

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

**In the Matter of:**

**Wyckoff Heights Medical Center,  
Respondent**

**PHMSA Case No. 06-0224-SBG-EA  
Docket No. PHMSA-2006-25897-3**

**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 Wyckoff Heights Medical Center (Respondent) on September 19, 2006. The Notice formally initiated proceedings for one violation of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171–180. The Notice advised Respondent that PHMSA proposed to assess a civil penalty in the amount of \$3,475 for offering Regulated Medical Waste, 6.2, UN 3291, PG II, for transportation in commerce when inner packagings were not closed so as to prevent materials from escaping and in inner packagings that were not authorized for use in transporting hazardous materials, in violation of 49 C.F.R. §§ 171.2(e), 173.22(a)(2) and 173.197(d)(1)(i) & (e)(1).

**Background**

Because Respondent offers hazardous materials for transportation in commerce within the United States, 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.<sup>1</sup>

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

On May 26, 2006, an inspector from the Office of Hazardous Materials Enforcement conducted a compliance inspection at Buck County Resource & Recovery in Marcus Hook, Pennsylvania. During the course of the inspection, the inspector observed a bulk outer packaging (BOP) which had been shipped by Respondent for processing. Inside the BOP, the inspector observed unmarked clear and blue plastic trash bags containing regulated medical waste (RMW), as well as red RMW bags that were marked and certified as meeting the required ASTM standards. Many of the plastic film bags were not properly closed, resulting in RMW not being contained within the BOP.

The inspector faxed an exit briefing to Respondent, describing the probable violations. The exit briefing explained Respondent's opportunity to respond to the facts alleged in the exit briefing and to submit evidence of corrective action. Respondent submitted evidence of corrective action on June 19, 2006.

Based on a preliminary assessment of the apparent nature, circumstances, extent, and gravity of the probable violations in the inspector's report, on September 19, 2006, the Office of Chief Counsel issued the Notice to Respondent, proposing a civil penalty in the amount of \$3,475 for one violation of the HMR. This proposed penalty included an increase for a prior violation and included a reduction for prompt corrective action. Respondent received the Notice on September 22, 2006.

The case now comes before the Chief Counsel for decision.

### **Discussion**

Respondent does not deny that the BOP contained unauthorized packagings and that some of the inner packagings were not properly closed. In response to the exit briefing, Respondent engaged in several corrective actions. Respondent provided additional training

regarding proper use of the BOP. Respondent established new procedures to insure that each bag of RMW is properly secured and packaged, as well as, to insure that no unauthorized packaging is placed within the BOP. Respondent's new procedures are also designed to ensure additional training is provided to any employees who fail to follow proper procedures. Respondent has also developed a program to receive feedback from the disposal facility regarding any packages that arrive out of compliance so that issues can be addressed. Following receipt of the Notice, Respondent submitted copies of the forms it had received from the disposal facility showing that RMW was arriving properly closed and in authorized packagings.

### **Findings**

Based on the above facts, I find Respondent knowingly committed the violation described above. In reaching this conclusion, I have reviewed the inspector's Inspection/Investigation Report and accompanying exhibits, the exit briefing, Respondent's replies, and all other correspondence in the case file.

Although Respondent took immediate and comprehensive action to come into compliance, this corrective action was considered in setting the penalty proposed in the Notice. The additional information Respondent provided following receipt of the Notice merely documented the corrective action credited in the proposed penalty. Furthermore, this is a repeat offense. No additional reduction in the penalty is warranted.

### **Conclusion**

I have determined that Respondent committed one violation of the HMR. 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 \$3,475 for one violation of the HMR. 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):

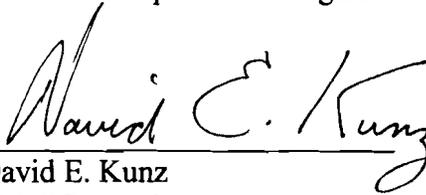
1. The nature, circumstances, extent, and gravity of the violations;
2. with respect to the Respondent, its degree of culpability, any history of prior violations, its ability to pay, and any effect on its ability to continue to do business; and
3. other matters as justice may require.

**Payment and Appeal**

Respondent must either pay the civil penalty in accordance with the attached instructions (Addendum A), or appeal this Order to PHMSA's Administrator. Payment must be made within 30 days of this Order, or if Respondent chooses to appeal this Order, it must do so in accordance with 49 C.F.R. § 107.325.<sup>2</sup>

This Order constitutes written notification of these procedural rights.

12/10/07  
Date

  
\_\_\_\_\_  
David E. Kunz  
Chief Counsel

Enclosure

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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<sup>2</sup> The requirements of § 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, c/o Office of Chief Counsel – PHC, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Ave., SE, 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 any appeal that is received after the twenty (20) day period, and it will not consider the request; therefore, PHMSA recommends the use of fax (202.366.7041) or an overnight service as documents received late will not be accepted.

**CERTIFICATE OF SERVICE**

This is to certify that on the \_\_\_\_ day of DEC 13, 2007, the Undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Wyckoff Heights Medical Center  
374 Stockholm Street  
Brooklyn, NY 11237  
Attn: Donald Ophals, Dir. of Environmental Services

Original Order with Enclosures  
Certified Mail Return Receipt

Ryan Posten  
Director, OHME  
PHH-40, East Building, 2<sup>nd</sup> Floor  
1200 New Jersey Ave., SE  
Washington, D.C. 20590

One Copy  
Internal E-Mail

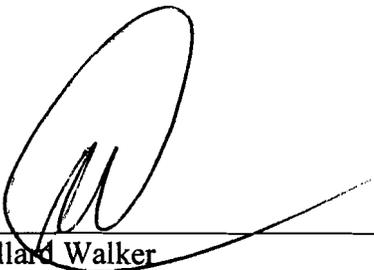
Colleen Abbenhaus, Chief  
Office of Hazardous Materials Enforcement  
Eastern Region Office  
820 Bear Tavern Road, Suite 306  
West Trenton, NJ 08628

One Copy  
Internal Email

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

DEC 13

  
\_\_\_\_\_  
Willard Walker

Appeal Information

If Respondent chooses to appeal, Respondent must:

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

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-341  
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-341  
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=/ALC-69-14-0001	10. <u>REASONS FOR PAYMENT</u> <i>Example: PHMSA Payment for Case #/Ticket</i>

**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 or ticket 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.