

**BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF THE ADMINISTRATOR**

**In the Matter of:**

**Allbrite Car Care Products, Inc.,  
Petitioner.**

**PHMSA Case No. 04-087-SB-EA  
Docket No. PHMSA-2006-24213-3**

**DECISION ON APPEAL**

**I. Background**

On March 15, 2006, the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT), issued an Order<sup>1</sup> to Allbrite Car Care Products, Inc. (Petitioner) finding the company had knowingly committed four violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. The Order, which is incorporated by reference, assessed a \$17,075 civil penalty. Specifically, the Order found Respondent had (1) offered a hazardous material for transportation in commerce in unauthorized, nonspecification packagings (plastic pails); (2) offered a hazardous material for transportation in commerce in used, plastic UN-standard drums, which had not been retested as required; (3) failed to properly prepare shipping papers and to properly mark and label non-bulk packagings; and (4) failed to provide general awareness/familiarization, function-specific, and safety training to hazmat employees.

Petitioner filed a timely appeal on April 7, 2006. In its appeal, Petitioner sought a reduction in the civil penalty on the basis of financial hardship, Petitioner's lack of prior

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<sup>1</sup> Document ID PHMSA-2007-24213-0001 at <http://www.regulations.gov>.

violation history and Petitioner's corrective actions. Petitioner provided additional evidence to support its claims of corrective action and clarified statements it had made prior to the issuance of the Order. Petitioner also argued that the penalty assessed by the Chief Counsel was unreasonable since Petitioner took immediate corrective action and has no record of incidents. Petitioner also argued that its five-gallon pails should qualify for ORM-D classification because its product is comparable to those sold at the common, larger home product retailers.

## **II. Discussion**

Petitioner is correct that it is subject to the same regulations as the larger retailers. All retailers of cleaning materials that are properly described and classified as Compound, Cleaning, Liquid (hydrofluoric acid, sulfuric acid), 8, NA1760, PG II, may not rename and reclassify the products as ORM-D unless, *inter alia*, the products are packaged in inner packagings not exceeding 1.0 liters (0.3 gallons).

Petitioner's customers may be eligible to use the materials of trade (MOTS) exception, found at 49 CFR § 173.6. The MOTS exception allows the transport of certain types and quantities of hazardous materials to be transported by motor vehicle by a private motor carrier in direct support of a principal business that is other than transportation by motor vehicle. Hazmat transported under the MOTS exception is subject to fewer requirements than ordinarily required by the HMR. Based on the information submitted, some of Petitioner's customers may have qualified for the MOTS exception. Petitioner, like any retailer of hazardous materials, must ensure that it is offering the hazmat to a party eligible for the MOTS exception in order to use that provision; otherwise, the retailer must prepare a shipping paper and properly mark, label and package the hazmat. In this case, the material would be limited to a packaging not exceeding 30

liters (8 gallons) in capacity. In addition, no customer could transport over 200kg (400 pounds) of MOTS materials in a single shipment. Petitioner should review the MOTS exception carefully and determine the eligibility of each of its customers to make use of this provision. Additional guidance regarding the use of the MOTS exception is available in the Hazmat Interpretations on the PHMSA web site, located at <http://www.phmsa.dot.gov>.

Petitioner also seeks a reduction in the civil penalty, stating that the penalty assessed would cause financial hardship for Petitioner's business. Petitioner provided financial information to support its claim; however, the financial information suggests that Petitioner should have no difficulty paying the assessed penalty. Therefore, no reduction on the basis of financial hardship is appropriate.

### **III. Findings**

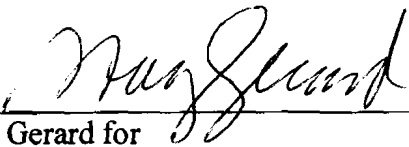
Petitioner's appeal is granted. Based on the additional evidence of corrective actions taken and additional explanation offered by Respondent regarding its business operations, I find a reduction in the civil penalty is appropriate. I am reducing the civil penalty imposed by the Chief Counsel by twenty-five percent (25%) for Violations 1 and 4 and by fifty percent (50%) for Violation 3. I order Respondent to pay the civil penalty of \$9,292, within 30 days of the date of this Decision on Appeal. Alternatively, Petitioner may contact the Office of Chief Counsel to arrange for a payment plan; however, the first payment must be made within 30 days of the date of this Decision on Appeal. See Addendum A for payment information.

