



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

April 2, 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Charles S. Davant
Houck Anderson
200 South Biscayne Boulevard, Suite 300
Miami, FL 33131-2332

Re: PHMSA FOIA Case # 2009-0026

Dear Mr. Davant:

This is in response to your request for records from the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested a clear and legible copy of our report regarding the May 20, 2008 M/V MADELEINE, moored at Port Everglades, Florida. The enclosed records will be posted on the PHMSA Hazmat website at www.dot.gov under frequently requested records in the next several weeks.

The Pipeline and Hazardous Materials Safety Administration has completed the search and review of the records per your request. We have invoked FOIA Exemption 6 which allows an agency to withhold all information about individuals in personnel and medical files and similar files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

The fee for processing your FOIA request is \$329.50 for 5 hours of search time at \$47.00 per hour (\$235.00) Certified True Copy (\$4.00) and \$90.50 for duplication of approximately 905 pages at \$.10 per page. The fee is determined in accordance with the Department of Transportation's regulation governing the implementation of FOIA. Payment is due upon receipt of the material. If remittance is not received within 30 days from the date of receipt of this letter, the Department may institute collection action pursuant to Federal debt collection statutes. These statutes provide for late charges of 3 percent per annum, penalty charges of 6 percent per annum, and administrative charges of \$12 per month that will be assessed retroactively for handling a delinquent debt owed the government.

You may pay for FOIA requests using one of two options. 1) PHMSA implemented an electronic service to help our customers submit payments to the Federal government over the

Internet. The service allows customers to pay FOIA payments with a credit card over the World Wide Web. Access is easy and the result is faster. You can access the system at the following address: <https://hazmatonline.phmsa.dot.gov/services/HazMatSplash.aspx>. The FOIA section is located under the PHMSA heading; 2) Payment can also be made by check, draft, or money order payable to the "Department of Transportation" and send to the following address:

**PHMSA FOIA Collection
DOT/FAA/MMAC
AMZ-341
P.O. Box 269039
Oklahoma City, OK 73125**

Please insert "PHMSA FOIA Case # 2009-0026" on your remittance to assure correct posting of your account.

I am responsible for this determination. You may appeal the determination in writing to Cynthia Douglass, Deputy Acting Administrator, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590. Any appeal must be submitted in writing within 30 days after you receive this determination. It should contain all information and argument that you wish to rely on. The envelope should be prominently marked "FOIA Appeal." Acting Deputy Administrator Douglass's determination will be administratively final.

If you need additional assistance or have questions, please call me at (202) 366-6119 or contact me by e-mail at Marilyn.Burke@dot.gov.

Sincerely,



Marilyn Burke
PHMSA FOIA Program Manager

Enclosures



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Ave., S.E.
Washington, DC 20590

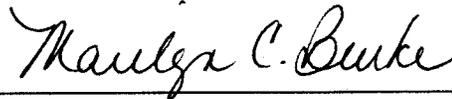
TRUE COPY CERTIFICATION

This certifies that R. Ryan Posten, Director, Office of Hazardous Materials Enforcement is the custodian of records for the Hazardous Materials Enforcement Program, Pipeline and Hazardous Materials Safety Administration, United States Department of Transportation.

I certify the attached report regarding the May 20, 2008 M/V MADELEINE incident, moored in Port Everglades, Florida are true copies of the original investigation records.

In witness whereof, I have hereunto set my hand,
and caused the seal of the Department of
Transportation to be affixed this 2nd day of
April, 2009.

For the Secretary of Transportation



Marilyn C. Burke
Certifying Official



HOUCK ANDERSON

ATTORNEYS AT LAW

MARCY E. ABITZ	MARK R. HOUCK
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FORT LAUDERDALE OFFICE
 1500 CORDOVA ROAD, SUITE 300
 FORT LAUDERDALE, FLORIDA 33316
 TELEPHONE (954) 522-0274
 FACSIMILE (954) 463-8752

Reply to: Miami Office

January 30, 2009

U.S. Department of Transportation
 PHMSA (PHC-1)
 East Building, 2nd Floor
 1200 New Jersey Avenue, SE
 Washington, D.C. 20590

FREEDOM OF INFORMATION ACT REQUEST

Re: **Marine Incident Involving M/V MADELEINE**
Date of Incident: May 20, 2008
Place of Incident: M/V MADELEINE, moored at
 Port Everglades, Florida
Request summary: A clear and legible copy of your report
 on this incident
Our File No.: 52437

To Whom It May Concern:

We represent the charterer, Trinity Shipping Line, S.A., of M/V MADELEINE an interested party to the investigation being conducted related to the incident of May 20, 2008 on board M/V MADELEINE. Trinity Shipping Line, S.A., has authorized us to file this Freedom of Information Act Request ("FOIA") on their behalf. This FOIA request is for certain records and materials in the possession of the Pipeline and Hazardous Materials Safety Administration ("PHMSA"). PHMSA is not a party to any suit pending for which these materials are requested. It is our belief that the records requested herein should be located in the PHMSA Investigator's office responsible for investigations in Port Everglades, Florida.

This letter constitutes a request for records made under the Freedom of Information Act, Title 5, U.S.C. §552(a)(3) and is made pursuant to the Department of Transportation Regulations contained in Title 49, Code of Federal Regulations, Part 7.

2009 MAR 11 10:45

The purpose of this request is to obtain all records and materials regarding PHMSA's response to and investigation of the marine incident involving M/V MADELEINE that occurred on May 20, 2008.

Pursuant to Title 49, Code of Federal Regulations, Part 7, Subpart F, we hereby state that we are willing to pay an amount sufficient to cover the necessary search fee, even if the estimated search fee will exceed \$100.00 up to an amount not exceeding \$500.00. The requestor recognizes and acknowledges that we will be required to pay a fee for the copying of any records identified in accordance with the fee schedule contained in section 7.43(d) of Title 49 of the Code of Federal Regulations.

To further expedite the processing of this request, this request should be interpreted to apply only to records that are now in the possession of the PHMSA and not to include any records that have been placed for storage with the National Archives or GSA. Further, this request for records should be interpreted as to exclude any information properly categorized as Classified National Security Information or any information properly protected by the Privacy Act and the requestor agrees in advance to the deletion or redaction of such protected information, including, but not limited to, home addresses of personnel, classified information, proprietary information, and the contents of personnel files.

The request for records contained herein as enumerated should be considered severable. Should the determination be made under Section 7.33 of Title 49 of the Code of Federal Regulations that unusual circumstances exist which would justify an extension of the date when such a determination should be made with regard to any specific request enumerated herein, the expedited processing of a response to those requests for records in which no unusual circumstances exist should be continued and processed within the time periods provided under Section 7.31 of Title 49 of the Code of Federal Regulations.

The materials and records requested are one clear and legible copy and one **Certified Blue Ribbon Copy** of:

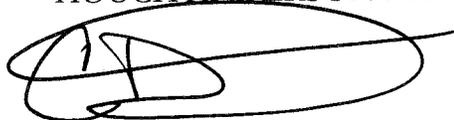
1. A clear and legible copy of your entire investigation regarding PHMSA's response to and investigation of the deaths of three stevedores during loading operations on board the M/V MADELEINE that occurred on May 20, 2008, to include: any and all investigation reports, marine casualty reports or other reports, witness statements and interviews, official memoranda, correspondence, case files or any other official records or writings relating, reflecting or referring to the above-described incident of May 20, 2008.

2. Any and all photographs videos or other visual depictions pertaining to the above-described incident, or any parties responding thereto.

Thank you very much for your cooperation and assistance in this matter. Should you have any questions or concerns regarding this request for records, or if our request for records is unclear or ambiguous in any manner, do not hesitate to call the undersigned at any time in order to clarify our request and to achieve the necessary specificity that is required to facilitate your handling of our request. Please do not delay in the processing of this request through inquiry by correspondence.

Very truly yours,

HOUCK ANDERSON P.A.

A handwritten signature in black ink, appearing to be 'C. Davant', is written over a large, hand-drawn oval scribble.

Charles S. Davant

/CSD

HOUCK ANDERSON

ATTORNEYS AT LAW

MARCY E. ABITZ
KRISTA FOWLER ACUÑA
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1500 CORDOVA ROAD, SUITE 300
FORT LAUDERDALE, FLORIDA 33316
TELEPHONE (954) 522-0274
FACSIMILE (954) 463-8752

Reply to: Fort Lauderdale

March 5, 2009

Ms. Marilyn C. Burke
PHMSA FOIA Program Manager
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re: M/V MADELEINE
FOIA Control No.: 2009-0026
Our File No.: 52437

Dear Ms. Burke:

The undersigned represents the interests of the time charterer of the M/V MADELEINE in relation to an accident which occurred on May 20, 2008. We are in receipt of and thank you for your February 24, 2009 correspondence which essentially acknowledges receipt of our January 30, 2009 FOIA request to the Pipeline and Hazardous Materials Safety Administration.

While your request references that it is in response to our FOIA request, we are not in receipt of any documents regarding your investigation as requested in our January 30, 2009 correspondence. At your earliest opportunity, please contact the undersigned in order to discuss when receipt of documents outlined in our January 30, 2009 FOIA request can be expected.

We look forward to hearing from you.

Very truly yours,

HOUCK ANDERSON P.A.


Charles S. Davant

CSD/fa



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

02/24/2009

FOIA Control No: 2009-0026

**CHARLES S. DAVANT
HOUCK ANDERSON
200 SOUTH BISCAYNE BOULEVARD, SUITE 300
MIAMI FL 33131-2332**

Dear Mr. Davant:

This is in response to your request dated 01/30/2009 related about a copy of the entire investigation regarding PHMSA's response to and investigation of the deaths of three stevedores during loading operations on board the M/V MADELEINE that occurred on May 20, 2008, to include any and all investigation reports, marine casualty reports or other reports, witness statements and interviews, official memoranda, correspondence, case files or any other official records or writings relating, reflecting or referring to the above described incident of May 20, 2008, and all photographs, videos or other visual depictions pertaining to the above-described incident, or any parties responding thereto..

Control number assigned to your request is 2009-0026.

Please mention your request control number in your future correspondence. If you have any questions, please feel free to contact us by phone or e-mail.

Sincerely,

**Marilyn C. Burke
PHMSA FOIA Program Manager
Pipeline and Hazardous Materials Safety Administration (PHMSA)**



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

Office of
Chief Counsel

1200 New Jersey Avenue, S.E.,
PHC-10, Room E26-331
Washington, D.C. 20590-0001
Phone: (202)366-5199
Fax: (202) 366-7041
E-mail: vincent.lopez@dot.gov

**Hazardous Materials Safety
Law Division**

NOTICE OF PROBABLE VIOLATION

Date Issued: MAR 31 2009

PHMSA Case No.: 08-0185-SIT-SO

Respondent: Airgas - South, Inc.
P.O. Box 9219
Marietta, GA 30067

ATTN: Mr. Jay Sullivan, President

No. of Alleged Violations: 6

Maximum Possible Assessment: \$600,000

Total Proposed Assessment: **\$385,400** (Includes a \$121,800 reduction for corrective action)

The Office of Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA) alleges that you (the Respondent named above) violated certain provisions of the 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. PHMSA sets forth the specific allegations in Addendum A to this Notice.

What are the maximum and minimum civil penalties that PHMSA can assess? Federal law sets a maximum civil penalty of \$50,000 (or \$100,000 if the violation results in death, serious illness or severe injury, or substantial destruction of property) and a minimum civil penalty of \$250 (or \$450 if the violation concerns training) for each violation of the Federal hazardous materials transportation law or the HMR committed on or after August 10, 2005. Each day of a continuing violation by a shipper or transporter of hazardous materials constitutes a separate violation for which the maximum penalty may be imposed (49 U.S.C. § 5123(a)).

What factors does PHMSA consider when proposing and assessing a civil penalty? Federal law requires PHMSA to consider certain factors when proposing and assessing a civil penalty for a violation of Federal Hazardous Materials Transportation Law or the HMR. Please refer to Addendum B to this Notice for more information concerning these factors.

When is my response due? You must respond within thirty (30) days from the date you receive the Notice (49 C.F.R. § 107.313(a)), unless you have made a written request for an extension, which must have been approved by PHMSA (49 C.F.R. §107.313(c)). Due to security concerns, mail delivery from the United States Postal Service (USPS) is experiencing significant delays.

As a result, you should allow at least 72 hours for delivery, even for overnight service by the USPS. To assure timely receipt, **PHMSA strongly encourages you to submit your response by e-mail, fax, or express mail.** A response received out of time will not be considered.

What are my response options? You may respond to this Notice in any of three ways:

- (1) Admit the alleged violations and pay the proposed assessment (49 C.F.R. § 107.313(a)(1));
- (2) Send an informal response, which can include a request for an informal conference (49 C.F.R. § 107.313(a)(2)); or
- (3) Request a formal hearing (49 C.F.R. § 107.313(a)(3)).

PHMSA provides information on these options in Addendum B to this Notice and the Office of Chief Counsel's homepage (<http://hazmat.dot.gov>). PHMSA explains its procedures for assessing civil penalties and imposing compliance orders in 49 C.F.R. § 107.307 through 107.331.

What happens if I fail to respond? You waive your right to contest the allegations made in Addendum A to this Notice if you fail to respond within thirty (30) days of receiving it (or by the end of any extension). Also, the Chief Counsel may make a finding of fact consistent with the allegations in this Notice and assess an appropriate civil penalty if you fail to respond within the applicable time frame.


Vincent M. Lopez, Attorney
Phone: (202) 366-5199
vincent.lopez@dot.gov

Enclosures: Addendum A
Addendum B
Addendum C
Case Exhibits

cc: (w/o enclosures)

Airgas - South, Inc.
9030 N.W. 58th Street
Miami, FL 33178

ATTN: Mr. Osvaldo Cejas, Plant Manager

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

PHMSA Case No. 08-0185-SIT-SO

SPECIFIC ALLEGATIONS

Probable Violation No. 1

Offering for transportation, in commerce, a hazardous material (Argon, refrigerated liquid, 2.2, UN1951), in a packaging which is governed under the provisions of a DOT Special Permit, DOT-SP 11186, while failing to provide a copy of DOT-SP 11186 to the carrier before, or at the time of shipment, in violation of 49 C.F.R. §§ 171.1(b)(7), 171.2(a), (b), (e) & (i), 173.22a(b) & (c), and DOT-SP 11186(8)(b) & (10)(a).

Factual Allegations/Averments

A. On May 20, 2008, an Investigator from the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Enforcement, responded to an incident reported at Pier 30 in Port Everglades, FL, involving a shipment of a hazardous material, and resulting in the deaths of three longshoremen.

B. On or about May 13, 2008, Respondent offered for transportation, in commerce, a hazardous material (Argon, refrigerated liquid, 2.2, UN1951) in a portable storage tank, identification number: JBKU 211007-4, as evidenced by Pro Transport Inc. Bill of Lading with Booking #: 10024463, dated May 14, 2008, and IMO Dangerous Goods Declaration with Booking #: 10024463, dated May 13, 2008.

C. Upon arriving on the scene of the incident referenced in paragraph A above, the Investigator was informed that portable storage tank, referenced in paragraph B above, was observed leaking its contents during cargo loading operations of the vessel containership "Madeleine."

D. Upon further investigation, the Investigator determined that the subject portable storage tank was stowed below deck of the vessel referenced in paragraph C above, as evidenced by the vessel's Hazardous Cargo Manifest, Job Number: 00108009-02, and the attendant cargo stowage plan.

E. The subject portable storage tank was removed from the vessel and placed on the dock. The Investigator observed and photographed the subject portable storage tank.

F. During the course of the investigation, the Investigator determined that the subject portable storage tank was a portable storage tank, identification number: JBKU 211007-4, and subject to DOT-SP 11186.

G. The Investigator obtained a copy of the DOT-SP 11186 for review. Upon review of the DOT-SP 11186, the Investigator discovered that it contained stowage requirements with a reference to the HMR stowage requirement that portable tanks containing cryogenic liquids must be stowed "on deck" and a requirement that a current copy of the special permit be carried aboard each cargo vessel or motor carrier used to transport packages covered by the special permit.

H. During the course of the investigation, the Investigator reviewed the shipping papers accompanying the subject portable storage tank. The Investigator's review of the shipping papers revealed that the special permit referenced in paragraph G above was not among the shipping papers, nor did any of the shipping papers reference the special permit.

I. On or about the dates referenced in paragraphs A – B above, Respondent offered for transportation, in commerce, a hazardous material, in a packaging which is governed under the provisions of a DOT Special Permit, DOT-SP 11186, while failing to provide a copy of DOT-SP 11186 to the carrier before, or at the time of shipment, in violation of the HMR.

- Please see Inspection/Investigation Report Number 08462028 at pages 3 – 9, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 2

Offering for transportation, in commerce, a hazardous material (Argon, refrigerated liquid, 2.2, UN1951), in a packaging which is governed under the provisions of a DOT Special Permit, DOT-SP 11186, and accompanied by shipping papers which fail to include the Special Permit number in association with the shipping description, in violation of 49 C.F.R. §§ 171.1(b)(7), 171.2(a), (b), (e) & (i), 172.200(a), and 172.203(a).

Factual Allegations/Averments

A. On May 20, 2008, an Investigator from the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Enforcement, responded to an incident reported at Pier 30 in Port Everglades, FL, involving a shipment of a hazardous material, and resulting in the deaths of three longshoremen.

B. On or about May 13, 2008, Respondent offered for transportation, in commerce, a hazardous material (Argon, refrigerated liquid, 2.2, UN1951) in a portable storage tank, identification number: JBKU 211007-4, as evidenced by Pro Transport Inc. Bill of Lading with Booking #: 10024463, dated May 14, 2008, and IMO Dangerous Goods Declaration with Booking #: 10024463, dated May 13, 2008.

C. Upon arriving on the scene of the incident referenced in paragraph A above, the Investigator was informed that portable storage tank, referenced in paragraph B above, was observed leaking its contents during cargo loading operations of the vessel containership "Madeleine."

D. Upon further investigation, the Investigator determined that the subject portable storage tank was stowed below deck of the vessel referenced in paragraph C above, as evidenced by the vessel's Hazardous Cargo Manifest, Job Number: 00108009-02, and the attendant cargo stowage plan.

E. The subject portable storage tank was removed from the vessel and placed on the dock. The Investigator observed and photographed the subject portable storage tank.

F. During the course of the investigation, the Investigator determined that the subject portable storage tank was a portable storage tank, identification number: JBKU 211007-4, and subject to DOT-SP 11186.

G. The Investigator obtained a copy of the DOT-SP 11186 for review. Upon review of the DOT-SP 11186, the Investigator discovered that it contained stowage requirements with a reference to the HMR stowage requirement that portable tanks containing cryogenic liquids must be stowed "on deck" and a requirement that a current copy of the special permit be carried aboard each cargo vessel or motor carrier used to transport packages covered by the special permit.

H. During the course of the investigation, the Investigator reviewed the shipping papers accompanying the subject portable storage tank. The Investigator's review of the shipping papers revealed that the special permit referenced in paragraph G above was not among the shipping papers, nor did any of the shipping papers reference the special permit.

I. On May 21, 2008, The Investigator continued the investigation at Respondent's Miami, FL facility.

J. During the course of the Investigation referenced in paragraph I above, the Investigator requested a sampling of Respondent's recent shipping papers for review.

