



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

Office of
Chief Counsel

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***Hazardous Materials Safety
Law Division***

NOTICE OF PROBABLE VIOLATION

Date Issued: May 16, 2025

PHMSA Case No.: 24-0078-SH-SO

Respondent: YKK AP America
1229 Highway 441 Bypass
Dublin, Georgia 31021
ATTN: Robert “Chip” Wilson, Environmental Manager

No. of Alleged Violations: 3

Total Proposed Assessment: \$10,725

The Office of Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA) alleges that you have violated certain provisions of the Federal hazardous materials transportation law, 49 U.S.C. § 5101 *et seq.*, and/or the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180. PHMSA sets forth the specific allegations in Addendum A to this Notice.

What are the maximum and minimum civil penalties that PHMSA can assess? Federal law sets a maximum civil penalty of \$99,756 (or \$232,762 if the violation results in death, serious illness or severe injury, or substantial destruction of property), and a minimum civil penalty of \$601 if the violation concerns training, for each violation of the Federal hazardous materials transportation law or the HMR. Each day of a continuing violation by a shipper or transporter of hazardous materials constitutes a separate violation for which the maximum penalty may be imposed (49 U.S.C. § 5123(a)).

What factors does PHMSA consider when proposing and assessing a civil penalty? Federal law requires PHMSA to consider certain factors when proposing and assessing a civil penalty for a violation of Federal hazardous materials transportation law or the HMR. Please refer to Addendum B to this Notice for more information concerning these factors, which include corrective actions you take to attain and ensure compliance with the HMR.

How do I respond? You may respond to this Notice in any of three ways:

- (1) By paying the proposed assessment (49 CFR § 107.313(a)(1));
- (2) By sending an informal response, which can include a request for an informal conference (49 CFR § 107.313(a)(2)); or
- (3) By requesting a formal hearing (49 CFR § 107.313(a)(3)).

Details on these three options are provided in Addendum B to this Notice and also online at: (<https://www.phmsa.dot.gov/hazmat/field-operations/nopvresponses>). PHMSA explains its procedures for assessing civil penalties and imposing compliance orders in 49 CFR §§ 107.307 - 107.331.

When is my response due? You must respond within thirty (30) days from the date that you receive the Notice (49 CFR § 107.313(a)). I may extend the 30-day period for your response if you ask for an extension, and show good cause, within the original 30-day period (49 CFR § 107.313(c)). A response received out of time will not be considered. To assure timely receipt, **PHMSA strongly encourages you to submit your response by e-mail, fax, or express mail.**

What happens if I fail to respond? You waive your right to contest the allegations made in Addendum A to this Notice if you fail to respond within thirty (30) days of receiving it (or by the end of any extension). In that event, the Chief Counsel may find that you committed the violation(s) alleged in this Notice and assess an appropriate civil penalty.

What happens if PHMSA issues an Order assessing a civil penalty, and I fail to pay? If you fail to pay a civil penalty assessed by an Order, on the 91st day after the date of the Order you will be prohibited from conducting hazardous materials operations, in accordance with 49 CFR Part 109, Subpart E. If PHMSA issues a cease operations order and you continue to conduct hazardous materials operations, you may be subject to additional penalties, including criminal prosecution pursuant to 49 U.S.C. 5124. The prohibition shall continue until payment of the penalty has been made in full, or until PHMSA approves an acceptable payment plan.

The Case Exhibits have been supplied to you via a secure large file transfer link. If receiving the Case Exhibits in electronic format creates an undue hardship for you, please contact me.

BRITTANY SIGRID
BESSER
Digitally signed by BRITTANY
SIGRID BESSER
Date: 2025.05.16 09:38:19 -04'00'

