

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

In the Matter of:

**General Fire Equipment Co., Inc.;
Respondent.**

**PHMSA Case No. 04-361-CR-EA
DMS Docket No. PHMSA-2007-27630-2**

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 General Fire Equipment Co., Inc. (Respondent) on April 15, 2004. The Notice formally initiated proceedings against Respondent under the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171–180.

Background

Respondent is a DOT-approved retester of cylinders, which Respondent certifies for transportation of hazardous materials in the United States. Respondent also offers for transportation in commerce fire extinguishers containing compressed or liquefied gas, a hazardous material. 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.¹

On January 21, 2004, inspectors from the Office of Hazardous Materials Enforcement conducted a compliance inspection at Respondent's facilities in Aston, Pennsylvania. The inspectors reviewed records for the requalification of cylinders, calibration records, training

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

records, and shipping papers. On April 15, 2004, the Office of Chief Counsel issued a Notice of Probable Violation (Notice) to Respondent, alleging five separate violations of the HMR and proposing a civil penalty in the amount of \$8,455.00, which reflected a \$1,895.00 reduction for corrective actions. Respondent replied to the Notice on May 10, 2004, contesting each violation.

Discussion

Violation 1: 49 C.F.R. §§ 171.2(c), and 180.205(g)(3)(i)-(ii) and (g)(4). The HMR require a cylinder requalifier to verify the accuracy of the testing equipment to within 1% of total expansion or to 0.1 cm³ prior to testing cylinders. During calibration, Respondent recorded total expansion of 1.8% and 2.3% in excess of the expected total expansion shown on the calibration certificate for the calibrated cylinder. On those same days, Respondent requalified and returned cylinders to service.

In addition, a calibrated cylinder must show no permanent expansion. Respondent recorded permanent expansion for its calibrated cylinder. Respondent claims that the data entered on the daily calibration records was incorrect, rather than an indication of an equipment calibration problem. Respondent's records do not establish that the calibrated cylinder did not show permanent expansion.

Violation 2: 49 C.F.R. §§ 171.2(c), and 180.215(a)(4) and (b). The HMR require a cylinder retester to maintain relevant portions of the HMR where the requalification is performed. Access to the HMR on the Internet fulfills the requirement to have the HMR available as long as the connection is working and the employee is accessing a current version of the HMR. Because there is no evidence in the file regarding whether an Internet copy of the HMR was readily available to the retesters, I am dismissing this portion of Violation 2.

The other allegation incorporated into Violation 2 is that Respondent failed to maintain complete and accurate daily records of requalification. Respondent did not enter the elastic expansion and the percent permanent expansion for every cylinder it requalified and returned to service. In addition, Respondent's retester admitted he entered incorrect information in some calibration records. Respondent also failed to maintain records for the required period of time.

Violation 3: 49 C.F.R. §§ 171.2(c) and 180.205(h)(2). The HMR require a retester to notify the owner of a cylinder in writing when the retester determines the cylinder must be condemned. Respondent admits it did not notify each of the owners of condemned cylinders in writing at the time of the cylinder's rejection. Following the inspection, Respondent took corrective action by sending a letter to the owner of each condemned cylinder.

Violation 4: 49 C.F.R. §§ 171.2(a) and 172.604(b). The HMR require an offeror of hazardous materials to provide an emergency response telephone number on all hazardous material shipping papers. Respondent provided the telephone number for CHEMTREC on its shipping papers, but admitted it had not subscribed to CHEMTREC's emergency response service at the time of the shipment. Accordingly, the Notice alleges Respondent provided an unauthorized emergency response telephone number.

