

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

In the Matter of:

**Abrachem Logistics, LLC,
Respondent.**

**PHMSA Case Nos. 02-079-SIBC-EA
02-097-SD-EA
DMS Docket No. PHMSA-2006-26221-1**

ORDER OF THE CHIEF COUNSEL

This matter is before the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA) for a determination regarding the Notice of Probable Violation (Notice) issued to Abrachem Logistics, LLC (Respondent) on May 29, 2002. The Notice formally initiated proceedings against Respondent under the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180.

Background

Respondent offers hazardous materials for transportation within the United States. Therefore, Respondent is subject to the jurisdiction of the Secretary of Transportation, PHMSA's Associate Administrator for Hazardous Materials Safety, and PHMSA's Office of Chief Counsel.¹

On January 15, 2002, an inspector observed portable tanks containing hazardous materials in use in Baltimore, Maryland, which had been filled by Respondent in Clifton, New Jersey. On March 14, 2002, an inspector in Carthage, New York, observed a shipment of hazardous materials in a packaging that was certified to a lower specific gravity than indicated

¹ See 49 U.S.C. § 5103 (2005); 49 C.F.R. § 107.301 (2004).

on the Material Safety Data Sheet (MSDS) for the material. The inspectors reviewed Respondent's records and determined Respondent had offered the packages containing hazardous materials for transportation in commerce. On May 29, 2002, the Office of Chief Counsel issued a Notice of Probable Violation (Notice) to Respondent, alleging three separate violations of the HMR and proposing a civil penalty in the amount of \$12,010.00, which reflected a \$2,250.00 reduction for reshipper status and \$790 for corrective actions.

Discussion

Violation 1: 49 C.F.R. §§ 171.2(a); 173.32(e); 173.242(c); 180.605(a), (g), and (h).

DOT-51 specification portable tanks must be subjected to periodic testing. The HMR require DOT-51 portable tanks to be retested every five years. An inspector observed a shipment of pyridine, 3, UN1282, PG II, in DOT-51 portable tanks, which were marked with the most recent test date of June 1996. Respondent's records indicated Respondent filled the two tanks on or after October 17, 2001, and offered the tanks for transportation on November 1, 2001. The tanks were required to be retested in June 2001. Respondent filled two out-of-test tanks with a hazard class 3, PG II, material and offered the tanks for transportation in commerce.

Violation 2: 49 C.F.R. §§ 171.2(a), 173.1, 173.22(a), 173.201(a), 173.202(c).

An inspector observed a shipment of hydrofluoric acid in 55-gallon plastic drums, which had been unloaded from a container and re-shipped by Respondent. The drums had corrosive and toxic labels attached. The drums were certified with the mark:

UN1H1/X/250/01/CN310060140.

The inspector obtained a Material Safety Data Sheet (MSDS) and a copy of Respondent's shipping paper for the shipment. The shipping paper described the material as:

HYDROFLUORIC ACID, SOLUTION RQ
8 (6.1) UN 1790 PG I

The accompanying invoice described the material as "Hydrofluoric Acid 70%." The MSDS for the 70-75% hydrofluoric acid solution indicated the relative density of the product is 1.23.² Respondent stated the MSDS it provided to the inspector was generic and did not reflect the characteristics of that particular shipment. Respondent argues the specific gravity of the material was 1.2 and therefore the packaging was authorized. Although Respondent submitted a certificate from the manufacturer of the hydrofluoric acid stating the specific gravity of the material was 1.2, the certificate was dated July 2, 2002 — well after the inspection date and after the Notice was issued. Because the testing and certifications were made by parties in interest, the certifications provided by Respondent are subject to closer scrutiny. The certification provided by Respondent is in direct conflict with the MSDS provided by Respondent to the inspector and with generally available, published information regarding the specific gravity of 70% hydrofluoric acid. Therefore, I find the MSDS, which accompanied the shipment and indicates a specific gravity in conformance with published data, is more reliable than a certification made by a party in interest and made after Respondent had received notice of a probable violation.

Violation 3: 171.2(a) and 172.202(b). The HMR do not permit information to be inserted between the first four required items in the shipping description; however, the material appears to have been properly identified as a reportable quantity of hydrofluoric acid.³ I am not making a finding of compliance or of violation of the HMR with regard to the shipping paper probable violation. Respondent is hereby warned in accordance with the provisions of 49 C.F.R. § 107.309. Respondent should continue taking appropriate action to ensure total compliance

² The terms "relative density" and "specific gravity" are used interchangeably in this Order. All relative density values are given in g/cm³.

