

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

In the Matter of:

**Pinnacle Products, Inc.,
Respondent.**

**PHMSA Case No. 04-754-SB-SW
DMS Docket No. PHMSA-2005-22778-3**

DECISION ON APPEAL

I. Procedural History

On October 13, 2005, the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT), issued an Order¹ to Pinnacle Products, Inc., (Respondent) finding Respondent had knowingly committed six violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180, and assessing a civil penalty in the amount of \$13,995. In accordance with PHMSA's regulations, Respondent had twenty (20) days from the receipt of the Order to file an appeal with this office. Respondent filed a response with the Office of Chief Counsel on November 3, 2005.

II. Summary

In this appeal, Respondent requests a reduction in the penalty to \$2,500. Respondent cites its corrective actions and inability to pay as a basis for the reduction. The Chief Counsel applied the Guidelines for Civil Penalties² after determining Respondent knowingly committed six violations of the Hazardous Materials Regulations. Respondent did not provide sufficient information to warrant mitigation on the basis of financial hardship; however, Respondent is a

¹ Order, DMS Docket No. PHMSA-2005-22778-1 (Oct. 13, 2005) at <http://dms.dot.gov/>.

² 49 C.F.R. Part 107, Subpart D, Appendix A.

small business and was shipping materials generally not considered to be a significant security risk. Respondent's appeal is granted, in part.

III. Background

This case arises from an October 5, 2004 compliance inspection performed at Respondent's facilities in Houston, Texas. Based on documents provided by Respondent, the inspector discovered Respondent had offered hazardous materials in unauthorized packagings, had failed to properly close authorized packagings, and had failed to properly prepare hazardous materials shipping papers. The shipping papers showed Respondent shipped hazardous materials in quantities requiring placarding; however, Respondent was not registered as an offeror of hazardous materials and did not have a security plan. In addition, Respondent had not marked packages containing a hazardous material with the proper shipping name.

Based on a preliminary assessment of the apparent nature, circumstances, extent, and gravity of the probable violations in the inspector's report, on November 30, 2004, the Office of Chief Counsel issued a Notice of Probable Violation (Notice) to Respondent, which proposed a civil penalty in the amount of \$14,335 for six violations of the HMR.

Respondent submitted evidence of corrective actions prior to receipt of the Notice. Respondent submitted additional evidence in its informal response to the Notice. The Office of Chief Counsel requested financial information to establish an inability to pay. Respondent did not submit any financial information. In his Order, the Chief Counsel considered the statutory criteria, including the evidence of Respondent's corrective actions.

IV. Discussion

Respondent appeals the Order and seeks a reduction in the assessed penalty to \$2,500. Respondent raises the same arguments it raised in prior correspondence. Respondent states it

believes the assessed penalty is excessive and is beyond its ability to pay. Respondent argues it corrected the violations to the best of its ability and is no longer operating.

The Chief Counsel considered Respondent's evidence of corrective action and granted a total reduction of \$3,105 from the recommended baseline penalties. The Chief Counsel granted a ten percent (10%) reduction for the packaging violation and a fifteen percent (15%) reduction for the shipping name violation, stating Respondent's evidence of corrective action did not fully address the violations. The Chief Counsel granted a twenty-five percent (25%) reduction for the security plan and registration and closure violations.³ Respondent did not submit any additional evidence of corrective action for consideration with its appeal.

Respondent did not submit any financial information for consideration by the Chief Counsel. Respondent did not submit any new information with its appeal to substantiate its claims of financial hardship. Although Respondent states it is no longer operating, it has maintained its incorporation in the State of Texas and has not dissolved its assets.

V. Findings

I find the Chief Counsel correctly determined Respondent committed six violations of the HMR. In addition, I find no error in the Chief Counsel's determinations for mitigation based on corrective actions. I find no error with the Chief Counsel's determination that Respondent failed to provide adequate evidence of financial hardship. Because the materials Respondent transported were of a type generally not considered to be a significant security risk, I am reducing the penalty for the security plan violation to \$275, the minimum penalty authorized at the time of the violation. I am also reducing the penalty by ten percent (10%) in consideration of Respondent's status as a small business entity.

Respondent's appeal is denied. I order Respondent to pay the civil penalty of \$11,490.

VI. Payment

Respondent must pay the \$11,490 civil penalty within thirty (30) days of the date of this Decision on Appeal. Respondent may contact the Office of Chief Counsel to arrange a payment plan; however, the first payment of such plan must be made within thirty (30) days of the date of this Decision on Appeal. See Addendum A for payment information.

VII. Final Administrative Action

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



Stacey Gerard for
Krista L. Edwards
Acting Administrator

Date Issued: NOV 16 2007

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

³ The Guidelines for Civil Penalties recommend a maximum reduction of twenty-five percent for corrective actions.

CERTIFICATE OF SERVICE

This is to certify that on the 16th day of Nov., 2007, the Undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Pinnacle Products, Inc.
16015 Elmbank Dr.
Houston, TX 77095
ATTN: Mr. Brian Quinlan

Original Decision
Certified Mail – Return Receipt

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
Office of Hazardous Materials Enforcement
USDOT/PHMSA/OHMS
Southwestern Region Office
8701 S. Gessner Road Suite 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