K. The Investigator's review of the shipping papers referenced in paragraph J above revealed that on or about March 11, March 19, April 11, and April 15, 2008, Respondent offered for transportation, in commerce, a hazardous material in a portable storage tank subject to DOT-SP 11186.

L. The Investigator's review the shipping papers referenced in paragraph J above revealed that the special permit referenced in paragraph G above was not among the shipping papers. Further, none of the shipping papers reviewed reference the special permit.

M. On or about the dates referenced in paragraphs B and K, Respondent offered for transportation, in commerce, a hazardous material, in a packaging which is governed under the provisions of a DOT Special Permit, DOT-SP 11186, and accompanied by shipping papers which fail to include the Special Permit number in association with the shipping description, in violation of the HMR.

- Please see Inspection/Investigation Report Number 08462028 at pages 10 – 12, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 3

Offering for transportation, in commerce, a hazardous material (Argon, refrigerated liquid, 2.2, UN1951) in a packaging which is governed under the provisions of a DOT Special Permit, DOT-SP 11186, while failing to comply with the requirements of DOT-SP 11186 by not documenting additional information on the shipping papers prior to shipment in violation of 49 C.F.R. §§ 171.2(a), (b), (e) & (i), 173.22a(b) and DOT-SP 11186(10)(b)(2) & (3).

Factual Allegations/Averments

A. On May 20, 2008, an Investigator from the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Enforcement, responded to an incident reported at Pier 30 in Port Everglades, FL, involving a shipment of a hazardous material, and resulting in the deaths of three longshoremen.

B. On or about May 13, 2008, Respondent offered for transportation, in commerce, a hazardous material (Argon, refrigerated liquid, 2.2, UN1951) in a portable storage tank, identification number: JBKU 211007-4, as evidenced by Pro Transport Inc. Bill of Lading with Booking #: 10024463, dated May 14, 2008, and IMO Dangerous Goods Declaration with Booking #: 10024463, dated May 13, 2008.

C. Upon arriving on the scene of the incident referenced in paragraph A above, the Investigator was informed that portable storage tank, referenced in paragraph B above, was observed leaking its contents during cargo loading operations of the vessel containership "Madeleine."

D. Upon further investigation, the Investigator determined that the subject portable storage tank was stowed below deck of the vessel referenced in paragraph C above, as evidenced by the vessel's Hazardous Cargo Manifest, Job Number: 00108009-02, and the attendant cargo stowage plan.

E. The subject portable storage tank was removed from the vessel and placed on the dock. The Investigator observed and photographed the subject portable storage tank.

F. During the course of the investigation, the Investigator determined that the subject portable storage tank was a portable storage tank, identification number: JBKU 211007-4, and subject to DOT-SP 11186.

G. The Investigator obtained a copy of the DOT-SP 11186 for review. Upon review of the DOT-SP 11186, the Investigator discovered that it contained stowage requirements with a reference to the HMR stowage requirement that portable tanks containing cryogenic liquids must be stowed "on deck" and a requirement that a current copy of the special permit be carried aboard each cargo vessel or motor carrier used to transport packages covered by the special permit.

H. During the course of the investigation, the Investigator reviewed the shipping papers accompanying the subject portable storage tank. The Investigator's review of the shipping papers revealed that the special permit referenced in paragraph G above was not among the shipping papers, nor did any of the shipping papers reference the special permit.

I. On May 21, 2008, The Investigator continued the investigation at Respondent's Miami, FL facility.

J. During the course of the Investigation referenced in paragraph I above, the Investigator requested a sampling of Respondent's recent shipping papers for review.

K. The Investigator's review of the shipping papers referenced in paragraph J above revealed that on or about March 11, March 19, April 11, and April 15, 2008, Respondent offered for transportation, in commerce, a hazardous material in a portable storage tank subject to DOT-SP 11186.

L. The Investigator's review the shipping papers referenced in paragraph J above revealed that the special permit referenced in paragraph G above was not among the shipping papers and that none of the shipping papers reviewed reference the special permit. Further, the Investigator discovered that Respondent had failed to document the subject portable storage tanks' One-Way-Travel-Time (OWTT), and the tanks' pressure and temperature.

M. On or about the dates referenced in paragraphs B and K, Respondent offered for transportation, in commerce, a hazardous material, in a packaging which is governed under the provisions of a DOT Special Permit, DOT-SP 11186, while failing to comply with the requirements of DOT-SP 11186 by not documenting additional information on the shipping papers prior to shipment in violation of the HMR.

- Please see Inspection/Investigation Report Number 08462028 at pages 13 – 15, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 4

Offering for transportation, in commerce, a hazardous material (Argon, refrigerated liquid, 2.2, UN1951), in an unauthorized DOT-SP 11186 Special Permit portable tank which had a pressure relief system with external adjustment valves with broken tamper evident seals. Failing to conduct an external inspection of all emergency devices of a portable tank for corrosion, distortion, or any damage or defect that could prevent their normal operation prior to offering the portable tank for transportation, in violation of 49 C.F.R. §§ 171.2(a), (b), (e) & (i), 173.22(a)(2)(i)(v), 173.22a(b), 173.32(e)(3)(4), 173.318(b)(1)(ii), 173.318(b)(7)(iii), 173.318(b)(10)(ii) and DOT-SP 11186(7)(c)(1).

Factual Allegations/Averments

- A. On May 20, 2008, an Investigator from the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Enforcement, responded to an incident reported at Pier 30 in Port Everglades, FL, involving a shipment of a hazardous material, and resulting in the deaths of three longshoremen.
- B. On or about May 13, 2008, Respondent offered for transportation, in commerce, a hazardous material (Argon, refrigerated liquid, 2.2, UN1951) in a portable storage tank, identification number: JBKU 211007-4, as evidenced by Pro Transport Inc. Bill of Lading with Booking #: 10024463, dated May 14, 2008, and IMO Dangerous Goods Declaration with Booking #: 10024463, dated May 13, 2008.
- C. Upon arriving on the scene of the incident referenced in paragraph A above, the Investigator was informed that portable storage tank, referenced in paragraph B above, was observed leaking its contents during cargo loading operations of the vessel containership "Madeleine."
- D. Upon further investigation, the Investigator determined that the subject portable storage tank was stowed below deck of the vessel referenced in paragraph C above, as evidenced by the vessel's Hazardous Cargo Manifest, Job Number: 00108009-02, and the attendant cargo stowage plan.
- E. The subject portable storage tank was removed from the vessel and placed on the dock. The Investigator observed and photographed the subject portable storage tank and noted that tank's internal pressure was 18.4 bar (268.32 psi) and that its maximum allowable working pressure was 10.3 bar (149.39 psi).
- F. During the course of the investigation, the Investigator determined that the subject portable storage tank was a portable storage tank, identification number: JBKU 211007-4, and subject to DOT-SP 11186.

G. The Investigator's observations of the subject portable storage tank revealed that it was equipped with three (3) emergency pressure relief devices. Upon further examination, the Investigator noted that each of the pressure relief devices had an external adjustment valve and that the valves appeared to have been tampered with due to broken "tamper-evident" lead seals attached to the valves. Further, the valves' identification tags were either corroded or missing.

H. The Investigator reviewed the "Certificate of Conformance" for each of the valves referenced in paragraph G above, which revealed that the valves were certified to a set pressure of 150, 150, and 200 psi.

I. On or about the dates referenced in paragraphs A – B above, Respondent offered for transportation, in commerce, a hazardous material, in an unauthorized DOT-SP 11186 Special Permit portable tank which had a pressure relief system with external adjustment valves with broken tamper evident seals. Failing to conduct an external inspection of all emergency devices of a portable tank for corrosion, distortion, or any damage or defect that could prevent their normal operation prior to offering the portable tank for transportation, in violation of the HMR.

- Please see Inspection/Investigation Report Number 08462028 at pages 16 – 19, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 5

Offering for transportation, in commerce, a hazardous material (Argon, refrigerated liquid, 2.2, UN1951), in a portable tank which had an identification number on an orange panel that was not legible, an obscure proper shipping name, and a damaged placard, in violation of 49 C.F.R. §§ 171.2(a), (b), (e) & (i), 173.301(a)(1), 172.326(a), 172.332(a), 172.504(a), 172.516(c)(1).

Factual Allegations/Averments

A. On May 20, 2008, an Investigator from the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Enforcement, responded to an incident reported at Pier 30 in Port Everglades, FL, involving a shipment of a hazardous material, and resulting in the deaths of three longshoremen.

B. On or about May 13, 2008, Respondent offered for transportation, in commerce, a hazardous material (Argon, refrigerated liquid, 2.2, UN1951) in a portable storage tank, identification number: JBKU 211007-4, as evidenced by Pro Transport Inc. Bill of Lading with Booking #: 10024463, dated May 14, 2008, and IMO Dangerous Goods Declaration with Booking #: 10024463, dated May 13, 2008.

C. Upon arriving on the scene of the incident referenced in paragraph A above, the Investigator was informed that portable storage tank, referenced in paragraph B above, was observed leaking its contents during cargo loading operations of the vessel containership "Madeleine."

D. Upon further investigation, the Investigator determined that the subject portable storage tank was stowed below deck of the vessel referenced in paragraph C above, as evidenced by the vessel's Hazardous Cargo Manifest, Job Number: 00108009-02, and the attendant cargo stowage plan.

E. The subject portable storage tank was removed from the vessel and placed on the dock. The Investigator observed and photographed the subject portable storage tank.

F. During the course of the investigation, the Investigator determined that the subject portable storage tank was a portable storage tank, identification number: JBKU 211007-4, and subject to DOT-SP 11186.

G. During the course of the investigation, the Investigator discovered that the portable storage tank referenced in paragraph B above was not marked and placarded in accordance with the HMR requirements.

H. On or about the dates referenced in paragraphs A – B above, Respondent offered for transportation, in commerce, a hazardous material, in a portable tank which had an identification number on an orange panel that was not legible, an obscure proper shipping name, and a damaged placard, in violation of the HMR.

- Please see Inspection/Investigation Report Number 08462028 at pages 20 – 21, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 6

Offering for transportation, in commerce, a hazardous material (Argon, refrigerated liquid, 2.2, UN1951), in a packaging which is governed under the provisions of a DOT Special Permit, DOT-SP 11186, while failing to provide function-specific training concerning requirements contained in the Special Permit that are specifically applicable to the functions the employee performs for shipment of hazardous materials in that packaging, in violation of 49 C.F.R. §§ 171.2(a), (b), (e) & (i), 172.702(a), 172.704(a)(2) & (d), 173.22a(b) and DOT-SP 11186(11)(b).

Factual Allegations/Averments

A. On May 20, 2008, an Investigator from the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Enforcement, responded to an incident reported at Pier 30 in Port Everglades, FL, involving a shipment of a hazardous material, and resulting in the deaths of three longshoremen.

B. On or about May 13, 2008, Respondent offered for transportation, in commerce, a hazardous material (Argon, refrigerated liquid, 2.2, UN1951) in a portable storage tank, identification number: JBKU 211007-4, as evidenced by Pro Transport Inc. Bill of Lading with Booking #: 10024463, dated May 14, 2008, and IMO Dangerous Goods Declaration with Booking #: 10024463, dated May 13, 2008.

C. Upon arriving on the scene of the incident referenced in paragraph A above, the Investigator was informed that portable storage tank, referenced in paragraph B above, was observed leaking its contents during cargo loading operations of the vessel containership "Madeleine."

D. Upon further investigation, the Investigator determined that the subject portable storage tank was stowed below deck of the vessel referenced in paragraph C above, as evidenced by the vessel's Hazardous Cargo Manifest, Job Number: 00108009-02, and the attendant cargo stowage plan.

E. The subject portable storage tank was removed from the vessel and placed on the dock. The Investigator observed and photographed the subject portable storage tank.

F. During the course of the investigation, the Investigator determined that the subject portable storage tank was a portable storage tank, identification number: JBKU 211007-4, and subject to DOT-SP 11186.

G. The Investigator obtained a copy of the DOT-SP 11186 for review. Upon review of the DOT-SP 11186, the Investigator discovered that it contained stowage requirements with a reference to the HMR stowage requirement that portable tanks containing cryogenic liquids must be stowed "on deck" and a requirement that a current copy of the special permit be carried aboard each cargo vessel or motor carrier used to transport packages covered by the special permit.

H. During the course of the investigation, the Investigator reviewed the shipping papers accompanying the subject portable storage tank. The Investigator's review of the shipping papers revealed that the special permit referenced in paragraph G above was not among the shipping papers, nor did any of the shipping papers reference the special permit.

I. On May 21, 2008, The Investigator continued the investigation at Respondent's Miami, FL facility.

J. During the course of the Investigation referenced in paragraph I above, the Investigator requested a sampling of Respondent's recent shipping papers for review.

K. The Investigator's review of the shipping papers referenced in paragraph J above revealed that on or about March 11, March 19, April 11, and April 15, 2008, Respondent offered for transportation, in commerce, a hazardous material in a portable storage tank subject to DOT-SP 11186.

L. During the course of the Investigation referenced in paragraph I above, the Investigator requested Respondent's recent training records for its hazmat employees.

M. The Investigator's review of the training records referenced in paragraph L above revealed that Respondent had failed to provide its hazmat employees with function specific training.

N. On or about the dates referenced in paragraphs B and K, Respondent offered for transportation, in commerce, a hazardous material, in a packaging which is governed under the provisions of a DOT Special Permit, DOT-SP 11186, while failing to provide function-specific training concerning requirements contained in the Special Permit that are specifically applicable to the functions the employee performs for shipment of hazardous materials in that packaging, in violation of the HMR.

- Please see Inspection/Investigation Report Number 08462028 at pages 22 – 23, and the exhibits that accompany this report, which are incorporated herein.

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

Prior Violations of the Hazardous Materials Regulations:

PHMSA increases proposed penalties when Respondent has committed a prior violation of the Federal Hazardous Materials Transportation Law or the HMR within the last six years, as determined through a civil penalty case, criminal case, or ticketing process (49 C.F.R. § 107.331(d)). More specifically, "the general standards for increasing a baseline proposed penalty on the basis of prior violations are . . . (1) for each prior civil or criminal enforcement case –25% increase over pre-mitigation recommended penalty, and (2) for each prior ticket–10% increase over pre-mitigation recommended penalty" (49 C.F.R. Part 107, Subpart D, Appendix A, Section IV, E).

According to PHMSA's records, Respondent has committed the following prior violations:

- (1) 07T-0108-SC-SO

Corrective Action:

An important purpose of PHMSA'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. In determining the final penalty assessment, PHMSA considers documented evidence of actions taken by a Respondent to correct violations and ensure that they do not recur (49 C.F.R. § 107.331 (g)).

Respondent provided correspondence dated June 22, and August 21, 2008, addressing the corrective action it has taken in response to the probable violations resulting from the inspection. Respondent described and documented its corrective action as follows:

- **Violation No.: 1:** Respondent stated that it had conducted extensive training and retraining of its hazmat employees. Further, Respondent indicated that it had conducted an internal review of its training programs and inspection criteria, and that it had developed new Standard Operating Procedures to ensure future compliance with all applicable regulations. Additionally, Respondent submitted the shipping papers for a recent shipment of a portable storage tank as further evidence of its corrective action (indicating that Respondent was including a copy of the applicable Special Permit).
- **Violation No.: 2:** Respondent stated that it had conducted extensive training and retraining of its hazmat employees. Further, Respondent indicated that it had conducted an internal review of its training programs and inspection criteria, and that it had developed new Standard Operating Procedures to ensure future compliance with all applicable regulations. Additionally, Respondent submitted the shipping papers for a recent shipment of a portable storage tank as further evidence of its corrective action (showing that Respondent was including a Special Permit reference on the shipping paper when applicable).
- **Violation No.: 3:** Respondent stated that it had conducted extensive training and retraining of its hazmat employees. Further, Respondent indicated that it had conducted an internal review of its training programs and inspection criteria, and that it had developed new Standard Operating Procedures to ensure future compliance with all applicable regulations. Additionally, Respondent submitted the shipping papers for a recent shipment of a portable storage tank as further evidence of its corrective action (indicating that Respondent was marking the shipping paper with the OWTT as necessary).
- **Violation No.: 4:** Respondent stated that it had conducted extensive training and retraining of its hazmat employees. Further, Respondent indicated that it had conducted an internal review of its training programs and inspection criteria, and that it had developed new Standard Operating Procedures to ensure future compliance with all applicable regulations.
- **Violation No.: 5:** Respondent stated that it had conducted extensive training and retraining of its hazmat employees. Further, Respondent indicated that it had conducted an internal review of its training programs and inspection criteria, and that it had developed new Standard Operating Procedures to ensure future compliance with all applicable regulations.

- **Violation No.: 6:** Respondent stated that it had conducted extensive training and retraining of its hazmat employees. Further, Respondent indicated that it had conducted an internal review of its training programs and inspection criteria, and that it had developed new Standard Operating Procedures to ensure future compliance with all applicable regulations. Additionally, Respondent submitted copies recent training records for its hazmat employees.

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.

PHMSA has no information that indicates that Respondent is unable to pay the proposed penalty. If Respondent believes it lacks the ability to pay the proposed penalty or that the proposed penalty will affect Respondent's ability to continue in business, Respondent should submit a current balance sheet (certified if possible) or other evidence of its assets and liabilities.

TOTAL CIVIL PENALTY PROPOSED

Probable Violation	Maximum Possible Penalty	Baseline Penalty	Increase for Priors	Corrective Action	Proposed Penalty
1	\$100,000	\$100,000 (death)	Waived	\$25,000	\$75,000
2	\$100,000	\$100,000 (death)	Waived	\$25,000	\$75,000
3	\$100,000	\$100,000 (death)	Waived	\$25,000	\$75,000
4	\$100,000	\$100,000 (death)	Waived	\$20,000	\$80,000
5	\$100,000	\$800 - \$7,200	Waived	\$1,800	\$5,400
6	\$100,000	\$100,000 (death)	Waived	\$25,000	\$75,000
TOTAL	\$600,000	\$507,200	Waived	\$121,800	\$385,400



Inspection / Investigation Report No. 08462028

U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Enforcement

Inspection Location:

Airgas South-Miami
9030 N.W. 58th Street
Miami, FL 33178

Principal Office (if different):

Airgas South
125 Townpark Dr., N.W. Suite 400
Kennesaw, GA 30144-5880

Contact: Osvaldo Cejas, Plant Manager
Phone: (305) 470-8933
Fax: (305) 470-9099

Contact: Jay Sullivan, President
Phone: (770) 590-6100

Type of Inspection: ACCIDENT/FAILURE
INVESTIGATION

Result: ENFORCEMENT REPORT

Inspector: BURNS, BOB
Code: PHH-46.2
Title: HAZARDOUS MATERIALS
ENFORCEMENT SPECIALIST

Signature:

Inspector #2: HENEGHAN, JOHN
Code: PHH-46.0
Title: CHIEF, SOUTHERN REGION

Supervisor Name: John P. Heneghan
Title: Chief, Southern Region

Authorization Date: 12/31/2008

Summary of Inspection

This report documents the findings of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) accident investigation of Airgas South-Miami's (Airgas) involvement with the offering for transportation in commerce of Argon, Refrigerated Liquid, Class 2.2, UN1951, in an ISO (inter-modal) portable tank authorized for transportation by DOT-SP 11186 Special Permit (S/P). Specifically, on May 20, 2008, three (3) transportation workers in Port Everglades, Florida, perished after loading the ISO tank into the lower cargo hold of a cargo vessel destined for Callao, Peru, in South America. The ISO tank's means of containment failed while stowed aboard the ship which resulted in the subsequent death of the three individuals due to chemical asphyxia, after the tank released argon gas in the confines of the cargo hold.

