



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: November 26, 2024

PHMSA Case No.: 24-0141-SH-SW

Respondent: A1 Smoke Kings
7250 Harwin Drive, Suite C
Houston, TX 77036
ATTN: Mohammad Mazhar Iqbal, Online Manager
(mazher786@live.com)

No. of Alleged Violations: 3

Total Proposed Assessment: \$22,270 (includes a \$5,430 reduction for corrective action)

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 \$96,624 (or \$225,455 if the violation results in death, serious illness or severe injury, or substantial destruction of property), and a minimum civil penalty of \$582 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.**

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 will be supplied to you in a PDF format using DOT's Secure Large File Transfer System via the link in an email to follow, which will be active for the next 30 days. If receiving the Case Exhibits in electronic format creates an undue hardship for you, please contact me.

**SAMANTHA
ANN VRSCAK**

Samantha Vrscak, Attorney

Digitally signed by SAMANTHA
ANN VRSCAK
Date: 2024.11.26 14:20:33 -05'00'

Enclosures: Addendum A
Addendum B
Addendum C

cc: Sam Rafiq, Office Manager (sam@smokekingss.com)

SERVICE BY ELECTRONIC MAIL

ADDENDUM A

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GENERAL ALLEGATIONS

General Factual Allegations/Averments

1. On February 21-22, 2024, PHMSA's Investigators conducted an inspection at Respondent's facility in Houston, Texas.
2. Mohammad Mazhar Iqbal, Online Manager, represented the company and provided necessary information and documentation.
3. Respondent is a wholesale supplier of products that are sold in convenience stores and smoke shops, including gas cartridges filled with butane used to refill torch style hand lighters.
4. As an offeror 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, UN2037, Receptacles, small, containing gas *or* gas cartridges, a Division 2.1 hazardous material, without hazardous materials shipping papers, package labels, or package markings as required by the HMR, thereby creating an undeclared shipment of hazardous materials, in violation of 49 CFR §§ 171.2(a), (b), and (e); 172.101; 172.200(a); 172.202(a); 172.300(a); 172.301(a)(1); 172.400(a) and (b); 172.417; and 173.306(a)(1) and (i).

Regulatory Standard

1. Pursuant to 49 CFR § 171.2(a), each person who performs a function covered by the HMR must perform that function in accordance with the HMR.
2. Pursuant to 49 CFR § 171.2(b), each person who offers a hazardous material for transportation in commerce must comply with all applicable requirements of the HMR.
3. Pursuant to 49 CFR § 171.2(e), no person may offer or accept a hazardous material for transportation in commerce unless the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of the HMR or an exemption or special permit, approval, or registration issued under the HMR or subchapter A of this chapter.

4. Pursuant to the Hazardous Materials Table (HMT), found at 49 CFR § 172.101, UN2037, Gas cartridges (flammable) without release device, non-refillable, or UN2037, Receptacles, small, containing gas *or* gas cartridges (*flammable*) *without release device, non-refillable and not exceeding 1 L capacity*, is a Division 2.1 hazardous material when containing a flammable gas, such as butane (UN1011). Exceptions for shipping this hazardous material are found at § 173.306.
5. Pursuant to 49 CFR § 172.200(a), each person who offers a hazardous material for transportation shall describe the hazardous material on the shipping paper in the manner required by this subpart of the HMR.
6. Pursuant to 49 CFR § 172.202(a), the shipping description of a hazardous material on the shipping paper must include:
 - a. The identification number prescribed for the material as shown in Column (4) of the Hazardous Materials Table (HMT), found at § 172.101;
 - b. The proper shipping name prescribed for the material in Column (2) of the HMT;
 - c. The hazard class or division number prescribed for the material, as shown in Column (3) of the HMT;
 - d. The packing group in Roman numerals, as designated for the hazardous material in Column (5) of the HMT. Class 1 (explosives) materials; self-reactive substances; Division 5.2 materials; and entries that are not assigned a packing group (e.g., Class 7) are excepted from this requirement. The packing group may be preceded by the letters “PG” (for example, “PG II”);
 - e. Except for transportation by aircraft, the total quantity of hazardous materials covered by the description must be indicated and must include an indication of the applicable unit of measurement; and
 - f. The number and type of packages must be indicated.
7. Pursuant to 49 CFR § 172.300(a), each person who offers a hazardous material for transportation shall mark each package, freight container, and transport vehicle containing the hazardous material in the manner required by this subpart.
8. Pursuant to 49 CFR § 172.301(a)(1), except as otherwise provided by the HMR, each person who offers a hazardous material for transportation in non-bulk packaging must mark the package with the proper shipping name and identification number (preceded by “UN,” “NA,” or “ID,” as appropriate) as shown in the HMT. The identification number marking preceded by “UN,” “NA,” or “ID” as appropriate must be marked in characters at least 12 mm (0.47 inches) high. Packages with a maximum capacity of 30 liters (8 gallons) or less, 30 kg (66 pounds) maximum net mass, or cylinders with a water capacity of 60 liters (16 gallons) or less must be marked with characters at least 6 mm (0.24 inches) high. Packages with a maximum capacity of 5 liters (1.32 gallons) or less or 5 kg maximum net mass (11 pounds) or less must be marked in a size appropriate for the size of the package.

