

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

**In the Matter of:**

**American Chemical Systems,  
Appellant.**

**PHMSA Case No. 05-0212-DS-SW  
Docket No. PHMSA-2007-29206-4**

**DECISION ON APPEAL**

**I. Background**

On September 12, 2007, 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 American Chemical Systems (Appellant) 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 \$6,170 civil penalty. Specifically, the Chief Counsel found Appellant had offered for transportation in commerce a placarded quantity of a hazard class 8 (corrosive), PG II material: (1) without registering as an offeror of hazardous materials, in violation of 49 C.F.R. §§ 171.2(a), 107.601(a)(6), and 107.608(a)-(b); (2) accompanied by a shipping paper that contained an unauthorized emergency response number, in violation of 49 C.F.R. §§ 171.2(a) and 172.604(b); and (3) without retaining a copy of the hazardous materials shipping papers, in violation of 49 C.F.R. § 171.2(a) and 172.201(e). The Chief Counsel also found Appellant allowed employees to perform functions subject to the HMR

---

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

when the employees were not trained and records of training were not created or retained, in violation of 49 C.F.R. §§ 171.2(a), 172.702(b), 172.704(a)(1)-(4), and 172.704(d).

Appellant seeks reversal of the Order of the Chief Counsel. Appellant states it should not have any violations on its record and should not be subject to a civil penalty because it has “done everything in our power to avoid any future violations and have proven that we have complied with everything we said we would.” Appeal at 3.

## **II. Discussion**

With its appeal, Appellant supplied additional information to support its claims of corrective action. Appellant does not contest the findings of violation; instead, Appellant argues only that it has taken steps to prevent similar violations in the future. Corrective action is a major factor in determining an appropriate civil penalty. It does not, however, eliminate Appellant’s responsibility for having allowed the violation to occur in the first place. Any person who commits a violation of the hazmat law is subject to a civil penalty. 49 U.S.C. § 5123. Accordingly, I cannot waive the civil penalty in its entirety. Instead, I must consider the statutory factors<sup>2</sup> to determine an appropriate penalty amount.

Appellant provided evidence that it registered as an offeror of hazardous materials for the period 2005-2006. Accordingly, I am reducing the penalty assessed for the registration violation by twenty-five percent (25%), the maximum reduction for corrective action in the Guidelines for Civil Penalties (“Guidelines”) (49 C.F.R. Part 107, Subpart D, Appendix A).

Appellant was cited for failing to provide an authorized emergency response number on its shipping papers. With its appeal, Appellant provided evidence that its distributors have an authorized emergency response number. Because Appellant no longer prepares shipping papers

---

<sup>2</sup> See 49 U.S.C. § 5123(c) and 49 C.F.R. § 107.331.

and, therefore, is unable to provide the type of corrective action normally required, I consider the evidence provided to be a sufficient basis to mitigate the penalty. Therefore, I am reducing the penalties for the two shipping paper violations by twenty-five percent (25%) from the baseline amount recommended in the Guidelines.<sup>3</sup> Although Appellant provided evidence it had purchased training materials, it did not demonstrate that it has provided training to its hazmat employees. Accordingly, I am reducing the civil penalty for the training violation by ten percent (10%), an appropriate amount for incomplete corrective action.

### **III. Findings**

I find the Chief Counsel did not err in his determination that Appellant committed four violations of the hazardous materials law. Although the Chief Counsel considered the statutory factors in determining the civil penalty based on the information available, I find that the assessed civil penalty must be reduced based on the additional information provided with the appeal.

### **IV. Conclusion**

I order Respondent to pay the civil penalty of \$5,130, within 30 days of the date of this Decision on Appeal. See Addendum A for payment information. The total penalty is allocated as follows:<sup>4</sup>

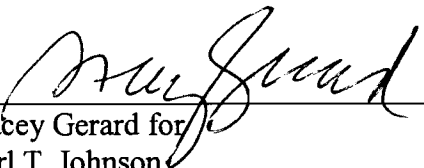
Violation 2: \$750, reduced from \$1,000 in the Order;  
Violation 3: \$2,550, reduced from \$2,720 in the Order;  
Violation 4: \$1,080, reduced from \$1,600 in the Order; and  
Violation 5: \$750, reduced from \$850 in the Order.

---

<sup>3</sup> The Order reduced the civil penalty for Violations 3 and 5 by 20% and 15%, respectively, from the recommended baseline civil penalty.

<sup>4</sup> "Violation 1" was dismissed with a warning in the Order of the Chief Counsel.

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

  
\_\_\_\_\_  
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:

American Chemical Systems  
3023 Power Drive  
Kansas City, KS 66106  
Attn: Brad Wickham, President

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

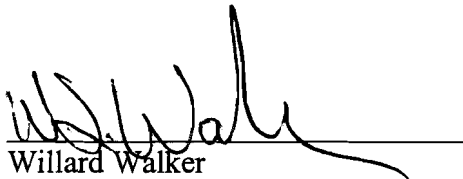
One Copy  
Internal E-mail

Billy Hines, Jr.  
Southwestern Region Chief  
USDOT/PHMSA/OHMS  
Southwestern Region Office  
8701 S. Gessner Rd, Ste. 1110  
Houston, TX 77074

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

  
\_\_\_\_\_  
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.