



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

Office of  
Chief Counsel

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**Hazardous Materials Safety  
Law Division**

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**NOTICE OF PROBABLE VIOLATION**

Date Electronically Issued: May 19, 2025

PHMSA Case No.: 24-0146-SH-SO

Respondent: Solid Start, Inc.  
2801 Saluda Road  
Lakeland, Florida 33801  
ATTN: Amber Kossak, CEO

No. of Alleged Violations: 3

Total Proposed Assessment: \$7,425

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: 2025.06.03 11:57:14 -04'00'

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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 March 4, 2024, PHMSA's Investigator conducted a compliance inspection at Respondent's facility in Lakeland, Florida (see Inspection Report No. 24248003 at page 1).
2. Mike Davis, Plant Manager; Ray Pryor, Vice President of Sales; and Alan Ferry, Technical Director, represented the company during this inspection, providing a tour of the facility, information, and necessary documentation (see Inspection Report No. 24248003 at page 1).
3. Respondent is a manufacturer of additives for automotive and marine craft, such as fuel injector cleaners, brake cleaners, windshield washer fluid, and much more. The products are marketed by several brand names: "True Brand," True Brand Marine," and "Cold-Plus" (see Inspection Report No. 24248003 at page 1).
4. Most of the fluids are shipped as Limited Quantities, although 5- and 55-gallon plastic and steel UN Standard drums are also used. The drums procured from Orlando Drum, Inc. in Orlando, Florida and Greif Packaging, LLC, in Auburndale, Florida (see Inspection Report No. 24248003 at page 1).
5. The products are shipped by ground service domestically via common carriers, such as R & L Carriers, and Respondent makes local deliveries using a van and a box truck. Freight forwarders are also utilized to export by vessel through ports in South Florida (see Inspection Report No. 24248003 at pages 1-2).
6. Six (6) hazardous materials employees are current with DOT, IATA, and IMDG hazardous materials training, which is accomplished by using a third-party training provider, Lion Technology, and safety training is conducted "in-house" using an internal "Safety & Health Training Agenda" (see Inspection Report No. 24248003 at page 2).
7. 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 hazardous materials, packaged in UN Standard drums, when the drums had not been closed in accordance with the manufacturers' closure instructions, and failing to maintain a copy of those instructions, in violation of 49 CFR §§ 171.2(a), (b), (e),

(i); 173.22(a)(4)(i)(ii); 173.24(f)(2); 178.2(c); and 178.601(b), thereby voiding the UN certification of those drums.

### Regulatory Standard

1. 49 CFR § 173.22(a)(4), states, in part: “(i) For a DOT specification or UN Standard packaging subject to the requirements of part 178 of this subchapter, a person must perform all functions necessary to bring the package into compliance with parts 173 and 178 of this subchapter, as identified by the packaging manufacturer or subsequent distributor (for example, applying closures consistent with the manufacturer’s closure instructions) in accordance with 178.2 of this subchapter. (ii) For other than a bulk package or a cylinder, a person must retain a copy of the manufacturers notification, including closure instructions.”
2. 49 CFR § 173.24(f)(2) states, in part: “A closure (including gaskets or other closure components, if any) used on a specification packaging must conform to all applicable requirements of the specification and must be closed in accordance with information, as applicable, provided by the manufacturer's notification required by §178.2 of this subchapter.”

### Factual Allegations/Averments

1. While examining Respondent’s inventory of products with Mr. Ferry in the warehouse, PHMSA’s Investigator observed a filled 55-gallon UN Standard steel drum that displayed a Class 3 flammable liquid label (see Inspection Report No. 24248003 at page 3 and Exhibit 2, pages 6-16 to Repot No. 24248003).
2. The Investigator examined the drum, finding it was marked as a UN-rated reconditioned drum, “UN 1A1/Y1.4/250 USA/M4649/23/RL”. A product label affixed to the side of the drum identified the contents as “True Brand Brake Cleaner” and the contents were regulated for transportation as “UN1992, Flammable Liquid, Toxic, N.O.S. (Heptane, Methanol), Marine Pollutant” (see Inspection Report No. 24248003 at page 3 and Exhibit 2, pages 6-16, to Report No. 24248003).
3. The Investigator also noted this was a “tight head” drum, in that the top head of the drum had 2” and ¾” closure devices installed in the bung openings. The Investigator asked if the product was manufactured and the drum filled at this facility. Mr. Ferry confirmed that was correct; however, this product was not sold and shipped often – maybe once or twice a year (see Inspection Report No. 24248003 at page 3 and Exhibit 2, pages 6-16, to Report No. 24248003).
4. Subsequently, the Investigator asked what tool or tools were used, if any, to effect proper closure of the bung fittings on this and other UN rated drums. Mr. Ferry produced a standard bung wrench, which had no means to gauge torque pressure when closing the