9. Pursuant to 49 CFR § 172.400(a), except as otherwise specified in 49 CFR § 172.400a, each person who offers for transportation or transports a hazardous material in a non-bulk package or containment device, shall label the package or containment device with labels specified for the material in the HMT and in this subpart.
10. Pursuant to 49 CFR § 172.400(b), labeling is required for a hazardous material which meets one or more hazard class definitions, in accordance with Column 6 of the HMT and Table 1 of this paragraph.
11. Pursuant to 49 CFR §§ 172.400(b), Table 1, and 172.417, the flammable gas hazardous materials label is required for packages containing Division 2.1 hazardous materials.
12. Pursuant to 49 CFR § 173.306(a)(1) and (i), limited quantities of compressed gases for which exceptions are permitted as noted by reference to this section in the HMT are excepted from labeling, except when offered for transportation by air, and unless required as a condition of the exception, specification packaging requirements of the HMR when packaged in accordance with the following paragraphs. In addition, shipments are not subject to subpart F (Placarding) of Part 172 of the HMR, to Part 174 of the HMR except § 174.24 (shipping papers for transport by vessel), and to Part 177 of the HMR except § 177.817 (shipping papers for transport by highway). Except as otherwise provided in this section, each package may not exceed 30 kg (66 lbs.) gross weight.
 - a. Except for transportation by aircraft, for compressed gases when in containers of not more than 4 fluid ounces capacity (7.22 cubic inches or less) except cigarette lighters, may be offered under the limited quantity exception provided for § 173.156.

Factual Allegations/Averments

1. On December 14, 2023, PHMSA Investigator Michael Orban, while conducting an investigation in Bonita Springs, Florida, observed and photographed a non-specification fiberboard box that had been shipped from Houston, Texas to an address in Bonita Springs, Florida via UPS Ground service, tracking number 1ZE5973B0324095718, through Amazon.com. The return address was “A1 Smoke Kings, Ste C, 7250 Harwin Drive, Houston TX 77036,” which is Respondent’s company name and address. (See Exhibit 3 to Report No. 24424006).
2. Inside the package was another non-specification fiberboard box. The interior fiberboard box was printed with “NEON 11x Premium Butane Universal Gas Lighter Refill.” Inside the interior box were 12 canisters, or cartridges, marked as containing 300 mL (10.14 fl. oz.) each of lighter butane. Each of the cartridges were labeled with a Class 2, Flammable Gas hazardous materials label, and marked with the UN identification number UN2037. The cartridges each had a valve stem and no release device. There were no hazardous materials labels or markings on the outer fiberboard packaging, and no shipping papers accompanied the package. (See Exhibit 3 to Report No. 24424006).

