

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

In the Matter of:

**MG International, Inc.,
Petitioner.**

**PHMSA Case No. 06-0197-SD-SO
Docket No. PHMSA-2007-29205-4**

DECISION ON APPEAL

On September 12, 2007, the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT), issued a Default Order¹ to MG International, Inc. (Petitioner) finding the company had knowingly committed three violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. The Default Order, which is incorporated by reference, assessed a \$4,275 civil penalty.

Petitioner seeks a reduction in the civil penalty, stating that the penalty assessed would cause financial hardship for Petitioner's business. Petitioner states that the company is struggling and that it has had to layoff employees. Petitioner states that the shipment of paints was new to its company and that it immediately took corrective action upon learning of the relevant transportation regulations.

Petitioner admits it received the Notice, which specifically stated it waived its right to contest the allegations in the Notice if it failed to respond within thirty (30) days. Petitioner bears the burden of proof when challenging a Default Order; however, Petitioner is not challenging the violations found in the order. Petitioner offers no explanation for its failure to


¹ Document ID PHMSA-2007-29205-0001 at <http://www.regulations.gov>.

respond. Because Petitioner failed to participate in the administrative process within the required time limit, it is now too late for Petitioner to be heard.

V. Findings

I find the Chief Counsel appropriately considered the statutory factors in setting a civil penalty based on the information available at the time of the Default Order. Petitioner was obligated to respond to the Notice within thirty (30) days in order to exercise its right to respond. Petitioner did not respond. Therefore, Petitioner's appeal is denied. I order Respondent to pay the civil penalty of \$4,275, as assessed in the Default Order 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.

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



Stacey Gerard for
Carl T. Johnson
Administrator

Date Issued: FEB 21 2008

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

CERTIFICATE OF SERVICE

This is to certify that on the _____ day of FEB 21 2008, 2007, the Undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

MG International, Inc.
90 International Parkway
Dallas, GA 30157
Attn: Takeshi Noshino, 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


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 21 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.