- bung fittings (see Inspection Report No. 24248003 at page 3 and Exhibit 2, pages 1-5, to Report No. 24248003).
5. The Investigator asked what the drum manufacturer's closure instructions require to accomplish proper closure of the bung fittings, in terms of a torque value, and requested a copy of the respective written closure notification and recent procurement documents for similar drums. Mr. Ferry was unaware of any specific closure requirements and was unfamiliar this requirement (see Inspection Report No. 24248003 at page 4 and Exhibit 2, pages 1-5, to Report No. 24248003).
  6. Mr. Ferry produced a Greif Packaging, LLC "Sales Invoice," number SLI-41827943, dated October 17, 2023, denoting the sale of eight (8) each, "55 Gallon Open Head Large Steel Drums" and ten (10) each 55 Gallon Tight Head Large Steel Drums" (see Inspection Report No. 24248003 at page 4 and Exhibit 3 to Report No. 24248003).
  7. The Investigator noted the Greif plant was located in Auburndale, Florida, and the delivery method was "Pick Up," based on SSI's Order Number "AF101123-Solid Start." The Investigator noted there was no information on this invoice concerning drum closure and asked if there were any other documents on file related to this order. Mr. Ferry stated he provided all paperwork that he could locate and did not recall ever receiving anything about closing drums from Greif (see Inspection Report No. 24248003 at page 4 and Exhibit 3 to Report No. 24248003).
  8. Respondent demonstrated an active history of tendering the brake cleaner in similar steel UN Standard drums. Mr. Ferry provided a Bill of Lading (BOL), number 210436853, dated January 2, 2024, and related "Sender's Receipt," "Invoice," and "Packing Slip," denoting the sale and shipment by Respondent via R & L Carriers of one (1) 55-gallon drum containing "Brake Cleaner" to Beach Auto Care, 20017 Panama City Beach Pkwy, Panama City Beach, Florida 32413. Declared and certified on the shipping paper, the drum was described as "UN1993, auto additive, 3, PG II" 1 Drum @ 380 pounds. The "Handling Instructions" on the BOL additionally stated "Flammable Liquid, Toxic, N.O.S. (Heptane, Methanol), Marine Pollutant" (see Inspection Report No. 24248003 at page 4 and Exhibit 4 to Report No. 24248003).
  9. The Safety Data Sheet (SDS) provided by Mr. Ferry confirmed in Section 14 that in the United States, the brake cleaner is regulated for transportation as "UN1993, Flammable Liquids, N.O.S. (Heptane, Methanol), 3," and internationally according to ADR, IMDG, IATA, it is regulated for transportation as "UN1992, Flammable Liquid, Toxic, N.O.S. (Heptane, Methanol), Marine Pollutant" (see Inspection Report No. 24248003 at page 4 and Exhibit 5 to Report No. 24248003).
  10. No further documentation or information concerning the UN Standard drums was provided during the on-site inspection. The Investigator pointed out to the management team that a requirement exists for their drum vendor, Greif, to provide Respondent with a copy of closure instructions because the closure fittings must be closed in a measurable and repeatable manner, and in the case of threaded and gasketed bung plugs, according to a specified torque pressure listed in the closure notification. Additionally, a requirement

also exists for the filler and shipper of UN Standard drums, in this case Respondent, to maintain a copy of such closure instructions and provide that to a DOT authority upon request (see Inspection Report No. 24248003 at page 4).

11. The Investigator explained that without closure instructions and using a standard bung wrench, Respondent had failed to close its UN Standard drums containing hazardous materials in the method prescribed by the manufacturer, in violation of the Hazardous Materials Regulations (HMR), and such failure also voided the UN certification of those UN packagings (see Inspection Report No. 24248003 at pages 4-5).
12. After the inspection, the Investigator contacted Greif Packaging, LLC in Auburndale, Florida, and conversed with Customer Service Specialist, Ms. Monica Allen. Ms. Allen stated each and every sale and shipment or customer pick-up of UN-rated drums has a document package accompanying the consignment, which includes closure instructions (see Inspection Report No. 24248003 at page 5).
13. Ms. Allen provided the Investigator with a copy of the document package that was provided to Respondent by Greif on October 16, 2023, at the time of pick up, consisting of a two (2) page BOL, a four (4) page Packing Slip with closure information, and an Order Acknowledgement (see Inspection Report No. 24248003 at page 5 and Exhibit 6 to Report No. 24248003).
14. Upon review, the Investigator noted a signature and date of acceptance was shown on page two of the BOL, and the Packing Slip contained closure instructions for open and closed head steel drums. The fittings on the UN Standard steel drums purchased require of torque values of 22-foot pounds for the 2" fittings and 9-foot pounds for the ¾" fittings (see Inspection Report No. 24248003 at page 5 and Exhibit 6 to Report No. 24248003).
15. Greif had provided what is required for drum closure to Respondent, and it is incumbent on the users of UN Standard packaging to maintain copies of closure notifications and comply them (see Inspection Report No. 24248003 at page 5 and Exhibit 6 to Report No. 24248003).
16. On or about January 2, 2024, Respondent offered for transportation in commerce hazardous materials, packaged in UN Standard drums, when the drums had not been closed in accordance with the manufacturers' closure instructions, and failed to maintain a copy of those instructions, in violation of 49 CFR §§ 171.2(a), (b), (e), (i); 173.22(a)(4)(i)(ii); 173.24(f)(2); 178.2(c); and 178.601(b), thereby voiding the UN certification of those drums.