Brittany S. Besser, Attorney

Enclosures: Addendum A
Addendum B
Addendum C

SERVICE BY ELECTRONIC MAIL

ADDENDUM A

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GENERAL ALLEGATIONS

General Factual Allegations/Averments

1. On April 23, 2024, PHMSA's Investigators conducted a compliance inspection at Respondent's facility in Dublin, Georgia (see Inspection Report No. 24415006 at page 1).
2. Robert "Chip" Wilson, Environmental Manager, and Brittany Howard, Environmental Engineer, represented the company during the inspection and provided any necessary documents (see Inspection Report No. 24415006 at page 1).
3. The inspection was predicated on an incident, which occurred on January 11, 2024, in Forsyth, Georgia, involving one of Respondent's shipments of "UN3170, Aluminum Remelting By-Product, 4.3, PGII" or "Aluminum Dross" loaded on a highway trailer that was observed with water leaking out of it. A Motor Carrier Officer (MCO) of the Georgia Department of Public Safety (GDPS) initiated a traffic stop on the vehicle and confirmed that water was comingled in the package with the dangerous when wet hazardous material (hazmat) (see Inspection Report No. 24415006 at pages 1-2).
4. As an offeror and transporter of hazardous materials, Respondent is a regulated entity subject to the HMR and to the jurisdiction of the Secretary of Transportation, PHMSA's Associate Administrator for Hazardous Materials Safety, and PHMSA's Office of the Chief Counsel (49 U.S.C. § 5103(b) and 49 CFR § 107.301).

SPECIFIC ALLEGATIONS

Probable Violation No. 1

Offering for transportation in commerce, a hazardous material, while having failed to prepare the hazardous material in accordance with this subchapter, specifically, special provision B115, in violation of 49 CFR §§ 171.2(a),(b),(d), and (e); §173.1(b); and 172.102(c)(3)B115.

Regulatory Standard

1. 49 CFR § 173.1(b) states, in part: "A shipment of hazardous materials that is not prepared in accordance with this subchapter may not be offered for transportation by air, highway, rail or water."
2. 49 CFR § 172.102(c)(3)B115 states: "Rail cars, highway trailers, roll-on/roll-off bins, or other non-specification bulk packagings are authorized. Packagings must be sift-proof, prevent liquid water from reaching the hazardous material, and be provided with sufficient venting to preclude dangerous accumulation of flammable, corrosive, or toxic gaseous emissions such as methane, hydrogen, and ammonia. The material must be loaded dry."

Factual Allegations/Averments

1. During the inspection, the Investigators, Mr. Wilson, and Ms. Howard discussed the January 11, 2024 incident, of which they were aware and was documented by GDPS report #GA1280000027 (see Inspection Report No. 24415006 at page 3 and Exhibit 2 to Report No. 24415006).
2. The report states that MCO Fowler of the GDPS initiated a traffic stop on a trailer displaying Class 4 Dangerous When Wet hazmat placards, after noticing that water was dripping from within the trailer onto the interstate. The trailer was detained at the Monroe County northbound weigh station (see Inspection Report No. 24415006 at page 3 and Exhibit 2 to Report No. 24415006).
3. While at the weigh station, MCO Fowler had the driver open the trailer, and he confirmed that the hazmat within was coming in direct contact with water. Later, the hazmat began to release smoke from inside the trailer and the weigh station parking lot was evacuated (see Inspection Report No. 24415006 at page 3 and Exhibit 2 to Report No. 24415006).
4. During the interview, Mr. Wilson explained that the driver that carried that load was a new driver and did not follow Respondent's procedures on how to load aluminum dross. Mr. Wilson took the Investigators to the area of the facility where the material was collected and stored until transport, and the Investigators observed and photographed the material (see Inspection Report No. 24415006 at page 3 and Exhibit 3 to Report No. 24415006).
5. Mr. Wilson further explained that the material is a byproduct of Respondent's manufacturing and that it is collected in bins inside a warehouse and then placed in a highway trailer parked directly outside the warehouse. The Investigators asked how water was prevented from reaching the hazmat while in storage, and Mr. Wilson said that a tarp would be rolled on over the top of the trailer. The Investigators observed and photographed the tarp on top of the trailer (see Inspection Report No. 24415006 at pages 3-4 and Exhibit 3 to Report No. 24415006).
6. Mr. Wilson stated that when a driver came to pick up the load, they would move the trailer approximately 100 yards away – but still within the facility's campus – to an incline, where then any water in the trailer would drain out to a retention pond. The Investigators observed and photographed the incline area. Once the water was drained, the driver would then exit the facility with the trailer. According to Mr. Wilson, on the day of the incident, the driver hooked up the trailer and immediately exited the facility without draining it first (see Inspection Report No. 24415006 at page 4 and Exhibit 3 to Report No. 24415006).
7. The Investigators asked why draining would be necessary if the hazmat was protected against water while onsite, to which Mr. Wilson was unable to give a sufficient answer. Additionally, the Investigators asked if there had been any adverse reactions with the

hazmat while stored onsite, to which Mr. Wilson responded negatively (see Inspection Report No. 24415006 at page 4 and Exhibit 3 to Report No. 24415006).

