



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

Office of the
Chief Counsel

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NOTICE OF PROBABLE VIOLATION

RSPA Case No. 04-228-IBCM-SW

Date Issued: October 04, 2004

Respondent: Clawson Container Company
4545 Clawson Tank Drive
Clarkston, MI 48346
Attention: Mr. Richard Harding II, President

No. of Alleged Violations: 5

Maximum Possible Assessment: \$162,500

Total Proposed Assessment: \$22,880 (After a \$2,080 increase for
Respondent's prior violation.)

The Office of the Chief Counsel of the Research and Special Programs Administration (RSPA) alleges that you (the Respondent named above) have violated certain provisions of 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. The specific allegations are contained in Addendum A to this Notice.

What are the maximum and minimum civil penalties that RSPA can assess? Federal law sets a maximum civil penalty of \$32,500 and a minimum civil penalty of \$275 for each violation of Federal hazardous materials transportation law or the HMR. Each day of a continuing violation by a shipper or transporter of hazardous material constitutes a separate violation for which the maximum penalty may be imposed. 49 U.S.C. § 5123(a)(2).

What factors does RSPA consider when proposing and assessing a civil penalty? Federal law requires RSPA to consider certain factors when proposing and assessing a civil penalty for a violation of Federal hazardous materials transportation law or the HMR. These factors, which include corrective action you take to attain and ensure ongoing compliance with the HMR, are in Addendum B to this Notice.

What are my response options? 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 RSPA's Office of the Chief Counsel, at "<http://rspa-atty.dot.gov>." RSPA's procedures for assessing civil penalties and imposing compliance orders are explained in Sections 107.307 through 107.331 of 49 C.F.R.

Provide your Federal Tax I.D. Number: You are required to furnish your federal taxpayer identification number in your response to this Notice of Probable Violation (31 U.S.C. § 7701(c)(1)). Your taxpayer identification number may be used for the purpose of collecting and reporting any delinquent amounts arising out of any current or future civil penalty actions with RSPA.

When is my response due? You must respond to this Notice within 30 days of the date you receive it. You are encouraged to submit your response by email 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.

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



Robert M. Kern II
Attorney

Enclosures: Addendum A
Addendum B
Addendum C
Case Exhibits

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Corrective Action

An important purpose of RSPA'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. Documented evidence of action taken to correct violations and ensure that they do not recur is considered by RSPA under 49 C.F.R. § 107.331(g) in determining the final penalty assessment. To date, Respondent has furnished no corrective action information. In order to receive mitigation for the civil penalties recommended below, Respondent is encouraged to provide documentation addressing each of the proposed violations cited in this Notice.

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. At present, RSPA has no information showing that Respondent is unable to pay the proposed penalty, or that payment of the penalty will affect its ability to continue in business. If Respondent wishes its financial condition to be considered in assessing a penalty for the violations alleged in this Notice, it should submit a copy of its most recent tax return, a current balance sheet (certified if possible) or any other financial information that shows the Respondent's ability to pay the proposed civil penalty.

Prior Violations of the Hazardous Materials Regulations

As 49 C.F.R. § 107.331(d) provides, RSPA increases proposed penalties when Respondent has committed a prior violation of the Federal hazardous materials transportation law or the HMR within the last five years, as determined through a civil penalty case, criminal case, or ticketing process. On July 26, 2002, in RSPA Case No. 01T-028-SIBC-WE, Clawson Container Company paid a \$1,500 civil penalty for failing to notify in writing (49 C.F.R. § 178.2(c)(1)). This fact has been considered in determining the penalty amount for each violation in this notice.