³ The Notice refers to the inspection report as a basis for the allegations in the Notice. The inspection report alleges an error in the shipping paper regarding the inclusion of a subsidiary hazard class. Respondent correctly noted that the subsidiary hazard class may be listed following the primary hazard class in the shipping description.

with the HMR. Violation of the HMR or the Federal hazardous material transportation law (49 U.S.C. §§ 5101 et seq.) may subject Respondent to a future enforcement action.

Findings

On the basis of the foregoing, I find Respondent knowingly committed two violations of the HMR. In reaching this conclusion, I have reviewed the Inspection/Investigation Report and accompanying exhibits, the exit briefing, Respondent's replies, and all other correspondence in the case file.

Civil Penalty

In assessing a civil penalty, I have taken into account the following statutory criteria:

1. The nature, circumstances, extent, and gravity of the violations;
2. with respect to the Respondent, its degree of culpability, any history of prior violations, its ability to pay, and any effect on its ability to continue to do business; and
3. other matters as justice may require.⁴

Respondent submitted evidence of corrective action warranting a twenty-five percent (25%) reduction in the civil penalty for the packaging violation.⁵ Respondent also submitted evidence its employees received training on the proper preparation of shipping papers and showing its employees had received refresher training regarding the periodic testing requirements for DOT specification tanks.

The total penalty is allocated as follows:

Violation No. 1: \$3,940.00, reduced from \$4,460.00 in the Notice; and
Violation No. 2: \$5,060.00, reduced from \$6,750.00 in the Notice.

⁴ 49 U.S.C. § 5123(c) and 49 C.F.R. § 107.331.

⁵ A twenty-five percent (25%) reduction is the maximum reduction recommended in the Guidelines for Civil Penalties (49 C.F.R. Part 107, Appendix A to Subpart D).

Accordingly, under the authority of 49 U.S.C. § 5123 and 49 C.F.R. §§ 107.317 and 107.329, I assess a total civil penalty of \$9,000.00 for the two violations of the C.F.R., after a reduction of \$3,000.00 for Respondent's corrective actions and a reduction of \$2,250 for Respondent's status as a reshipper with regard to Violation 2. Violation 3 is dismissed with a warning.

Payment and Appeal

Respondent is ordered to pay a civil penalty in the amount of \$9000.00 for violations of the HMR as set forth in this Order. Respondent must either pay the civil penalty within 30 days or appeal this Order to PHMSA's Administrator in accordance with the attached instructions (Addendum A).

This Order constitutes written notification of these procedural rights.

3/15/2007
Date

Sherrí Pappas
Sherri Pappas
Acting Chief Counsel

Attachment

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

CERTIFICATE OF SERVICE

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

Abrachem Logistics, LLC
2 Peekay Drive
Clifton, NJ 07014
Attn: Tilghman Frey, CEO

Original Order with Attachment
Certified Mail – Return Receipt

Ryan Posten
Director, OHME
USDOT/PHMSA/OHMS
400 Seventh Street, S.W.
Washington, D.C. 20590

One Copy
Internal E-Mail

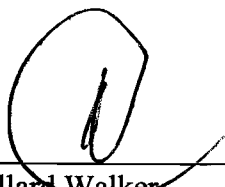
Colleen Abbenhaus
Eastern Region Chief
USDOT/PHMSA/OHMS
Eastern Region Office
820 Bear Tavern Road, Suite 306
West Trenton, NJ 08628

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

MAR 16 2007



Willard Walker

Appeal Information

If Respondent chooses to appeal, Respondent must:

- (1) File a written appeal within twenty (20) days of receiving this Order; a submission will be considered "filed" with PHMSA on the date it is received by PHMSA;
- (2) Address the appeal to the Administrator, c/o Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590-0001; and
- (3) State with particularity in the appeal (a) the findings in the Order that are challenged; and (b) all arguments for setting aside any of the findings in the Order or reducing the penalty assessed in the Order.

The appeal must include all relevant information or documentation. PHMSA will not consider any arguments or information not submitted in or with the written appeal.

PHMSA will regard as untimely, and will not consider, any appeal that is received after the twenty (20) day period. PHMSA recommends the use of fax (202.366.7041) or an overnight service. An appeal received by PHMSA more than twenty (20) days after receipt of the Order by Respondent will not be considered and will not toll the deadline for payment of the civil penalty assessed in the Order.

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-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=/AC-69-14-0001	10. <u>REASONS FOR PAYMENT</u> <i>Example: Payment for PHMSA Case No. (or Ticket No.)</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=/AC-69-14-0001 Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation

Block #10 - REASON FOR PAYMENT - "AC-Payment for PHMSA Case No." 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.