

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

**In the Matter of:**

**Concord Chemical, Inc. and  
Concord Chemical, Inc. d/b/a  
Seacord Corporation,  
Respondent.**

**PHMSA Case Nos. 05-0626-SD-EA  
05-0627-SD-EA  
DMS Docket No. PHMSA-2006-24885-2**

**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 Concord Chemical, Inc. and Concord Chemical, Inc. d/b/a Seacord Corporation (Respondent) on May 22, 2006. The Notice formally initiated proceedings against Respondent under the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180.

**Background**

Respondent manufactures cleaning products and waxes, which are classified as hazard class 6.1 (poisonous material), PG II and hazard class 3 (flammable liquid), PG III. Respondent offers these hazardous materials for transportation in commerce 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.<sup>1</sup>

During a compliance inspection at Respondent's facilities in Camden, New Jersey, on October 31, 2005, inspectors from the Office of Hazardous Materials Enforcement reviewed Respondent's shipping papers. The shipping papers showed Respondent offered 17,500 units of

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

cresylic acid, 6.1, UN2022, II, for transportation in commerce on April 7, 2005. Respondent indicated the quantity indicated on the shipping paper was measured in pounds. The inspector also observed 55-gallon steel drums, certified UN1A1/X1.8/300/05/USA/GBC3, containing cresylic acid. Respondent represented that the drums had been closed with a torque wrench that was not capable of measuring torque.

On May 22, 2006, the Office of Chief Counsel issued a Notice of Probable Violation (Notice) to Respondent, alleging three violations of the HMR and proposing a civil penalty in the amount of \$7,500.00.

### **Discussion**

Violation 1: 49 C.F.R. §§ 171.2(a), (b); 172.800(b); 172.802(a), (b). The HMR require a shipper who offers a placarded quantity of a hazardous material to develop and implement a security plan. Respondent did not have a security plan in place at the time of the inspection. Respondent represented in an email dated June 8, 2006, that it had prepared a security plan containing all the required elements. Respondent is hereby warned under the provisions of 49 C.F.R. §§ 107.307 and 107.309 that the recurrence of this probable violation may subject Respondent to enforcement action.

Violation 2: 49 C.F.R. §§ 171.2(a), (b), (e), (i); 173.22(a)(4), 173.24(f)(2); 173.202(a). The HMR require a shipper to close packagings containing hazardous materials in accordance with the manufacturer's closure instructions prior to offering the package for transportation in commerce. Although Respondent did not have a wrench capable of measuring torque to ensure it had complied with the manufacturer's closure instructions, Respondent indicated it verified the torque with another torque wrench and found all of the drums met the manufacturer's requirements. Therefore, I find there is insufficient evidence to show Respondent offered

hazardous materials for transportation in commerce which had not been closed in accordance with the manufacturer's closure instructions.

Violation 3: 49 C.F.R. §§ 171.2(a), (b); 172.702(a); 172.704(d). The HMR require a hazmat employer to provide training to its employees and to retain records of that training. Respondent indicated during the inspection that it had provided training to its employees but was unable to provide any record of the training. Respondent indicated it has generated training records and is maintaining them as required by the HMR.

### **Findings**

On the basis of the foregoing, I find Respondent knowingly violated the HMR in that it failed to maintain training records. Respondent provided evidence of financial hardship and its status as a small business.

### **Civil Penalty**

In assessing a civil penalty, I am required to consider 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.

I am required to assess a civil penalty where I find a violation has occurred. Therefore, after consideration of the factors listed above, I hereby assess a total civil penalty of \$450.00 for one violation of the HMR, under the authority of 49 U.S.C. § 5123 and 49 C.F.R. §§ 107.317 and 107.329.

**Conclusion**

Respondent is ordered to pay a civil penalty in the amount of \$450.00 for one violation of the HMR as set forth in this Order. 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. If Respondent chooses to appeal this Order, it must do so in accordance with 49 C.F.R. § 107.325.<sup>2</sup>

This Order constitutes written notification of these procedural rights.

3/15/2007  
Date

Sherri Pappas  
Sherri Pappas  
Acting Chief Counsel

Attachment

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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<sup>2</sup> The requirements of Section 107.325 include the following: (1) File a written appeal within twenty (20) days of receiving this Order (filing effective upon receipt 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. See 49 C.F.R. § 107.325(c)(2). 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; therefore, PHMSA recommends the use of fax (202.366.7041) or an express delivery service.

**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:

Concord Chemical, Inc. &  
Concord Chemical d/b/a Seacord Corporation  
1700 Federal Street  
Camden, NJ 08105  
Attn: John Faucett, President

Original Order  
Certified Mail – Return Receipt

Ryan Posten  
Office of Hazardous Materials Safety  
400 Seventh Street, S.W., Rm. 7104  
Washington, D.C. 20590

One Copy  
Internal E-Mail

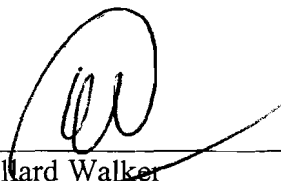
Ms. Colleen Abbenhaus  
Office of Hazardous Materials Enforcement  
Eastern Region Office  
820 Bear Tavern Rd., Suite 306  
West Trenton, NJ 08628

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

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=/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.