

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

In the Matter of:

Hunan Liuyang Huan Yu Co.,

Respondent.

**PHMSA Case No. 11-0236-FSB-EA
Docket No. PHMSA-2012-0307**

ORDER OF THE CHIEF COUNSEL

By a Notice of Probable Violation (Notice) issued on March 15, 2012, the Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration (PHMSA), proposed to assess Hunan Liuyang Huan Yu Co. (Respondent) a civil penalty under the provisions of 49 C.F.R. §§ 107.307 and 107.311. In the Notice, PHMSA alleged that Respondent had committed one violation of the Hazardous Materials Regulations (HMR), 49 C.F.R. parts 171-180, and proposed a total civil penalty of \$11,250.

On June 12, 2012, Respondent sent PHMSA an email in which it stated that it had received the Notice on June 5, 2012, and it was “discussing about how to solve the problem as soon as possible.” However, Respondent did not reply to follow-up emails from PHMSA on June 12 and August 17, 2012. Because Respondent has not otherwise responded to the Notice, this case is before me for a determination.

Discussion

On June 21, 2011, investigators from PHMSA’s Eastern Regional Office of Hazardous Materials Enforcement conducted a compliance inspection at Legion Fireworks Co., Inc., Wappingers Falls, New York (Legion) pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. During the inspection, the investigators observed and photographed fiberboard boxes to which Division 1.4G hazard warning labels were affixed and which were marked:

- “Articles Pyrotechnic UN0431,” “Made in China,” and, variously, “PFX62BB-G 62 MM Gold Peony,” “PFX62BB-W 62MM White Peony,” “PFX62BB-R 62MM Red Peony,” or “PFX62BB-B 62MM Blue Peony.” (Exhibits 2 & 7)¹

¹ References to “Exhibits” are to the Exhibits to PHMSA’s Inspection/Investigation Report No. 11196038 (I/I Report), a copy of which was provided to Respondent with the Notice.

- “Fireworks UN0336,” “Made in China,” and “DM580 Top Shelf-16S Fan Cake.” (Exhibit 5)
- “Fireworks UN0336,” “Made in China,” and “DM574,” “Patriotic Dominance.” (Exhibit 6)

Following the inspection, Legion’s president provided PHMSA’s investigator with copies of a “Bill of Lading for Ocean Transport or Multimodal Transport” and a “Commercial Invoice Loading in Liuyang” reflecting a shipment by Respondent to Legion of a total of 1,924 cartons of items classed as Division 1.3G UN0335 or Division 1.4G UN0336 hazardous materials (Exhibit 3), including:

- 14 cartons “DM574 Patriotic Dominance (Red, White & Blue)”;
- 17 cartons “DM580 Top Shelf Fan Cake”; and
- 30 cartons “PFX62BB is 62mm variegated peony, blue, red peony, white.”

Thereafter, PHMSA’s investigator reviewed PHMSA’s approvals records which contained no approval of any of these items. (I/I Report, page 2; Exhibit 4)

This evidence is sufficient to find that Respondent violated the HMR when it offered for transportation in commerce Division 1.4G hazardous materials (fireworks and articles pyrotechnic) which had not been approved by PHMSA and were forbidden for transportation, in violation of 49 C.F.R. §§ 171.2(b) & (e), 173.51(a), 173.54(a), and 173.56(a) & (b).

In the Notice, PHMSA proposed a total civil penalty of \$11,250. PHMSA used the Penalty Guidelines set forth at Appendix A to 49 C.F.R. part 107, subpart D, to calculate the civil penalty proposed in the Notice. Respondent has not submitted information or documentation showing that it has corrected this violation or taken other actions to prevent future violations of the HMR. Accordingly, no reduction of the penalty proposed in the Notice is appropriate.

Findings

Based on all the facts discussed above, I find that Respondent offered for transportation in commerce Division 1.4G hazardous materials (fireworks and articles pyrotechnic). Therefore, Respondent is subject to the requirements of the HMR issued by PHMSA under authority delegated by the Secretary of Transportation acting pursuant to Federal hazardous material transportation law. *See* 49 U.S.C. § 5103(b); 49 C.F.R. §§ 1.53(b), 107.301.