The initial on-site investigation was assigned to PHMSA Hazardous Materials Investigator Robert Burns (reporting investigator) and supplemented by PHMSA Southern Region Chief, John Heneghan. Many other federal, state, and local agencies conducted similar investigations while providing necessary information and documentation to the PHMSA investigators. These agencies are specifically listed in this report.

Airgas, located at 9030 N.W. 58th Street, Miami, Florida, 33178, was found to be the shipper of record and the subject of this investigation.

Airgas South-Miami
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The Miami Airgas facility is a filler, transporter, and shipper of cryogenic gases in cargo tanks, Dewar flasks, and ISO portable tanks. Airgas also fills and transports industrial, medical, and specialty compressed gases in DOT cylinders and has over ten (10) hazardous materials employees. Mr. Osvaldo Cejas is the Plant Manager with Account Manager, Gustavo DeQuesada, acting as the company's primary employee tasked with arranging for the export and international shipment of ISO tanks. Both of these individuals represented Airgas and provided information and documentation to the PHMSA investigators during the investigative process. Additionally, Airgas is represented by Frank Zacherl, Esquire, of Shutts & Bowen LLP, who has also assisted with providing information to PHMSA.

This investigation revealed that Airgas failed to comply with certain requirements of the Federal Hazardous Materials Regulations (HMR) and failed to perform functions described in DOT-SP 11186. These failures involved carrying out certain inspection criteria of the ISO portable tank and its emergency relief devices prior to shipment and providing for the proper communication of the hazard involved according to the HMR, and provisions of the S/P, which had a direct effect in the improper stowage aboard the cargo vessel (stowed below deck) and subsequent death of the transportation workers.

The probable violations were discussed with Mr. Cejas, Mr. DeQuesada, and Mr. Zacherl, during the Exit Briefing (Exhibit 1). The violations concerned failing to list the S/P number on the shipping papers; failure to provide a copy of the S/P to the carrier before or at the time of shipment; failure to provide function-specific training to employees regarding the S/P; failure to conduct an external inspection of emergency relief devices on a portable tank prior to shipment; failure to identify the One Way Travel Time (OWTT) on the shipping papers and create a written record of the tanks pressure and ambient (outside) temperature prior to shipment; offered hazardous material in a portable tank with damaged and/or missing identification panels and placards.

Letters of corrective action were received (Exhibits 35 & 36), dated June 22, 2008 and August 21, 2008, from Mr. Zacherl, legal counsel for Airgas, which provides evidence that the violations have been corrected. Extensive documentation was included that demonstrates Airgas has reviewed and enhanced the company's internal procedures for shipping hazardous materials; developed and implemented new Standard Operating Procedures (SOP's) specifically relating to the inspection and shipping of ISO tanks covered by DOT S/P's, and conducted a system wide hazardous materials training program enhancement specifically for the handling and shipping of ISO tanks under DOT-SP 11186.

Violation Number: 1

Number Discovered: 5

49 CFR Section:

171.1(b)(7)

171.2(a), (b), (e) & (i)

173.22a(b) & (c)

DOT-SP 11186(8)(b) & (10)(a)

Exhibit: 2 Through 26, 29, 31, 33, 35, 36

Violation Description:

Offering for transportation in commerce, a hazardous material, Argon, Refrigerated Liquid, 2.2, UN1951, in a packaging which is governed under the provisions of a DOT Special Permit, number DOT-SP 11186, while failing to provide a copy of DOT-SP 11186 to the carrier before or at the time of shipment, in violation of 49 CFR §171.1(b)(7), §171.2(a), (b), (e) & (i), §173.22a(b) & (c) and DOT-SP 11186(8)(b) & (10)(a).

Evidence Summary:

This report documents the findings of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) accident investigation of Airgas South-Miami's (Airgas) involvement with the offering for transportation in commerce of Argon, Refrigerated Liquid, Class 2.2, UN1951, in an ISO (inter-modal) portable tank authorized for transportation by DOT-SP 11186 Special Permit (S/P). Specifically, on May 20, 2008, three (3) transportation workers in Port Everglades, Florida, perished after loading the ISO tank into the lower cargo hold of a cargo vessel destined for Callao, Peru, in South America. The ISO tank's means of containment failed while stowed aboard the ship which resulted in the subsequent death of the three individuals due to chemical asphyxia, after the tank released argon gas in the confines of the cargo hold.

The initial on-site investigation was assigned to PHMSA Hazardous Materials Investigator Robert Burns (reporting investigator) and supplemented by PHMSA Southern Region Chief, John Heneghan. Many other federal, state, and local agencies conducted similar investigations while providing necessary information and documentation to the PHMSA investigators. These agencies are specifically listed in this report.

Airgas, located at 9030 N.W. 58th Street, Miami, Florida, 33178, was found to be the shipper of record and the subject of this investigation. The Miami Airgas facility is a filler, transporter, and shipper of cryogenic gases in cargo tanks, Dewar flasks, and ISO portable tanks. Airgas also fills and transports industrial, medical, and specialty compressed gases in DOT cylinders and has over ten (10) hazardous materials employees. Mr. Osvaldo Cejas is the Plant Manager with Account Manager, Gustavo DeQuesada, acting as the company's primary employee tasked with arranging for the export and international shipment of ISO portable tanks.

**Airgas South-Miami
Inspection / Investigation Report No. 08462028**

Both of these individuals represented Airgas and provided information and documentation to the PHMSA investigators during the investigative process. Additionally, Airgas is represented by Frank Zacherl, Esquire, of Shutts & Bowen LLP, who has also assisted with providing information to PHMSA.

Details of the investigation are as follows:

On May 20, 2008, at 1030 hours, Hazardous Materials Investigator Robert Burns responded to Pier 30 in Port Everglades, Florida, located at 4200 McIntosh Road, Fort Lauderdale, after receiving notification through the PHMSA Southern Regional Office that the National Response Center (NRC) had issued NRC notification #871468 (Exhibit 2), describing an accident involving the deaths of three employees aboard a cargo ship due to asphyxia by argon gas from a leaking storage tank. The cause of the leak was unknown.

Immediately upon arrival, Investigator Burns received a briefing from primary emergency responders already at the scene, Detective Efrain Torres from the Broward County Sheriff's Office (BCSO) and Lt. Richard Dixon of United States Coast Guard (USCG), Sector Miami Port Operations. These gentlemen explained that during cargo loading operations of the containership "Madeleine" moored at Pier 30; three (3) Longshoremen were exposed to a cryogenic tank leaking argon gas that was stowed below deck in the forward cargo hold of the ship. The Longshoremen were employed by a cargo handling agent at the port, Florida Transportation Services, and succumbed to the argon gas while attempting to investigate the source of the leaking tank. The deceased and the tank had been removed from the ship, with the tank being placed on the dock for further investigation. The investigator was escorted aboard the Madeleine by personnel from the USCG and toured the area where the tank was stowed (Exhibit 33).

Detective Torres provided Investigator Burns with a preliminary copy of an Investigative Action Report (Exhibit 3) that describes in detail the tragic events that occurred during cargo loading operations of the Madeleine. In summary, one of the Longshoremen observed what he believed was smoke emanating from the cargo hold and went below to investigate. When the man failed to return, two other Longshoremen went down into the hold to attempt a rescue but like the first were overcome by argon gas. Detective Torres provided the investigator with copies of the Broward County Medical Examiners Reports (Exhibit 4) for the deceased.

Lt. Dixon provided copies of the Madeleine's Hazardous Cargo Manifest for Voyage 87SB and copies of the vessel's cargo stowage plan. The manifest (Exhibit 5) reflects that the argon tank was assigned booking number 10024463 and was identified as container number JBKU-211007-4. Attached to the manifest was an IMO Dangerous Goods Declaration (IMO DGD) for this container which describes a shipment of 20,520 kgs, 1 unit, UN1951, ISO, Argon, Refrigerated Liquid, Class 2.2 (Exhibit 5, page 3). The shipper was listed as Airgas South-Miami. The stowage plan (Exhibit 6) shows that JBKU-211007-4 was stowed in the forward cargo hold of the ship.

The investigator was escorted to the dock finding that the tank was an inter-modal portable tank, identification number JBKU 211007-4, marked ARGON REFRIGERATED LIQUID (Exhibit 7), and displayed Class 2 Non-Flammable Gas placards with identification number "1951" affixed on orange panels. The investigator gleaned from the specification plates that the portable tank was specified by design type as DOT-338-E 11186 (Exhibit 7, pages 10-12, Exhibit 29 & Exhibit 31). The investigator also observed that the portable tank was marked on each side "DOT-E 11186" (Exhibit 7, pages 4, 6, 9).

Airgas South-Miami
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Special note: 49 CFR §173.23(h) allows that an Exemption packaging or shipping paper that is permanently marked "DOT-E" prior to October 1, 2007, may continue in use as long as the Exemption or Special Permit (S/P) remains valid, unless otherwise specified in the Exemption or Special Permit. The terms "DOT-E" and "DOT-S/P" are used synonymously throughout this report.

Investigator Burns noted that the exterior supply piping extending from the tank and most of the exterior lines were in a frozen state (Exhibit 8). Lt. Dixon and Detective Torres both stated that the tank was removed from the ship in this manner except that the tank was venting intensely for several hours through a small vent at the end of the tank (Exhibit 8, page 8) but had since discontinued that.

Investigator Burns requested copies of any shipping documents or paperwork that was available concerning the shipment of portable tank JBKU 211007-4. Detective Torres stated that his BCSO forensics investigative team had conducted a complete crime scene analysis and obtained several documents from a document tube attached to the tank. The Detective provided an original IMO DGD, dated 5/13/08, that described a shipment of 20,520 kgs, 1 unit, UN1951, ISO, Argon, Refrigerated Liquid, Class 2.2 (Exhibit 9), with a destination of AGA SA Peru, AV Nester Gambetta 880, Callao, Peru. The shipper was listed as Airgas South-Miami and the declaration was signed by Gustavo DeQuesada on behalf of Airgas. Also provided was a Tank Container Periodic Inspection Report for JBKU 211007-4 (Exhibit 10) and Certificates of Conformance for the portable tank's pressure relief devices (Exhibit 11). The investigator noted that a copy of Special Permit (S/P) DOT-E 11186 was not among these documents.

Detective Torres pointed to three individuals on site and stated they were representatives from Airgas and may be able to provide more information. The individuals were from the Miami Airgas facility and were Supervisor Jose Montes, Account Manager Gustavo DeQuesada, and Technician Woodruff Nelson. Investigator Burns inquired as to why a copy of the S/P was not available with the shipping papers and requested a copy from the Airgas representatives. A copy could not be provided as the Airgas employees did not have a copy in their possession or understand how the marking on the side of the portable tank, DOT-E 11186, related to the shipment. Mr. Gustavo DeQuesada was the person who signed the Dangerous Goods Declaration and stated that he was unaware of the S/P, so of course did not provide a copy with the shipment. Investigator Burns explained that it is the shipper's responsibility to maintain and furnish copies of S/P's for packagings shipped under a DOT Special Permit and that a copy was needed in furtherance of this investigation.

At approximately 1700 hours, Airgas Plant Manager Osvaldo Cejas arrived on site and provided the investigator with a copy of DOT-SP 11186 (Exhibit 12). A review of the S/P revealed that paragraph 10.b. requires vessel stowage to conform to 49 CFR §176.76(g). Referencing this section of the HMR, the investigator found that §176.76(g)(4) mandates that "Portable tanks, cargo tanks, and tank cars containing cryogenic liquids must be stowed "on deck" regardless of the stowage authorized in §172.101 of this subchapter". Investigator Burns explained to all four (4) Airgas employees that failure to provide a copy of the S/P with the shipment directly affected the ability of the vessel operator to determine proper stowage requirements for the portable tank aboard the ship for transportation.

On May 21, 2008, Investigator Burns and Southern Region Chief John Heneghan continued the investigation at Airgas, located at 9030 N.W. 58th Street, Miami, Florida, 33178.

The primary contacts were Mr. Gustavo DeQuesada and Frank Zacherl, Esquire, of Shutts & Bowen LLP. Mr. DeQuesada explained the relationship with their customer and consignee of the shipment, AGA SA in South America, whereas Airgas ships a similar ISO portable tank to AGA SA approximately every one (1) to two (2) weeks filled with cryogenic argon. Airgas does not own the portable tanks, AGA SA leases them and ships them to Airgas to be filled and returned. Airgas uses the services of a contractor, Cryogenic Transportation, Inc. (CTI) to fill the portable tanks with refrigerated argon from a cargo tanker CTI brings on site at the Airgas facility, then Airgas contracts with a freight forwarder, Clover Systems, Inc. to export the portable tanks on Airgas' behalf. Mr. DeQuesada commented he did not understand how Airgas could be responsible for knowing about or ensuring compliance with the S/P when Airgas does not own the tanks, fill the tanks, or make export of the tanks. Chief Heneghan stated Airgas is responsible because they are the shipper of record and sign the shipper's certification; all the other entities are acting as agents on Airgas' behalf.

The investigators requested copies all documentation related to the shipment of portable tank JBKU 211007-4. Mr. DeQuesada provided the inbound shipping papers showing that JBKU 211007-4 arrived at Airgas from AGA SA with a "residue" of cryogenic argon on March, 13, 2008 (Exhibit 13, pages 3, 4). Mr. DeQuesada provided a copy of an outbound Bill of Lading (BOL), Pro-2061, dated 5/14/2008, and copy of the IMO DGD, which shows that Pro Transport, Inc. picked up the portable tank from Airgas in Miami and delivered it to Fort Lauderdale on booking #10024463 (Exhibit 13, pages 1, 2). Also provided were copies of the Airgas "Original Invoice" and "Delivery Order" verifying the order and sale of 20,520 kgs of Argon, Refrigerated Liquid, 2.2, UN1951, to AGA SA in Peru, South America (Exhibit 14). A copy of a CTI "Delivery Receipt" furnished by Mr. DeQuesada shows that on 5/14/08, 4,005 gallons of LAR (liquid argon) was supplied for JBKU 211007-4 (Exhibit 15). There was no copy or reference to S/P DOT-SP 11186 associated with any of this paperwork.

Mr. DeQuesada offered that prior to shipment; Airgas normally takes a few photographs of the ISO portable tanks with a digital camera for business purposes. The reason, he stated, was in the past Airgas and customer AGA SA had a disagreement about the quantity of product purchased and filled for AGA SA, verses what AGA SA received. Apparently some loss of product occurs during transportation. Additionally, Airgas has had to make repairs occasionally when an ISO portable tanks control cabinet becomes damaged. The photographs capture the portable tank's identification number and quantity reading on the fill gauges prior to shipment as well as the overall condition of the portable tank or any repairs that have been made (Exhibit 36, page 2 last paragraph). The photographs are then sent via e-mail by Airgas to AGA SA. Mr. DeQuesada provided the photographs for the shipment of portable tank JBKU 211007-4 in an e-mail to Chief Heneghan (Exhibit 16). The S/P number on the portable tank is visible in the photographs.

The investigators asked Mr. DeQuesada if he could recall seeing the S/P number DOT-SP 11186 marked on any previous ISO portable tanks shipped by Airgas. Mr. DeQuesada replied "no, not ever". Chief Heneghan requested Mr. DeQuesada to research his files and select at random four previous shipments and associated photographs.

Mr. DeQuesada provided a document package (Exhibit 17) and photographs (Exhibit 18) for a shipment of an ISO portable tank, container number JBKU-31101-6, that Airgas shipped to AGA SA in Ecuador on 4/15/08.

The document package contains a Pro Transport BOL showing the pickup from Airgas, a CTI Delivery Receipt, an IMO DGD and Airgas documents reflecting the sale and shipment of 20,250 kgs of UN1951, Argon, Refrigerated Liquid, 2.2. There was no copy or reference to S/P DOT-SP 11186 associated with any of this paperwork. Photographs were e-mailed to AGA SA on 4/14/08 (Exhibit 17, page 6). A review of the photographs by the investigators revealed that JBKU-31101-6 was marked DOT-E 11186.

Mr. DeQuesada provided a document package (Exhibit 19) and photographs (Exhibit 20) for a shipment of an ISO portable tank, container number JBKU-111027-5, that Airgas shipped to AGA S.A. in Peru on 3/19/08. The document package contains a Pro Transport BOL showing the pickup from Airgas, a CTI Delivery Receipt, an IMO DGD and Airgas documents reflecting the sale and shipment of 20,250 kgs of UN1951, Argon, Refrigerated Liquid, 2.2. There was no copy or reference to S/P DOT-SP 11186 associated with any of this paperwork. Photographs were e-mailed to AGA on 4/02/08 (Exhibit 19, pages 6, 7). A review of the photographs by the investigators revealed that JBKU-111027-5 was marked DOT-E 11186.

Mr. DeQuesada provided a document package (Exhibit 21) and photographs (Exhibit 22) for a shipment of an ISO portable tank, container number JBKU-312003-5, that Airgas shipped to AGA S.A. in Ecuador on 3/11/08. The document package contains a Pro Transport BOL showing the pickup from Airgas, a CTI Delivery Receipt, an IMO DGD and Airgas documents reflecting the sale and shipment of 20,250 kgs of UN1951, Argon, Refrigerated Liquid, 2.2. There was no copy or reference to S/P DOT-SP 11186 associated with any of this paperwork. Photographs were e-mailed to AGA on 3/10/08 (Exhibit 21, pages 6, 7). A review of the photographs by the investigators revealed that JBKU-312003-5 was marked DOT-E 11186.

Mr. DeQuesada provided a document package (Exhibit 23) for a shipment of an ISO portable tank, container number JBKU-114003-2, that Airgas shipped to AGA S.A. in Ecuador on 4/11/08. The document package contains a Pro Transport BOL showing the pickup from Airgas, a CTI Delivery Receipt, an IMO DGD and Airgas documents reflecting the sale and shipment of 20,250 kgs of UN1951, Argon, Refrigerated Liquid, 2.2. There was no copy or reference to S/P DOT-SP 11186 associated with any of this paperwork. However, there were no photographs available for this shipment.

A copy of a Material Safety Data Sheet (MSDS) for argon was obtained from Mr. DeQuesada which confirms the shipping description as UN1951, Argon, Refrigerated Liquid, 2.2 (Exhibit 24, page 3).

On July 1, 2008, Hazardous Materials Investigators Robert Burns and Sean Lynum conducted a document review at Airgas' freight forwarder, Clover Systems, Inc. (Clover), 1910 N.W. 97th Avenue, Miami, Florida, 33172. General Manager Mabel Villiers provided all the documents in Clover's possession (Exhibit 25) relating to the shipment of the ISO portable tank JBKU 211007-4, on May 14, 2008, from Airgas. These documents include Airgas' IMO DGD and Delivery Order, the Pro Transport, Inc. BOL, Clover's BOL, booking documents for booking #10024463 on the Madeleine Voyage 87SB, and Clover's internal database printout of the history of this shipment. The investigators noted that there was no copy or reference to S/P DOT-SP 11186 associated with any of this paperwork. Ms. Villiers stated that she had provided copies of all the documents that were furnished to Clover by Airgas.