8. The Investigators were provided with a Bill of Lading (BOL) from the incident: BOL #458, dated January 11, 2024, denoting the shipment of (1) trailer load of aluminum dross weighing 33,260 pounds from YKK AP America INC to Metal Exchange Corp., 144 West Port Plaza, Suite 383, St. Louis, MO 63179 (see Inspection Report No. 24415006 at page 4 and Exhibit 4, page 1, to Report No. 24415006).
9. The Investigators obtained a Safety Data Sheets (SDS), dated June 1, 2015, for aluminum dross, confirming it as a hazardous material (see Inspection Report No. 24415006 at page 4 and Exhibit 5 to Report No. 24415006).
10. The Investigators advised Mr. Wilson and Ms. Howard of the importance of preparing hazmat in accordance with the HMR. They understood the violation as noted and stated they would take the necessary actions to correct the noted probable violation (see Inspection Report No. 24415006 at page 4).
11. On or about January 11, 2024, Respondent offered for transportation in commerce, a hazardous material, while having failed to prepare the hazardous material in accordance with this subchapter, specifically, special provision B115, in violation of 49 CFR §§ 171.2(a),(b),(d), and (e); §173.1(b); and 172.102(c)(3)B115.

- Please see Inspection/Investigation Report Number 24415006 at pages 3-5, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 2

Offering for transportation in commerce, a hazardous material, while having failed to ensure the person answering the emergency response number listed is either knowledgeable of the hazardous material being shipped or has immediate access to a person possessing such knowledge, in violation of 49 CFR § 172.604(a)(2).

Regulatory Standard

1. 49 CFR § 172.201(d) states, in part: "...a shipping paper must contain an emergency response telephone number and, if utilizing an emergency response information telephone number service provider, identify the person (by name or contact number) who has a contractual agreement with the service provider, as prescribed in subpart G of this part."
2. 49 CFR § 172.604(a) states, in part: "A person who offers a hazardous material for transportation must provide a numeric emergency response telephone number, including the area code, for use in an emergency involving the hazardous material...The telephone number must be—

- (1) Monitored at all times the hazardous material is in transportation, including storage incidental to transportation.
 - (2) The telephone number of a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material or has immediate access to a person who possesses such knowledge and information.”
3. 49 CFR § 172.604(b) states, in part: “The telephone number required by paragraph (a) of this section must be—
 - (1) The number of the person offering the hazardous material for transportation when that person is also the emergency response information provider (ERI provider).
 - (2) The number of an agency or organization capable of, and accepting responsibility for, providing the detailed information required by paragraph (a)(2) of this section...The person who is registered with the ERI provider must be identified by name, or contract number or other unique identifier assigned by the ERI provider ...”

Factual Allegations/Averments

1. During the interview with Mr. Wilson and Ms. Howard, the Investigators again referenced the GDPS report, and the fact that when the authorities called the number listed on BOL #458 (1-800-424-9324), the person answering the phone was unaware of the hazmat being shipped and how to respond. The Investigators also called the number and discovered that it belonged to a company that sells lighting and lighting supplies (see Inspection Report No. 24415006 at page 6 and Exhibit 2 to Report No. 24415006).
2. The Investigators then observed that other BOLs had different emergency telephone numbers listed on them, as follows:
 - a. BOL #458, dated January 11, 2024, denoting the shipment of (1) trailer load of aluminum dross weighing 33,260 pounds from YKK AP America INC to Metal Exchange Corp., 144 West Port Plaza, Suite 383, St. Louis, MO 63179. The emergency phone number listed was 1-800-424-9324 (see Inspection Report No. 24415006 at page 6 and Exhibit 4, page 1, to Report No. 24415006);
 - b. BOL #462, dated March 22, 2024, denoting the shipment of (1) trailer load of aluminum dross weighing 33,480 pounds from YKK AP America INC to Metal Exchange Corp., 144 West Port Plaza, Suite 383, St. Louis, MO 63179. The emergency phone number listed was 1-800-424-9326 (see Inspection Report No. 24415006 at page 6 and Exhibit 4, page 2, to Report No. 24415006);
 - c. BOL #464, dated April 12, 2024, denoting the shipment of (1) trailer load of aluminum dross weighing 35,750 pounds from YKK AP America INC to Metal

