

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

In the Matter of:

**Polyweave Packaging, Inc.,
Appellant.**

**PHMSA Case No. 16-0036-PM-SO
Docket No. PHMSA-2020-0079**

DECISION ON APPEAL

On July 28, 2020, the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued an Order to Polyweave Packaging, Inc. (Polyweave or Appellant) assessing a civil penalty in the amount of \$14,460 for four violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. parts 171-180. The Order was issued after Polyweave and PHMSA were unable to come to an agreement following the issuance of the Notice of Probable Violation (Notice), which was issued on December 30, 2016. Polyweave filed a timely Appeal of the Order on March 25, 2021.

In the Order, which is incorporated by reference, the Chief Counsel found that Appellant committed four violations of the HMR, when:

1. Appellant represented, marked, certified and sold UN standard 5H2 poly-woven bags as meeting the requirements of the HMR, when design qualification periodic retesting was not performed, in violation of 49 C.F.R. §§ 171.2(a), (c), and (g); 178.2(a)(2) and (b); and 178.601(e);
2. Appellant allowed employees to perform a function subject to the requirements of federal hazardous materials regulations when the employees had not received initial hazardous materials general awareness, function-specific, safety, and security awareness training as required by 172.704(c)(1), in violation of 49 C.F.R. §§ 171.2(a), (b), and (e); 172.702(a); 172.704(a)(1) - (4); and 172.704(c)(1);
3. Appellant represented, marked, certified and sold UN standard 5H2 poly-woven bags as meeting the requirements of the HMR, without maintaining complete and accurate UN test reports, in violation of 49 C.F.R. §§ 171.2(a), (c), and (g); and 178.601(1); and when

4. Appellant represented, marked, certified and sold UN standard 5H2 poly-woven bags as meeting the requirements of the HMR, without ensuring that all markings and labels were durable and legible, in violation of 49 C.F.R. §§ I 71.2(a), (c), and (g); 178.503(a); and I 72.407(a) and (b)(1).

Background

Polyweave manufactures UN 5H2 polywoven bags with inner liners for the explosives industry. Polyweave was issued a manufacturer's symbol- M4590- for its Madisonville facility in 1992. Polyweave marks its polywoven bags with this manufacture's symbol.

Appeal and Litigation

On March 25, 2021, Polyweave submitted a timely appeal (Appeal) of the Order. Polyweave did not specifically contest any factual or legal findings in the Order, but it argues that the Findings of Violation and Civil Penalty of \$14,460 are inappropriate and unfair.

On October 18, 2021, after consideration and review of the record and Polyweave's Appeal, the PHMSA Chief Safety Officer issued a Decision on Appeal to Polyweave affirming the Findings of Violation set forth in the Order.

On December 20, 2021, Polyweave filed a petition for review in the United States Court of Appeals for the Sixth Circuit seeking review of the October 18, 2021, Decision on Appeal pursuant to 49 U.S.C. § 5127. After Polyweave filed its opening brief, PHMSA moved to vacate and remand after determining that the Chief Safety Officer was not properly appointed at the time he issued the October 18, 2021, Decision on Appeal. On January 27, 2023, the Sixth Circuit granted PHMSA's motion, vacated the October 18, 2021, Decision on Appeal, and remanded the case to PHMSA for further proceedings.

Upon the court's remand, this matter is now before me for review and further proceedings. As an inferior officer properly appointed by the Secretary of Transportation, I am vested with the authority to review this matter and make a final determination. In an exercise of enforcement discretion, and due to the unique circumstances of this case, I am dismissing this matter in its entirety.

Final Administrative Action

This Decision on Appeal constitutes the final administrative action in this proceeding.

May 16, 2023

Date



Tristan H. Brown
Deputy Administrator

CERTIFIED MAIL – RETURN RECEIPT REQUESTED