

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

In the Matter of:

Larry Fricker Company, Inc.

Respondent.

**PHMSA Case No. 04-079-SCT-EA
DMS Docket No. RSPA-05-20265-3**

DECISION ON APPEAL

I. Procedural History

On December 30, 2004, the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT), issued an Order to Larry Fricker Company, Inc. (Respondent) 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 \$10,010 civil penalty, which reflected a \$550 reduction from the amount proposed in the Notice of Probable Violation (Notice), dated January 30, 2004.

Respondent did not file an appeal or make payment on the Order. As a result, the debt was transferred to the Department of Treasury for collection. In its response to the Department of Treasury, Respondent submitted a copy of a letter dated January 27, 2005. PHMSA has no record of receiving the letter, but it would have constituted an appeal under our regulations. Therefore, we are treating the letter as an appeal.

II. Background

This case arises from an October 17, 2003 compliance inspection performed at a Respondent's facilities in Anaheim, California. At the informal conference on March 29, 2004, Respondent stated it had not registered as an offeror of hazardous materials but would within approximately one week. Respondent stated it was using Roman numerals to indicate the packing group on its shipping papers and was properly placarding its trucks. Respondent also indicated it was suffering financial hardship.

In a letter summarizing the informal conference, the Office of Chief Counsel indicated to Respondent it could use its company telephone number or subscribe to an emergency response telephone service but it could not use the number for a service to which it had not subscribed. The Office of Chief Counsel specifically instructed Respondent to provide photos of the placarded trucks and to submit example shipping papers demonstrating compliance with regard to the packing group notation and the emergency response telephone number. The Office of Chief Counsel also requested financial information to determine an appropriate amount of mitigation on the basis of financial hardship.

The Office of Chief Counsel did not receive any documentation of financial hardship or corrective action, nor did Respondent allege that it had attempted to submit any other information prior to its appeal. The Chief Counsel found the following violations: Respondent did not indicate the packing group using Roman numerals and provided an unauthorized emergency response telephone number on its shipping papers. Respondent was not registered as an offeror of hazardous materials but had offered a quantity of hazardous materials requiring placarding. Respondent had not provided training to its hazmat employees and had improperly placarded cargo tanks.

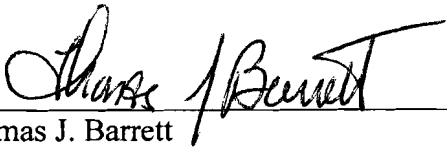
III. Discussion

In its appeal, Respondent states it understood it could use the company telephone number as the emergency response telephone number on its shipping papers. Under some circumstances, a shipper may use its telephone number as the emergency response telephone number. Respondent also states it has provided training, is using Roman numerals to indicate the packing group, and has metal placards on the sides of its tank truck. Respondent admits it has not registered as an offeror of hazardous materials.¹

Respondent failed to submit to the Office of Chief Counsel any evidence to support its claims of corrective action. Respondent also failed to provide financial information to determine an appropriate amount of mitigation. Respondent did not submit any new information with its appeal. Although Respondent has made claims of addressing the violations, Respondent has not provided any evidence to support its claims.

The Chief Counsel granted a \$550 reduction in the civil penalty on the basis of financial hardship, despite Respondent's failure to submit financial information. There is no justification to grant Respondent's appeal and withdraw the civil penalties previously assessed. Respondent's appeal is denied.

This Order constitutes the final administrative action in this proceeding.



Thomas J. Barrett
Administrator

Date Issued: *September 5, 2006*

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

¹ As of August 30, 2006, Respondent had not registered.

CERTIFICATE OF SERVICE

This is to certify that on the SEP 15 2006 day of SEP 15 2006, 2006, the Undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Larry Fricker Company, Inc.
1421 North State College Blvd.
Anaheim, CA 92806
ATTN: Mr. Paul Etzold, President

Original Order
Certified Mail – Return Receipt

Krista Edwards, Esquire
Chief Counsel
USDOT/PHMSA
400 Seventh Street, S.W.
Washington, DC 20590

One Copy
Internal E-mail

Ray LaMagdelaine
Enforcement Officer
USDOT/PHMSA/OHMS
400 Seventh Street, S.W.
Washington, D.C. 20590

One Copy
Internal E-Mail

Colleen Abbenhaus
Eastern Region Chief
USDOT/PHMSA/OHMS
Eastern Region Office
820 Bear Tavern Road, Suite 306
West Trenton, NJ 08628

One Copy
Internal E-Mail

U.S. DOT Dockets
U.S. Department of Transportation
400 Seventh Street, S.W., RM PL-401
Washington D.C. 20590

One Copy
Personal Delivery



Willard Walker

SEP 15 2006