Respondent contends its unauthorized use of an emergency response number is a matter between it and CHEMTREC and has no bearing on its responsibility under the HMR. In fact, the HMR provide that the emergency response telephone number provided on the shipping paper "must be the number of the person offering the hazardous material for transportation or the number of an agency or organization capable of, and accepting responsibility for, providing the detailed information concerning the hazardous material. A person offering a hazardous material for transportation who lists the telephone number of an agency or organization shall ensure that

agency or organization has received current information on the material . . . before it is offered for transportation.” 49 C.F.R. § 172.604(b). Because Respondent had not contracted with CHEMTREC, CHEMTREC did not accept responsibility for providing emergency response information for Respondent’s shipment. In addition, Respondent did not ensure that CHEMTREC had current information on the materials being shipped.

Although Respondent represents that it is now a subscriber to Chem-Tel for emergency response services, it was not in compliance at the time of the inspection.

Violation 5: 49 C.F.R. §§ 171.2(a) and 172.704(d). The HMR require a hazmat employer to provide training to its employees to ensure the employees are aware of the *current* regulations affecting their job functions. The HMR require recurrent training *at least* once every three years. Respondent provided evidence of training and testing for each of its hazmat employees within the previous three years; however, Respondent admitted its employees had not received training following a major change in the cylinder requalification section of the HMR. In addition, Respondent did not certify the training and testing of each of its employees. Respondent provided evidence of having provided training following the inspection, including the required certification.

Findings

On the basis of the foregoing, I find Respondent knowingly violated the HMR, as set forth above with regard to Violations 1, 3, 4, and 5. With respect to Violation 2, I find there is insufficient evidence to determine whether Respondent had access to a copy of the HMR while testing; however, I find that Respondent knowingly failed to maintain complete and accurate daily records of requalification and calibration. In reaching this conclusion, I have reviewed the

Inspection/Investigation Report and accompanying exhibits, the exit briefing, and Respondent's replies. In particular, I note Respondent admitted Violations 2 and 3.²

Civil Penalty

In assessing a 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 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.

The civil penalty proposed in the Notice was adjusted to reflect corrective actions taken prior to the issuance of the Notice. A further reduction is necessary in view of the partial dismissal of Violation 2. Because Respondent provided additional evidence of corrective action, and because Respondent is a small business, I am reducing the penalties for each of the violations.

Accordingly, under the authority of 49 U.S.C. § 5123 and 49 C.F.R. §§ 107.317 and 107.329, I assess a total civil penalty of \$7,285.00 for five violations of the HMR. After mitigation and taking into consideration all of the statutory factors, the penalty is allocated as follows:

Violation No. 1: \$1,780.00, reduced from \$2,735.00 in the Notice;

Violation No. 2: \$1,500.00, reduced from \$2,340.00 in the Notice;

Violation No. 3: \$750.00, reduced from \$800.00 in the Notice;

Violation No. 4: \$1,950.00, reduced from \$2,080.00 in the Notice; and

² Although Respondent states in its correspondence with the Office of Chief Counsel following the issuance of the Notice that it does not admit any of the violations, Respondent admits the facts underlying the violations. The fact that Respondent has taken appropriate corrective action is relevant to the civil penalty imposed but is not a defense to the finding of a violation.

Violation No. 5: \$375.00, reduced from \$500.00 in the Notice.

Conclusion

Respondent is ordered to pay a civil penalty in the amount of \$6,355.00 for violations of the HMR as set forth in this Order. Respondent may pay the penalty in three payments, with the first payment of \$2,121.00 due within 30 days of this Order and two subsequent monthly payments of \$2,117.00. Respondent must either pay the civil penalty 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. § 107.325.³

This Order constitutes written notification of these procedural rights.

3/16/2007
Date

Sherri Pappas
Sherri Pappas
Acting Chief Counsel

Attachment

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

³ 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, Pipeline and Hazardous Materials Safety Administration, c/o Office of Chief Counsel, 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:

Mr. & Mrs. David McDonnell, Jr.
General Fire Equipment Co., Inc.
220 Broadway Avenue
Ashton, PA 19014

Original Order
Certified Mail – Return Receipt

Mr. Ryan Posten
Office of Hazardous Materials Enforcement
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:</i> Payment for PHMSA Case No. (or Ticket No.)

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.