Exchange Corp., 144 West Port Plaza, Suite 383, St. Louis, MO 63179. The emergency phone number listed was 1-800-424-9326 (see Inspection Report No. 24415006 at page 7 and Exhibit 4, page 3, to Report No. 24415006); and

- d. BOL #465, dated April 19, 2024, denoting the shipment of (1) trailer load of aluminum dross weighing 29,920 pounds from YKK AP America INC to Metal Exchange Corp., 144 West Port Plaza, Suite 383, St. Louis, MO 63179. The emergency phone number listed was 1-800-424-9327 (see Inspection Report No. 24415006 at page 7 and Exhibit 4, page 4, to Report No. 24415006).
3. Mr. Wilson explained that Respondent was contracted with CHEMTREC as its emergency response provider. CHEMTREC's emergency response number was 1-800-424-9300, and that phone number should have been on the BOLs (see Inspection Report No. 24415006 at page 7).
4. The Investigators obtained a Safety Data Sheets (SDS), dated June 1, 2015, for aluminum dross, confirming it as a hazardous material (see Inspection Report No. 24415006 at page 7 and Exhibit 5 to Report No. 24415006).
5. The Investigators stressed the importance of using the correct emergency response telephone number on BOLs, and Mr. Wilson and Ms. Howard stated they would conduct an internal investigation as to why the numbers were listed wrong and correct the noted probable violation (see Inspection Report No. 24415006 at page 7).
6. On or about January 11, March 22, and April 12 and 19, 2024, Respondent offered for transportation in commerce, a hazardous material, while having failed to ensure the person answering the emergency response number listed is either knowledgeable of the hazardous material being shipped or has immediate access to a person possessing such knowledge, in violation of 49 CFR § 172.604(a)(2).

- Please see Inspection/Investigation Report Number 24415006 at pages 6-8, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 3

Offering for transportation in commerce, a hazardous material, while having used an incorrect packing group on shipping papers, in violation of 49 CFR § 172.202.

Regulatory Standard

1. 49 CFR §172.202(a) states, in part: "The shipping description on the shipping paper must include: (4) The packing group in Roman numerals, as designated for the hazardous material in Column (5) of the §172.101 table...."

Factual Allegations/Averments

1. The investigators were provided with the following BOLs for aluminum dross, which listed it as a Packing Group II (exhibit 4):
 - a. BOL #458, dated January 11, 2024, denoting the shipment of (1) trailer load of aluminum dross weighing 33,260 pounds from YKK AP America INC to Metal Exchange Corp., 144 West Port Plaza, Suite 383, St. Louis, MO 63179 (see Inspection Report No. 24415006 at page 9 and Exhibit 4, page 1, to Report No. 24415006);
 - b. BOL #462, dated March 22, 2024, denoting the shipment of (1) trailer load of aluminum dross weighing 33,480 pounds from YKK AP America INC to Metal Exchange Corp., 144 West Port Plaza, Suite 383, St. Louis, MO 63179 (see Inspection Report No. 24415006 at page 9 and Exhibit 4, page 2, to Report No. 24415006);
 - c. BOL #464, dated April 12, 2024, denoting the shipment of (1) trailer load of aluminum dross weighing 35,750 pounds from YKK AP America INC to Metal Exchange Corp., 144 West Port Plaza, Suite 383, St. Louis, MO 63179 (see Inspection Report No. 24415006 at page 9 and Exhibit 4, page 3, to Report No. 24415006); and
 - d. BOL #465, dated April 19, 2024, denoting the shipment of (1) trailer load of aluminum dross weighing 29,920 pounds from YKK AP America INC to Metal Exchange Corp., 144 West Port Plaza, Suite 383, St. Louis, MO 63179 (see Inspection Report No. 24415006 at page 9 and Exhibit 4, page 4, to Report No. 24415006).
2. The Investigators obtained a Safety Data Sheets (SDS), dated June 1, 2015, for aluminum dross, confirming it as a hazardous material with a Packing Group III designation (see Inspection Report No. 24415006 at page 10 and Exhibit 5 to Report No. 24415006).
3. The Investigators advised Mr. Wilson and Ms. Howard of the importance of having the correct Packing Group listed on the shipping papers as per the SDS. They understood the violation as noted and stated they would take the necessary actions to correct the noted probable violation (see Inspection Report No. 24415006 at page 10).
4. On or about January 11, March 22, and April 12 and 19, 2024, Respondent offered for transportation in commerce, a hazardous material, while having used an incorrect packing group on shipping papers, in violation of 49 CFR § 172.202.

