UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: ENVIROSOLVE, LLC

FAA Order No. 2006-2

Docket No. CP02SW0020
DMS No. FAA-2002-13913[1]

Served: February 7, 2006

DECISION AND ORDER[2]

Respondent Envirosolve, LLC (Envirosolve) has appealed the decision of Administrative Law Judge (ALJ) Burton S. Kolko.[3] The ALJ found that Envirosolve violated numerous provisions of the Hazardous Materials Regulations (HMR) by shipping and offering for shipment hazardous materials without proper shipping papers, markings, labels, and emergency response information.[4] The ALJ assessed a $60,000 civil penalty.

The main issue on appeal is whether the ALJ properly held that the materials shipped or offered for shipment were hazardous. This decision holds that the Federal Aviation Administration (FAA) presented sufficient evidence to support the ALJ's

---

[1] Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation's Docket Management System (DMS). Access may be obtained through the following Internet address: http://dms.dot.gov.

[2] The Administrator's civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are available on the Internet at the following address: http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty/. In addition, Thomson/West publishes Federal Aviation Decisions. Finally, the decisions are available through LEXIS and WestLaw. For additional information, see the website.

[3] A copy of the ALJ's written decision is attached, but is not included on the FAA website.

[4] The specific regulations charged in the complaint are set forth in the Appendix to this decision.

finding; therefore, the ALJ's decision is affirmed. The assessed penalty remains the same.

I. Background

Envirosolve, a limited liability company established in Oklahoma, brokers hazardous and non-hazardous waste. (Tr. 88, 321.) Envirosolve employs about 35 employees at its various locations. (Tr. 321.)

Jerald Warwick was a client solutions manager, or sales representative, for Envirosolve in its New Mexico office. (Tr. 64, 88-89, 96.) He was previously employed for 5 years as a technical service manager at a waste management company called Romic Environmental Technologies (Romic). (Tr. 167.) Warwick's clients at Romic included the waste generators Independent Mobility Systems (IMS), Riley Industrial, Inc. (Riley), and Car Crafters. (Tr. 91.) When Warwick left Romic to work for Envirosolve, he took these and other clients with him to Envirosolve. (*Id*.)

In August 2000, while employed by Envirosolve, Warwick's superiors told him to change the "transportation storage and disposal facility," or TSDF, for these three clients from his former employer, Romic, to Missouri Fuel Resources (MFR), a subsidiary of Continental Cement Company. (Tr. 99-100.) Envirosolve's management directed Warwick to send samples of the waste to MFR as soon as possible to see if MFR could use the clients' waste streams as fuel in its cement kiln. (Tr. 96, 133-134, 154-155, 230.)

Warwick visited each waste generator's facility to obtain samples of the waste, which was being stored in drums. (Tr. 96-97; FAA Exhibits 400.03, 400.05.) To remove a sample, Warwick or the client inserted a specialized tube all the way into the bottom of the drum to get all the layers and solids. (Tr. 104.)

Warwick testified at the hearing before the ALJ that he knew that the samples were hazardous materials (Tr. 99) "from working at Romic, the [waste] profile at Romic." (Tr. 102, 169.) He testified that the Romic laboratory had prepared a waste "profile" for the materials from each of these clients (Tr. 169), which would include the chemical analysis of the sample, the Department of Transportation (DOT) hazard class, and the proper shipping name. (Tr. 99-100.) He also testified that the waste generator client – that is, IMS, Riley, or Car Crafters – provided the "Waste Stream Information" in the Romic profile. In each case, the "Waste Stream Information" stated that the material was "Paint Related Material."[5] (Tr. 186.)

Romic recertified the profiles every 2 years (Tr. 180) by asking the waste generator if the waste stream had changed in any way that would affect the profile. (*Id*.) Warwick testified that he would hear from a client if the waste stream changed so dramatically that the profile no longer fit. (Tr. 203.)