In assessing this civil penalty, I have taken into account the following statutory criteria (49 U.S.C. § 5123(c) and 49 C.F.R. § 107.331):

1. The nature, circumstances, extent and gravity of the violations;
2. with respect to Petitioner, its degree of culpability, any history of prior violations, its ability to pay, and any effect on its ability to continue to do business; and
3. other matters as justice may require.

**IV. Conclusion**

This Decision on Appeal constitutes the final administrative action in this proceeding.

  
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Stacey Gerard for  
Carl T. Johnson  
Administrator

Date Issued: FEB 20 2008

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**CERTIFICATE OF SERVICE**

This is to certify that on the \_\_\_\_\_ day of FEB 20 2008, 2008, the Undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Allbrite Car Care Products, Inc.  
1201 N. Las Brisas Street  
Anaheim, CA 92806  
Attn: Jitu Jhaveri

Original Order  
Certified Mail – Return Receipt

David Kunz, Esq.  
Chief Counsel  
USDOT/PHMSA  
1200 New Jersey Ave., SE  
Washington, D.C. 20590

One Copy  
Internal E-mail

Ryan Posten  
Director, OHME  
USDOT/PHMSA/OHMS  
Mail Stop: E21-317  
1200 New Jersey Ave., SE  
Washington, D.C. 20590

One Copy  
Internal E-mail

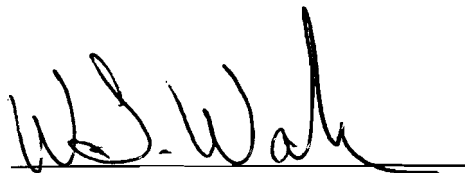
Colleen Abbenhaus  
Eastern Region Chief  
USDOT/PHMSA/OHMS  
Eastern Region Office  
820 Bear Tavern Rd., Ste. 306  
West Trenton, NJ 08628

One Copy  
Internal E-mail

U.S. DOT Dockets  
U.S. Department of Transportation  
1200 New Jersey Ave., SE  
Washington, D.C. 20590

One Copy  
Personal Delivery

FEB 20 2008

  
\_\_\_\_\_  
Willard Walker

Payment of Civil Penalty

Respondent must pay the civil penalty by one of the following: (1) wire transfer, (2) certified check or money order, or (3) credit card via the Internet.

(1) Wire Transfer.

Detailed instructions for sending a wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury are contained in the enclosure to this Order. Please direct questions concerning wire transfers to:

AMZ-341  
Federal Aviation Administration  
Mike Monroney Aeronautical Center  
P.O. Box 25082  
Oklahoma City, OK 73125  
Telephone (405) 954-8893

(2) Check or Money Order.

Make check or money order payable to "U.S. Department of Transportation" (include the Ref. No. of this case on the check or money order) and send to:

AMZ-341  
Federal Aviation Administration  
Mike Monroney Aeronautical Center  
P.O. Box 25082  
Oklahoma City, OK 73125.

(3) Credit Card.

To pay electronically using a credit card, visit the following website address and follow the instructions:

<https://www.pay.gov/paygov/>

Interest and Administrative Charges.

If Respondent pays the civil penalty by the due date, no interest will be charged. If Respondent does not pay by that date, the FAA's Financial Operations Division will start collection activities and may assess interest, a late-payment penalty, and administrative charges under 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 49 C.F.R. § 89.23.

The rate of interest is determined under the above authorities. Interest accrues from the date of this Order. A late-payment penalty of six percent (6%) per year applies to any portion of the debt that is more than 90 days past due. The late-payment penalty is calculated from the date Respondent receives the Order.

Treasury Department Collection.

FAA's Financial Operations Division may also refer this debt and associated charges to the U.S. Department of Treasury for collection. The Department of the Treasury may offset these amounts against any payment due Respondent. 31 C.F.R. § 901.3.

Under the Debt Collection Act (see 31 U.S.C. § 3716(a)), a debtor has certain procedural rights prior to an offset. You, as the debtor, have the right to be notified of: (1) the nature and amount of the debt; (2) the agency's intention to collect the debt by offset; (3) the right to inspect and copy the agency records pertaining to the debt; (4) the right to request a review within the agency of the indebtedness and (5) the right to enter into a written agreement with the agency to repay the debt. This Order constitutes written notification of these procedural rights.





**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=/ALC-69-14-0001	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, it must be used for all wire transfer to the Treasury Department.

**Block #9** - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/ALC-69-14-0001" 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 or ticket 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) 954-8893.