- Please see Inspection/Investigation Report Number 24415006 at pages 9-10, and the exhibits that accompany this report, which are incorporated herein.

FACTS ALREADY CONSIDERED (UNDER 49 CFR § 107.331) IN SETTING PROPOSED PENALTIESPrior Violations:

When setting a civil penalty, PHMSA will review the respondent's compliance history and determine if there are any finally-adjudicated violations of the HMR initiated within the previous six years. Only cases or tickets that have been finally-adjudicated will be considered (i.e., the ticket has been paid, a final order has been issued, or all appeal remedies have been exhausted or expired). PHMSA will include prior violations that were initiated within six years of the present case; a case or ticket will be considered to have been initiated on the date of the exit briefing for both the prior case and the present case. If multiple cases are combined into a single Notice of Probable Violation or ticket, the oldest exit briefing will be used to determine the six-year period. If a situation arises where no exit briefing is issued, the date of the Notice of Probable Violation or Ticket will be used to determine the six-year period. PHMSA may consider prior violations of the Hazardous Materials Regulations from other DOT Operating Administrations.

The general standards for increasing a baseline proposed penalty on the basis of prior violations are as follows (49 CFR Part 107, Subpart D, Appendix A):

1. For each prior civil or criminal enforcement case—25 percent increase over the pre-mitigation recommended baseline penalty.
2. For each prior ticket—10 percent increase over the pre-mitigation recommended baseline penalty.
3. If a respondent is cited for operating under an expired special permit and previously operated under an expired special permit (as determined in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket), PHMSA will increase the civil penalty 100 percent.
4. If a respondent is cited for the exact same violation that it has been previously cited for within the six-year period (in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket), PHMSA will increase the baseline for that violation by 100 percent. This increase will apply only when the present violation is identical to the previous violation and applies only to the specific violation that has recurred.
5. A baseline proposed penalty (both for each individual violation and the combined total) will not be increased more than 100 percent on the basis of prior violations.

PHMSA's records do not contain any prior violations by Respondent at this facility, and PHMSA did not consider any prior violations in determining the proposed assessment for the violation in this Notice.

Penalty Increases for Multiple Counts:

PHMSA generally will treat multiple occurrences that violate a single regulatory provision as separate violations and assess the applicable baseline penalty for each distinct occurrence of the violation. PHMSA will generally consider multiple shipments or, in the case of package testers, multiple package designs, to be multiple occurrences; and each shipment or package design may constitute a separate violation.

PHMSA, however, will exercise its discretion in each case to determine the appropriateness of combining into a single violation what could otherwise be alleged as separate violations and applying a single penalty for multiple counts or days of a violation, increased by 25 percent for each additional instance, as directed by 49 U.S.C. 5123(c). For example, PHMSA may treat a single shipment containing three items or packages that violate the same regulatory provision as a single violation and apply a single baseline penalty with a 50 percent increase for the two additional items or packages; and PHMSA may treat minor variations in a package design for a package tester as a single violation and apply a single baseline penalty with a 25 percent increase for each additional variation in design.

When aggravating circumstances exist for a particular violation, PHMSA may handle multiple instances of a single regulatory violation separately, each meriting a separate baseline or increase the civil penalty by 25 percent for each additional instance. Aggravating factors may include increased safety risks, continued violation after receiving notice, or separate and distinct acts. For example, if the multiple occurrences each require their own distinct action, then PHMSA may count each violation separately (e.g., failure to obtain approvals for separate fireworks devices) (49 CFR Part 107, Subpart D, Appendix A).