When Warwick went to obtain samples from his clients, he took with him a blank copy of MFR's acceptance form called a "Waste Profile Summary." On this form, the waste generator was supposed to identify, to the best of its ability, the type of material that it was sending to MFR. (Tr. 98.) Warwick filled out this form with each client, using information from the Romic waste profile. (Tr. 100, 217.) The client then signed the acceptance form (Tr. 217), certifying that "all information in this and attached

[5] The term "paint related material" is taken from the Hazardous Materials Table in 49 C.F.R. § 172.101.

documents" contained accurate descriptions of the waste (FAA Exhibits 400.03 and 400.05).[6]

In preparation for shipping the samples to MFR, Warwick placed each 8-ounce bottle (Tr. 148) in a separate box approved by the Department of Transportation (DOT) for the shipment of hazardous materials. (Tr. 96, 104.) With each sample, he enclosed: (1) a Romic waste profile; (2) an MFR acceptance form; and (3) a Missouri state notification of hazardous material. (Tr. 96-98, 101, 102, 151.)

Warwick then gave the three boxes to another Envirosolve employee, Carolee Marez, to ship to MFR. (Tr. 70.) Per Warwick's instructions, she marked on each box that it contained "waste, paint related material, UN 1263."[7] (Tr. 78-79; FAA Exhibit 200.19.) Marez filled out air waybills for the boxes, using Warwick's name as the sender and addressing them for delivery to MFR. (Tr. 66.) In response to the question on the waybill, "Does this shipment contain dangerous goods?" she marked "Yes, Shipper's Declaration not required." (Tr. 66; FAA Exhibits 300.01-300.03.) She did not fill out a shipper's declaration for dangerous goods for any of the boxes. (Tr. 66.) She testified that she understood, based on conversations with Warwick, that as samples, the boxes did not need shipper's declarations. (Tr. 72.) Marez telephoned Federal Express (FedEx) to have the boxes picked up on August 11, 2000. (Tr. 69.)

When the FedEx courier, Neva Denney, arrived to pick up the boxes on August 11, 2000, she told Marez that the packages needed shipper's declarations

[6] The MFR acceptance form did not include any independent analysis by MFR. It simply advised MFR concerning what Envirosolve and the waste generators thought they were sending to MFR. MFR would test the materials on receipt to determine if it could use the wastes in its cement kiln.

[7] The "UN" number is set forth in the Hazardous Materials Table, 49 C.F.R. § 172.101, and was included in the Romic waste profile.

(Tr. 112), but Marez insisted that the declarations were unnecessary. Rather than arguing, Denny accepted the boxes, reasoning that "the customer is always right." (Tr. 121.) She took them to the FedEx processing station and gave them to the dangerous goods specialist, Roy Milam. (*Id*.) Milam agreed that FedEx could not ship the boxes without a shipper's declaration.[8] (Tr. 124.) He completed a FedEx "bump sheet" for each, indicating that FedEx was rejecting the boxes because they lacked shipper's declarations, which are necessary for hazardous materials. (Tr. 126; FAA Exhibits 600.02-600.04.) A FedEx employee later called Envirosolve to have it retrieve the boxes. (*Id*.) The table below summarizes the attempted shipments on August 11, 2000, which Envirosolve offered to FedEx, but which FedEx returned.

Sample From	**Date Given to FedEx**	**Marked As**	**Air Waybill Statement**
IMS	8/11/2000	Waste, paint related material, UN 1263	Yes, contains dangerous goods.
Riley	8/11/2000	Waste, paint related material, UN 1263	Yes, contains dangerous goods.
Car Crafters	8/11/2000	Waste, paint related material, UN 1263	Yes, contains dangerous goods

Laura Renner, an FAA dangerous cargo security specialist, testified that she asked Milam about the boxes during a visit to the FedEx processing facility in mid-August 2000. (Tr. 38, 129.) Milam told Agent Renner that Envirosolve had tried to ship the boxes without shipper's declarations. (*Id*.)

[8] Under 49 C.F.R. § 172.204(a), anyone offering a shipment of hazardous materials must provide a declaration certifying that the materials are described on the shipping papers with the proper shipping name, are properly classified, packaged, marked, and labeled, and are in proper condition for transportation according to applicable regulations.

