

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

**In the Matter of:**

**Marine Packing Company, Inc.,  
d/b/a Shipline/Marine Packing  
Company**

**Respondent.**

**PHMSA Case No. 03-362-SIBC-EA  
DMS Docket No. PHMSA-2005-22781-3**

**DECISION ON APPEAL**

**I. Procedural History**

On October 6, 2005, the Office of Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT), issued an Order to Marine Packing Company, Inc., d/b/a Shipline/Marine Packing Company (Respondent) finding Respondent had knowingly offered an undeclared shipment of hazardous materials for transportation in commerce.<sup>1</sup> The Order assessed a civil penalty in the amount of \$11,400 for offering a hazardous material – Environmentally hazardous substances, solid, n.o.s. (antimony trioxide) 9, UN3077, PG III – in unauthorized, non-UN standard packagings and accompanied by shipping papers which failed to meet the requirements of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. In a letter received October 27, 2005, Respondent timely filed an appeal of the Order.

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<sup>1</sup> 49 C.F.R. §§ 171.2(a), 173.22(a)(1), 172.200(a), 172.201, 172.202, 172.203(c), 172.204, 172.302, 172.332, 172.504(f)(9), and 172.604(a).

## **II. Summary**

Respondent seeks a reduction in the assessed penalty based on Respondent's small size and the economic harm the penalty will cause the company. The Chief Counsel applied the Guidelines for Civil Penalties after determining Respondent knowingly made an undeclared shipment of hazardous materials, in violation of the HMR. Considering the circumstances of the violation in conjunction with Respondent's financial status, a reduction in the assessed penalty is appropriate. Respondent's appeal is granted.

## **III. Background**

This case arises from a May 12, 2003 compliance inspection performed at Respondent's facilities in Baltimore, Maryland. During the inspection, the inspector observed and photographed intermediate bulk containers (IBCs) containing antimony trioxide.<sup>2</sup> Respondent routinely repackages antimony trioxide from 25 kg bags to 500 kg and 1,000 kg bags for reshipment. Respondent selects the bags used for reshipment and charges its customers for the bags and repackaging. A bill of lading from "one" of Respondent's recent shipments of 500 kg (1,100 pound) bags of antimony trioxide did not identify the product as hazardous for transportation and did not provide an emergency response telephone number.

On an inspection performed on May 19, 2003, the inspector photographed IBCs shipped by Respondent. The IBCs were not marked, labeled or placarded to identify the material as hazardous. In its reply to the Notice, Respondent stated it had relied upon the representations of one of its customers that antimony trioxide was not a hazardous material and stated it had not understood a chemical could be deemed hazardous in a large quantity and not hazardous in a small quantity.

Respondent detailed its corrective actions in its informal response. Respondent submitted additional information on December 10, 2004, including a balance sheet and several samples of recent bills of lading for reportable quantities of antimony trioxide, which identified the shipments as hazardous for transportation but did not meet the requirements of the HMR.

#### **IV. Discussion**

Respondent appeals the Order, challenging the magnitude of the fine. Respondent believes the penalty should be \$250, the minimum permitted by law at the time of the violation. Respondent states such a penalty is appropriate given “the nature of the error on our part and the economic harm to our firm.” Respondent argues it is “a small time operator” and therefore was unaware “that antimony trioxide in big bags is hazardous and in small bags was not.”<sup>3</sup>

The record shows Respondent had a copy of the Material Safety Data Sheet (MSDS) for antimony trioxide which specifically describes quantities in excess of 1,041 pounds per package as hazardous and provides the information necessary for Respondent to have properly packaged, labeled and marked the packagings and to have provided the proper shipping description on the shipping papers. The evidence of corrective action taken by Respondent showed improvement but demonstrated a continued failure to meet the requirements of the HMR.

Respondent submitted financial information demonstrating some financial hardship. In its appeal, Respondent states it made a \$100 profit on the transaction which it failed to declare as hazardous. The Guidelines for Civil Penalties state financial considerations “relate to a respondent’s entire business, and not just the product line or part of its operations involved in the

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<sup>2</sup> Antimony trioxide is regulated as a hazardous *substance* when transported in reportable quantities over 1,000 pounds (454 kg). The substance meets the definition of a hazardous material, which “includes hazardous substances, hazardous wastes . . . .” 49 C.F.R. § 171.8.

<sup>3</sup> Appeal, DMS Docket No. PHMSA-2205-22781-2 (Oct. 28, 2005) at <http://dms.dot.gov/>.

violation(s).”<sup>4</sup> The Chief Counsel granted Respondent a reduction and a payment plan based on Respondent’s financial condition.

Failure to declare the shipment of a hazardous material is one of the most serious violations of the HMR; however, the material Respondent failed to declare is an environmentally hazardous substance and is regulated under the HMR only in large quantities. Antimony trioxide does not present the same types of hazards as materials identified in the Hazardous Materials Table. In assessing a civil penalty, I must balance the danger created by the violation with a variety of other factors, including the financial hardship the penalty will cause.

The safety hazard created by Respondent’s failure to declare a shipment of a reportable quantity of antimony trioxide does not warrant the degree of financial hardship created by the civil penalty assessed by the Chief Counsel. Therefore, I am reducing the civil penalty to \$7,000 – a reduction of over fifty percent (50%) from the recommended baseline of \$15,000. I must also consider Respondent’s failure to demonstrate complete corrective action. The \$7,000 penalty should be sufficient to convey the severity of shipping hazardous materials undeclared without causing undue hardship to Respondent.

## **VI. Payment**

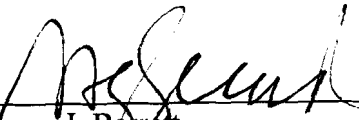
Respondent must pay the \$7,000 civil penalty within 30 days of the date of this Decision on Appeal. Alternatively, Respondent may contact the Office of Chief Counsel to arrange for a payment plan; however, the first payment must be made within 30 days of the date of this Decision on Appeal. See Addendum A for payment information.

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<sup>4</sup> 49 C.F.R. Part 107, Subpart D, Appendix A.

**VII. Final Administrative Action**

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

  
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Thomas J. Barrett  
Administrator

Date Issued: OCT 24 2006

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**CERTIFICATE OF SERVICE**

This is to certify that on the \_\_\_ day of OCT 24, 2006, the Undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Marine Packing Company, Inc.  
1601 South Highland Avenue  
Baltimore, MD 21224  
ATTN: Mr. Donald J. Heim, Jr.

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

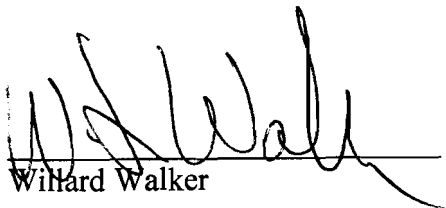
One Copy  
Internal E-Mail

Colleen Abbenhaus  
Eastern Region Chief  
USDOT/PHMSA/OHMS  
Eastern Region Office  
820 Bear Tavern Rd., Ste. 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

OCT 24 2006

Payment Method.

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-300  
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-300  
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:</i> PHMSA Payment for Case #/Ticket

**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/ticket number or Pipeline Assessment 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.