Corrective Action:

An important purpose of PHMSA's enforcement program is to bring the regulated community into compliance with the HMR, and to promote ongoing efforts by that community to maintain compliance. In determining the final penalty assessment, PHMSA considers documented evidence of actions taken by a Respondent to correct violations and ensure that they do not recur (49 CFR § 107.331(g)).

In its May 20, 2024 letter, Respondent addressed the actions it has taken to correct the violations alleged in this Notice and to prevent future violations of the HMR. Respondent described and documented its corrective action as follows:

- Violation No.1: Respondent has moved the aluminum dross trailer to a fully covered trailer storage area and has also updated the written procedure to reflect this new storage location (see Inspection Report No. 24415006 at page 11 and Exhibit 6, pages 1 and 3, to Report No. 24415006).

- Violation No.2: Respondent's internal investigation revealed that a computer formatting issue was to blame for the incorrect numbers. Respondent has created a new spreadsheet template that is now part of the Environmental Department's Document Control System (see Inspection Report No. 24415006 at page 11 and Exhibit 6, pages 1,2, and 4, to Report No. 24415006).
- Violation No.3: Respondent's internal investigation revealed this to be a keystroke mistake and corrected the issue by creating a new Excel spreadsheet for the Melt/Cast Manager to use and ensure all information in the description is correct (see Inspection Report No. 24415006 at page 11 and Exhibit 6, pages 2 and 5, to Report No. 24415006).

Based on this information and documentation, the proposed penalty has been reduced by 25% for Violation 1, 25% for Violation 2, and 25% for Violation 3 (as indicated below).

Financial Status

Under 49 CFR §107.331 (e) and (f), the proposed penalty may be reduced if Respondent demonstrates that it is unable to pay that penalty, or if payment of the proposed penalty would affect Respondent's ability to continue in business. Respondent's poor financial condition may be a basis for reducing the proposed penalty; a healthy financial condition is *not* a basis for increasing the penalty.

PHMSA has no information that indicates that Respondent is unable to pay the proposed penalty or that payment of the proposed penalty will affect Respondent's ability to continue in business. If Respondent wishes its financial condition to be considered in assessing a penalty for the violation(s) alleged in this Notice, it must provide current financial information (i.e., copies of Respondent's three most current Federal tax returns, an income statement, and a current balance sheet [preferably certified]).

TOTAL CIVIL PENALTY PROPOSED

Probable Violation	Baseline Penalty	Increase for Priors	Corrective Action	Proposed Penalty
1	\$9,300	+\$0	-\$2,325	\$6,975
2	\$3,700	+\$0	-\$925	\$2,775
3	\$1,300	+\$0	-\$325	\$975
TOTAL	\$14,300	+\$0	-\$3,575	\$10,725

ADDENDUM B

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**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**

How do I respond to this Notice of Probable Violation (Notice)?

You may respond to this Notice in any of three ways:

- (1) Pay the proposed assessment (49 C.F.R. § 107.315);
- (2) Send an informal response, which can include a request for an informal conference (§ 107.317); or
- (3) Request a formal hearing (§ 107.319).

How do I pay the proposed assessment?

You pay the proposed assessment by:

- (1) Sending a wire transfer, through the Federal Reserve Communications System (Fedwire), to the U.S. Treasury account (49 C.F.R. § 89.21(b)(3)). Addendum C contains the instructions for sending wire transfers. Questions concerning wire transfers should be directed to: DOT/PHMSA/MMAC, AMK-325/HQ-RM 181 6500 S MacArthur Blvd., Oklahoma City, OK 73169 (Telephone No. (405) 954-9309).

Or

- (2) Sending a certified check or money order if the penalty amount is \$10,000 or less. The certified check or money order must be payable to the "U.S. Department of Transportation" and must be mailed to: DOT/PHMSA/MMAC, AMK-325/HQ-RM 181 6500 S MacArthur Blvd., Oklahoma City, OK 73169 (Telephone No. (405) 954-9309).