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On July 1, 2008, investigators Burns and Lynam conducted a document review at the cartage agent Clover contracted with to transport JBKU 211007-4 from the Airgas facility in Miami to Port Everglades. Pro Transport, Inc. (Pro) is located at 10800 N.W. South River Drive, Miami, Florida, 33178. President Oscar Acharandio provided all the documents (Exhibit 26) relating to his company's involvement with the transportation of portable tank JBKU 211007-4 on May 14, 2008, to Port Everglades. These documents include Airgas' IMO DGD, the Pro Transport, Inc. BOL, a booking document for booking #10024463 on the Madeleine Voyage 87SB, and Pro's Invoice, number 26549, for transportation services billed to Clover. The investigators noted that there was no copy or reference to S/P DOT-SP 11186 associated with any of this paperwork. Mr. Acharandio stated that he had provided copies of all the documents that were furnished to Pro by Clover.

In summary, by failing to provide the S/P to the carrier, which would then be forwarded to the vessel operator, Airgas failed to notify the parties involved of the stowage requirements outlined in DOT-SP 11186. The S/P requires that the portable tank be stowed on a vessel in conformance with 49 CFR §176.76(g). This section requires that tanks containing cryogenic liquids must be stowed "on deck". The intended final leg of transportation was tendered under the International Maritime Dangerous Goods Code (IMDG) whereby Packing Instruction 203 states that cryogenic receptacles shall conform to the requirements approved by the competent authority; therefore the S/P issued by DOT/PHMSA takes precedence over the IMDG code. The failure by Airgas to provide a copy of the S/P with the shipment directly affected the ability of the vessel operator to determine proper stowage requirements for the portable tank, and indirectly contributed to the deaths of the transportation workers.

49 CFR §173.22a(b) & (c) state in part, "(b) If an exemption or special permit authorizes the use of a packaging for the transportation of a hazardous material by any person or class of persons other than or in addition to the holder of the exemption or special permit, that person or a member of that class of persons may use the packaging for the purposes authorized in the exemption or special permit subject to the terms specified therein.

(c) When an exemption or special permit issued to a person who offers a hazardous material contains requirements that apply to a carrier of the hazardous material, the offeror shall furnish a copy of the current exemption or special permit to the carrier before or at the time a shipment is tendered."

DOT-SP 11186(8)(b) states "A person who is not a holder of this special permit, but receives a package covered by this special permit, may reoffer it for transportation provided no modification or change is made to the package or its contents and it is offered for transportation in conformance with this special permit and the HMR."

DOT-SP 11186(10)(a) states "A current copy of this special permit must be carried aboard each cargo vessel or motor vehicle used to transport packages covered by this special permit."

Letters of corrective action were received (Exhibits 35 & 36), dated June 22, 2008 and August 21, 2008, from Mr. Zacherl, legal counsel for Airgas. The response asks for consideration of the fact that Airgas furnished an MSDS concerning the properties of argon to the freight forwarder in advance of the incident on May 20, 2008 (Exhibit 35). Extensive documentation was included to demonstrate the history of the company's existing safety and training program, and major improvements to the program, which includes hazardous materials training for DOT S/P's.

The response demonstrates that as a result of the accident in Port Everglades, Airgas has reviewed and enhanced the company's internal procedures for shipping hazardous materials; developed and implemented new Standard Operating Procedures (SOP's) specifically relating to the inspection and shipping of ISO tanks covered by DOT S/P's, and conducted a system wide hazardous materials function-specific training program on S/P's and shipping of ISO portable tanks under DOT-SP 11186. Copies of a recent shipment of an ISO portable tank was included which shows that DOT-SP 11186 was furnished with the shipping paper (Exhibit 36, pages 38-69). The corrective actions appear to be sufficient to correct the violation and prevent further violations of this nature.

Violation Number: 2

Number Discovered: 5

49 CFR Section:

171.1(b)(7)
171.2(a), (b), (e) & (i)
172.200(a)
172.203(a).

Exhibit: 9, 17 Through 23, 35, 36

Violation Description:

Offering for transportation in commerce, a hazardous material, Argon, Refrigerated Liquid, 2.2, UN1951, in a packaging which is governed under the provisions of a DOT Special Permit, number DOT-SP 11186, and accompanied by shipping papers which fail to include the Special Permit number in association with the shipping description, in violation of 49 CFR §171.1(b)(7), §171.2(a), (b), (e) & (i), §172.200(a) and §172.203(a).

Evidence Summary:

It has been established in Violation 1 of this report that Airgas was unaware the ISO portable tanks they have been shipping were covered by DOT-SP 11186 Special Permit (S/P) and were failing to provide a copy of the S/P to the carrier. Equally, Airgas failed to identify the S/P number on the shipping paper for the shipment involved in the accident in Port Everglades on May 20, 2008, and for four (4) other shipments sampled by the PHMSA investigators during the investigation. A review of these shipments is as follows:

During the on-site investigation in Port Everglades, Investigator Burns requested copies of any shipping documents or paperwork that was available concerning the shipment of portable tank JBKU 211007-4 that was marked DOT-E 11186. Detective Torres from the BCSO provided an original IMO DGD, dated 5/13/08, that described a shipment of 20,520 kgs, 1 unit, UN1951, ISO, Argon, Refrigerated Liquid, Class 2.2 (Exhibit 9), with a destination of AGA SA Peru, AV Nester Gambetta 880, Callao, Peru. The shipper was listed as Airgas South-Miami and the declaration was signed by Gustavo DeQuesada on behalf of Airgas. Investigator Burns noted there was no S/P number associated with the shipping description.

During the investigation at the Airgas facility in Miami, Chief Heneghan requested Mr. DeQuesada to research his files and select at random four previous shipments of ISO portable tanks containing cryogenic argon.

Mr. DeQuesada provided a document package (Exhibit 17) and photographs (Exhibit 18) for a shipment of an ISO portable tank, container number JBKU-31101-6, that Airgas shipped to AGA SA in Ecuador on 4/15/08. The document package contains a Pro Transport BOL showing the pickup from Airgas, a CTI Delivery Receipt, an IMO DGD and Airgas documents reflecting the sale and shipment of 20,250 kgs of UN1951, Argon, Refrigerated Liquid, 2.2.

The investigators noted there was no S/P number associated with the shipping description or reference to S/P DOT-SP 11186 associated with any of this paperwork. A review of the photographs by the investigators revealed that JBKU-31101-6 was marked DOT-E 11186.

Mr. DeQuesada provided a document package (Exhibit 19) and photographs (Exhibit 20) for a shipment of an ISO portable tank, container number JBKU-111027-5, that Airgas shipped to AGA SA in Peru on 3/19/08. The document package contains a Pro Transport BOL showing the pickup from Airgas, a CTI Delivery Receipt, an IMO DGD and Airgas documents reflecting the sale and shipment of 20,250 kgs of UN1951, Argon, Refrigerated Liquid, 2.2. The investigators noted there was no S/P number associated with the shipping description or reference to S/P DOT-SP 11186 associated with any of this paperwork. A review of the photographs by the investigators revealed that JBKU-111027-5 was marked DOT-E 11186.

Mr. DeQuesada provided a document package (Exhibit 21) and photographs (Exhibit 22) for a shipment of an ISO portable tank, container number JBKU-312003-5, that Airgas shipped to AGA S.A. in Ecuador on 3/11/08. The document package contains a Pro Transport BOL showing the pickup from Airgas, a CTI Delivery Receipt, an IMO DGD and Airgas documents reflecting the sale and shipment of 20,250 kgs of UN1951, Argon, Refrigerated Liquid, 2.2. The investigators noted there was no S/P number associated with the shipping description or reference to S/P DOT-SP 11186 associated with any of this paperwork. A review of the photographs by the investigators revealed that JBKU-312003-5 was marked DOT-E 11186.

Mr. DeQuesada provided a document package (Exhibit 23) for a shipment of an ISO portable tank, container number JBKU-114003-2 that Airgas shipped to AGA SA in Ecuador on 4/11/08. The document package contains a Pro Transport BOL showing the pickup from Airgas, a CTI Delivery Receipt, an IMO DGD and Airgas documents reflecting the sale and shipment of 20,250 kgs of UN1951, Argon, Refrigerated Liquid, 2.2. The investigators noted there was no S/P number associated with the shipping description or reference to S/P DOT-SP 11186 associated with any of this paperwork. However, there were no photographs available for this shipment.

Although these documents reflect the proper shipping description, the investigators noted that none of the shipping documents display the S/P number in association with the shipping description. Mr. DeQuesada, the main shipping clerk who signed all of these shipping papers stated during the investigation that he was unaware of the applicable S/P and the requirements associated with it.

In summary, the ISO portable tanks previously identified are clearly marked DOT-E 11186 yet Airgas employees failed to recognize that and follow through in communicating it to the transportation sector. Marking of an S/P number on a shipping paper is an alert to those involved that special handling is required for that shipment and a special document is needed to determine those requirements. Had the shipping paper for portable tank JBKU 211007-4 been clearly marked DOT-SP 11186, would have provided a transportation worker the opportunity to recognize a special document was needed and in the absence of that document, discontinue movement of the shipment until the document could be obtained, and the special requirements determined. As with the first violation, the failure by Airgas to carry out the communication requirements at the start of the transportation cycle did not allow persons involved with the shipment of the portable tank to be aware of the S/P and react accordingly.

49 CFR §172.203(a) states in part, "Each shipping paper issued in connection with a shipment made under a special permit must bear the notation "DOT-SP" followed by the special permit number assigned and located so that the notation is clearly associated with description to which the special permit applies."

Letters of corrective action were received (Exhibits 35 & 36), dated June 22, 2008 and August 21, 2008, from Mr. Zacherl, legal counsel for Airgas. Extensive documentation was included to demonstrate the history of the company's existing safety and training program, and major improvements to the program, which includes hazardous materials training for DOT S/P's. Copies of recent shipping papers were included that show how DOT-SP 11186 is now displayed on the shipping paper (Exhibit 36, pages 38-69). The response demonstrates that as a result of the accident in port Everglades, Airgas has reviewed and enhanced the company's internal procedures for shipping hazardous materials; developed and implemented new Standard Operating Procedures (SOP's) specifically relating to the inspection and shipping of ISO tanks covered by DOT S/P's, and conducted a system wide hazardous materials function-specific training program on S/P's and shipping of ISO tanks under DOT-SP 11186. The corrective actions appear to be sufficient to correct the violation and prevent further violations of this nature.

Violation Number: 3

Number Discovered: 5

49 CFR Section:

171.2(a), (b), (e) & (i)

173.22a(b)

DOT-SP 11186(10)(b)(2) & (3).

Exhibit: 9, 12, 17 Through 23, 27, 35, 36

Violation Description:

Offering for transportation in commerce, a hazardous material, Argon, Refrigerated Liquid, 2.2, UN1951, in a packaging which is governed under the provisions of a DOT Special Permit, number DOT-SP 11186, while failing to comply with the requirements of DOT-SP 11186 by describing additional information on the shipping papers prior to shipment in violation of 49 CFR §171.2(a), (b), (e) & (i), §173.22a(b) and DOT-SP 11186(10)(b)(2) & (3).

Evidence Summary:

During the course of examining the shipping papers discussed in Violations 1 and 2 of this report, the PHMSA investigators noted that in addition to failing to list the Special Permit S/P number of the shipping papers, two (2) key record-keeping elements specifically required by DOT-SP 11186 were not documented in any of the paperwork; display of the portable tanks one-way-travel-time (OWTT) and a record created of the tanks pressure and ambient (outside) temperature prior to shipment. A review of these shipping papers is as follows:

During the on-site investigation at Port Everglades on May 20, 2008, Investigator Burns requested copies of any shipping documents or paperwork that was available concerning the shipment of portable tank JBKU 211007-4 that was marked DOT-E 11186. Detective Torres from the BCSO provided an original IMO DGD, dated 5/13/08, that described a shipment of 20,520 kgs, 1 unit, UN1951, ISO, Argon, Refrigerated Liquid, Class 2.2 (Exhibit 9), with a destination of AGA SA Peru, AV Nester Gambetta 880, Callao, Peru. The shipper was listed as Airgas South-Miami and the declaration was signed by Gustavo DeQuesada on behalf of Airgas. Investigator Burns noted that none of these documents reflect the portable tanks one-way-travel-time (OWTT) or the tanks pressure and ambient temperature at the start of the trip as required by DOT-SP 11186(10)(b)(2) & (3).

Investigator Burns noted while inspecting the specification plates on portable tank JBKU 211007-4, that the Maximum Rated Holding Time (MRHT) for UN1951, liquid argon was 1,719 hours (Exhibit 27, pages 4, 5). DOT-SP 11186(10)(b)(2) requires that the one-way-travel-time (OWTT) be marked on the shipping papers and gives the formula of $OWTT = MRHT - 24$ hours (Exhibit 12, page 7). Under these circumstances, the shipping papers should have identified a OWTT of 1,695 hours but the shipping papers did not identify this information. Additionally, no indication of the portable tanks pressure and ambient temperature was apparent on any of the paperwork provided to the investigator.

During the investigation at the Airgas facility in Miami, Chief Heneghan requested Mr. DeQuesada to research his files and select at random four previous shipments of ISO portable tanks containing cryogenic argon.

Mr. DeQuesada provided a document package (Exhibit 17) and photographs (Exhibit 18) for a shipment of an ISO portable tank, container number JBKU-31101-6, that Airgas shipped to AGA SA in Ecuador on 4/15/08. The document package contains a Pro Transport BOL showing the pickup from Airgas, a CTI Delivery Receipt, an IMO DGD and Airgas documents reflecting the sale and shipment of 20,250 kgs of UN1951, Argon, Refrigerated Liquid, 2.2. Not apparent in any of the paperwork was display of the portable tanks one-way-travel-time (OWTT) and a record created of the tanks pressure and ambient (outside) temperature prior to shipment. A review of the photographs by the investigators revealed that JBKU-31101-6 was marked DOT-E 11186.

Mr. DeQuesada provided a document package (Exhibit 19) and photographs (Exhibit 20) for a shipment of an ISO portable tank, container number JBKU-111027-5, that Airgas shipped to AGA SA in Peru on 3/19/08. The document package contains a Pro Transport BOL showing the pickup from Airgas, a CTI Delivery Receipt, an IMO DGD and Airgas documents reflecting the sale and shipment of 20,250 kgs of UN1951, Argon, Refrigerated Liquid, 2.2. Not apparent in any of the paperwork was display of the portable tanks one-way-travel-time (OWTT) and a record created of the tanks pressure and ambient (outside) temperature prior to shipment. A review of the photographs by the investigators revealed that JBKU-111027-5 was marked DOT-E 11186.

Mr. DeQuesada provided a document package (Exhibit 21) and photographs (Exhibit 22) for a shipment of an ISO portable tank, container number JBKU-312003-5, that Airgas shipped to AGA SA in Ecuador on 3/11/08. The document package contains a Pro Transport BOL showing the pickup from Airgas, a CTI Delivery Receipt, an IMO DGD and Airgas documents reflecting the sale and shipment of 20,250 kgs of UN1951, Argon, Refrigerated Liquid, 2.2. Not apparent in any of the paperwork was display of the portable tanks one-way-travel-time (OWTT) and a record created of the tanks pressure and ambient (outside) temperature prior to shipment. A review of the photographs by the investigators revealed that JBKU-312003-5 was marked DOT-E 11186.

Mr. DeQuesada provided a document package (Exhibit 23) for a shipment of an ISO portable tank, container number JBKU-114003-2 that Airgas shipped to AGA SA in Ecuador on 4/11/08. The document package contains a Pro Transport BOL showing the pickup from Airgas, a CTI Delivery Receipt, an IMO DGD and Airgas documents reflecting the sale and shipment of 20,250 kgs of UN1951, Argon, Refrigerated Liquid, 2.2. Not apparent in any of the paperwork was display of the portable tanks one-way-travel-time (OWTT) and a record created of the tanks pressure and ambient (outside) temperature prior to shipment. However, there were no photographs available for this shipment.

Mr. DeQuesada stated during the investigation that he was unaware of the S/P and the requirements associated with it.

In summary, Airgas failed to comply with the requirements of DOT-SP 11186 by not documenting two key record-keeping elements for five (5) separate shipments;

display of the portable tanks one-way-travel-time (OWTT) on the shipping papers and a record created of the tanks pressure and ambient temperature prior to shipment.

§173.22a(b) states in part, "If an exemption or special permit authorizes the use of packaging for the transportation of a hazardous material by any person or class of persons other than or in addition to the holder of the exemption or special permit, that person or a member of that class of persons may use the packaging for the purposes authorized in the exemption or special permit subject to the terms specified therein."

DOT-SP 11186(10)(b)(2) & (3) states that "The legend "one-Way Travel Time ___ Hours" must be marked on the shipping paper or on the dangerous cargo manifest immediately after the container description. The OWTT is determined by the formula: $OWTT = MRHT - 24 \text{ hours}$. A written record of the portable tank's pressure and ambient (outside) temperature at the following times must be prepared for each shipment: (i) At the start of each trip; (ii) immediately before and after any manual venting; (iii) At least every 24 hours; and (iv) At the destination point."

Letters of corrective action were received (Exhibits 35 & 36), dated June 22, 2008 and August 21, 2008, from Mr. Zacherl, legal counsel for Airgas. The response asks for consideration of the fact that Airgas creates a record of the ISO portable tanks pressure prior to shipment by taking a photograph of the pressure gauge indicating the inner shell pressure of the tank (Exhibit 35). Extensive documentation was included to demonstrate the history of the company's existing safety and training program, and major improvements to the program, which includes hazardous materials training for DOT S/P's. Copies of a recent shipment was included (Exhibit 36, pages 38-69) that show how the OWTT is marked on the shipping papers and how a new "ISO Pressure/Temperature Fill Log" that corresponds to the container number and customer is supplied for ISO tank shipments under DOT-SP 11186. The response demonstrates that as a result of the accident in port Everglades, Airgas has reviewed and enhanced the company's internal procedures for shipping hazardous materials; developed and implemented new Standard Operating Procedures (SOP's) specifically relating to the inspection and shipping of ISO tanks covered by DOT S/P's, and conducted a system wide hazardous materials function-specific training program on S/P's and shipping of ISO tanks under DOT-SP 11186. The corrective actions appear to be sufficient to correct the violation and prevent further violations of this nature.

Violation Number: 4

Number Discovered: 1

49 CFR Section:

171.2(a), (b), (e) & (i), 173.22(a)(2)(i)(v)
173.22a(b), 173.32(e)(3)(4)
173.318(b)(1)(ii), 173.318(b)(7)(iii)
173.318(b)(10)(ii)
DOT-SP 11186(7)(c)(1)

Exhibit: 7, 8, 10, 11, 13, 15, 28 Through 31, 35, 36

Violation Description:

Offering for transportation in commerce, a hazardous material, Argon, Refrigerated Liquid, 2.2, UN1951, in an unauthorized DOT-SP 11186 Special Permit portable tank which had a pressure relief system with external adjustment valves with broken tamper evident seals. Failing to conduct an external inspection of all emergency devices of a portable tank for corrosion, distortion, or any damage or defect that could prevent their normal operation prior to offering the portable tank for transportation, in violation of 49 CFR §171.2(a), (b), (e) & (i), §173.22(a)(2)(i)(v), §173.22a(b), §173.32(e)(3)(4), §173.318(b)(1)(ii), §173.318(b)(7)(iii), §173.318(b)(10)(ii) and DOT-SP 11186(7)(c)(1).