- Please see Inspection/Investigation Report Number 24248003 at pages 3-5, and the exhibits that accompany this report, which are incorporated herein.

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Probable Violation No. 2

Offering for transportation in commerce a hazardous material, accompanied by a shipping paper with a shipping description that included an incorrect proper shipping name not authorized by the Hazardous Materials Regulations (HMR), in violation of 49 CFR §§ 171.2(a), (b), (e), (i); 172.200(a); and 172.202(a)(2) & (k).

Regulatory Standard

1. 49 CFR § 172.202 states, in part: “(a)(2) The shipping description of a hazardous material on the shipping paper must include: (1) The proper shipping name prescribed for the material in column 2 of the § 172.101 table.... (k) Technical name for “n.o.s” and other generic descriptions. Unless otherwise excepted, if a material is described on a shipping paper by one of the proper shipping names identified by the letter “G” in column (1) of the 172.101 Table, the technical name of the hazardous materials must be entered in parentheses in association with the basic description.”

Factual Allegations/Averments

1. Bill Of Lading (BOL) number 210436853, dated January 2, 2024, and related “Sender’s Receipt,” “Invoice,” and “Packing Slip,” denoting the sale and shipment by Respondent via R & L Carriers of one (1) 55-gallon drum containing “Brake Cleaner” to Beach Auto Care, 20017 Panama City Beach Pkwy, Panama City Beach, Florida 32413. Declared and certified on the shipping paper the drum was described as “UN1993, auto additive, 3, PG II” 1 Drum @ 380 pounds. The “Handling Instructions” on the BOL state “Flammable Liquid, Toxic, N.O.S. (Heptane, Methanol), Marine Pollutant” (see Inspection Report No. 24248003 at page 6 and Exhibit 4 to Report No. 24248003).
2. According to the SDS provided by Mr. Ferry, in the United States, the brake cleaner is regulated for transportation as “UN1993, Flammable Liquids, N.O.S. (Heptane, Methanol), 3,” and is regulated internationally, according to ADR, IMDG, IATA, as “UN1992, Flammable Liquid, Toxic, N.O.S. (Heptane, Methanol), Marine Pollutant,” neither of which is reflected accurately on the provided shipping documents (see Inspection Report No. 24248003 at page 6 and Exhibit 5 to Report No. 24248003).
3. According to the 49 CFR 172.101 Table of Hazardous Materials, and further confirmed by the SDS, the proper shipping name in the shipping description should have been “Flammable Liquid, N.O.S.,” and “auto additive” is not listed in the table. Further, because it is an N.O.S. entry in the table flagged with the symbol of “G” in column (1), the technical name(s) were required to be added either after the proper shipping name and before the hazard class or after the basic description in parentheses. From the SDS the technical names included should have been “(Heptane, Methanol).” The correct shipping description, identified by the letter “X” on the shipping paper, should have been, 1 drum,

“UN1993, Flammable Liquid, N.O.S. (Heptane, Methanol), 3, PG II” (see Inspection Report No. 24248003 at pages 6-7 and Exhibits 4 and 5 to Report No. 24248003).

4. The Investigator explained the proper shipping name to Respondent’s Representatives, who stated the error would be easy to correct by making an adjustment to the software program used (see Inspection Report No. 24248003 at page 7).
5. On or about January 2, 2024, Respondent offered for transportation in commerce a hazardous material, accompanied by a shipping paper with a shipping description that included an incorrect proper shipping name not authorized by the Hazardous Materials Regulations (HMR), in violation of 49 CFR §§ 171.2(a), (b), (e), (i); 172.200(a); and 172.202(a)(2) & (k).

- Please see Inspection/Investigation Report Number 24248003 at pages 6-7, and the exhibits that accompany this report, which are incorporated herein.

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### Probable Violation No. 3

Allowing an employee to perform functions subject to the requirements of Hazardous Materials Regulations (HMR), when the employee had not received initial hazardous materials general awareness, function-specific, safety, and security awareness training, as required by the HMR, in violation of 49 CFR §§ 171.2(a) & (b); 172.702(a) & (b); 172.704(a)(1), (2), (3), (4); and 172.704(c)(1).