3. PHMSA's Investigator obtained the invoice for this shipment of butane lighter fuel. The shipment was an Amazon order, with order number 111-1851106-9923452, for one "Twelve (12) Cans of Neon 11x Ultra Refined Butane Fuel Lighter Refill Gas," shipped on September 2, 2023. The item was sold by Al Smoke Kings. (See Exhibit 3 to Report No. 24424006).
4. According to the Hazardous Materials Table, a hazardous material with the UN identification number UN2037, containing butane, a Division 2.1 hazardous material, in gas cartridges without a release device and nonrefillable, is regulated as UN2037, Gas cartridges (*flammable*) *without a release device, non-refillable*, or UN2037, Receptacles, small, containing gas or gas cartridges (*flammable*) *without release device, non-refillable and not exceeding 1 L capacity, 2.1*.
5. The inner packagings exceeded 4 fluid ounces capacity in each package containing butane lighter fluid refills, which is also regulated as UN2037, Receptacles, small, containing gas or gas cartridges (*flammable*) *without release device, non-refillable and not exceeding 1 L capacity, 2.1*. Thus, this hazardous materials shipment was not exempt from the HMR's requirements of having hazardous materials shipping papers, markings, or labels. See 49 CFR § 173.306(a)(1) and (i).
6. Accordingly, the outer fiberboard packaging was required to display the Division 2.1 flammable gas hazardous materials label and marked with the identification number, UN2037, and the proper shipping name, Receptacles, small, gas cartridges. The outer fiberboard packaging containing the inner packaging of butane lighter fluid refill cartridges did not display any hazardous materials labeling or markings. Further, no hazardous materials shipping papers with the UN identification number, proper shipping name, and hazard class accompanied this shipment, as required by the HMR. (See Exhibit 3 to Report No. 24424006).
7. During the subsequent inspection at Respondent's facility, PHMSA's Investigators observed and photographed boxes labeled as containing "NEON 11x Premium Butane Universal Gas Lighter Refill," which is the same product as that observed in the Amazon shipment. The cartridges inside were marked as containing 300 mL (10.14 fl. oz.) each of lighter butane. Each of the cartridges were labeled with a Class 2, Flammable Gas hazardous materials label, and marked with the UN identification number UN2037. The cartridges each had a valve stem and no release device. (See Exhibit 2 to Report No. 24424006).
8. PHMSA's Investigators asked Respondent's representative how shipments of "NEON 11x" were packaged and transported. Respondent's representative explained cans of "NEON 11x" were sold individually or by the case, both over the counter at the storefront and via Amazon on Respondent's Amazon storefront. Depending on the quantity ordered, Respondent's representative either placed the carton or the cans into a non-specification fiberboard box, taped it closed, and attached the UPS label. In an oral interview, he confirmed he did not provide any other shipping documents for the order. (See Report No. 24424006, pages 3-4; Exhibit 5).

9. PHMSA's Investigators obtained a safety data sheet (SDS) from Riegel USA, Inc., Respondent's butane lighter refill supplier, confirming the material was hazardous and regulated as UN2037, Receptacles, small, containing gas (gas cartridges) without a release device, non-refillable, 2.1. (See Report No. 24424006, page 3; Exhibit 4).
10. On or about September 2, 2023, Respondent offered for transportation in commerce, UN2037, Receptacles, small, gas cartridges, a Division 2.1 hazardous material, without hazardous materials shipping papers, package labels, or package markings as required by the HMR, thereby creating an undeclared shipment of hazardous materials, in violation of 49 CFR §§ 171.2(a), (b), and (e); 172.101; 172.200(a); 172.202(a); 172.300(a); 172.301(a)(1); 172.400(a) and (b); 172.417; and 173.306(a)(1) and (i).

- Please see Inspection/Investigation Report Number 24424006 at pages 3-4, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 2

Offering for transportation in commerce, UN2037, Receptacles, small, containing gas *or* gas cartridges, a Division 2.1 hazardous material, in non-UN standard or non-specification packaging, in violation of 49 CFR §§ 171.2(a), (b), and (e); 172.101(i); the Hazardous Materials Table (HMT) at 172.101; 173.22(a)(2); 173.24(c)(1); 173.301(a)(1); 173.304(a); 173.306(a)(1) and (i).

Regulatory Standard

1. Pursuant to 49 CFR § 171.2(a), each person who performs a function covered by the HMR must perform that function in accordance with the HMR.
2. Pursuant to 49 CFR § 171.2(b), each person who offers a hazardous material for transportation in commerce must comply with all applicable requirements of the HMR.
3. Pursuant to 49 CFR § 171.2(e), no person may offer or accept a hazardous material for transportation in commerce unless the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of the HMR or an exemption or special permit, approval, or registration issued under the HMR or subchapter A of this chapter.
4. Pursuant to 49 CFR § 172.101(i), Columns 8A, 8B, and 8C of the Hazardous Materials Table specify the applicable sections for exceptions, non-bulk packaging requirements, and bulk packaging requirements, respectively, in Part 173 of the HMR. When packaging requirements are specified, they are in addition to the standard requirements for all packagings prescribed in § 173.24 of the HMR and any other applicable requirements in subparts A and B of Part 173 of the HMR.