Evidence Summary:

During the course of examining portable tank JBKU 211007-4 on May 20, 2008, at Pier 30 in Port Everglades, Florida, Investigator Burns gleaned from the specification plates that the portable tank was specified by design type as DOT-338-E 11186 (Exhibit 7, pages 10-12, Exhibit 29 & Exhibit 31). The portable tank was marked ARGON REFRIGERATED LIQUID (Exhibit 7), and displayed Class 2 Non-Flammable Gas placards with identification number "1951" affixed on orange panels. The investigator also observed that the portable tank was marked on each side "DOT-E 11186" (Exhibit 7, pages 4, 6, 9).

Investigator Burns noted that the exterior supply piping extending from the tank and most of the exterior lines were in a frozen state (Exhibit 8). Lt. Dixon and Detective Torres both stated that the tank was removed from the ship in this manner except that the portable tank was observed venting intensely for several hours through a small vent at the end of the tank (Exhibit 8, page 8) but had since discontinued that.

The investigator determined from the portable tanks pressure gauge that the inner shell pressure was 270.48 pounds per square inch (psi) and seriously over pressurized. The gauge displayed pressure readings in the metric unit of "bar" and was showing 18.4 bar (Exhibit 28). The pressure was determined by the investigator performing a calculation of 18.4 bar times a conversion factor to psi of 14.504, which equals 266.87 psi (18.4 x 14.504 = 266.87). Conversely, the investigator noted from the Identity Data Plate and a separate specification plate that the maximum allowable working pressure was 150 psi (10.3 bar) (Exhibit 29, pages 4, 9 & Exhibit 31). The tank was almost two (2) times its maximum allowable working pressure and Investigator Burns still considered the tank as a safety concern.

Investigator Burns alerted Lt. Dixon and Detective Torres of the danger and also informed the representatives from Airgas who were present, Supervisor Jose Montes, Account Manager Gustavo DeQuesada, and Technician Woodruff Nelson. This investigator also discussed the danger during a telephone conversation with Duane Young from Airgas' corporate safety office. Mr. Young agreed with Investigator Burns that the portable tank was posing a continuing danger to public safety and needed to be relieved. The investigator asked Technician Nelson if he knew the proper procedure to safely purge the portable tank to a level below the maximum allowable working pressure. Mr. Nelson replied "yes" and explained which valves would be opened and what would occur. After conferring with all of the emergency responders on the scene, Investigator Burns instructed Mr. Nelson to vent the portable tank to 40 psi. This process took approximately twenty (20) minutes then the portable tank was transported to a secure location on the port for further investigation.

The investigator observed the portable tank was marked as being within the five (5) year periodic inspection requirement (Exhibit, 29 page 10) and this fact was also confirmed by the Tank Container Inspection Report for JBKU 211007-4 (Exhibit 10), which was provided to this investigator upon arrival to the scene. Investigator Burns observed that the portable tank was equipped with three (3) emergency pressure relief devices placed at the top of the tank in series (Exhibit 7, page 6 & Exhibit 30, page 1). A review of the Certificates of Conformance for the portable tank's pressure relief devices (Exhibit 11) by the investigator revealed that two (2) of the valves were certified as set to function at 151.1 and 150.2 psi (150 psi) and the third was set to open at 201.7 psi (200 psi). However, all three (3) of these valves failed to function as certified as Investigator Burns and others witnessed the pressure in the portable tank reach 270.48 psi prior to purging.

In the course of examining and photographing portable tank JBKU 211007-4, Investigators Burns and Heneghan noted that all three (3) pressure relief devices had been tampered with. The devices had external adjustment valves with broken tamper-evident lead seals. In addition, these pressure relief valves were not plainly and permanently marked with the pressure, in psig, at which they were set to discharge due to corrosion that obliterated two (2) of the valves identification tags and the third valve had its identification tag completely missing. (Exhibit 30).

During the investigation, Airgas did not believe that they were responsible for the portable tanks condition since they did not fill the tank with product and did not own the tank. The tank was delivered to Airgas on March 13, 2008 (Exhibit 13, pages 3 & 4) and was at their facility for a month until it was provided to Cryogenic Transportation, Inc. (CTI) to be filled on April 14, 2008 (Exhibit 15). The investigators explained that it was not CTI's decision to offer the tank for shipment and therefore CTI had no responsibility in determining compliance for transportation.

In summary, the pressure relief devices attached to this portable tank were not in good repair and in proper configuration for shipment. They are an integral part of the tank but were not readily identifiable in terms of their service function or sealed in a manor to operate as certified. Therefore, the integrity of the portable tanks system was compromised, making the portable tank no longer an unauthorized package for transportation. The devices did not function as required when needed, either by tampering or disrepair, forcing the tank to vent outside its normal pressure relief system in the lower cargo hold of the cargo vessel.

Had the shipper, Airgas, performed the necessary inspections of the tank and its components prior to shipment, they would have had the opportunity to identify that the devices were not suitable for transportation as a safety feature for a bulk package containing hazardous material in transportation.

49 CFR §173.22(a)(2)(i)(v) states in part, "Except as otherwise provided in this part, a person may offer a hazardous material for transportation in a packaging or container required by this part only in accordance with the following:

(2) The person shall determine that the packaging or container is an authorized packaging, including Part 173 requirements, and that it has been manufactured, assembled, and marked in accordance with:

(i) Section 173.7(a) and Parts 173, 178, or 179 of this subchapter; (v) An exemption or special permit issued under Subchapter A of this chapter."

49 CFR §173.32(e)(3)(4) states in part, "Each portable tank must be given a complete external inspection prior to filling. Any unsafe condition must be corrected prior to it's being filled and offered for transportation. The external inspection shall include a visual inspection of:

(3) All emergency devices for corrosion, distortion, or any damage or defect that could prevent their normal operation;

(4) All required markings on the tank for legibility."

49 CFR §173.318(b)(1)(ii) states in part, "Tanks in helium and atmospheric gas (except oxygen) cryogenic liquid service. For a tank used in helium and atmospheric gas (except oxygen) cryogenic liquid service, the tank must be protected by at least one pressure relief system consisting of:

[A] One or more pressure relief valves; or

[B] A combination of one or more pressure relief valves and one or more frangible discs."

49 CFR §173.318(b)(7)(iii) states in part, "Each pressure relief valve must be designed and located to minimize the possibility of tampering. If the pressure setting or adjustment is external to the valve, the valve adjustment must be sealed."

49 CFR §173.318(b)(10)(ii) states in part, "Each pressure relief valve must be plainly and permanently marked with the pressure, in psig, at which it is set-to-discharge, the discharge rate of the device in SCF per minute (SCFM) of free air, and the manufacturer's name or trade name and catalog number. The marked set-to-discharge pressure valve must be visible with the valve in its installed position. The rated discharge capacity of the device must be determined at a pressure of 120 percent of the design pressure of the tank."

DOT-SP 11186(7)(c)(1) states "Each portable tank must be prepared and shipped as required in §173.318, as applicable for the lading."

Letters of corrective action were received (Exhibits 35 & 36), dated June 22, 2008 and August 21, 2008, from Mr. Zacherl, legal counsel for Airgas. Extensive documentation was included to demonstrate the history of the company's existing safety and training program, and major improvements to the program, which includes hazardous materials training for DOT S/P's. Copies of revised Standard Operating Procedures (SOP's) were provided (Exhibit 36, pages 8-21) which describe preparation and inspection procedures for ISO tanks and their related pressure relief devices.

The response demonstrates that as a result of the accident in port Everglades, Airgas has reviewed and enhanced the company's internal procedures for shipping hazardous materials; developed and implemented new SOP's specifically relating to the inspection and shipping of ISO tanks covered by DOT S/P's, and conducted a system wide hazardous materials function-specific training program on S/P's and shipping of ISO tanks under DOT-SP 11186. The corrective actions appear to be slightly deficient in that the SOP requires inspection of relief devices for tampering but does not go further in requiring inspection of the valve identification plates for corrosion, distortion, etc.

Note: In the first letter of corrective action (Exhibit 35, page 3), dated June 22, 2008, from Mr. Frank Zacherl, legal counsel for Airgas, Mr. Zacherl asked PHMSA for clarification of language in the PHMSA Exit Briefing concerning "offering a cryogenic liquid, Argon...[in a] portable tank which had a pressure relief system with an external adjustment valve with broken tamper evident seals" and the ISO "vented in a means outside the normal pressure relief system". On July 22, 2008, Investigator Burns provided these clarifications to Mr. Zacherl in a certified letter (Exhibit 32).

Violation Number: 5

Number Discovered: 1

49 CFR Section:

171.2(a), (b), (e) & (i)
173.301(a)(1)
172.326(a), 72.332(a),
172.504(a), 172.516(c)(1)

Exhibit: 7, 16, 33, 35, 36

Violation Description:

Offering for transportation in commerce, a hazardous material, Argon, Refrigerated Liquid, 2.2, UN1951, in a portable tank which had an identification number on an orange panel that was not legible, an obscure proper shipping name and a damaged placard, in violation of §171.2(a), (b), (e) & (i), §173.301(a)(1), §172.326(a), §172.332(a), §172.504(a), §172.516(c)(1).

Evidence Summary:

In the course of examining and photographing portable tank JBKU 211007-4 on site in Port Everglades, Investigators Burns and Heneghan noted that the side of the tank with the control cabinet displayed improper markings and placards. Specifically, an orange panel was torn and missing part of the identification number, a Class 2 Non-Flammable gas placard was missing completely, and the proper shipping name, Argon, Refrigerated Liquid, was faded and difficult to read (Exhibit 7, page 4).

Photographs sent by Mr. DeQuesada via e-mail to the consignee, AGA SA, on May 14, 2008, and forwarded to Chief Heneghan depict that the portable tank was offered for transportation in this manner. The photographs taken by Airgas prior to shipment show that the tank displayed damaged placards and indistinct markings before the tank left Airgas' facility (Exhibit 16, page 2). Part of the placard was visible although torn and missing approximately half of the placard. The other half of the placard had fallen off during the accident as Investigator Burns discovered it at the bottom of the cargo hold onboard the cargo vessel Madeleine, during the on-site investigation on May 20, 2008 (Exhibit 33, pages 3, 4, 6).

In summary, Airgas offered a portable tank for transportation that was not properly marked and placarded for the hazard it contained.

49 CFR §172.332(a) states "When required by §172.301, §172.302, §172.313, §172.326, §172.328, §172.330, or §172.331, identification number markings must be displayed on orange panels or placards as specified in this section, or on white square-on-point configurations as prescribed in §172.336(b)."

49 CFR §172.326(a) states "No person may offer for transportation or transport a portable tank containing a hazardous material unless it is legibly marked on two opposing sides with the proper shipping name specified for the material in the §172.101 Table."

49 CFR §172.504(a) states "Except as otherwise provided in this subchapter, each bulk packaging, freight container, unit load device, transport vehicle or rail car containing any quantity of a hazardous material must be placarded on each side and each end with the type of placards specified in Tables 1 and 2 of this section and in accordance with other placarding requirements of this subpart, including the specifications for the placards named in the tables and described in detail in §172.519 through §172.560."

49 CFR §172.516(c)(1) states in part, "Each placard on a transport vehicle, bulk packaging, freight container or aircraft unit load device must — (1) Be securely attached or affixed thereto or placed in a holder thereon."

49 CFR §173.301(a)(1) states in part, "Compressed gases must be in UN pressure receptacles built in accordance with the UN standards or in metal cylinders and containers built in accordance with the DOT and ICC specifications and Part 178 of this subchapter in effect at the time of manufacture, and requalified and marked as prescribed in Subpart C in Part 180 of this subchapter, if applicable."

Letters of corrective action were received (Exhibits 35 & 36), dated June 22, 2008 and August 21, 2008, from Mr. Zacherl, legal counsel for Airgas. Extensive documentation was included to demonstrate the history of the company's existing safety and training program, and major improvements to the program, which includes hazardous materials training. Copies of function-specific training for Mr. Gustavo DeQuesada and others at the Miami facility (Exhibit 35, pages 15-114 & Exhibit 36, pages 22-26) were provided which documents the remedial training conducted by the Airgas corporate safety office concerning DOT S/Ps and the company's procedures for initiating shipments under DOT-SP 11186. Part of the training specifically addresses ensuring that proper marking and placarding of ISO tanks is verified prior to shipment. The response demonstrates that as a result of the accident in port Everglades, Airgas has reviewed and enhanced the company's internal procedures for shipping hazardous materials; developed and implemented new Standard Operating Procedures (SOP's) specifically relating to the inspection and shipping of ISO tanks covered by DOT S/P's, and conducted a system wide hazardous materials function-specific training program on S/P's and shipping of ISO tanks under DOT-SP 11186. The corrective actions appear to be sufficient to correct the deficiency and prevent further violations of this nature.

Violation Number: 6

Number Discovered: 1

49 CFR Section:

171.2(a), (b), (e) & (i)
172.702(a)
172.704(a)(2) & (d)
173.22a(b)
DOT-SP 11186(11)(b)

Exhibit: 7, 9, 16 Through 23, 34 Through 36

Violation Description:

Offering for transportation in commerce, a hazardous material, Argon, Refrigerated Liquid, 2.2, UN1951, in a packaging which is governed under the provisions of a DOT Special Permit, number DOT-SP 11186, while failing to provide function-specific training concerning requirements contained in the Special Permit that are specifically applicable to the functions the employee performs for shipment of hazardous materials in that packaging, in violation of §171.2(a), (b), (e) & (i), §172.702(a), §172.704(a)(2) & (d), §173.22a(b) and DOT-SP 11186(11)(b).

Evidence Summary:

During this investigation, the PHMSA investigators requested hazardous materials training documents and records for the Airgas hazardous materials employee, Mr. Gustavo DeQuesada, that signed and certified all five (5) shipping papers (Exhibits 9, 17, 19, 21, 23) for the shipments identified in Violations 1 through 5 of this report. Each of these shipments consisted of an ISO portable tank containing 20,520 kgs of UN1951, Argon, Refrigerated Liquid, Class 2.2, governed in transportation by DOT-SP 11186 (Exhibits 7, 16, 18, 20, 22).

Mr. DeQuesada provided the hazardous materials training records but the records were generic in nature for air and ocean transport and did not reflect function-specific training for requirements of DOT Special Permits (S/P), and specifically the requirements of DOT-SP 11186 (Exhibit 34). Additionally, the records did not reflect training for handling of ISO portable tanks and the details that involve their preparation for shipment. Mr. DeQuesada stated during the investigation that he was unaware of the S/P and the requirements associated with it.

In summary, there was no evidence furnished that this employee received training regarding the use and application of DOT-SP 11186, which became obvious by the lack of knowledge displayed during the course of this investigation. Had Mr. DeQuesada received the benefit of this training from Airgas, the communication breakdown in the transportation system may not have occurred.

§49 CFR 172.704(a)(2) states in part, "Each hazmat employee must be provided function-specific training concerning requirements of this subchapter, or exemptions or special permits issued under subchapter A of this chapter, that are specifically applicable to the functions the employee performs."

§173.22a(b) states in part, "If an exemption or special permit authorizes the use of packaging for the transportation of a hazardous material by any person or class of persons other than or in addition to the holder of the exemption or special permit, that person or a member of that class of persons may use the packaging for the purposes authorized in the exemption or special permit subject to the terms specified therein."

DOT-SP 11186(11)(b) states "Each hazmat employee, as defined in §171.8 who performs a function subject to this special permit must receive training on the requirements and conditions of this special permit in addition to training required by §172.700 through §172.704."

Letters of corrective action were received (Exhibits 35 & 36), dated June 22, 2008 and August 21, 2008, from Mr. Zacherl, legal counsel for Airgas. The response states that Mr. Gustavo DeQuesada had received training on DOT S/P's through the company's corporate safety program and by a third-party training contractor (Exhibit 35). Extensive documentation was included to demonstrate the history of the company's existing safety and training program, and major improvements to the program, which includes hazardous materials training for DOT S/P's. Copies of function-specific training for Mr. Gustavo DeQuesada and others at the Miami facility (Exhibit 35, pages 15-114 & Exhibit 36, pages 27-37) were provided which documents the remedial training conducted by the Airgas corporate safety office concerning DOT S/Ps and the company's procedures for initiating shipments under DOT-SP 11186. The response demonstrates that as a result of the accident in port Everglades, Airgas has reviewed and enhanced the company's internal procedures for shipping hazardous materials; developed and implemented new Standard Operating Procedures (SOP's) specifically relating to the inspection and shipping of ISO tanks covered by DOT S/P's, and conducted a system wide hazardous materials function-specific training program on S/P's and shipping of ISO tanks under DOT-SP 11186. The corrective actions appear to be sufficient to correct the deficiency and prevent further violations of this nature.

Additional Information Pertaining to the Inspection:

1. The failure of the portable tank to perform its containment function is still under investigation. Testing of the tank and its pressure relief devices has been performed by order of the USCG at Airgas' expense. USCG, OSHA & PHMSA are awaiting the test results.
2. The USCG is pursuing enforcement action against the vessel operator, OSHA is working enforcement against the cargo handler, and PHMSA is pursuing this case against Airgas.
3. The response from Airgas was received in two (2) separate letters with associated "tabs". The first letter included tabs 1-13 and the second letter included tabs 14-19. Not all tabs are directly related to a particular violation so the letters have been incorporated in this report as Exhibit 35 and 36. The tabs that correlate to a particular violation were included with Exhibits 35 and 36 and are listed as "pages", i.e. "Exhibit 35, pages _ - _". All 19 tabs were then added as "Additional Documentation Tab _" for reference purposes.
4. There are more photographs and documentation available that was not necessary to include in this report and these are posted on the internal X, P & N shared drives under Airgas Port Everglades documents and photos.

