



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety Administration**

Office of  
Chief Counsel

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***Hazardous Materials Safety Law  
Division***

**NOTICE OF PROBABLE VIOLATION**

Date Issued:           **FEB 03 2014**

PHMSA Case No.:    14-0002-SH-CE

Respondent:        Marathon Oil Company  
3172 Highway 22 N  
Dickinson, ND 58601  
ATTN: Lee Tillman, President and CEO

Marathon Oil Company  
5555 San Felipe St.  
Houston, TX 77056  
ATTN: Clarence Cazalot, Jr., President and CEO

Marathon Oil Company  
5555 San Felipe St.  
Houston, TX 77056  
ATTN: W.F. Schwind, Jr., Secretary and General Counsel

No. of Alleged Violations:        1

Total Proposed Assessment:       \$30,000

The Office of Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA) alleges that you have violated certain provisions of the Federal hazardous materials transportation law, 49 U.S.C. § 5101 *et seq.*, and/or the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. PHMSA sets forth the specific allegations in Addendum A to this Notice.

What are the maximum and minimum civil penalties that PHMSA can assess? For violations occurring after October 1, 2012, Federal law sets a civil penalty of not more than \$75,000 for each violation of the Federal hazardous materials transportation law or the HMR (49 U.S.C. § 5123(a)(1)). Furthermore, if a person's violation of the HMR "results in death, serious illness, or severe injury . . . or substantial destruction of property" the maximum civil penalty is \$175,000 (49 U.S.C. § 5123(a)(2)); and if the violation concerns training the minimum civil penalty is \$450 (49 U.S.C. § 5123(a)(3)). Each day of a continuing violation constitutes a separate violation for which the maximum penalty may be imposed (49 U.S.C. § 5123(a)(4)).

What factors does PHMSA consider when proposing and assessing a civil penalty? Federal law requires PHMSA to consider certain factors when proposing and assessing a civil penalty for a violation of Federal hazardous materials transportation law or the HMR. Please refer to Addendum B to this Notice for more information concerning these factors, which include corrective actions you take to attain and ensure compliance with the HMR.

How do I respond? You may respond to this Notice in any of three ways:

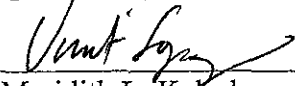
- (1) pay the proposed assessment;
  - (2) send an informal response, which can include a request for an informal conference;
- or
- (3) request a formal hearing.

Details on these three options are provided in Addendum B to this Notice and also on the home page of PHMSA's Office of Hazardous Materials Safety (go to <http://www.phmsa.dot.gov/hazmat/enforcement>). PHMSA explains its procedures for assessing civil penalties and imposing compliance orders in 49 C.F.R. § 107.307 through 107.331.

When is my response due? You must respond within thirty (30) days from the date that you receive the Notice (49 C.F.R. § 107.313(a)). You are encouraged to submit your response by e-mail or fax when possible. I may extend the 30-day period for your response if you ask for an extension, and show good cause, within the original 30-day period (49 C.F.R. § 107.313(c)).

What happens if I fail to respond? You waive your right to contest the allegations made in Addendum A to this Notice if you fail to respond within thirty (30) days of receiving it (or by the end of any extension). In that event, the Chief Counsel may find that you committed the violation(s) alleged in this Notice and assess an appropriate civil penalty.

The Case Exhibits have been supplied to you on a Compact Disk in a PDF format. If receiving this CD in electronic format creates an undue hardship for you, please contact the attorney listed below.

*for*   
\_\_\_\_\_  
Meredith L. Kelsch  
Senior Attorney Advisor

Enclosures: Addendum A  
Addendum B  
Addendum C  
Case Exhibits on Compact Disk

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

## **SPECIFIC ALLEGATIONS**

### General Factual Allegations/Averments

1. On October 8 to 10, 2013, Investigators from the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Safety Field Operations, conducted an investigation at Respondent's Hess Tioga loading facility (Marathon Hess TRT), located in Tioga, North Dakota, and obtained samples of UN1267, Petroleum crude oil, 3, Packing Group (PG) I from several motor carriers and reviewed records of shipments.
2. The motor carriers provided the samples of the UN1267, Petroleum crude oil, 3, PG I to PHMSA's Investigators.
3. The samples of UN1267, Petroleum crude oil, 3, PG I were sent to an Intertek Group (Intertek) laboratory to verify the flash point and boiling point.
4. During the course of the investigation, PHMSA's Investigators obtained and/or generated the following documents:
  - a. PHMSA Chain of Custody Form, dated October 10, 2013.
  - b. Intertek Chain of Custody Form, referencing US150-0035255.
  - c. Intertek Report of Analysis, Reference Number US150-0035255, dated October 11, 2013.
  - d. The following shipping papers for shipments of UN1267, Petroleum crude oil, 3, PG I that were offered into transportation by Respondent:
    - i. Run Ticket 946796, dated October 10, 2013, transported by MBI Energy Services, Inc. in truck 928, Tank No. 2395;
    - ii. Run Ticket 946802, dated October 10, 2013, transported by Fladeland Trucking, LLC in truck 37, Tank No. 2377;
    - iii. Run Ticket 946804, dated October 10, 2013, transported by Fladeland Trucking, LLC in truck 41, Tank No. 2388.
  - e. Affidavit of Kipton Wills, the Director of PHMSA's Office of Hazardous Materials Safety Field Operations, Central Region.