Marez testified that she was surprised when FedEx returned the boxes, because Envirosolve had sent other samples in the same way, and FedEx had not returned them. (Tr. 80.) She did not ask any of her co-workers how to reship the boxes, and no one told her. (Tr. 82.) She testified that she was not under pressure to ship the samples quickly, but she wanted to get them to their destination in a reasonable timeframe. (Tr. 84-85.)

On August 21, 2000, Marez crossed out the shipping names and UN numbers on the IMS and Riley sample boxes and put them together in a single overpack[9] (Tr. 41, 44-45, 79-81), without the Car Crafters sample.[10] In place of the shipping names and UN numbers for the IMS and Riley boxes, Marez wrote "Sample." She filled out an air waybill for the overpack containing the IMS and Riley samples, addressing it for delivery to MFR. Contrary to her practice 10 days earlier, Marez responded "no" to the question on the air waybill as to whether the overpack contained dangerous goods. (Tr. 68-69.) She sent the overpack, which did not indicate in any way that it contained hazardous materials and which had no shipper's declaration, to MFR by FedEx. (Tr. 69, 136.)

The next day, Diana Hays, a customer service representative with MFR, received the overpack. (Tr. 135.) She described it as a large box with flaps that did not close completely. (*Id*.) She testified that one of the samples, a yellow liquid from Riley, was labeled "waste paint and thinner." (*Id*.) Hays labeled the samples with the waste generator name and date of receipt, and forwarded them to MFR's in-house laboratory for analysis. (Tr. 138.)

---

[9] An overpack is an outer package that contains smaller packages inside.

[10] Thus, any actual shipment of the Car Crafters sample is not at issue in this case. Regarding the Car Crafters sample, only its "offer" for shipment by air on August 11, 2000, with the IMS and Riley samples, is at issue.

On August 23, 2000, FAA Agent Renner conducted a shipper's assessment at Envirosolve, during which she asked Marez about the status of the three packages that Envirosolve had attempted to ship on August 11. (Tr. 43.) Marez informed Agent Renner that she had reshipped two of the packages, the IMS and Riley samples, to MFR. (FAA Exhibit 200.19 at 2.) Marez told Agent Renner she thought the samples were exempt from the hazardous materials regulations. (Tr. 72.) Agent Renner learned that both Warwick and Marez had received hazardous materials training. (FAA Exhibits 400.02, 400.07; Tr. 62, 92.)

In her written statement,[11] Agent Renner reported that she met with Riley's Vice President, who told her that Riley had a contract with Envirosolve to dispose of drums of hazardous waste. (FAA Exhibit 200.19.) Riley's Vice President also told Agent Renner that Warwick had met with him and requested a sample of the waste paint. (*Id*.) Regarding IMS, Agent Renner wrote that an IMS employee had stated that Warwick had requested a sample of the "waste thinner." (*Id*.) Agent Renner's statement does not indicate whether she spoke with anyone from the third waste generator, Car Crafters.

On February 23, 2001, the FAA sent a Letter of Investigation to Envirosolve alleging various violations of the hazardous materials regulations. Thereafter, on December 3, 2002, the FAA filed a complaint seeking a $240,000 civil penalty. Both the FAA's original complaint and its amended complaint alleged that Envirosolve violated

[11] The ALJ granted the FAA's motion to admit all documents from FAA Exhibit 100.01 – 700.02 that did not relate to the actual shipment of the Car Crafters sample. (Tr. 159-160.) The statement of Agent Renner, FAA Exhibit 200.19, fell within this group. While at other points in the hearing, the ALJ expressly excluded other documents (FAA Exhibits 200.01-200.08 and 400.03-400.06), he did not exclude Agent Renner's statement.

numerous sections of the hazardous materials regulations. The agency sought a civil penalty of $240,000 under 49 U.S.C. § 5123(c) and 49 C.F.R. § 107.329.