### Regulatory Standard

1. 49 CFR § 172.702 states, in part: “(a) A hazmat employer shall ensure that each of its hazmat employees is trained in accordance with the requirements prescribed in this subpart. (b) Except as provided in §172.704(c)(1), a hazmat employee who performs any function subject to the requirements of this subchapter may not perform that function unless instructed in the requirements of this subchapter that apply to that function. It is the duty of each hazmat employer to comply with the applicable requirements of this subchapter and to thoroughly instruct each hazmat employee in relation thereto.”
2. 49 CFR § 172.704(a) states, in part: “[E]ach hazardous materials employee shall be provided general awareness, function-specific, safety, and security awareness training”.

### Factual Allegations/Averments

1. The Investigator asked for and received an exemplar of hazardous materials training provided for the employees. Mr. Ferry provided training records for him denoting that on July 6 and 7, 2023, Mr. Ferry successfully completed hazardous materials and dangerous goods training and testing according to DOT and modal IMDG and IATA regulations.

Also provided was a training record for safety training conducted by Mr. Ferry on May 5, 2021 (see Inspection Report No. 24248003 at pages 8-9 and Exhibits 7 and 8 to Report No. 24248003).

2. The Investigator could not identify by name the signature of the employee that signed the Shipper's Certification on BOL number 210436853, dated January 2, 2024, and asked what the employee's name was. Mr. Ferrier stated the employee was Javier Cossio, who has been employed there for approximately two (2) years (see Inspection Report No. 24248003 at page 9 and Exhibit 4 to Report No. 24248003).
3. The investigator did not find Mr. Cossio's name listed in any of the training records provided and requested hazardous materials training records for him. Mr. Ferry was unable to provide any training records for Mr. Cossio and stated this must have been an oversight in training or recordkeeping (see Inspection Report No. 24248003 at page 9).
4. The Investigator discussed the training requirements with Respondent's Representatives and provided suggestions to accomplish the training, such as third-party training providers or "in-house" training, and directed their attention to the hazardous materials training modules available on the agency public website (see Inspection Report No. 24248003 at page 9).
5. On or about January 2, 2024, Respondent allowed an employee to perform functions subject to the requirements of Hazardous Materials Regulations (HMR), when the employee had not received initial hazardous materials general awareness, function-specific, safety, and security awareness training, as required by the HMR, in violation of 49 CFR §§ 171.2(a) & (b); 172.702(a) & (b); 172.704(a)(1), (2), (3), (4); and 172.704(c)(1).

- Please see Inspection/Investigation Report Number 24248003 at pages 8-9, and the exhibits that accompany this report, which are incorporated herein.

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## **FACTS ALREADY CONSIDERED (UNDER 49 CFR § 107.331) IN SETTING PROPOSED PENALTIES**

### Prior 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 April 2, 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 obtained the drum closure instructions from Greif, procured a torque wrench with an adapter, and also developed an internal standard operating procedure (SOP) specific to closure of UN-rated drums. Function-specific training was conducted with the employees who perform drum closure. Copies of the purchase invoice for the tools were provided with the response, including the SOP, function-specific training record, and the Greif closing instructions (see Inspection Report No. 24248003 at page 10 and Exhibit 9, pages 1-14, to Report No. 24248003).
- Violation No.2: Respondent provided a statement of intent this violation was corrected through "training and simple instructions," but no documented evidence was offered, such as a sample of a shipping paper with the revised basic shipping description (see Inspection Report No. 24248003 at page 10 and Exhibit 9 to Report No. 24248003).
- Violation No.3: Respondent provided training records for Mr. Cossio and a second employee, John Willis, dated March 27, 2024, which denotes these two employees were trained and tested in twenty-eight (28) component areas including the exams (see Inspection Report No. 24248003 at page 10 and Exhibit 9, pages 15-18, to Report No. 24248003).

Based on this information and documentation, the proposed penalty has been reduced by 25% for Violation 1, 5% for Violation 2, and 25% for Violation 3 (as indicated below).

In order to justify further reduction of the proposed penalty for Violation 2, Respondent must submit additional information and documentation (such as a sample of a shipping paper with the revised basic shipping description).

#### 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]).

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#### **TOTAL CIVIL PENALTY PROPOSED**

Probable Violation	Baseline Penalty	Increase for Priors	Corrective Action	Proposed Penalty
1	\$4,000	+\$0	-\$1,000	\$3,000
2	\$1,500	+\$0	-\$75	\$1,425
3	\$4,000	+\$0	-\$1,000	\$3,000
<b>TOTAL</b>	<b>\$9,500</b>	<b>+\$0</b>	<b>-\$2,075</b>	<b>\$7,425</b>

# **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.