Probable Violation No. 1

Offering for transportation, in commerce, a hazardous material (UN1267, Petroleum crude oil, 3, PG I), while failing to properly classify and describe the material as Packing Group I and listing the hazardous material on shipping papers as a Packing Group II material, in violation of 49 CFR §§ 171.2(a), (b), (e), (i), 172.200(a), 172.202(a)(4), 173.22(a)(1), and 173.121(a)(1).

Factual Allegations/Averments

*A. Tank No. 2395, Sample No. 15*

1. During the investigation, PHMSA's Investigators observed and photographed an incoming cargo tank marked MBI Energy Services, Inc. and marked truck number 928.
2. PHMSA's Investigators observed and photographed the Gauge Run Ticket for this cargo tank, which was dated October 10, 2013, numbered 946796, and listed the cargo tank as Tank No. 2395. The Gauge Run Ticket indicated that Respondent shipped hazardous material, UN1267, Petroleum crude oil, 3; PG II, from Cora Martin Battery in North Dakota to Marathon Hess TRT on October 10, 2013.
3. PHMSA's Investigators requested and observed a Hess Safety Team employee take a sample of petroleum crude oil from Tank No. 2395. Kipton Wills, the Director of PHMSA's Office of Hazardous Materials Safety Field Operations, Central Region (the Director) labeled the sample as Sample No. 15.
4. The Director submitted Sample No. 15 to an Intertek laboratory, located in Mandan, North Dakota, for analysis.
5. Intertek performed the following tests on Sample No. 15:
  - a. Standard Method of Test for Flash Point by Tag Closed Cup Tester (ASTM D56);
  - b. Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure (ASTM D86.)
6. Intertek provided a Report of Analysis, Reference No. US150-0035255, dated October 11, 2013, which indicates it tested Sample No. 15, Sample ID 2013-NDMD-000053-008 on October 11, 2013, and determined the flash point of the material was less than 50°F and the initial boiling point was 89°F.

*B. Tank No. 2377, Sample No. 24*

1. During the investigation, PHMSA's Investigators observed and photographed an incoming cargo tank marked Fladeland Trucking, LLC and marked truck number 37.

2. PHMSA's Investigators observed and photographed the Gauge Run Ticket for this cargo tank, which was dated October 10, 2013, numbered 946802, and listed the cargo tank as Tank No. 2377. The Gauge Run Ticket indicated that Respondent shipped hazardous material, UN1267, Petroleum crude oil, 3, PG II, from Cora Martin Battery in North Dakota to Marathon Hess TRT on October 10, 2013.
3. PHMSA's Investigators requested and observed a Hess Safety Team employee take a sample of petroleum crude oil from Tank No. 2377. The Director labeled the sample as Sample No. 24.
4. The Director submitted Sample No. 24 to an Intertek laboratory, located in Mandan, North Dakota, for analysis.
5. Intertek performed the following tests on Sample No. 24:
  - a. Standard Method of Test for Flash Point by Tag Closed Cup Tester (ASTM D56);
  - b. Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure (ASTM D86.)
6. Intertek provided a Report of Analysis, Reference No. US150-0035255, dated October 11, 2013, which indicates it tested Sample No. 24, Sample ID 2013-NDMD-000053-017 on October 11, 2013, and determined the flash point of the material was less than 50°F and the initial boiling point was 91.6°F.

*C. Tank No. 2388, Sample No. 25*

1. During the investigation, PHMSA's Investigators observed and photographed an incoming cargo tank marked Fladeland Trucking, LLC and marked truck number 41.
2. PHMSA's Investigators observed and photographed the Gauge Run Ticket for this cargo tank, which was dated October 10, 2013, numbered 946804, and listed the cargo tank as Tank No. 2388. The Gauge Run Ticket indicated that Respondent shipped hazardous material, UN1267, Petroleum crude oil, 3, PG II, from Cora Martin Battery in North Dakota to Marathon Hess TRT on October 10, 2013.
3. PHMSA's Investigators requested and observed a Hess Safety Team employee take a sample of petroleum crude oil from Tank No. 2388. The Director labeled the sample as Sample No. 25.
4. The Director submitted Sample No. 25 to an Intertek laboratory, located in Mandan, North Dakota, for analysis.
5. Intertek performed the following tests on Sample No. 25:

- a. Standard Method of Test for Flash Point by Tag Closed Cup Tester (ASTM D56);
- b. Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure (ASTM D86.)