After a hearing, the ALJ ruled that Envirosolve violated the regulations alleged in the amended complaint and assessed a civil penalty of $60,000. The ALJ found sufficient proof that the three packages offered for shipment on August 11 and the shipment made on August 21 contained hazardous materials because: (1) Envirosolve employees had concluded, based on information from the waste generators, that each substance constituted a hazardous material; (2) the waste generators may reasonably be expected to know what they are shipping; (3) waste brokers may rely on the representations of the waste generators; and (4) there was no evidence that Envirosolve employees' belief that the materials were hazardous was unwarranted.[12] Because Envirosolve had failed to comply with marking, labeling, and associated requirements in the hazardous materials regulations for both the attempted and actual shipments, the ALJ found that Envirosolve violated the regulations alleged in the complaint.

As for the civil penalty, after weighing the facts, mitigating factors, precedent, and agency policy, the ALJ concluded that a $60,000 civil penalty was appropriate. The ALJ assessed this penalty based on the totality of the circumstances.

---

[12] The ALJ wrote:

> Customer companies of waste brokers, profilers, and the like, such as IMS and Riley, create industrial waste in the course of their business. They may be expected to know the nature of the substances they are transmitting. Waste brokers and reprofilers may rely on their representations. In this case, it was enough that the generating companies had stated that their "samples" were hazardous wastes. Envirosolve was entitled to trust, but not verify. Its reliance on the generator companies' "professionalism," I conclude, was reasonable.

(Initial Decision at 4; citations omitted.)

II. Analysis

The crux of Envirosolve's appeal is that the ALJ erred in concluding that the FAA had met its burden of proving that the materials shipped and offered for shipment were hazardous. This, however, is not a criminal case in which the government must prove its case beyond a reasonable doubt. In the Matter of High Exposure, FAA Order No. 2003-7 at 13 (September 12, 2003), citing In the Matter of Terry and Menne, FAA Order No. 1991-12 at 6 (April 12, 1991), *petition for reconsideration denied*, FAA Order No. 1991-31 (August 12, 1991), *petition for review denied*, Terry and Menne v. FAA, *reported as table case at* 976 F.2d 1445, *full text slip opinion reported at* 1992 U.S. App. LEXIS 27483 (D.C. Cir. Oct. 21, 1992). Instead, under the rules of practice, the party with the burden of proof – here, the FAA – must prove its case only by "a preponderance of reliable, probative, and substantial evidence." 14 C.F.R. § 13.223.

At the outset, it is important to note that shippers like Envirosolve are responsible for knowing whether they are shipping hazardous materials. In the Matter of Riverdale Mills Corp., FAA Order No. 2000-25 at 4 (December 21, 2000).[13] When Envirosolve

[13] Envirosolve states that "it is more economical and expeditious to manage an item as a hazardous material rather than perform the necessary testing to prove that the item is not hazardous." (Appeal Brief at 21.) But the regulations provide that "… a material that is not a hazardous material … may not be offered for transportation or transported when its description on a shipping paper includes a hazard class or an identification number specified in the § 172.101 Table." 49 C.F.R. § 172.202(e). Envirosolve's own training manual stated that:

> It is NOT safe to over-classify hazardous materials (i.e., to assign hazards that are not, in fact, exhibited by the material). Such overclassification can cause emergency responders to take excessive or improper precautions, exacerbating an emergency. Overuse of DOT communication can also cause employees and others to disregard them when they are properly used. Finally, it is illegal to use many DOT hazard communications when the material shipped is not, in fact, hazardous.

(FAA Exhibit 400.01; emphasis in original.)

initially offered the three boxes to FedEx for shipment, Envirosolve employees marked on the boxes that the contents were "Waste, paint related material, UN 1263." Further, the Riley sample was marked "waste paint and thinner." (Tr. 135.) The air waybills also indicated that the boxes contained dangerous goods. (Tr. 66.) Envirosolve employee Warwick enclosed a Missouri state notification of hazardous waste in each of the boxes. He testified that he knew, based on his work at Romic, that the materials were hazardous, and that he would have heard if the waste streams had changed so dramatically that they were no longer hazardous.