5. Pursuant to the Hazardous Materials Table (HMT), located at 49 CFR § 172.101, UN2037, Receptacles, small, containing gas or gas cartridges, 2.1, is subject to the non-bulk packaging provisions located at § 173.304. The packaging requirements for this hazardous material may be excepted if the requirements prescribed by § 173.306 are met.
6. Pursuant to 49 CFR § 173.22(a)(2), a person may offer a hazardous material for transportation in a packaging or container required by the HMR only after determining that the packaging or container is an authorized packaging, including requirements in Part 173 of the HMR, and that it has been manufactured, assembled, and marked in accordance with § 173.7(a) and Parts 173, 178, or 179 of the HMR; a specification of the Department in effect at the date of the packaging's manufacture; national or international regulations based on the UN Recommendations (see 49 CFR § 171.7), as authorized in § 173.24(d)(2); an approval issued under the HMR; or an exemption or special permit issued under subchapter A of this chapter.
7. Pursuant to 49 CFR § 173.24(c)(1), a packaging is authorized for a hazardous material only if the packaging is prescribed or permitted for the hazardous material in a packaging section specified for that material in Column 8 of the HMT and conforms to applicable requirements in the special provisions of Column 7 of the HMT and, for specification packagings (but not including UN standard packagings manufactured outside the United States), the specification requirements in Parts 178 and 179 of this subchapter; or the packaging is permitted under, and conforms to, provisions contained in subparts B or C of Part 171 of the HMR or §§ 173.3, 173.4, 173.4a, 173.4b, 173.5, 173.5a, 173.6, 173.7, 173.8, 173.27, or 176.11 of the HMR.
8. Pursuant to 49 CFR § 173.301(a)(1), compressed gases must be in UN pressure receptacles built in accordance with the UN standards or in metal cylinders and containers built in accordance with the DOT and ICC specifications and part 178 of this subchapter in effect at the time of manufacture or CRC, BTC, CTC or TC specification, and requalified and marked as prescribed in subpart C in part 180 of this subchapter, if applicable.
9. Pursuant to 49 CFR § 173.304(a), except as provided in § 171.23(a)(3) of this subchapter, a cylinder filled with a liquefied compressed gas (except gas in solution) must be offered for transportation in accordance with the requirements of this section and the general requirements in § 173.301 of this subpart. In addition, a DOT specification cylinder must meet the requirement in §§ 173.301a, 173.304a, and 173.305 of this subpart, as applicable. UN pressure receptacles must be shipped in accordance with the requirements in §§ 173.301b and 173.304b of this subpart, as applicable.
10. Pursuant to 49 CFR § 173.306(a)(1) and (i), limited quantities of compressed gases for which exceptions are permitted as noted by reference to this section in the HMT are excepted from labeling, except when offered for transportation by air, and unless required as a condition of the exception, specification packaging requirements of the HMR when packaged in accordance with the following paragraphs. In addition, shipments are not subject to subpart F (Placarding) of Part 172 of the HMR, to Part 174 of the HMR except

§ 174.24 (shipping papers for transport by vessel), and to Part 177 of the HMR except § 177.817 (shipping papers for transport by highway). Except as otherwise provided in this section, each package may not exceed 30 kg (66 lbs.) gross weight.

- a. Except for transportation by aircraft, for compressed gases when in containers of not more than 4 fluid ounces capacity (7.22 cubic inches or less) except cigarette lighters, may be offered under the limited quantity exception provided for § 173.156.