Exhibit Summary

Evidence		Obtained From		
No.	Description	Name, Title	Company	City, State
1	Exit Briefing, Dated 5/23/2008.	Robert Burns, Hazardous Materials Investigator	U.S. DOT/PHMSA/OHME Southern Region	Titusville, FL
2	NRC Report #871468.	John Heneghan, Southern Region Chief	U.S. DOT/PHMSA/OHME Southern Region	Atlanta, GA
3	BCSO Investigative Action Report.	Efrain Torres, Detective	Broward County Sheriff's Office	Fort Lauderdale, FL
4	Broward County Medical Examiner Reports.	Efrain Torres, Detective	Broward County Sheriff's Office	Fort Lauderdale, FL
5	Hazardous Cargo Manifest.	Lt. Richard Dixon, Field Office Supervisor	United States Coast Guard	Port Everglades, FL
6	Madeleine Stowage Plan.	Lt. Richard Dixon, Field Office Supervisor	United States Coast Guard	Port Everglades, FL
7	Photos of Portable Tank JBKU-211007-4.	Robert Burns, Hazardous Materials Investigator	U.S. DOT/PHMSA/OHME Southern Region	Titusville, FL
8	Photos of Portable Tank Frozen Piping.	Robert Burns, Hazardous Materials Investigator	U.S. DOT/PHMSA/OHME Southern Region	Titusville, FL
9	IMO DGD for JBKU-211007-4.	Efrain Torres, Detective	Broward County Sheriff's Office	Fort Lauderdale, FL
10	Periodic Inspection Report for JBKU-211007-4.	Efrain Torres, Detective	Broward County Sheriff's Office	Fort Lauderdale, FL
11	Pressure Relief Device Certifications for JBKU-21107-4.	Efrain Torres, Detective	Broward County Sheriff's Office	Fort Lauderdale, FL
12	DOT-SP 11186.	Osvaldo Cejas, Plant Manager	Airgas South-Miami	Miami, FL
13	Pro Transport BOL 2061.	Gustavo DeQuesada, Account Manager	Airgas South-Miami	Miami, FL
14	Delivery Order & Invoice for JBKU-21107-4	Gustavo DeQuesada, Account Manager	Airgas South-Miami	Miami, FL

**Airgas South-Miami
Inspection / Investigation Report No. 08462028**

Evidence		Obtained From		
No.	Description	Name, Title	Company	City, State
15	CTI Delivery Receipt for JBKU-21107-4.	Gustavo DeQuesada, Account Manager	Airgas South-Miami	Miami, FL
16	Airgas Furnished Photos of JBKU-211007-4.	Gustavo DeQuesada, Account Manager	Airgas South-Miami	Miami, FL
17	Documents for JBKU-311001-6.	Gustavo DeQuesada, Account Manager	Airgas South-Miami	Miami, FL
18	Airgas Furnished Photos of JBKU-311001-6.	Gustavo DeQuesada, Account Manager	Airgas South-Miami	Miami, FL
19	Documents for JBKU-111027-5.	Gustavo DeQuesada, Account Manager	Airgas South-Miami	Miami, FL
20	Airgas Furnished Photos of JBKU-111027-5.	Gustavo DeQuesada, Account Manager	Airgas South-Miami	Miami, FL
21	Documents for JBKU-312003-5.	Gustavo DeQuesada, Account Manager	Airgas South-Miami	Miami, FL
22	Airgas Furnished Photos of JBKU-312003-5.	Gustavo DeQuesada, Account Manager	Airgas South-Miami	Miami, FL
23	Documents for JBKU-114003-2.	Gustavo DeQuesada, Account Manager	Airgas South-Miami	Miami, FL
24	MSDS for Argon.	Gustavo DeQuesada, Account Manager	Airgas South-Miami	Miami, FL
25	Clover Systems Export Documents.	Mabel Villiers, General Manager	Clover Systems, Inc.	Miami, FL
26	Pro Transport Cartage Documents.	Oscar Acharandio, President	Pro Transport, Inc.	Miami, FL
27	Photos of Portable Tank JBKU-211007-4 OWTT Markings.	Robert Burns, Hazardous Materials Investigator	U.S. DOT/PHMSA/OHME Southern Region	Titusville, FL
28	Photos of Portable Tank JBKU-211007-4 Pressure Gauges.	Robert Burns, Hazardous Materials Investigator	U.S. DOT/PHMSA/OHME Southern Region	Titusville, FL
29	Photos of Portable Tank JBKU-211007-4 Spec Plates.	Robert Burns, Hazardous Materials Investigator	U.S. DOT/PHMSA/OHME Southern Region	Titusville, FL
30	Photos of Portable Tank JBKU-211007-4 Pressure Relief Devices.	Robert Burns, Hazardous Materials Investigator	U.S. DOT/PHMSA/OHME Southern Region	Titusville, FL
31	Portable Tank Observation Report.	Robert Burns, Hazardous Materials Investigator	U.S. DOT/PHMSA/OHME Southern Region	Titusville, FL
32	Certified Letter.	Robert Burns, Hazardous Materials	U.S. DOT/PHMSA/OHME	Titusville, FL

**Airgas South-Miami
Inspection / Investigation Report No. 08462028**

Evidence		Obtained From		
No.	Description	Name, Title	Company	City, State
		Investigator	Southern Region	
33	Photos of Madeleine's Forward Cargo Hold.	Robert Burns, Hazardous Materials Investigator	U.S. DOT/PHMSA/OHME Southern Region	Titusville, FL
34	H/M Training Records for Mr. DeQuesada.	Gustavo DeQuesada, Account Manager	Airgas South-Miami	Miami, FL
35	LOC, Dated 06/22/2008.	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
36	LOC, Supplemental Response, Dated 08/21/2008.	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
37	Additional Documentation - Index of Tabs included with Corrective Actions.	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
38	Additional Documentation - Tab 1	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
39	Additional Documentation - Tab 2	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
40	Additional Documentation - Tab 3	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
41	Additional Documentation - Tab 4	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
42	Additional Documentation - Tab 5	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
43	Additional Documentation - Tab 6, Part 1	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
44	Additional Documentation - Tab 6, Part 2	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
45	Additional Documentation - Tab 6, Part 3	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
46	Additional Documentation - Tab 7	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
47	Additional Documentation - Tab 8	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
48	Additional Documentation - Tab 9	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
49	Additional Documentation - Tab 10	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
50	Additional Documentation - Tab 11	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
51	Additional Documentation - Tab 12	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL

**Airgas South-Miami
Inspection / Investigation Report No. 08462028**

Evidence		Obtained From		
No.	Description	Name, Title	Company	City, State
52	Additional Documentation - Tab 13	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
53	Additional Documentation - Tab 14	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
54	Additional Documentation - Tab 15	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
55	Additional Documentation - Tab 16	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
56	Additional Documentation - Tab 17	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
57	Additional Documentation - Tab 18	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL
58	Additional Documentation - Tab 19	Frank Zacherl, Attorney	Shutts & Bowen LLP	Fort Lauderdale, FL



U.S. Department of
Transportation

Pipeline and Hazardous
Materials Safety Administration

Office of Hazardous
Materials Enforcement
Southern Region

233 Peachtree Street NE, Suite 602
Atlanta, Georgia 30303
(404) 832-1140 Fax: (404) 832-1168

Y67

EXIT BRIEFING

COMPANY NAME Airgas South - Miami DATE May 23, 2008

ADDRESS 9030 N.W. 58th Street, Miami, FL 33178

COMPANY WEB ADDRESS _____ TAX ID# _____

NAME OF INDIVIDUALS RECEIVING THE BRIEFING:

Name: Mr. Gustavo DeQuesada

Title: ACCOUNT MANAGER
~~Shipping Manager - Export~~

Email Address: ALDO CARASA ASST. MGR

Name: ^{OSVALDO}
Mr. Oswaldo Cejas

Title: Plant Manager

Email Address: _____

Name: FRANK ZACHERL, ESQ.

Title: ATTORNEY

Email Address: FZACHERL@SHUTTS.COM

This has been a compliance inspection conducted in accordance with Title 49 U.S.C. Section 5121(c). This exit briefing addresses only the areas noted, and it is not a finding of general compliance in any other areas covered by the Hazardous Materials Regulations that were subject to the inspection.

During the course of the inspection the following probable violations of 49 CFR and/or quality control items were noted:

PROBABLE VIOLATIONS:

171.1(b)(7), 171.2(b), 171.2(e), 171.2(l) & 172.203(a)
Failing to enter the DOT Special Permit number DOT-SP 11186 on each shipping paper issued in connection with a shipment made under a special permit.

Example: 5/13/2008, Booking Number 10024463, IMO DG Declaration
1 unit UN1951 ISO Argon Refrigerated Liquid Class 2.2 20,520 KGS
Airgas South-Miami, Miami, FL to AGA SA Peru, Callao, Peru
CTU Id JBKU 211007-4, signed by Gustavo DeQuesada,

Investigators sampled five total shipments of Argon and identified that the Special Permit number was missing from all shipping documents. Mr. DeQuesada, the main shipping clerk who signed the shipping paper stated during the investigation that he was unaware of the applicable special permit and the requirements associated with it.

Also in attendance:

rleblanc@
shutts.com;

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171.1(b)(7), 171.2(b), 171.2(e), 171.2(I), 173.22a(b), DOT-SP 11186(8)(b) & (10)(a) & 173.22a(c)
Failing to provide a copy of special permit DOT-SP 11186 to the carrier before or at the time of shipment made under special permit number DOT-SP 11186. Failing to comply with the terms of a special permit.

By failing to provide the special permit to the carrier, which would then be forwarded to the vessel operator, the shipper failed to notify the parties involved in the shipment of the material of the stowage requirements outlined in special permit DOT-SP 11186. The Special Permit requires that the shipment be stowed in conformance with 176.76(g). This section requires that containers containing cryogenic liquids must be stowed "on deck" regardless of the stowage authorized in §172.101 of this subchapter. The intended final leg of transportation of this shipment was tendered under the International Maritime Dangerous Goods Code whereby packing instruction 203 states that cryogenic receptacles shall conform to the construction, testing & filling requirements approved by the competent authority, therefore the special permit issued by the U.S. Department of Transportation, Pipeline & Hazardous Material Safety Administration takes precedence over the IMDG code.

Example: 5/13/2008, Booking Number 10024463, IMO DG Declaration
1 unit UN1951 ISO Argon Refrigerated Liquid Class 2.2 20,520 KGS
Airgas South-Miami, Miami, FL to AGA SA Peru, Callao, Peru
CTU Id JBKU 211007-4, signed by Gustavo DeQuesada,

Investigators sampled five total shipments of Argon and identified that the Special Permit was never offered to the carrier. Mr. DeQuesada stated during the investigation that he was unaware of the applicable special permit and the requirements associated with it. Mr. DeQuesada went over his procedures for documenting the filled package with photos whereby he would e-mail the consignee the photos informing them that it was tendered for transportation. He also documented his procedure for transmitting a scanned copy of just the IMO Dangerous Goods Declaration (shipping paper) to the freight forwarder. He did not provide the Special Permit to the carrier, freight forwarder, and subsequent transporters.

171.2(b), 171.2(e), 171.2(I), 173.22a(b), 172.704(d), 172.702(a)(2), DOT-SP 11186(11)(b)
Failing to provide function-specific training concerning the requirements contained in special permit DOT-SP 11186 that are specifically applicable to the functions the employee performs when shipping hazardous materials in this container. Failing to maintain complete function specific hazmat training records and failing to comply with the terms of a special permit.

Example: 5/13/2008, Booking Number 10024463, IMO DG Declaration
1 unit UN1951 ISO Argon Refrigerated Liquid Class 2.2 20,520 KGS
Airgas South-Miami, Miami, FL to AGA SA Peru, Callao, Peru
CTU Id JBKU 211007-4, signed by Gustavo DeQuesada,

Investigators sampled five total shipments of Argon and identified that the Special Permit was never offered to the carrier. Mr. DeQuesada stated during the investigation that he was unaware of the special permit and the requirements associated with it. Mr. DeQuesada provided training records but his training did not include the requirements of special permits, and specifically, the requirements of special permit DOT-SP 11186.

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171.2(b), 171.2(e), 171.2(I), 173.22(a)(2)(i)(v), 173.22a(b), 173.318(b)(1)(ii), 173.318(b)(7)(iii), 173.318(b)(10)(ii), 173.32(e)(3)(4) & DOT-SP 11186(7)(c)(1)

Failing to conduct an external inspection of all emergency devices of a portable tank for corrosion, distortion, or any damage or defect that could prevent their normal operation prior to offering for transportation. Offering a cryogenic liquid, Argon, refrigerated liquid, 2.2, UN1951, in an unauthorized DOT-SP 11186 portable tank which had a pressure relief system with an external adjustment valve with broken tamper evident seals. Without properly sealed adjustment valves, the integrity of the system was compromised, and therefore, no longer certified for transportation. In addition, these pressure relief valves were not plainly and permanently marked with the pressure, in psig, at which it is set-to-discharge due to corrosion that obliterated two of the three valves and the third valve had its identification label completely missing.

Example: 5/13/2008, Booking Number 10024463, IMO DG Declaration
1 unit UN1951 ISO Argon Refrigerated Liquid Class 2.2 20,520 KGS
Airgas South-Miami, Miami, FL to AGA SA Peru, Callao, Peru
CTU Id JBKU 211007-4, signed by Gustavo DeQuesada,

Investigators Heneghan & Burns responded to an incident where three fatalities occurred and observed portable tank CTU Id JBKU 211007-4 that had vented in a means outside the normal pressure relief system. An observation of the pressure relief system showed that all three devices were tampered with. The inspectors observed that the pressure relief systems were non-functional. Investigator Burns witnessed the pressurization of the tank, which exceeded 270 psig without the pressure relief devices activating.

Mr. DeQuesada stated that Cryogenic Transportation, Inc, the provider of the liquid Argon who filled the tank at the Airgas facility had the responsibility to comply with the HMR requirements and that Airgas only filed out the necessary paperwork as a middle man / broker for the product. During the inspection, Airgas did not believe that they were responsible for the shipment since CTI filled the container. The container in question was delivered to Airgas on March 13, 2008, and was on their facility until it was provided to Cryogenic Transportation, Inc. to be filled on May 14, 2008. Airgas had plenty of time to inspect the container and determine suitability for filling for shipment. Airgas ordered CTI to fill the container and only Airgas reoffered that same container for transportation. CTI had no hand in offering the product and therefore had no responsibility in determining compliance for transportation, since the container might have been filled for Airgas's private use on site.

171.2(b), 171.2(e), 171.2(I), 173.22a(b), DOT-SP 11186(10)(b)(2) & (3)(i)

Offering a cryogenic liquid, Argon, refrigerated liquid, 2.2, UN1951 under special permit DOT-SP 11186 when the shipping paper did not identify the One Way Travel Time in Hours and the offeror failed to create a written record of the portable tanks pressure and ambient (outside) temperature at the start of the trip.

Example: 5/13/2008, Booking Number 10024463, IMO DG Declaration
1 unit UN1951 ISO Argon Refrigerated Liquid Class 2.2 20,520 KGS
Airgas South-Miami, Miami, FL to AGA SA Peru, Callao, Peru
CTU Id JBKU 211007-4, signed by Gustavo DeQuesada,

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The container had a specification plate which identified the rated holding time of 1719 hours for Liquid Argon, UN1951 and the special permit in section 10(b)(2) requires that the One Way Travel Time be marked on the shipping paper and gives the formula of OWTT=MRHT - 24 hours. Under these circumstances the shipping paper should have identified a OWTT of 1,695 hours. All shipments of liquid Argon under special permit did not identify this information and Mr. DeQuesada stated during the investigation that he was unaware of the applicable special permit and the requirements associated with it.

171.2(b), 171.2(e), 171.2(I), 173.301(a)(1), 172.332(a), 172.326(a), 172.504(a) & 172.516(c)(1) Offering a cryogenic liquid, Argon, refrigerated liquid, 2.2, in a portable tank which had an improper (damaged) identification number on an orange panel whereby you could not read the full identification number. The placard was also damaged and fell off the container on the port during the incident and the proper shipping name on the package is also faded and hard to read.

Example: 5/13/2008, Booking Number 10024463, IMO DG Declaration
1 unit UN1951 ISO Argon Refrigerated Liquid Class 2.2 20,520 KGS
Airgas South-Miami, Miami, FL to AGA SA Peru, Callao, Peru
CTU Id JBKU 211007-4, signed by Gustavo DeQuesada,

After the container was filled on Airgas property and prior to its departure, Mr. DeQuesada obtained photos of the filled container, including the damaged identification panel, the damaged placard & the faded proper shipping name. Mr. DeQuesada e-mailed these photos to the consignee on May 14th at 8 am and sent the same e-mail with the photos to John Heneghan on 5/21/08 @ 4:56 pm. The container was observed on the port after it was shipped with the same violations as identified in the photos taken prior to shipment.

This investigation has revealed a number of communication and quality control issues as it relates to the use of a DOT special permit and DOT special permit containers. Continued improper shipments of Liquid Argon and all cryogenic liquids, without steps to implement a training program and subsequent training of company employees, may subject Airgas to civil fines of up to \$100,000 per violation; criminal penalties of up to \$500,000 per violation and/or 5 years in jail; and the initiation of Federal District Court proceedings for the issuance of a temporary or permanent injunction, punitive damages, and/or an order placing Airgas out-of-service as an imminent hazard (49 U.S.C. §§ 5123, 5124, and 5122). Additional criminal penalties may be up to 10 years in jail in any case in which the violation involves the release of a hazardous material that results in death or bodily injury to any person. Inspection criteria for the safety devices on portable tanks need to be developed by the company and an action plan implemented to mitigate all violations discovered.

The Pipeline and Hazardous Material Safety Administration takes the safety of its special permit program & certified containers seriously and may initiate a nationwide safety notice documenting the deficiencies identified during this incident in an effort to reduce the chance of another such mishap. As the competent authority of the United States, PHMSA may also petition changes in the IMDG regarding the stowage requirements of cryogenic liquids.

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If PHMSA can be of assistance in helping to get Airgas or the regulated industry in general into compliance with the hazardous material regulations, please don't hesitate to make suggestions or ask for our assistance.

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5/6/08

This document is not a final report. The information gathered at this inspection and any probable violations noted will be reviewed prior to finalizing the report. Probable violation(s) may be removed or others may be added during this review. In addition, quality control items may be revised to become probable violations during this review.

Upon determination that a probable violation exists, the Associate Administrator for Hazardous Materials Safety is authorized to impose certain sanctions, including warning letters, tickets, compliance orders, and civil penalties. In addition, court actions, including injunctive or criminal proceedings, may be initiated. Title 49 U.S.C. Sections 5123 and 5124 provide for civil and criminal penalties for violation of the Hazardous Materials Regulations.

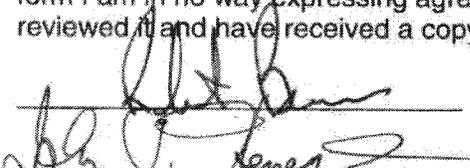
A civil penalty of not more than \$50,000, but not less than \$250, per violation may be imposed through administrative proceedings initiated by the Office of Chief Counsel of the Pipeline and Hazardous Materials Safety Administration. In addition, if a violation results in death, serious illness, or severe injury to any person or substantial destruction of property, the agency may increase the amount of the civil penalty for each violation to not more than \$100,000. When a criminal violation has been determined by a court, a fine, or imprisonment for not more than \$500,000, imprisonment for not more than 5 years, or both may be imposed for each violation. The maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material that results in death or bodily injury to any person.

The investigator does not determine which sanction, if any, may be imposed and cannot provide information concerning what proceedings will be initiated or sanctions imposed.

Documentation of corrective action submitted in writing to the investigator within 30 days of the inspection may be considered for mitigation should the sanction imposed result in the issuance of a notice proposing a civil penalty. However, any documented corrective action would not eliminate or preclude the initiation of a civil penalty proceeding, a finding of violation, or assessment of a civil penalty.