Regarding two of the three samples, there was additional evidence. The FAA offered into evidence the MFR acceptance forms for both the Riley and the IMS samples, which showed that the waste streams were: (1) paint related material identified as UN 1263; (2) flammable; and (3) EPA "hazardous waste." (FAA Exhibits 400.03 and 400.05.) The purpose of the MFR acceptance forms was to inform MFR, to the best of Envirosolve's and the waste generator's ability, about the nature of the waste streams. (Tr. 98.) The ALJ erred in excluding these exhibits, given that these forms accompanied the shipments and that ***the waste generators expressly certified*** at the end of the forms that ***"all information submitted in this and attached documents contains true and accurate descriptions of the waste."*** (FAA Exhibits 400.3, 400.5; emphasis added.) IMS and Riley were in the best position to know if their processes had changed so dramatically that the waste streams were no longer hazardous paint related materials.[14]

[14] The ALJ also excluded the Romic waste profiles for the IMS and Riley samples, which described them as "paint related material," from an "auto body" process, "waste paint related material 3 UN1263 II"; and "flammable liquid." Regarding the Romic profile for the Riley sample, the ALJ excluded it because it expired about 5 months before the incidents. Similarly, the ALJ excluded the Romic profile for the IMS sample because it was dated after the incidents. It is unnecessary to disturb the ALJ's ruling regarding these exhibits. Warwick testified that he

In its defense, Envirosolve elicited testimony that waste streams in general "could" vary from day to day or month to month, depending on the generation process. (Tr. 319.) But Envirosolve failed to present any evidence that these particular waste streams had changed in such a way as to make the materials non-hazardous. Further, Warwick testified that as the account manager for the waste generators, he would hear if the waste streams changed so dramatically that they were no longer hazardous and the profiles no longer fit. (Tr. 203.)

Envirosolve points out that it could not test the samples because the laboratory had destroyed them, in accordance with its internal policies. Envirosolve argues that the FAA should have preserved the samples, citing FAA Order No. 2150.3A, Compliance and Enforcement Program ¶ 405(a), which states:

> The object of the investigation is to obtain evidence to establish whether a violation occurred. Evidence includes all the means by which any alleged fact tends to be established or disproven. It is the means by which we [the FAA] prove or establish the facts set forth in FAA legal notices. If there is doubt as to the relevance of a particular piece of evidence, it should be secured and preserved from the outset.

This passage does not state that the agency must obtain every possible piece of evidence. Agency investigators must exercise discretion. Here, agency investigators believed at the time that an independent laboratory had tested the samples, that the results indicated that the materials were hazardous, and that the test results would be admissible at a hearing. Nothing in the record indicates that the agency investigators' belief was not held in good faith. Envirosolve has cited no case law indicating that when the FAA does not preserve a particular piece of evidence, its case must necessarily fail.

---

had relied on the *information* in the Romic profile for Riley when he filled out the MFR form, but it is unclear whether he relied on the particular document introduced by the FAA and whether that particular document was included with the shipment.

Moreover, the underlying premise of Envirosolve's argument – that there can be no enforcement action under DOT's hazardous materials regulations unless a physical sample is available for testing – is not the law, nor should it be. The Government's burden of proof in a case alleging an offer to ship, or the actual shipment of, a hazardous material may be met through circumstantial, as well as direct, evidence. A rule requiring that an actual sample of the material at issue be available for testing would seriously undermine enforcement of the comprehensive regulations applicable to the shipment of hazardous materials.

In this case, Warwick, who had worked in the waste management business for years (Tr. 167), testified that he believed, based on his experience with these three clients and the waste profiles, that the materials were hazardous. He further testified that he would have heard if the waste streams had changed so dramatically that they no longer fit their profiles, which indicated that they were hazardous materials. (Tr. 203.) As a result, there was sufficient circumstantial evidence in this case for the Government to meet its burden of proof. In addition, regarding the IMS and Riley samples, the waste generators had certified that their wastes were hazardous materials. The conclusion that the materials were hazardous then triggered the labeling, packaging, and certification requirements that were the subject of the amended complaint.[15]

