

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

In the Matter of:

**CECO Chemical Manufacturing Co.,
Respondent.**

**PHMSA Case No. 05-0241-SD-SO
DMS Docket No. PHMSA-2006-26203-2**

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 CECO Chemical Manufacturing Co. on July 1, 2005. The Notice formally initiated proceedings against Respondent for five violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171–180, and proposed to assess a civil penalty in the amount of \$9,400, which reflected a \$2,350 reduction for corrective actions.

Respondent manufactures and sells chemicals that it offers for transportation in 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 March 10, 2005, PHMSA inspectors conducted a compliance inspection at Respondent's facilities in Miami, Florida. Respondent provided PHMSA inspectors with an invoice that listed a chemical that was not identified in the HMR. Respondent shipped the chemical in drums. Respondent provided a copy of the Material Safety Data Sheet (MSDS), which indicates the shipping description for the product is Corrosive liquids, Acidic, Organic, n.o.s. (Glycolic acid) 8, UN3265, PG II.

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

Violation 1: 49 C.F.R. §§ 172.702(b), 172.704(a)(4)-(5), and 172.800(b). Respondent shipped 2,700 pounds of a hazardous material, which is an amount that requires placarding. Therefore, Respondent was required to have a security plan. On a Security Inspection Report, Respondent certified it did not have a written security plan and had not provided its employees with security awareness training.

Violation 2: 49 C.F.R. §§ 171.2(a), 173.22(a)(2) and (4), and 173.24(f)(2). The drum head and closure instructions for the drums Respondent used indicated 20 ft/lbs of torque should be used to close the drums. Respondent stated it used a drum closure device that could not measure torque, instead of a variable torque wrench it had on-site. Because the drums were not closed in accordance with the manufacturer's closure instruction, the drums were not authorized for the transportation of hazardous materials.

Violation 3: 49 C.F.R. §§ 172.702(b), and 172.704(a)(1)-(3) and (d). Respondent stated its employees had received hazmat training in the required areas of general awareness, function-specific training and safety but was unable to provide any records showing its employees had received general awareness, function-specific, safety, security awareness or in-depth security training.

Violation 4: 49 C.F.R. §§ 171.2(a), and 172.202(a)(1). The shipping paper accompanying the shipment of Corrosive liquids, Acidic, Organic, n.o.s. (Glycolic acid) 8, UN3265, PG II, did not include the proper shipping name.

Violation 5: 49 C.F.R. §§ 171.2(a) and 172.301(a)(1). A corrosive, hazard class 8, label was affixed to each 1H1 drum. Next to the label, Respondent had marked an incorrect shipping name and UN identification number.

Following the inspection, Respondent provided evidence it had created a security plan, provided training to most of its employees, and corrected its markings and shipping papers.

On July 1, 2005, the Office of Chief Counsel issued the Notice, proposing a civil penalty in the amount of \$9,400 for five violations of the HMR. In correspondence responding to the Notice, Respondent disputed the fine on the ground that it had corrected all of the violations found during the inspection. Respondent also submitted additional evidence of corrective action.

Findings

Based on the facts detailed above, I find Respondent knowingly committed four violations of the HMR. In reaching this conclusion, I have reviewed the Inspection/Investigation Report and accompanying exhibits, the exit briefing, and Respondent's replies. In particular, I note that Respondent admitted several of the violations and did not challenge any of the factual allegations underlying the violations.

I am not making a finding of compliance or of violation of the HMR with regard to the security plan violations. Respondent is hereby warned in accordance with the provisions of 49 C.F.R. § 107.309. Respondent should continue taking appropriate action to ensure compliance 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.

Conclusion

Respondent did not challenge the factual or legal basis of the violations found in this Order, but contends that it should not be subject to a civil penalty because it asserts it is now in compliance with the HMR. Although Respondent may be in compliance now,² there is no dispute that Respondent was not in compliance at the time of the inspection. PHMSA's penalty

² This Order does not make a finding as to Respondent's current state of compliance.

schedule is designed to encourage future compliance; however, the penalty assessed is for violations that have already occurred.

The civil penalty proposed in the Notice was adjusted to reflect corrective actions taken. Respondent is a small business and has provided evidence of financial hardship. I find a reduction in the penalty is appropriate based on Respondent's inability to pay the penalty proposed in the Notice.

In assessing a civil penalty, I have taken into account the following statutory criteria (49 U.S.C. § 5123(c) and 49 C.F.R § 107.331):

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.

After mitigation and taking into consideration all of the statutory factors, the penalty is allocated as follows:

Violation No. 1: reduced to warning;
Violation No. 2: \$1,500, reduced from \$2,000 in the Notice;
Violation No. 3: \$500, reduced from \$600 in the Notice;
Violation No. 4: \$550, reduced from \$800 in the Notice; and
Violation No. 5: \$2,000, reduced from \$2,400 in the Notice.

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 \$4,550 for four violations of the HMR.**³

Payment and Appeal

Respondent must either pay the civil penalty within 30 days in accordance with the attached instructions (Addendum A), or appeal this Order to PHMSA's Administrator.

³ The assessed penalty reflects a total reduction of approximately thirty-five percent (35%) from the recommended total baseline penalty.

Respondent may contact the Office of Chief Counsel to arrange a payment plan; however, the first payment of a payment plan must be made within 30 days of this Order. If Respondent chooses to appeal this Order, it must do so in accordance with 49 C.F.R. § 107.325.

This Order constitutes written notification of these procedural rights.

3/16/2007
Date

Sherrí Pappas
Sherri Pappas
Acting Chief Counsel

Enclosure

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:

CECO Chemical Manufacturing Co.
2990 NW 73rd Street
Miami, FL 33147
Attn: Mr. Steve Matthews, President

Original Order
Certified Mail – Return Receipt

Mr. Ryan Posten
Director, OHME
USDOT/PHMSA/OHMS
400 Seventh Street, S.W., Ste. 7104
Washington, D.C. 20590

One Copy
Internal E-Mail

Mr. John Heneghan
Chief, Southern Region Office
Office of Hazardous Materials Enforcement
Southern Region Office
233 Peachtree Street N.E., Ste. 602
Atlanta, Georgia 30303

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.