



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.: 14-0001-SH-CE

Respondent: Hess Corporation
10340 68th Street, NW
Tioga, North Dakota 58852
ATTN: Rory Nelson, CEO

No. of Alleged Violations: 2

Total Proposed Assessment: \$51,350

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 on or 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:

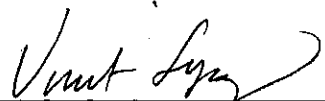
- (1) pay the proposed assessment;
- (2) send an informal response, which can include a request for an informal conference;
or
- (3) request a formal hearing.

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 
Shawn C. Wolsey, Attorney

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

cc (w/o Case Exhibits): Hess Corporation
John B. Hess, CEO
1185 Avenue of the Americas, 40th Floor
New York, New York 10036

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

SPECIFIC ALLEGATIONS

General Factual Allegations/Averments

1. On October 8 – 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 the Hess Tioga facility, located in Tioga, North Dakota. The Investigators obtained samples of UN1267, Petroleum crude oil, 3, 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 the PHMSA 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, the PHMSA 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 for samples 2013-NDMD-000053-001 to 2013-NDMD-000053-018.
 - d. The following shipping papers for shipments of UN1267, Petroleum crude oil, 3, PG I offered into transportation by Respondent:
 - i. Bill of Lading 673321, dated October 9, 2013, transported by Power Fuels truck 6546;
 - ii. Tank Truck Run Ticket 120076, transported by Power Fuels truck 6586 in trailer 7839;
 - iii. Bill of Lading 608024, dated October 9, 2013, transported by Power Fuels truck 6517;
 - iv. Tank Truck Run Ticket 034280, dated October 10, 2013, transported by Power Fuels truck 6584;
 - v. Tank Truck Run Ticket 66390, dated October 9, 2013, transported by QC Energy Resources truck 533;

- vi. Tank Truck Run Ticket 67444, dated October 9, 2013, transported by QC Energy Resources truck GPT1;
 - vii. Meter Run Ticket 944975, dated October 9, 2013, transported by JBS Trucking truck 79, trailer 313;
- 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) and 173.22(a)(1) and 173.121(a)(1).

Factual Allegations/Averments

1. The PHMSA Investigators obtained copies of the following shipping documents from the following trucks, which listed the material as UN1267, Petroleum crude oil, 3, PG II:
 - a. Bill of Lading 673321, dated October 9, 2013, transported by Power Fuels truck 6546;
 - b. Tank Truck Run Ticket 120076, transported by Power Fuels truck 6586 in trailer 7839;
 - c. Bill of Lading 608024, dated October 9, 2013, transported by Power Fuels truck 6517;
 - d. Tank Truck Run Ticket 034280, dated 10/10/13, transported by Power Fuels truck 6584;
 - e. Tank Truck Run Ticket 66390, dated October 9, 2013, transported by QC Energy Resources truck 533;
 - f. Tank Truck Run Ticket 67444, dated 10/9/13, transported by QC Energy Resources truck GPT1;
 - g. Meter Run Ticket 944975, dated October 9, 2013, transported by JBS Trucking truck 79, trailer 313.
2. During the investigation, seven samples of Respondent's oil were obtained from each of the shipments referenced in paragraph 1.

3. The PHMSA Investigators assigned sample numbers to each sample and provided an Intertek laboratory, located in Mandan, North Dakota, the following samples for analysis: 16, 17, 18, 19, 21, 22, and 23.
4. Intertek performed the following tests on samples 16, 17, 18, 19, 21, 22, and 23:
 - 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.)
5. Intertek provided a Report of Analysis, Reference No.: US 150-0035255, dated October 11, 2013, which indicated it tested samples 16, 17, 18, 19, 21, 22, and 23 and determined the following:

Sample Number	Flash Point	Initial Boiling Point
16	<50°F	92.1°F
17	<50°F	92.6°F
18	<50°F	91.9°F
19	<50°F	89.0°F
21	<50°F	88.9°F
22	<50°F	87.6°F
23	<50°F	90.9°F

6. On or about the dates, referenced in paragraph 1 above, 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 shipping papers as a Packing Group II material, in violation of the HMR.

- Please see Inspection/Investigation Report Number 14243001 at pages 2 and 3, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 2

Offering for transportation, in commerce, a hazardous material (UN1267, Petroleum crude oil, 3, PG I), while failing to list the basic description in the required sequence on the shipping paper, in violation of 49 CFR §§ 171.2(a) & (e) and 172.202(b).

Factual Allegations/Averments

1. The PHMSA Investigators reviewed the following shipping papers:

- a. Bill of Lading 673321, dated October 9, 2013, transported by Power Fuels truck 6546;
 - b. Tank Truck Run Ticket 120076, transported by Power Fuels truck 6586 in trailer 7839;
 - c. Bill of Lading 608024, dated October 9, 2013, transported by Power Fuels truck 6517;
 - d. Tank Truck Run Ticket 034280, dated October 10, 2013, transported by Power Fuels truck 6584;
 - e. Tank Truck Run Ticket 66390, dated October 9, 2013, transported by QC Energy Resources truck 533;
 - f. Tank Truck Run Ticket 67444, dated October 9, 2013, transported by QC Energy Resources truck GPT1;
 - g. Meter Run Ticket 944975, dated October 9, 2013, transported by JBS Trucking truck 79, trailer 313
2. The PHMSA Investigator observed the shipping description on the shipping papers as Petroleum crude oil, 3, UN1267, II (Crude Oil).
 3. The HMR require that the shipping description be listed as: UN Identification number, proper shipping name, Hazard class and packing group.
 4. The PHMSA Investigator did not observe the hazardous material listed as UN Identification number, proper shipping name, Hazard class and packing group.
 5. On or about the dates, referenced in paragraph 1 above, Respondent offered for transportation, in commerce, a hazardous material (UN1267, Petroleum crude oil, 3, PG I), while failing to list the basic description in the required sequence on the shipping paper, in violation of of the HMR.

- Please see Inspection/Investigation Report Number 14243001 at page 4, and the exhibits that accompany this report, which are incorporated herein.

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 and examples of recent shipping papers with the proper sequence.

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]).

TOTAL CIVIL PENALTY PROPOSED

Probable Violation	Baseline Penalty	Increase for Multiple Counts	Increase for Priors	Corrective Action	Proposed Penalty
1	\$20,000 ¹	\$30,000 ²	\$0	\$0	\$50,000
2	\$600	\$750 ³	\$0	\$0	\$1,350
TOTAL	\$20,600	\$30,750	\$0	\$0	\$51,350

¹ 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.

² 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, there were 7 separate shipments where this violation was found. The baseline penalty of \$20,000 was applied for failing to properly classify a hazardous material prior to the transportation of that hazardous material. Therefore, pursuant to the guidelines above regarding multiple counts, a 25% increase (\$5,000) for each multiple (6) after the initial baseline penalty has been applied (\$30,000).

³ There were 6 separate shipments where this violation was found. The baseline penalty of \$600 was applied for failing to list a hazardous material in the proper sequence on a shipping paper. Therefore, pursuant to the guidelines that follow Appendix A to Subpart D of Part 107 for multiple counts, a 25% increase (\$150) for each multiple (5) after the initial baseline penalty has been applied (\$750).