Factual Allegations/Averments

1. On December 14, 2023, PHMSA Investigator Michael Orban, while conducting an investigation in Bonita Springs, Florida, observed and photographed a non-specification fiberboard box that had been shipped from Houston, Texas to an address in Bonita Springs, Florida via UPS Ground service, tracking number 1ZE5973B0324095718, through Amazon.com. The return address was “A1 Smoke Kings, Ste C, 7250 Harwin Drive, Houston TX 77036,” which is Respondent’s company name and address. The Amazon invoice also indicated the seller was A1 Smoke Kings and had been shipped on September 2, 2023. (See Exhibit 3 to Report No. 24424006).
2. Inside the package was another non-specification fiberboard box. The interior fiberboard box was printed with “NEON 11x Premium Butane Universal Gas Lighter Refill.” Inside the interior box were 12 canisters, or cartridges, marked as containing 300 mL (10.14 fl. oz.) each of lighter butane. Each of the cartridges were labeled with a Class 2, Flammable Gas hazardous materials label, and marked with the UN identification number UN2037. The cartridges each had a valve stem and no release device. None of the cartridges had any DOT specification or UN standard markings indicating that they were approved for containing a hazardous material for transport. (See Exhibit 3 to Report No. 24424006).
3. During the inspection of Respondent’s facility, PHMSA’s Investigators observed and photographed non-DOT specification or UN standard cartridges marked as containing “NEON 11x Premium Butane Universal Gas Lighter Refill,” the same product as the Amazon shipment. The cartridges were also marked as containing 300 mL (10.14 fl. oz.) each of lighter butane. Each of the cartridges were labeled with a Class 2, Flammable Gas hazardous materials label, and marked with the UN identification number UN2037. The cartridges each had a valve stem and no release device. None of the cartridges had any DOT specification or UN standard markings. (See Report No. 24424006, page 5; Exhibit 2).
4. Respondent’s representative confirmed Respondent sold “NEON 11x” cartridges individually or by the case, both over the counter and on Amazon on Respondent’s storefront. Respondent’s representative he would place the cartridges in a fiberboard box, then affix the shipping label and close the package. (See Report No. 24424006, page 5; Exhibit 5).

5. PHMSA's Investigators obtained a SDS for the material, confirming it was hazardous and regulated as UN2037, Receptacles, small, containing gas (gas cartridges) without a release device, non-refillable, 2.1. (See Report No. 24424006, page 5; Exhibit 4).
6. Because each cartridge containing the butane lighter refill exceeded 4 ounces fluid capacity, Respondent was required to follow the non-bulk packaging requirements indicated in § 173.304. *See* 49 CFR § 173.306(a)(1) and (i). Accordingly, the butane lighter refills were required to be packaged in either UN standard or DOT specification cylinders prior to their transportation in commerce. *See* 49 CFR §§ 173.301(a)(1); 173.304(a).
7. On or about September 2, 2023, Respondent offered for transportation in commerce, UN2037, Receptacles, small, containing gas *or* gas cartridges, a Division 2.1 hazardous material, in non-UN standard or non-specification packaging, in violation of 49 CFR §§ 171.2(a), (b), and (e); 172.101(i); the Hazardous Materials Table (HMT) at 172.101; 173.22(a)(2); 173.24(c)(1); 173.301(a)(1); 173.304(a); 173.306(a)(1) and (i).

- Please see Inspection/Investigation Report Number 24424006 at pages 5-6, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 3

Allowing an employee to perform functions subject to the requirements of the HMR, when that employee had not received initial general awareness, function-specific, safety, and security awareness training, in violation of 49 CFR §§ 171.2(a) and (b); 171.8; 172.702(a) and (b); and 172.704(a) and (c)(1).

Regulatory Standard

1. Pursuant to 49 CFR § 171.2(a), each person who performs a function covered by the HMR must perform that function in accordance with the HMR.
2. Pursuant to 49 CFR § 171.2(b), each person who offers a hazardous material for transportation in commerce must comply with all applicable requirements of the HMR.
3. Pursuant to 49 CFR § 171.8, a "hazmat employee" includes an individual, employed on a full time, part time, or temporary basis by a hazmat employer, or who is self-employed, who during the course of employment loads, unloads, or handles hazardous material, or who prepares hazardous materials for transportation. A "hazmat employer" includes a person who employs or uses at least one hazmat employee on a full time, part time, or temporary basis and who transports hazardous materials in commerce or causes hazardous materials to be transported in commerce.
4. Pursuant to 49 CFR § 172.702(a), a hazmat employer shall ensure that each of its hazmat employees is trained in accordance with the requirements prescribed in the HMR.

5. Pursuant to 49 CFR § 172.702(b), except as otherwise provided in § 172.704(c)(1), a hazmat employee who performs any function subject to the requirements of the HMR may not perform that function unless instructed in the requirements of the HMR that apply to that function. It is the duty of each hazmat employer to comply with the applicable requirements of the HMR and to thoroughly instruct each hazmat employee in relation thereto.
6. Pursuant to 49 CFR § 172.704(a)(1)-(4), each employee who handles hazardous materials must receive training that includes general awareness/familiarization training, function-specific training, safety training, and security awareness training.
7. Pursuant to 49 CFR § 172.704(c)(1), a new hazmat employee, or a hazmat employee who changes job functions, must complete the initial training within 90 days after employment or change in job function.