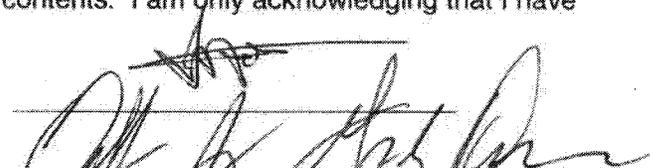
Our objective is to ensure a fair regulatory enforcement environment. If you feel you have been treated unfairly or unprofessionally, you may contact Ryan Posten at 202-366-4700, or e-mail us at OHME-HQ@dot.gov. You also have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR, or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities by this agency. The Pipeline and Hazardous Materials Safety Administration strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about compliance and enforcement activities.

I certify that I received the above briefing as it appears on this form. I understand that by signing this form I am in no way expressing agreement with its contents. I am only acknowledging that I have reviewed it and have received a copy.



Signature of Investigator(s)

Date: 5/23/08



Signature of Representative(s)

Date: 5/23/08

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Burns, Bob <PHMSA>

From: Heneghan, John <PHMSA>
Sent: Tuesday, May 20, 2008 7:36 AM
To: Nichols, Marc <PHMSA>
Cc: Smith, Doug S. <PHMSA>; Burke, Marilyn <PHMSA>; PHMSA PHH46 SOUTHERN; Posten, Ryan <PHMSA>
Subject: RE: NRC#871468: Argon gas release, three deaths. Hollywood, FL

Ryan, I have already contacted Burns & Lynam and believe that Bob can break away from the OIG in Miami if needed. Until then, Marc will be making all inquiries. Bob please check in with Marc.

Thanks Guys.

-----Original Message-----

From: Posten, Ryan <PHMSA>
Sent: Tue 5/20/2008 7:30 AM
To: Heneghan, John <PHMSA>
Cc: Smith, Doug S. <PHMSA>; Burke, Marilyn <PHMSA>
Subject: Fw: NRC#871468: Argon gas release, three deaths. Hollywood, FL

Three deaths! I have many questions. We'll make some prelim investigation on this. Some info I'd like to know- what were the "tank" types as referenced in the CMC report (specs, capacities, etc), method of unloading, pressures, were they employees of who? (The port, gas comp?).

This is a "lite" investigation until further info is determined.

Thx John.

R. Ryan Posten
Director, Hazmat Enforcement
US DOT-PHMSA
202-366-4700

----- Original Message -----

From: CMC-01 <OST>
To: Hazmat Notification Group <PHMSA>; Bohnert, Roger <MARAD>; Christensen, Tom <MARAD>; Doherty, Owen <MARAD>; Moore, Christopher <MARAD>
Cc: CMC-01 <OST>; CMC-02 <OST>; Jennifer.Mansour@faa.gov <Jennifer.Mansour@faa.gov>; Holland, Rena <OST>; stuckey, william <OST>; Winslow Powell <Winslow.powell@hq.dhs.gov>
Sent: Tue May 20 05:22:50 2008
Subject: NRC#871468: Argon gas release, three deaths. Hollywood, FL

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NRC#871468

What: The caller stated while unloading a tank that was filled with argon gas something caused the gas to release. The tank was being unloaded from a vessel to the port. The cause of the leak is unknown at this time.

The gas is not poisonous, but is an asphyxiant and three employees of the port are deceased. The police and fire department are on scene and have the situation under control. The leak has stopped and no other actions were necessary. The coast guard has been notified and are en route.

Where: Hollywood, FL

When: May 20, 2008 at 4:49 AM EDT

NATIONAL RESPONSE CENTER 1-800-424-8802

GOVERNMENT USE ONLYGOVERNMENT USE ONLY***

Information released to a third party shall comply with any applicable federal and/or state Freedom of Information and Privacy Laws

Incident Report # 871468

INCIDENT DESCRIPTION

*Report taken by: MST3 KEVIN MALLICK at 04:49 on 20-MAY-08

Incident Type: STORAGE TANK

Incident Cause: UNKNOWN

Affected Area:

The incident was discovered on 20-MAY-08 at 03:27 local time.

Affected Medium: AIR ATMOSPHERE

REPORTING PARTY

Name: OFFICER EXT 0 PATRICK

Organization: BROWARD COUNTY SHERIFF'S OFFICE

Address: 2025 ELLER DR.

HOLLYWOOD, FL 33316

PRIMARY Phone: (954)7654511

Type of Organization: POLICE DEPARTMENT

SUSPECTED RESPONSIBLE PARTY

Name: UNKNOWN

XX

INCIDENT LOCATION

County: BROWARD

City: HOLLYWOOD State: FL Zip: 33316

Section: N/A Township: N/A Range: N/A

BERTH 31 - PORT EVERGLADES

RELEASED MATERIAL(S)

CHRIS Code: NCC Official Material Name: NO CHRIS CODE

Also Known As: ARGON GAS

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REPORT NUMBER: 08462028
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Qty Released: 0 UNKNOWN AMOUNT

DESCRIPTION OF INCIDENT

THE CALLER STATED WHILE UNLOADING A TANK THAT WAS FILLED WITH ARGON GAS SOMETHING CAUSED THE GAS TO RELEASE. THE TANK WAS BEING UNLOADED FROM A VESSEL TO THE PORT. THE CAUSE OF THE LEAK IS UNKNOWN AT THIS TIME. THE GAS IS NOT POISONOUS, BUT IS AN ASPHYXIANT AND THREE EMPLOYEES OF THE PORT ARE DECEASED. THE POLICE AND FIRE DEPARTMENT ARE ON SCENE AND HAVE THE SITUATION UNDER CONTROL. THE LEAK HAS STOPPED AND NO OTHER ACTIONS WERE NECESSARY. THE COAST GUARD HAS BEEN NOTIFIED AND ARE EN ROUTE.

SENSITIVE INFORMATION

NONE

INCIDENT DETAILS

Description of Tank: ARGON GAS TANK
Tank Above/Below Ground: ABOVE
Transportable Container: YES
Tank Regulated: UNKNOWN
Tank Regulated By:
Tank ID: UNKNOWN
Capacity of Tank: 0 UNKNOWN AMOUNT
Actual Amount: 0 UNKNOWN AMOUNT

IMPACT

Fire Involved: NO Fire Extinguished: UNKNOWN

INJURIES: NO Hospitalized: Empl/Crew: Passenger:
FATALITIES: YES 3 Empl/Crew: 3 Passenger: Occupant:
EVACUATIONS:NO Who Evacuated: Radius/Area:

Damages: NO

Closure Type	Description of Closure	Hours	Direction of Closure
N			
Air:			Major
Road:			Artery:N
Waterway:			
Track:			

Environmental Impact: NO

Media Interest: NONE Community Impact due to Material:

REMEDIAL ACTIONS

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FIRE AND POLICE HAVE THE SITUATION UNDER CONTROL

Release Secured: YES

Release Rate:

Estimated Release Duration:

WEATHER

Weather: CLEAR, 75°F Wind speed: 5 MPH Wind direction: W

ADDITIONAL AGENCIES NOTIFIED

Federal: COAST GUARD

State/Local: FIRE, POLICE

State/Local On Scene: FIRE, POLICE

State Agency Number: NONE

NOTIFICATIONS BY NRC

CHEM SAFETY AND HAZARD INVEST BOARD (AFTER HOURS)

20-MAY-08 05:04 (202)3146290

DOT CRISIS MANAGEMENT CENTER (MAIN OFFICE)

20-MAY-08 05:04 (202)3661863

U.S. EPA IV (MAIN OFFICE)

(404)6504955

USCG COMMAND CENTER (MAIN OFFICE)

(202)2672100

FLORIDA DEPT OF HEALTH (COMMAND CENTER)

20-MAY-08 05:04 (850)2454117

NATIONAL INFRASTRUCTURE COORD CTR (MAIN OFFICE)

20-MAY-08 05:04 (202)2829201

NOAA RPTS FOR FL (MAIN OFFICE)

20-MAY-08 05:04 (206)5264911

NATIONAL RESPONSE CENTER HQ (MAIN OFFICE)

(202)2671136

HOMELAND SEC COORDINATION CENTER (MAIN OFFICE)

20-MAY-08 05:04 (202)2828300

SECTOR MIAMI (SECTOR MIAMI COMMAND CENTER)

(305)5358701

FL EMERGENCY RESPONSE COMMISSION (MAIN OFFICE)

20-MAY-08 05:04 (850)4139911

ADDITIONAL INFORMATION

THE CALLER HAD NO ADDITIONAL INFORMATION.

*** END INCIDENT REPORT #871468 ***

Report any problems or Fax number changes by calling 1-800-424-8802

PLEASE VISIT OUR WEB SITE AT <http://www.nrc.uscg.mil>

U.S. DOT/PHMSA/OHME/SOUTHERN REGION

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SHERIFF'S OFFICE - BROWARD COUNTY, FLORIDA
Investigative Action Report



Case: BS08-05-5085

Zone: 1406

Offense: Accidental Death

CONTACT INFORMATION:

VICTIM:

Hayman Sooknanan
 W/M, DOB:

Exemption 6

(Victim was overcome by Argon gas while checking for a possible leak in the hull of a cargo ship in Port Everglades)

James T. Cason
 B/M, DOB:

Exemption 6

(Victim was overcome by Argon gas while trying to help a fellow co-worker who succumbed to the fumes while checking the container for leaks)

Rene R. Dutertre Jr.
 W/M, DOB:

Exemption 6

(Victim was overcome by Argon gas while trying to help fellow co-workers who succumbed to the fumes while checking the container for leaks)

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Sign			<u>11/10/08</u>	Sign:		
Print Efrain O Torres		10690	Page 1 of 22	Print: Sergeant Ken Kaminsky		6523



SHERIFF'S OFFICE - BROWARD COUNTY, FLORIDA
Investigative Action Report



Case: BS08-05-5085

Zone: 1406

Offense: Accidental Death

WITNESSES-CIVILIAN:

Carlos A. Parra

W/M, DOB:

Exemption 6

(Works as a Port Captain for Trinity Shipping Lines. Advised supervisor that there was a possible gas leak and container needed to be removed. Located victim in the hull of the ship and evacuated ship)

Matthew Sheffield

W/M, DOB:

Exemption 6

(Works for FTS as a checker. Was responsible for checking off items as they entered the ship's cargo hold. Tried to stop victim's from entering hold to rescue supervisor)

Tarson Bodden

W/M, DOB:

Exemption 6

(Works for FTS as flag man; supervises setting of containers. Tried to stop victim's from entering hold to rescue supervisor)

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SHERIFF'S OFFICE - BROWARD COUNTY, FLORIDA
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Case: BS08-05-5085

Zone: 1406

Offense: Accidental Death

Luis Chiu
W/M, DOB

Exemption 6

(Works for FTS as a crane operator; saw supervisor enter hold of ship. Offloaded the container so that EMS could reach the victim's)

Vincent Felder
B/M, DOB:

Exemption 6

(Day laborer who was working as for FTS as a deck hand. Was helping to load cargo onto the ship)

Hanley Freeman
B/M, DOB

Exemption 6

(Day laborer who was working for FTS as a deck hand)

Peter Rimmel
Marine Chemist & Testing Company

Exemption 6

(Tested air in cargo hold and cross compartments)

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SHERIFF'S OFFICE - BROWARD COUNTY, FLORIDA
Investigative Action Report



Case: BS08-05-5085

Zone: 1406

Offense: Accidental Death

Woodruff Nelson
Airgas South-Miami

Exemption 6

(Responded to scene and helped purge container)

Cheryl Nesbitt
B/F, DOB:

Exemption 6

(Cason's live in girlfriend who has children in common with victim. Notification made by Detective Carmody)

Dawn Weissberg
W/F, DOB:

Exemption 6

(Dutertre's live in girlfriend who has two children in common with victim. Notification made by Detective Carmody)

Verna Sooknanan
W/F DOB:

Exemption 6

(Sooknanan's wife. Notification was made by victim's brother who was on scene. Victim's property was later returned to her)

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SHERIFF'S OFFICE - BROWARD COUNTY, FLORIDA
Investigative Action Report



Case: BS08-05-5085

Zone: 1406

Offense: Accidental Death

Parasram Sooknanan
W/M, DOB:
Exemption 6

(Hayman Sooknanan's brother who arrived on scene. Works as day shift supervisor and was notified of brother's death)

WITNESSES-FEDERAL AGENCIES:

Bob Burns
U.S. Department of Transportation
Hazardous Materials Investigator
233 Peachtree Street, N.E., Suite 602
Atlanta, Georgia 30303
Telephone (404)832-1140

(Responded to scene to inspect Argon Gas container. Removed container to secured lot in Port Everglades for further inspection)

Marcelina Santiago
U.S. Department of Labor
Occupational Safety and Health Administrations
Telephone (954)424-0242

(Responded to scene to conduct investigation)

Hannah-Marie Miller
U.S. Department of Labor
Occupational Safety and Health Administrations
Telephone (954)424-0242

(Responded to scene to conduct investigation)

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SHERIFF'S OFFICE - BROWARD COUNTY, FLORIDA
Investigative Action Report



Case: BS08-05-5085

Zone: 1406

Offense: Accidental Death

Lt. Richard H. Dixon
Port Everglades Field Office Supervisor
United States Coast Guard
Telephone (954)920-7899

(Assisted with investigation. Removed container from dock area and placed it in secure lot)

Lt. Drayer Port Everglades Field Office Supervisor
United States Coast Guard Fort Lauderdale Sector
Telephone (954)920-7899

(Assisted with initial investigation. Completed inspection of cargo ship and interviewed the Captain and the crew)

Lt. Michelle Schopp
United States Coast Guard Sector Miami
Senior Investigating Officer
Telephone (305)535-8750

(Assisted with investigation. Took over for Lt. Drayer who was re-assigned to another station)

WITNESSES-LAW ENFORCEMENT:

Deputy Salvatore Verini CCN 10390
District 14/ Port Everglades
Telephone 954-765-4511

(Reporting Deputy, he secured the ship and surrounding area and started crime scene log)

Deputy John Bartik CCN 6694
District 14/Port Everglades
Telephone 954-765-4511

(Relieved Deputy Verini reference the crime scene log)

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SHERIFF'S OFFICE - BROWARD COUNTY, FLORIDA
Investigative Action Report



Case: BS08-05-5085

Zone: 1406

Offense: Accidental Death

Sergeant Joseph Fitzpatrick CCN 9328
District 14/Port Everglades
Telephone 954-765-4511

(Alpha shift supervisor, responded to scene)

Sergeant Kenneth Erwin CCN 5722
District 14/Port Everglades
Telephone 954-765-4511

(Bravo shift supervisor, responded to scene and relieved Sgt. Fitzpatrick)

Detective Terry Gattis CCN
BSO Crime Scene Unit
Telephone 954-831-6412

(He documented the scene and collected evidence)

Detective Jim Torok CCN 10386
BSO Crime Scene Unit
Telephone 954-831-6412

(Assisted with documentation of scene and evidence collection)

Sergeant Kenneth Kaminsky CCN 6523
BSO Homicide Unit/RID
Telephone 954-321-4210

(Homicide Supervisor)

Detective Efrain O. Torres CCN 10690
BSO Homicide Unit/RID
Telephone 954-321-4210

(Lead Investigator)

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SHERIFF'S OFFICE - BROWARD COUNTY, FLORIDA
Investigative Action Report



Case: BS08-05-5085

Zone: 1406

Offense: Accidental Death

Detective Joe Ventura CCN
 BSO Homicide Unit/RID
 Telephone 954-321-4210

(Assisted with investigation)

Detective Dave Nicholson CCN
 BSO Homicide Unit/RID
 Telephone 954-321-4210

(Assisted with investigation)

Detective Ray Carmody CCN
 BSO Homicide Unit/RID
 Telephone 954-321-4210

(Assisted with investigation)

WITNESSES-MEDICAL:

Broward Sheriff Fire Rescue #96
 Telephone 954-831-8200
 Lt. Joe Evans
 Fire Fighter Gus Barrera
 Fire Fighter Louis Uribe
 Driver/Engineer George Castillo

(Responded to the ship in an attempt to rescue the victim's. Pronounced victim deceased at ___ a.m.)

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SHERIFF'S OFFICE - BROWARD COUNTY, FLORIDA
Investigative Action Report



Case: BS08-05-5085

Zone: 1406

Offense: Accidental Death

Interstate Removal Service
954-535-1122
Jason Noel
Sharon Anderson

(Transported victim's to ME's office)

Doctor Khalil Wardak
Medical Examiner
Telephone 954-327-6500

(Performed a post-mortem examination under ME case # BME2008-0730)

CASE SYNOPSIS:

The Broward Sheriff's Office Fire Rescue Units responded to Port Everglades Berth 30 in regards to a Haz-Mat call involving three longshoremen aboard the Container ship "Madelein" who became ill and collapsed in the cargo hold of the ship. They were exposed to a cryogenic container that was leaking Argon gas. Fire Rescue units boarded the vessel and located the three victim's in the cargo hold, thirty five feet below deck. The three victim's were pronounced deceased on the scene by Lt. Joseph Evans. On May 20th, 2008 Doctor Khalil Wardak M.D. preformed a post-mortem examination and concluded that the cause of death was Chemical Asphyxia due to displacement of ambient oxygen by Argon gas, and the manner of death was accidental. (ME report 2008-0730).

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SCENE:

The address of 4200 McIntosh Road, Hollywood, Broward County, Florida is described as a

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SHERIFF'S OFFICE - BROWARD COUNTY, FLORIDA
Investigative Action Report



Case: BS08-05-5085

Zone: 1406

Offense: Accidental Death

commercial port facility with numerous berthing docks to accommodate large commercial and private vessels. The scene is a single berthing area that runs north and south on Berth 30 of the Port Everglades facility. The victim's were located stacked on top of each other in a confined cargo hold of a ship. The victim's were Longshoreman who worked for Florida Transportation Service and were loading the vessel with containers for shipment to several countries. (See crime scene photographs and crime scene report for details).

BODY:

The victim's were stacked on top of each other when Paramedics entered the cargo hold. According to the Paramedics on scene, the victim's were unresponsive and unconscious when they entered the hold. did not have a pulse, had fixed and dilated pupils and had varying degrees of general cyanosis and lividity. An EKG was run on each victim and then they were declared deceased. (See EMS report 2008-0102942-000).

NARRATIVE:

On Tuesday May 20th, 2008 at approximately 4:30 a.m., I was directed by the Duty officer to respond to 3050 SE 41st Street in Port Everglades, Berth 30, Hollywood Fl. to investigate the death of two white males and a black male later identified as Hayman Sooknanan, James T Cason, and Rene R. Dutertre. The victim's succumbed to Argon Gas contained in the hold of a cargo ship. Broward Sheriff Fire Rescue and Hollywood Fire Rescue units responded and Lt. Rogers pronounced the victim deceased at _____.

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Sign				Sign:		
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SHERIFF'S OFFICE - BROWARD COUNTY, FLORIDA
Investigative Action Report



Case: BS08-05-5085

Zone: 1406

Offense: Accidental Death

I responded to the scene, arriving at 5:23 a.m. The scene had numerous fire rescue units to include Hazmat teams that were on the ship monitoring oxygen levels in the cargo hold. The area was secured by Deputies and a crime scene log was established.

The cargo ship where the incident occurred is called the "Madeline. It is a 331 foot cargo ship registered out of St. John. The ship arrived in Port Everglades on May 19th 2008 at 4:35 a.m. from Ecuador and was scheduled to depart Port Everglades on May 20th, 2008 at 10:00 p.m.