Or

- (3) Using a credit card via the Internet. To pay electronically with a credit card, visit the following website address and follow the instructions:

<https://www.pay.gov/public/form/start/1078346>

Where do I send my response?

You must address your informal response or formal hearing request to the attorney who issued the Notice at the following address:

Pipeline and Hazardous Materials Safety Administration
Office of the Chief Counsel (PHC-10)
Room E26-105
U.S. Department of Transportation
1200 New Jersey Avenue S.E.
Washington, D.C. 20590

When is my response due? (§ 107.313)

You must respond to the Notice within thirty (30) days of the date you receive it. The attorney who issued the Notice may extend the 30-day period for your response if you ask for an extension, and show good cause, within the original 30-day period.

What happens if I do not respond? (§ 107.313)

If you fail to respond to the Notice within thirty (30) days of receiving it (or by the end of any extension), you will waive your right to contest the allegations made in Addendum A to the Notice. In addition, the Chief Counsel will issue a default Order finding the facts as alleged in the Notice and assessing the civil penalty as outlined within that notice.

May I propose a compromise offer? (§ 107.327)

Yes. At any time before an order is issued and referred to the Attorney General for collection, you may propose to compromise a civil penalty case by submitting a specific compromise offer amount to the attorney handling the case (§ 107.327). The Chief Counsel may also propose a compromise.

If a compromise is agreeable to all parties, the attorney handling the case will forward a compromise agreement to you for signature. This document will outline the terms of the joint agreement and you must return a signed original to the attorney handling the case within 30 days. After this agreement has been returned it will be signed by the assigned attorney and presented to the Chief Counsel with a request that the Chief Counsel adopt the terms of that agreement by issuing a Compromise Order (49 C.F.R. § 107.327(a)(1)). The terms of the agreement constitute an offer of compromise until accepted by the Chief Counsel. When you agree to a compromise, you give up your right to appeal the order issued by the Chief Counsel.

What should I include in my informal response? (§107.317)

Your informal response must contain written explanations, information or arguments that respond to the allegation(s), the amount of the proposed civil penalty, or the terms of a proposed compliance order. Provide complete documentation of your explanations and arguments. No specific format is required for an informal response.

May I request an informal conference? (§ 107.317)

Yes. You may request an informal conference as part of your informal response. Please describe the issues you want to discuss during the conference. After receiving your request, the attorney handling the case will contact you to arrange the conference. Normally the conference will be held by telephone, and the attorney handling the case and the inspector who conducted the compliance inspection will participate in the conference.

What happens after I submit an informal response to the Notice?

We will hold an informal conference if you have asked for one. Based on the Notice, the evidence supporting the Notice, any written explanations, information and documentation that you provide, and matters presented at a conference, the Chief Counsel decides the case. The Chief Counsel may issue an order finding all or some of the violation(s) alleged in the Notice or may withdraw all or some of the alleged violation(s). If the Chief Counsel finds violation(s), the order will assess a civil penalty.

How do I appeal an order? (§ 107.325)

You may appeal an order to PHMSA's

Administrator. How do I request a formal hearing? (§ 107.319)

You must request a formal hearing within 30 days of the date that you receive the Notice. If you are granted an extension of time to respond to the Notice, you must submit a formal hearing request by the end of the extended time period. If you do not request a formal hearing within the specified time, you will waive your right to a formal hearing.

Your request for a formal administrative hearing must include the following:

- (1) The name and address of the respondent and any other person submitting the request;
- (2) A statement of which allegations of violations are not in dispute; and
- (3) A description of the issues that you will raise at the hearing. (The Administrative Law Judge will decide whether issues not raised in the request may be raised at the hearing.)

After receiving a request for a hearing that complies with these requirements, the Chief Counsel will request an Administrative Law Judge from the DOT Office of Hearings to preside over the hearing. Once an Administrative Law Judge is assigned, all further matters in the proceeding will be conducted by the Administrative Law Judge. Either you or PHMSA may appeal the decision of the Administrative Law Judge to PHMSA's Administrator.

How does PHMSA determine if I have committed a violation?