Further, Envirosolve had other means, besides testing the samples, of rebutting the FAA's prima facie case. Envirosolve could have introduced evidence showing that the waste streams were non-hazardous – for example, through testimony to that effect

[15] These are not mere "technical" requirements. The carrier must have proper notice of what it is being asked to transport and, through the shipper's declaration, must be assured that the contents have been properly packaged and secured.

from the waste generators themselves, or perhaps Envirosolve's contracts with the waste generators, which may have indicated the nature of the waste. Thus, the destruction of the samples did not deprive Envirosolve of its ability to defend itself.[16]

III. Penalty

As the ALJ observed, there are a variety of factors that must be weighed in determining a civil penalty, but the principal elements of such an analysis "are the nature of the respondent's conduct and the totality of the circumstances." Initial Decision at 4-5. The ALJ also correctly noted that the number of violations is not, in itself, determinative of the appropriate penalty. Initial Decision at 5, *citing* In the Matter of Warbelow's Air Ventures, Inc., FAA Order No. 2000-3 at 20-21 (February 3, 2000), *petition for reconsideration denied*, FAA Order No. 2000-14 (June 8, 2000), *petition for reconsideration denied*, FAA Order No. 2000-16 (Aug. 8, 2000), *petition for review denied*, Warbelow's Air Ventures v. FAA, 2001 U.S. App. LEXIS 20820 (9th Cir. Sept. 20, 2001). In this case, the ALJ carefully and properly weighed the relevant factors.

Of particular importance in the determination of the appropriate penalty in this case is that the actual shipment of the hazardous materials misled FedEx as to the true contents of the package. This decision finds that there is sufficient evidence that Envirosolve employees reasonably believed that the samples were hazardous when Envirosolve initially offered them for shipment and marked them accordingly. When faced with FedEx's unwillingness to transport the samples, the Envirosolve clerk

[16] Envirosolve also attempted to rebut the FAA's case by showing that MFR improperly performed the flash point tests on the IMS and Riley samples. The ALJ, however, found that the flash point tests for the IMS and Riley samples did not show one way or another whether the materials were flammable, and this finding will not be disturbed on appeal.

resorted to the expedient, but dangerous, act of removing all indicia that the shipment contained hazardous materials. Envirosolve's failure to include proper shipping papers, markings, labels, and emergency response information put FedEx employees and the public at risk. It is well settled that hidden shipments pose a special danger. *See, e.g.*, In the Matter of Toyota Motor Sales, USA, FAA Order No. 1994-28 at 12 (Sept. 30, 1994). Accordingly, under the totality of the circumstances, the penalty assessed by the ALJ is appropriate.

IV. Conclusion

A civil penalty of $60,000 is wholly appropriate in this case involving the special danger posed by a hidden shipment of hazardous materials. For the foregoing reasons, the ALJ's decision is affirmed and a $60,000 civil penalty is assessed.[17]

MARION C. BLAKEY, ADMINISTRATOR
Federal Aviation Administration

[17] Unless Respondent files a petition for review under 5 U.S.C. § 704 and 28 U.S.C. § 1331 with an appropriate District Court of the United States, this decision shall be considered an order assessing civil penalty.

APPENDIX

Section 171.2(a)[1] provides:

> No person may offer or accept a hazardous material for transportation in commerce unless that person complies with subpart G of part 107 of this chapter, and the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by this subchapter . . . .

Section 172.200 provides:

> (a) *Description of hazardous materials required.* … [E]ach person who offers a hazardous material for transportation shall describe the hazardous material on the shipping paper in the manner required by this subpart.

Sections 172.202(a)(1)-(5) provide:

> (a) The shipping description of a hazardous material on the shipping paper must include:
> (1) The proper shipping name prescribed for the material in Column 2 of the § 172.101 Table;
> (2) The hazard class or division prescribed for the material as shown in Column 3 of the § 172.101 Table (class names or subsidiary hazard class number may be entered following the numerical hazard class, or following the basic description) . . . .
> (3) The identification number prescribed for the material as shown in Column 4 of the § 172.101 Table;
> (4) The packing group, in Roman numerals, prescribed for the material in column 5 of the § 172.101 table, if any. . . . . ; and
> (5) . . . [T]he total quantity . . . , including the unit of measurement, of the hazardous material covered by the description . . . .

