

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

**In the Matter of:**

**USA POOL  
MANAGEMENT, INC.**

**Respondent.**

**RSPA Case No. 04-298-SPT-SO  
DMS Docket No. PHMSA-2005-21889**

**DECISION ON APPEAL**

On June 23, 2005, the Office of Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA)<sup>1</sup>, U.S. Department of Transportation (DOT), issued an Order<sup>2</sup> (Order) to USA Pool Management, Inc. (Respondent), finding Respondent had committed the following violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180, and assessing a penalty in the amount of \$4,125:

Violation No. 1 – Offering for transportation in commerce a hazardous material (hypochlorite solutions, 8, UN1791, PG III) in a quantity requiring placarding under the provisions of subpart F of 49 C.F.R. Part 172, when Respondent had not developed a security plan, in violation of 49 C.F.R. § 172.800(b).

Violation No. 2 – Offering for transportation in commerce a hazardous material (hypochlorite solutions, 8, UN1791, PG III) when the accompanying shipping paper listed an emergency response telephone number which was not monitored at all times the hazardous material was in transportation, in violation of 49 C.F.R. §§ 171.2(a) and 172.604(a)(1).

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<sup>1</sup> Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) was created to further the highest degree of safety in pipeline transportation and hazardous materials transportation. Section 108 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). *See also* 70 Fed. Reg. 8299 (February 18, 2005), redelegating the hazardous materials safety functions from the Research and Special Programs Administration to the Administrator, PHMSA.

<sup>2</sup> Docket Number PHMSA-2005-21889-1 at <http://dms.dot.gov>.

Violation No. 3 – Allowing an employee to perform functions subject to the HMR when Respondent had not provided the employee general awareness, function-specific, safety and security awareness hazardous materials training, in violation of 49 C.F.R. §§ 172.702(b) and 172.704(a).

The Order assessed a \$4,125 civil penalty for the violations listed above. In accordance with PHMSA's<sup>3</sup> regulations, Respondent had 20 days from the receipt of the Order to file an appeal with the PHMSA Administrator (49 C.F.R. §107.325(b)). The U.S. Postal Service's records indicate Respondent received the Order on June 25, 2005. According to the regulations, Respondent's appeal should have been filed with PHMSA by July 18, 2005 (which includes 3 additional days for mailing), at the very latest, in order to be considered timely.

Respondent submitted a letter, dated September 6, 2005, "in appeal to the Notice of Probable Violation." PHMSA received the letter on September 12, 2005, eight weeks after the filing deadline.

### **Discussion**

PHMSA will consider USA Pool Management's September 6, 2005, letter to be an appeal of the June 23, 2005 Order. The Order specifically stated a written appeal must be filed within twenty (20) days of Respondent's receipt of the Order. The Order also stated: "Any appeal that is postmarked after the twenty (20) day period will be regarded as untimely and will not be considered." Respondent was aware of the filing deadline and failed to meet the requirements. Respondent's letter offered no explanation for the late submission of the appeal. Therefore, Respondent's appeal is untimely and will not be considered.

### **Conclusion**

There is no justification to grant Respondent's appeal and withdraw the civil penalties previously assessed. I, therefore, order Respondent's appeal be dismissed as untimely filed. The

June 23, 2005 Order constitutes the final administrative action in this proceeding. Because the Order still stands, payment of the \$4,125 civil penalty is due immediately. See Addendum A for payment information.

A handwritten signature in black ink, appearing to read "Brigham A. McCown", written over a horizontal line.

Brigham A. McCown  
Acting Administrator

Date Issued: 12-02-05

Enclosure

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

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<sup>3</sup> For ease of reading and clarity, when an action occurred at RSPA, this order will refer to PHMSA.