6. Intertek provided a Report of Analysis, Reference No. US150-0035255, dated October 11, 2013, which indicates it tested Sample No. 25, Sample ID 2013-NDMD-000053-018 on October 11, 2013, and determined the flash point of the material was less than 50°F and the initial boiling point was 92.1°F.

#### *D. Summary*

1. On or about October 10, 2013, Respondent offered for transportation, in commerce, a hazardous material (UN1267, Petroleum crude oil, 3, PG I), while failing to properly classify and describe the material as Packing Group I and listing the hazardous material on the shipping papers as a Packing Group II material, in violation of the Hazardous Materials Regulations (HMR).

- Please see Inspection/Investigation Report Number 14125001 at page 2, and the exhibits that accompany this report, which are incorporated herein.

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### **FACTS ALREADY CONSIDERED (UNDER 49 C.F.R. § 107.331) IN SETTING PROPOSED PENALTIES**

#### Prior Violations

PHMSA increases proposed penalties when Respondent has committed a prior violation of the Federal hazardous materials transportation law or the HMR, as determined through a civil penalty case, criminal case, or ticket initiated within the last six calendar years (49 C.F.R. § 107.331(d)). In general, a baseline proposed penalty will be increased by 25% for each prior civil or criminal enforcement case, and 10% for each prior ticket – up to a maximum increase of 100% (49 C.F.R. Part 107, Subpart D, Appendix A, Section IV.E).

PHMSA's records do not contain any prior violations by Respondent and PHMSA did not consider any prior violations in determining the proposed assessment for the violation in this Notice.

#### Corrective Action

An important purpose of PHMSA's enforcement program is to bring the regulated community into compliance with the Hazardous Materials Regulations, and to promote ongoing efforts by that community to maintain compliance. In determining the final penalty assessment, PHMSA

considers documented evidence of actions taken by a Respondent to correct violations and ensure that they do not recur (49 C.F.R. § 107.331(g)).

Respondent is encouraged to provide information and documentation of the steps it has taken to correct the alleged violations and to prevent future violations of the HMR.

In order to justify a reduction of the proposed penalty, Respondent must submit corrective action showing that the subject hazardous material has been properly classified and assigned the correct packing group.

Financial Status

Under 49 C.F.R. §107.331 (e) and (f), the proposed penalty may be reduced if Respondent demonstrates that it is unable to pay that penalty, or if payment of the proposed penalty would affect Respondent's ability to continue in business. Respondent's poor financial condition may be a basis for reducing the proposed penalty; a healthy financial condition is *not* a basis for increasing the penalty.

PHMSA has no information that indicates that Respondent is unable to pay the proposed penalty or that payment of the proposed penalty will affect Respondent's ability to continue in business. If Respondent wishes its financial condition to be considered in assessing a penalty for the violation(s) alleged in this Notice, it must provide current financial information (i.e., a copy of Respondent's most current 3 Federal tax returns or a current balance sheet [preferably certified]).

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**TOTAL CIVIL PENALTY PROPOSED**

Probable Violation	Baseline Penalty	Increase for Multiple Counts	Increase for Priors	Corrective Action	Proposed Penalty
1	\$20,000 <sup>1</sup>	\$10,000 <sup>2</sup>	\$0	\$0	\$30,000
TOTAL	\$20,000	\$10,000	\$0	\$0	\$30,000

<sup>1</sup> The baseline penalty is based on the civil penalty provided in the *List of Frequently Cited Violations* in 49 C.F.R. Part 107, Subpart D, Appendix A, Part II, for offering for transportation a PG I hazardous material that is misclassified on the shipping paper.

<sup>2</sup> In accordance with 49 C.F.R. Part 107, Subpart D, Appendix A, Part IV, *Miscellaneous Factors Affecting Penalty Amounts*, paragraph B., PHMSA generally treats multiple occurrences, including multiple shipments, that violate the same regulatory provisions as separate violations and assesses the applicable baseline penalty for each distinct occurrence of the violation. However, in considering the nature, circumstances, extent, and gravity of each violation and other matters as justice requires, PHMSA may combine into a single violation what could otherwise be alleged as separate violations and apply a single penalty for multiple counts of a violation, increased by 25% for each additional instance. In this case, Respondent violated the same regulatory requirements in three separate shipments. Since the shipments all occurred on the same date, originated from the same facility, and had the same destination, PHMSA has elected, in its discretion, to treat these three occurrences as a single violation, and increase the applicable penalty by 25% for each of the additional occurrences. As such, the baseline penalty of \$20,000 applies for the first shipment and an additional \$5,000 (25%) applies for the second and third shipments, respectively.