Section 172.204(a) provides:

> (a) . . . [E]ach person who offers a hazardous material for transportation shall certify that the material is offered for transportation in accordance with this subchapter by printing . . . on the shipping paper containing the required shipping description the certification contained in paragraph (a)(1) of this section or the certification (declaration) containing the language contained in paragraph (a)(2) of this section.

---

[1] All citations are to Title 49 of the Code of Federal Regulations.

(1) "This is to certify that the above-named materials are properly classified, described, packaged, marked, and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation."

(2) "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations."

. . .

Section 172.204(c)(2)-(3) provides:

(c) *Transportation by air—*

(2) *Certificate in duplicate.* Each person who offers a hazardous material to an aircraft operator for transportation by air shall provide two copies of the certification required in this section. . . . .

(3) *Passenger and cargo aircraft.* Each person who offers for transportation by air a hazardous material authorized for air transportation shall add to the certification required in this section the following statement:

This shipment is within the limitations prescribed for passenger aircraft/cargo aircraft only (delete nonapplicable).

Section 172.300 provides:

(a) Each person who offers a hazardous material for transportation shall mark each package, freight container, and transport vehicle containing the hazardous material in the manner required by this subpart.

Section 172.301(a) provides:

(a) *Proper shipping name and identification number.* . . . [E]ach person who offers for transportation a hazardous material in a non-bulk packaging shall mark the package with the proper shipping name and identification number (preceded by "UN" or "NA," as appropriate) for the material as shown in the § 172.101 table. . . .

Section 172.304(a)(1) provides:

(a) The marking required in this subpart –

(1) Must be durable, in English and printed on or affixed to the surface of a package or on a label, tag, or sign.

Section 172.400(a) provides:

> (a) . . . [E]ach person who offers for transportation or transports a hazardous material in any of the following packages or containment devices, shall label the package or containment device with the labels specified for the material in the § 172.101 Table and in this subpart ….

Section 172.600 provides:

> (c) *General requirements.* No person to whom this subpart applies may offer for transportation . . . a hazardous material unless:
> (1) Emergency response information conforming to this subpart is immediately available for use at all times the hazardous material is present . . . .

Section 172.602(a)(1)-(7) provide:

> (a) … [T]he term "emergency information" means information that can be used in the mitigation of an incident involving hazardous materials and, as a minimum, must contain the following information:
> (1) The basic description and technical name …;
> (2) Immediate hazards to health;
> (3) Risks of fire or explosion;
> (4) Immediate precautions to be taken in the event of an accident or incident;
> (5) Immediate methods for handling fires;
> (6) Initial methods for handling spills or leaks in the absence of fire; and
> (7) Preliminary first aid measures.

Section 172.604(a)(3) provides:

> (a) A person who offers a hazardous material for transportation must provide an emergency response telephone number …. The telephone number must be –
> (3) Entered on a shipping paper ….

Section 173.1(b) provides:

> A shipment of hazardous materials that is not prepared in accordance with this subchapter may not be offered for transportation by air . . . .

Section 173.22(a)(1) provides:

> (a) … a person may offer a hazardous material for transportation ... only in accordance with the following:
> (1) The person shall class and describe the hazardous material in accordance with parts 172 and 173 of this subchapter ….

Section 173.25(a)(2)-(4) provide:

> (a) Authorized packages containing hazardous materials may be offered for transportation in an overpack as defined in § 171.8 of this subchapter, if all of the following requirements are met:
> …
> (2) The overpack is marked with the proper shipping name and identification number, the air eligibility marking, when applicable, and is labeled as required by this subchapter for each hazardous material contained therein ….
> (3) Each package … is marked with package orientation marking arrows ….
> (4) The overpack is marked with a statement … that the inside … packages comply with prescribed specifications ….