This is a civil penalty case and PHMSA uses the "knowingly" standard, which is defined in the Federal hazardous materials transportation law (See 49 U.S.C. 5123(a)(1)), in all civil penalty cases. The standard for a violation is similar to "negligence". After considering all the available information (including the additional information you provide in your response to the Notice), PHMSA must find either that (1) you had actual knowledge of the facts giving rise to the violation, or (2) you had imputed knowledge, of the facts giving rise to the violation, in that a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. PHMSA does not need to find that you actually knew about, or intended to violate, requirements in the Federal hazardous material transportation law or the HMR.

What factors does PHMSA consider when proposing and assessing a civil penalty? (§ 107.331)

PHMSA considers the following factors when proposing and assessing a civil penalty for a violation of the regulations:

- (1) The nature and circumstances of the violation(s);
- (2) The extent and gravity of the violation(s);
- (3) The degree of your culpability;
- (4) Your history, if any, of prior offenses;
- (5) Your ability to pay the penalty;
- (6) The effect of the penalty on your ability to continue in business;
- (7) The size of your business, and
- (8) Other matters as justice may require.

The nature and the timeliness of any corrective action you take to prevent future violations of a similar nature will be considered under item No. 8. However, you must submit documented evidence of that corrective action to the PHMSA attorney. If you have submitted documented evidence regarding any of these factors during PHMSA's investigation of the alleged violation(s), and that documentation is referenced in the Notice or accompanying Inspection/Investigation Report, you do not need to resubmit it.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA), PHMSA must consider the rights of small entities in enforcement actions. PHMSA's hazardous materials enforcement program has been designed to consider small businesses and the penalties that PHMSA proposes and assesses are generally considered appropriate for small businesses. PHMSA takes into consideration the size of the company when proposing and assessing a civil penalty.

However, special consideration may not be given to a small business if:

- (1) The small business has not corrected its violation(s) within a reasonable time;
- (2) The small business has committed one or more prior violations of the HMR;
- (3) The violations involve willful conduct;
- (4) The violations pose serious threats to health, safety or the environment; or
- (5) The small business has not made a good faith effort to comply with the law.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. Our objective is to ensure a fair regulatory enforcement environment.

You have a right to contact the Small Business Administration's national Ombudsman at 1-888- REG-FAIR (1-888-734-3247) or <https://www.sba.gov/ombudsman> regarding the fairness of the compliance and enforcement activities by this agency.

The Pipeline and Hazardous Materials Safety Administration strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about compliance and enforcement activities.

Where can I find more information on how PHMSA handles hazardous materials enforcement cases?

A more detailed discussion of these procedures is in 49 C.F.R. §§ 107.301 through 107.333. These procedures are also on the Office of the Chief Counsel's home page at <http://www.phmsa.dot.gov/org/office-of-chief-counsel>.

ADDENDUM C

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**INSTRUCTIONS FOR ELECTRONIC FUNDS TRANSFER TO
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION**

1. <u>RECEIVER'S ABA NO.</u> 021030004	2. <u>TYPE SUBTYPE</u> (provided by sending bank)
3. <u>SENDING BANK ARB NO.</u> (provided by sending bank)	4. <u>SENDING BANK REF NO.</u> (provided by sending bank)
5. <u>AMOUNT</u>	6. <u>SENDING BANK NAME</u> (provided by sending bank)
7. <u>RECEIVER NAME:</u> TREAS NYC	8. <u>PRODUCT CODE</u> (Normally CTR, or sending bank)
9. <u>BENEFICIAL (BNF)- AGENCY LOCATION CODE</u> BNF=/AC-69140001	10. <u>REASONS FOR PAYMENT</u> <i>Example: PHMSA Payment for Case #/Ticket</i>

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for Block (1), (5), (7), (9), and (10). The information provided in blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this nine digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE:** **\$10,000.00**

Block #7 - RECEIVER NAME- "TREAS NYC." Ensure the sending bank enters this abbreviation, which must be used for all wire transfer to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/AC-69140001" Ensure the sending bank enters this information. This is the Agency Location Code for Pipeline and Hazardous Materials Safety Administration, Department of Transportation

Block #10 - REASON FOR PAYMENT – "AC-Payment for PHMSA Case#" To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number."

Note: - A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You, as the sender, can assist this process by notifying, at the time you send the wire transfer, the General Accounting Division at (405) 954-9309.