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U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

DEPT. OF TRANSPORTATION
DOCKETS

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400 Seventh Street, S.W.
Washington, D.C. 20590

OCT - 4 2005

PHMSA-2005-23199-2

Mr. Don Hausz, President
All-Out Fire Equipment Co., Inc.
385 High Street
Holbrook, NY 11741

Termination of Approval

Dear Mr. Hausz:

This letter constitutes notification that, in accordance with 49 C.F.R. § 107.713(b)(4), I am terminating your approval (Retester Identification Number (RIN) A261). I am taking this action because, based on a review of the inspection detailed in the Inspection Report No. 04421033 sent to you previously, I have a reasonable belief that All-Out Fire Equipment Co., Inc. (All-Out Fire) knowingly committed the following violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180:

Violation No. 1 - Representing, certifying, and marking DOT specification and exemption cylinders as having been successfully retested in accordance with the HMR, without actually conducting hydrostatic testing, in violation of 49 C.F.R. §§ 171.2(c), 180.205(c), 180.205(g)(1), and 180.209(a)(1).

On June 15, 2004, an inspector from the Office of Hazardous Materials Enforcement (OHME) of the Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted a compliance inspection of All-Out Fire. A review of the retest records for high pressure gas cylinders from November 2003 to June 2004, revealed that:

- All-Out Fire visually inspected a very large number of high pressure gas cylinders.
- There were no records of any hydrostatic testing, including retest equipment calibration, performed on these cylinders.
- All-Out Fire certified these cylinders as requalified by stamping and labeling them as retested merely after visual inspections.
- All-Out Fire returned the same cylinders to high pressure gas service.
- In addition, All-Out Fire could not also produce retest records of cylinders requalified prior to November 2003.

Violation No. 2 - Representing, certifying, and marking DOT specification cylinders as having been successfully retested in accordance with the HMR, when the test records had recorded the

cylinders as having failed the visual inspection, in violation of 49 C.F.R. §§ 171.2(c), 180.205(h), and 180.205(i).

During the same inspection, a review of the retest records for high pressure DOT specification gas cylinders from November 2003 to June 2004, revealed that:

- On or about February 5, 7, and 12, All-Out Fire visually inspected cylinders.
- Eight of the cylinders had failed their visual examination.
- All-Out Fire certified these cylinders as requalified by stamping and labeling them as retested.
- All-Out Fire returned the same cylinders to high pressure gas service.
- On or about May 25, 2005, All-Out Fire visually inspected cylinders.
- One of the cylinders had failed its visual examination.
- All-Out Fire certified this cylinder as requalified by stamping and labeling it as retested.
- All-Out Fire returned the same cylinder to high pressure gas service.

Violation No. 3 - Representing, certifying, marking, and offering DOT specification cylinders as having been successfully retested in accordance with the HMR, when the cylinders were tested by an unauthorized retest operator, in violation of 49 C.F.R. §§ 171.2(c), 107.805(g), and 180.205(b) and in violation of RIN A261 Approval Letter of October 10, 2001.

- All-Out Fire had, during 2003, hired a new employee.
- This employee operated the cylinder retest equipment to perform cylinder retesting and requalification work.
- All-Out Fire failed to report the change in test personnel to PHMSA's Associate Administrator as required under its approval to conduct retesting and requalification work.

Violation No. 4 - Representing, certifying, marking, and offering DOT specification cylinders as having been successfully retested in accordance with the HMR, without maintaining complete retest and reinspection records, in violation of 49 C.F.R. §§ 171.2(c) and 180.215(b).

- The inspector observed a cylinder on the premises as retested by All-Out Fire in 1999 and 2003.
- However, All-Out Fire could not produce retest records to verify the tests.
- All-Out Fire had no retest records for low pressure cylinders that were reported/represented to be tested.
- The available records, in addition, had entries missing such as retest identification and disposition codes.

Violation No. 5 - Representing, certifying, and marking DOT specification cylinders as having been successfully retested in accordance with the HMR, without maintaining current copies of applicable regulations, in violation of 49 C.F.R. §§ 171.2(c) and 180.215(a)(4).

- All-Out Fire retested and requalified high pressure gas cylinders.
- All-Out Fire could not produce a current copy of the pertinent Code of Federal Regulations (C.F.R.) for continuing qualification and maintenance of packagings (cylinders).

Violation No. 6 - Allowing an employee to perform functions subject to the HMR, including and not limited to representing, certifying, and marking DOT specification and exemption cylinders as having been successfully retested, while failing to provide hazmat training and testing of its employee, in violation of 49 C.F.R. §§ 171.2(c), 172.702(b), 172.702(d), and 172.704(d).

- An employee of All-Out Fire performed retesting and requalification of high pressure gas cylinders on All-Out Fire's behalf during the years 2003 and 2004.
- All-Out Fire had no records of hazmat training for the employee, including cylinder retesting and requalification training of this employee
- All-Out Fire had no records indicating the employee had been properly tested on cylinder requalification work.

A retester of DOT specification and exemption cylinders is required to follow specific testing protocols and procedures specified in the regulations. The retester must properly retest cylinders, provide training to its employees, maintain complete records of retesting and training, and make these records available for inspection by DOT and PHMSA. This required level of proficiency in testing of high pressure gas cylinders, quality control, recordkeeping, and oversight ensures compliance with the federal safety standards and regulations governing continued qualification and maintenance of packagings.

In accordance with 49 C.F.R. § 107.713(c), on April 26, 2005, I provided you a written notice of my proposal to terminate your approval and the reasons for it. After reviewing the above facts and circumstances and also the fact that you failed to respond to the Proposed Termination letter, I have a reasonable belief that you have knowingly violated the terms of your approval and have demonstrated a lack of fitness to perform hydrostatic tests on compressed gas cylinders.

Therefore, I am terminating your approval.

You may request that I reconsider my decision to terminate your approval. See 49 C.F.R. § 107.715(a). Your request must:

- (1) be in writing and filed within 20 days of receipt of this decision;
- (2) state in detail any alleged errors of fact and law;
- (3) enclose any additional information needed to support the request to reconsider; and
- (4) state in detail the modifications of the final decision sought.

You must send your response to the following address:

Dr. Robert A. McGuire, PHH-1
Associate Administrator for
Hazardous Material Safety
Department of Transportation
Pipeline and Hazardous Materials Safety Administration
400 Seventh Street, S.W., Room 8321
Washington, D.C. 20590

If there are any questions concerning this letter, you may contact Attorney Anil Mehta in PHMSA's Office of the Chief Counsel at 202/366-4400.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. McGuire", written over a horizontal line.

Robert A. McGuire
Associate Administrator for
Hazardous Materials Safety

CERTIFIED MAIL - RETURN RECEIPT REQUESTED