I further find that Respondent violated the HMR when it offered for transportation in commerce Division 1.4G hazardous materials (fireworks and articles pyrotechnic) which had not been approved by PHMSA and were forbidden for transportation, in violation of 49 C.F.R. §§ 171.2(b) & (e), 173.51(a), 173.54(a), and 173.56(a) & (b).

In reaching this conclusion, I have reviewed the Inspection/Investigation Report and accompanying exhibits, and I find that substantial evidence supports these findings.

Conclusion

Under the authority of 49 U.S.C. § 5123 and 49 C.F.R. §§ 107.317 and 107.329, I hereby assess Respondent a total civil penalty of \$11,250, as proposed in the Notice.

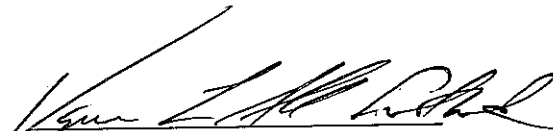
In assessing this civil penalty, I have taken into account the following statutory criteria (49 U.S.C. § 5123(c) and 49 C.F.R § 107.331):

- (1) The nature, circumstances, extent, and gravity of the violation;
- (2) Respondent's degree of culpability and lack of prior violations;
- (3) Respondent's size;
- (4) Respondent's ability to pay a penalty and the effect of a penalty on its ability to continue to do business; and
- (5) Other matters as justice may require.

Payment and Appeal

Respondent must either (1) pay the civil penalty within thirty (30) days of the date of this Order or (2) appeal this Order to PHMSA's Administrator within twenty (20) days of the date that the Order is received by Respondent. Instructions for payment or appeal are set forth in Addendum A.

1/2/2013
Date


Vanessa L. Allen Sutherland
Chief Counsel

REGISTERED MAIL

Appeal Information

If Respondent chooses to appeal, Respondent must:

- (1) File a written appeal within twenty (20) days of receiving this Order. A submission is considered "filed" with PHMSA on the date it is received by PHMSA;
- (2) Address the appeal to the Administrator, Pipeline and Hazardous Materials Safety Administration, c/o Office of Chief Counsel, 1200 New Jersey Ave., SE, PHC – East Building 2nd Floor, Washington, DC 20590; 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 and 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

The U.S. Department of Transportation's Federal Aviation Administration (FAA) is authorized to receive and process payments of civil penalties assessed by PHMSA. Respondent must pay the civil penalty by (1) wire transfer, (2) certified check or money order, or (3) credit card via the Internet, in accordance with the following instructions.

(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:

Financial Operations Division (AMZ-341)
Federal Aviation Administration
Mike Monroney Aeronautical Center
P.O. Box 269039
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-341
Federal Aviation Administration
Mike Monroney Aeronautical Center
P.O. Box 269039
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.

CERTIFICATE OF SERVICE

This is to certify that on April 30, 2013 the undersigned served in the following manner the designated copies of this Order with attached addendum to each party listed below:

President
Hunan Liuyang Huan Yu Co.
30 Beizheng Road
Liuyang, Hunan
CHINA 410316

Original Decision
Registered Mail
&
Email: zhouli7028@hotmail.com

Colleen Abbenhaus
Director, Eastern Region
Office of Hazardous Materials Safety
Field Operations

One Copy
Electronic Mail

U.S. DOT Dockets, M-30
U.S. Department of Transportation
West Building Ground Floor, Room W12-14
1200 New Jersey Ave., SE
Washington D.C. 20590

One Copy
Personal Delivery

Meridith Kelshh, Attorney
Office of Chief Counsel

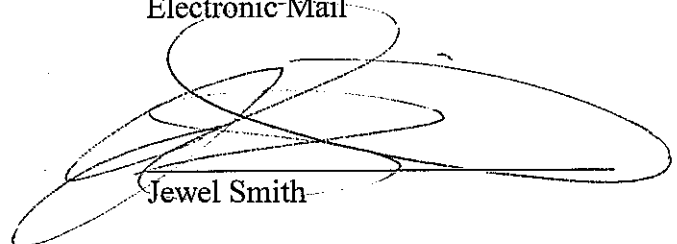
One Copy (without enclosures)
Electronic Mail

Joseph Solomey
Assistant Chief Counsel for
Hazardous Materials Safety Law

One Copy (without enclosures)
Electronic Mail

James Reynolds
Acting Enforcement Officer

One Copy (without enclosures)
Electronic Mail



Jewel Smith