Factual Allegations/Averments

1. During the inspection of Respondent's facility, PHMSA's Investigators observed and photographed non-DOT specification or UN standard cartridges marked as containing "NEON 11x Premium Butane Universal Gas Lighter Refill," which was also regulated as UN2037, Receptacles, small, containing gas *or* gas cartridges, a Division 2.1 hazardous material. (See Exhibits 2, 4 of Report No. 24424006).
2. Additionally, PHMSA's Investigators received evidence that Respondent had shipped to an address in Bonita Springs, Florida, a box containing 12 cartridges of "NEON 11x Premium Butane Universal Gas Lighter Refill," via UPS Ground service, tracking number 1ZE5973B0324095718, through Amazon.com. The Amazon order invoice indicated the package was shipped on September 2, 2023, via Respondent's Amazon storefront. (See Exhibit 3 to Report No. 24424006).
3. Respondent's representative indicated he sold the butane lighter refill cartridges individually or in cases, and he would sell the product from Respondent's physical store location as well as online through Amazon. Respondent's representative confirmed that when he received an online order through Amazon, he would package the butane lighter refills in a box, print the shipping label for the customer, and place the shipping label on the box for shipment. (See Report No. 24424006, pages 3,7; Exhibit 5).
4. PHMSA's Investigators requested training records for Respondent's hazmat employee. (See Report No. 24424006, page 6; Exhibit 6).
5. In an oral interview, Respondent's representative confirmed Respondent had not conducted any hazmat training for its hazmat employee. (See Report No. 24424006, page 6; Exhibit 6).
6. On or about September 2, 2023, Respondent allowed an employee to perform functions subject to the requirements of the HMR, when that employee had not received initial

general awareness, function-specific, safety, and security awareness training, in violation of 49 CFR §§ 171.2(a) and (b); 171.8; 172.702(a) and (b); and 172.704(a) and (c)(1).

- Please see Inspection/Investigation Report Number 24424006 at pages 3, 7-8, and the exhibits that accompany this report, which are incorporated herein.

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 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 email correspondence on March 20 and April 9, 2024, 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 explained it halted all shipments of hazardous materials, including the butane gas cartridges observed by PHMSA's investigators, until ensuring it was compliant with DOT regulations for shipping and packaging. Respondent stated it acquired proper shipping papers, package markings, and labels to ship UN2037, Receptacles, small, containing gas, and provided a sample shipping paper and sample labels. Based on this information and documentation, the proposed penalty has been reduced by 20%.
 - In order to justify further reduction of the proposed penalty, Respondent must submit additional information and documentation, such as a shipping paper that complies with § 172.202, which includes the type of packages being shipped and the proper shipping name as provided for in the Hazardous Materials Table at § 172.101, and examples of properly marked and labeled hazmat packages.
- Violation No.2: Respondent explained it halted all shipments of hazardous materials, including the butane gas cartridges observed by PHMSA's investigators, until ensuring it was compliant with DOT regulations for shipping and packaging. Respondent stated it purchased the "proper packaging material with the correct specification to ship the hazardous materials containing Gas 2.1." Based on this information and documentation, the proposed penalty has been reduced by 15%.
 - In order to justify further reduction of the proposed penalty, Respondent must submit additional information and documentation, such as proof of purchase of compliant packaging and/or documentation that all of its inventory for sale of UN2037, Receptacles, small, containing gas *or* gas cartridges, 2.1, is either packaged in DOT specification or UN standard cylinders, or that the cartridges do not exceed 4 fluid ounce capacity in order to qualify for the limited quantity exception to the packaging requirements as provided for in § 173.306.
- Violation No. 3: Respondent submitted a certificate of completion showing Mohammad Mazhar Iqbal, who was the employee responsible for shipping hazardous materials, had completed initial hazmat training as required by 49 CFR 172.704(a) and (c)(1) on March 6, 2024. Based on this information and documentation, the proposed penalty has been reduced by 25% (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	\$17,500	\$0	-\$3,500 [20% reduction]	\$14,000
2	\$6,200	\$0	-\$930 [15% reduction]	\$5,270
3	\$4,000	\$0	-\$1,000 [25% reduction]	\$3,000
TOTAL	\$27,700	\$0	-\$5,430	\$22,270

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:</i> PHMSA Payment for Case #/Ticket

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.