Upon arrival at Port Everglades, the cargo plan was drawn up and approved by the Captain of the Madeleine. The port captain for Trinity Shipping Lines, Albert Parra reviewed the cargo plan and it was given to Florida Transportation Service. Parra supervised the loading of the cargo based on the load plan. One of the containers loaded onto the vessel was a cryogenic container containing Argon gas that was loaded at approximately 7:16:52 p.m. It should be noted that the container arrived at the dock at 7:15 p.m. No venting was noted as the container arrived at the dock and was loaded onto the ship. (See video).

While the loading was progressing, Parra was approached by 2nd Officer Vitaly Ivanoski from the Madelein to advise that there was a possible gas leak from the Argon gas container in the forward cargo area (Hull #1). Ivanoski told Parra that one of his crew members smelled a foul odor and could hear some "hissing" sounds coming from the cargo hold. The crew member was able to look into the hold and observed smoke coming from the bottom of the hold. One of the crew members escorted Parra to the cargo hold and Parra was able to see the gas leak. Ivanoski requested that the container be removed because it could have been damaged during loading. Parra agreed to remove the container. (See Detective Nicholson's supplement).

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Zone: 1406

Offense: Accidental Death

Albert Parra located the supervisor for Florida Transportation Service, Hayman Sooknanan and advised that the container needed to be removed because it was leaking. Parra left the area to check on some refrigeration systems in another part of the port. Sooknanan was seen going down into the cargo hold by the crane operator, Luis Chiu. Chiu continued loading cargo onto the ship unaware that Sooknanan had succumbed to the gas and had not made it out of the hold.

Parra returned to the ship fifteen to twenty minutes later and went looking for Sooknanan. He asked everyone on the dock if they had seen Sooknanan with negative results. He attempted to call Sooknanan on the phone but was unable to make contact. Parra boarded the vessel and went to the cargo hold to check on the status of the container. He looked down into the hold and saw the reflective strips from Sooknanan's vest. Parra immediately ordered everyone off the vessel.

James T. Cason, a Longshoreman with Florida Transportation System boarded the vessel and climbed down into the hold in an attempt to rescue Sooknanan. Cason succumbed to the gas and was unable to climb out of the hold. Rene Dutertre, another Longshoreman climbed down the ladder into the cargo hold in an attempt to assist his fellow workers. Dutertre attempted to climb out of the hold but tragically fell back after almost reaching the top of the ladder rung. Both longshoreman were advised not to climb down into the hold because of the possible gas leak but ignored the warnings from their fellow workers.

Chiu quickly removed the Argon gas container at approximately 3:40:38 a.m. and placed it on the ground so that arriving Fire Rescue units could reach the victim's that were still lying

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Zone: 1406

Offense: Accidental Death

motionless at the bottom of the cargo hold. According to Chiu, and remaining FTS workers, the container was venting extensively as it was removed from the cargo hold. (See video).

Fire Rescue Units arrived on scene at approximately 3:34:52 a.m. and attempted a high angle rescue on the victim's in the cargo hold. (See video). Unfortunately, the victim's had asphyxiated once Haz Mat 23 were able to descend into the hold to render aid. Once it was established that all three victims were deceased, the Haz Mat team started recovery operations to remove the bodies. They also monitored the oxygen level in the compartment to ensure that it was safe for investigators from the crime scene unit to descend into the cargo hold to document the scene and take photographs of the crime scene. It should be noted that the Haz Mat team utilized a four gas monitor to test the oxygen level and received the following readings: LEL-0, Oxygen reading at the floor ranged from 4% to 14% at waist level, VOC-5, Hydrogen Sulfide-, Carbon Monoxide-O. (See Fire Rescue reports and supplements).

Doctor Khalil Wardak M.D. arrived on scene and examined the victim's as they were systematically removed from the vessel. The victim's were placed in a tent adjacent to the vessel. Doctor Wardak later preformed a post-mortem examination and concluded that the cause of death was Chemical Asphyxia due to displacement of ambient oxygen by Argon gas, and the manner of death was accidental. (ME report 2007-1831).

At approximately 5:20 a.m., Detective Terry Gattis and Detective Jim Torok arrived on scene and boarded the "Madelein" in order to document and photograph the crime scene. Once completed, the Fire Department was cleared to remove the bodies. (See crime scene photographs, crime scene report, and scene description for details).

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Offense: Accidental Death

At approximately 5:23 a.m., I arrived at the scene and spoke to Sgt. Kenneth Kaminsky who advised me that three victims were in the cargo hold of the ship and had succumbed to a gas leak, causing their deaths. Sgt. Kaminsky indicated that there were numerous witnesses on scene and advised me to interview them to determine the circumstances surrounding the victim's deaths.

At approximately 6:57 a.m., Doctor Khalil Wardak from the Medical Examiners Office arrived on scene. The first victim, Hayman Sooknanan was lifted out of the cargo hold at 7:00 a.m., Sooknanan was wearing a grey shirt with FTS patch above the right breast pocket and was wearing dark grey pants. The second victim, Rene Duterte was lifted out of the cargo hold at 7:15 a.m., Duterte was wearing blue jean pants and had a blue shirt wrapped around his head. The third victim, James T Carson was lifted out of the cargo hold at 7:25 a.m. Carson was wearing a white t-shirt, blue pants and had a gray shirt wrapped around his head. Doctor Wardak examined all three victims and determined that they had probably expired as a result asphyxiation due in part to a high concentrated level of Argon gas in the confined space of the cargo hold.

At approximately 7:32 a.m., I spoke to Vincent Felder, who is a day laborer working for FTS. Felder stated that he was working in the middle cargo hold and heard a commotion outside. Felder stated that heard someone advise that there was a gas leak. Felder indicated that he saw Duterte enter the hold. I asked Felder if he saw smoke coming from the container as it was lifted out of the hold and he stated "yes". Felder did not see the other two victims' enter the cargo hold.

At approximately 7:37 a.m., I spoke to Hanley Freeman, who is a day laborer working for FTS. Freeman stated that he was working in the cargo hold of the ship. After his lunch break, Freeman resumed loading cargo onto the ship. Freeman stated that when the supervisor was

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found unconscious in the cargo hold, he observed Cason wrap a shirt around his head and go down into the hold. Freeman advised that Duterte yelled "hold on James" and also descended into the cargo hold.

At approximately 7:51 a.m., Parasram Sooknanan arrived on scene and was advised that his brother, Hayman Sooknanan was deceased. It should be noted that Parasram Sooknanan is the day shift supervisor for FTS and relieves the victim in the morning.

At approximately 7:51 a.m., Interstate Removal Service arrived on scene and transported the three victims' to the Medical Examiners Office.

At approximately 8:28 a.m., I took a sworn taped statement from Matthew Sheffield who is an employee for Florida Transportation Service at Port Everglades. I asked Sheffield what his current position is and he stated that he was working as a Checker. I asked Sheffield what his responsibilities included and he indicated that he checked the containers that were being loaded aboard the vessel and made sure that they matched the manifest. Sheffield advised that a crew member came down and he stated that one of their employees was in the cargo area lashing down containers and became lightheaded. I asked Sheffield if he ever saw his supervisor, Hayman Sooknanan go down into the cargo hold and he stated "no".

He tried calling Sooknanan but got no response. Sheffield advised that another FTS employee by the name of Tarson Bodden saw the supervisor go down and yelled "man down". Sheffield stated that James Cason, another FTS employee ran to the vessel and that he told him not to go down into the cargo hold but that Cason went anyways. Sheffield stated that Cason

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never returned. Sheffield advised that Rene Dutertre stated that he was going down to help Hayman and Cason. Sheffield pleaded with Dutertre not to go down into the cargo hold because he knew that the gas had probably already killed Hayman and Cason.

Sheffield advised that Rene Dutertre then took his shirt off and wrapped it around his face and head and went down into the cargo hold. Sheffield stated that he heard Dutertre gagging and then saw him climbing the ladder. Dutertre was almost to the top when he collapsed and dropped back into the cargo hold. Sheffield stated that he was the one who dialed 911. I asked Sheffield if he remembers what he told that 911 operator and he stated that he might have told her that there was some type of gas problem but that he couldn't be certain.

At approximately 8:35 a.m., Detective Carmody met with Jacqueline Cason Hawthorn, Doris Williams and Patricia A. Grim. Detective Carmody notified them that Jason T. Cason was deceased. Hawthorn and Williams are Cason's sisters. Grim is his girlfriend who was living with the victim.

At approximately 8:35 a.m., I took a sworn taped statement from Tarson Bodden who is an employee for Florida Transportation Service at Port Everglades. Bodden advised that a crew member had advised the cargo captain about a container that was leaking and notified Sooknanan. Bodden stated that Parra observed Sooknanan down in the hold and called for everyone to evacuate the other cargo holds aboard the ship. I asked Bodden if he saw Carson climb down and he stated "no". Bodden advised that he told Rene Dutertre not to go down into the cargo hold but that Dutertre ignored him and wrapped his shirt around his head and descended down into the hold. Bodden stated that Dutertre attempted to climb out of the cargo hold but

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apparently succumbed to the fumes. Bodden stated that Dutertre was yelling out the supervisor's name, "Hayman, Hayman", as he fell back into the hold.

At approximately 8:49 a.m., I took a sworn taped statement from Luis Chiu who is an employee for Florida Transportation Service at Port Everglades. Chiu stated that he is a crane operator and started loading items onto the ship at 7:20 p.m. Chiu stated that the Argon gas container was the very first item he loaded on the ship. I asked Chiu if the container was leaking any gas when he loaded it and he stated "no". Chiu stated that he loaded a couple more items in that hold and then moved to another portion of the vessel where he loaded a few more items. Chiu went on lunch break around 12:00 a.m. and returned to work at around 2:45 a.m.

Once back on the dock, he was advised by the boat Captain and Carlos Parra that he needed to remove a container because it was possibly leaking. Chiu stated that he saw Hayman operating the forklift. Hayman told him to remove tank in bay three. He told him that it had a possible valve problem. Chiu got back in the crane around 2:58 a.m. Chiu saw Hayman looking down into the cargo hold with a flashlight. Chiu stated that he started loading more containers and observed Hayman climbing down into the cargo hold. After he loaded some containers, he heard some of the workers calling for Hayman. Chiu stated that he tried calling Hayman but got no response. When Hayman was discovered along with the other two victims. Chiu stated that he quickly removed three containers and then the Argon gas container which was at the very bottom of the cargo hold. I asked Chiu if he observed the tank leaking as he lifted out of the cargo hold and he stated "yes". Chiu stated that there was smoke everywhere.

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At approximately 8:49 a.m., Detective Ventura took a sworn taped statement from Miguel Fernandez who is an employee for Florida Transportation Service at Port Everglades. (See his supplement).

At approximately 8:59 a.m., I took a sworn taped statement from Carlos A. Parra who is a Port Captain for Trinity Shipping Lines. Parra stated that he is responsible for the cargo plan. The plan is drafted and given to the Captain of the ship who can make changes and/or approve the plan as submitted. After the plan is approved, the ship gets loaded with the prescribed cargo. Parra advised that it is his responsibility to ensure that the cargo is loaded according to the cargo plan. I asked Parra how he became aware of a problem aboard the ship. Parra indicated that he was approached by a crew member who advised him that one of the containers was leaking. Parra accompanied the crew member to the cargo hold and the crew member showed him with a flashlight where the container was located. Parra advised that he was able to see some smoke coming from the container.

Parra went ashore and located that FTS supervisor, Hayman Sooknanan and advised him about the leak. He asked Sooknanan to remove the container so that it could be inspected. Parra advised that he left the dock and went to another lot to check on some refrigerating units. He was gone for about 15 minutes. Parra advised that he returned to the dock and asked the checker, Matthew Sheffield if he had seen Sooknanan. He was advised that Sooknanan was in the area. Parra went looking for him and was unable to locate him. He left the dock and checked the yard with negative results. He returned to the dock and asked the Checker again if he had seen Sooknanan and he stated "no". Parra stated that they tried raising Sooknanan on the radio with negative results.

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After checking the entire dock area, Parra advised that he boarded the vessel and walked over to the cargo hold. While looking down into the hold, he was able to see the reflection of a vest. Parra stated that he ran down to the dock yelling for someone to call 911 because there was a man down. Parra advised that Sheffield called 911. Parra advised that the container containing the Argon gas was lifted out of the hold by the crane operator. I asked Parra if he could still see smoke coming from the contained and he state "yes".

At approximately 10:12 a.m., Peter Rimmel from Marine Chemist & Testing Company arrived on scene. Rimmel boarded the vessel and tested no 1 cargo hold areas upper & lower, no. 2 cargo hold forward escape trunk, Foc'sol store spaces, tunnel & trunk to tunnel, Emergency generator room, CO2 room and paint locker. Rimmel advised that the atmosphere was now safe for workers. (See his certificate).

At approximately 10:35 a.m., Bob Burns from Department of Transportation arrived on scene and inspected container. The container is described as a cryogenic container owned by Wesmor Cryogenic Services. The container information is as follows: UN#1951, DOT E11186, Tank Marking JBKU211007-4,22T7, Chemical name AAR600.

At approximately 10:39 a.m., Woodruff Nelson from Air-gas South-Miami arrived on scene to inspect the container.

At approximately 1:05 p.m., Bob Burns authorized Woodruff Nelson to purge the container to reduce some of the PSI. EMS and Fire Rescue units responded and stood by while the container was purged.

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At approximately 1:20 p.m., Woodruff Nelson closed the valve on the Argon gas container once Bob Burns established that it was within normal operating levels. (See his report).

On Wednesday May 21st, 2008 at approximately 11:25 a.m., I returned Hayman Sooknanan's personal effects to his wife at 1850 Eller Drive, Port Everglades Administration building. (See property receipt).

At approximately 11:31 a.m., I surrendered the victim's port ID's at the Port Everglades Administration building. (See property receipts).

On Wednesday May 23rd, 2008 at approximately 9:00 a.m., Captain K.L. Schultz of the United States Coast Guard at Port Everglades issued the Captain of the Madeleine a Coast Guard Form B for an improperly stowed container of carbon monoxide compressed gas (UN1016) and a container of ethylene oxide (UN1040) that were improperly stowed below deck. An additional warning was issued for an inoperable ventilation system in cargo hold #1. The containers are to be stowed on deck and the ventilation system repaired or replaced prior to the vessel's departure. (See attached letter).

On Wednesday May 27th, 2008 at approximately 12:17 p.m., I met with Cheryl Nesbit at **Exemption 6** and returned Cason's property to her. (See property receipt).

I reviewed video surveillance of port and observed container being loaded on the vessel at approximately _____. The container was not emanating any smoke and appeared to be operating normally.

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Case: BS08-05-5085

Zone: 1406

Offense: Accidental Death

EXHIBITS:

- Event Report
- Crime Scene reports and photographs
- Medical Examiner Report
- Video Surveillance Footage of Berth 30
- Madeleine Crew List
- Property Receipt's
- Madelein Cargo Loading Plan
- Hazardous Cargo Manifest
- Valve Test Report
- IMO Dangerous Goods Declaration
- Marine Chemist Certificate of Inspection
- Hazardous Commodity Notification Permit
- BSO EMS Incident report 2008-0102942-000

VICTIM INFORMATION:

Medical History:
Arrest History:
Next of Kin: Verna Sooknanan (wife)
Property Disposition:
Vehicle Seized: N/A

Medical History:
Arrest History: **EXEMPTION 6**

Next of Kin: Cheryl Nesbitt (girlfriend)
Property Disposition:
Vehicle Seized: N/A

Medical History:
Arrest History: **EXEMPTION 6**

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Case: BS08-05-5085

Zone: 1406

Offense: Accidental Death

Next of Kin: Dawn Weissberg (girlfriend)
 Property Disposition:
 Vehicle Seized: N/A

CASE STATUS:

Based on the physical evidence, witness statements, the circumstances surrounding the death coupled with the Broward County Medical Examiner's ruling, this case will be classified as an Accident and deemed Exceptionally Cleared.

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OFFICE OF THE MEDICAL EXAMINER
DISTRICT 17- BROWARD COUNTY, FLORIDA
5301 SW 31 Avenue

Fort Lauderdale, Florida 33312
954-327-6500

ME CASE # BME2008-0730
Name: SOOKANAN, HAYMAN
Age: 47
DOB: EXEMPTION 6
RACE: Asian
SEX: M

REPORTED BY 1: Police Crime Scene Gattis 0-
BSO
BS08-05-5085
DATE REPORTED: 5/20/2008 TIME: 8:01:12AM
REPORTED BY 2: 0-

RESIDENCE: Exemption 6
LAST SEEN ALIVE DATE: 05/20/2008 TIME: 3:15:00AM

INCIDENT: 4200 McIntosh Rd
Fort Lauderdale, FL
DATE: 05/20/2008 TIME: 3:20:00AM

DEATH: 4200 McIntosh Rd Fort Lauderdale, FL
DATE: 05/20/2008 TIME: 3:25:00AM
FOUND:

Narrative/Summary: O
n May 20, 2008 at approximately 0750 hours, Detective Gattis, of Broward Sheriff's Office, called to report the work-related death of this 47-year-old, asian male. According to the detective, the decedent, a worker at Port Everglades, entered the hull of a ship to investigate a gas leak, and was overcome by Argon gas. Two other workers (BME2008-0731, BME2008-0732) followed the decedent into the area and also succumbed to the fumes. All were pronounced on scene by Fire-Rescue.

*****Dr. WARDAK RESPONDED TO THE SCENE*****

THE ABOVE INFORMATION IS PRELIMINARY AND SUBJECT TO CHANGE WITH FURTHER INVESTIGATION.

Narrative/Summary Prepared by: Wendy Crane

Cause of Death: Chemical asphyxia

Due to: Displacement of ambient oxygen by argon gas

Due to:

Due to:

Contributory Cause:

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Manner of Death: Accident
Injury Inhaled argon gas
Description:
Autopsy at: ON 05/20/2008
Pathologist: Khalil Wardak, M.D.

U.S. DOT PHMSA/CHMP SOUTHERN REGION
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OFFICE OF THE MEDICAL EXAMINER
DISTRICT 17- BROWARD COUNTY, FLORIDA
5301 SW 31 Avenue

Fort Lauderdale, Florida 33312

954-327-6500

ME CASE # BME2008-0731
Name: CASON, JAMES
Age: 43
DOB: EXEMPTION 6
RACE: Black
SEX: M

REPORTED BY 1: Police Crime Scene Gattis ()-
BSO
BS08-05-5085
DATE REPORTED: 5/20/2008 TIME: 8:03:13AM
REPORTED BY 2: ()-

RESIDENCE: EXEMPTION 6
LAST SEEN ALIVE DATE: 05/20/2008 TIME: 3:20:00AM

INCIDENT: 4200 McIntosh Rd
Fort Lauderdale, FL
DATE: 05/20/2008 TIME: 3:22:00AM

DEATH: 4200 McIntosh Rd Fort Lauderdale, FL
DATE: 05/20/2008 TIME: 3:25:00AM
FOUND: Y

Narrative/Summary: O
n May 20, 2008 at approximately 0750 hours, Detective Gattis, of Broward Sheriff's Office, called to report the work-related death of this 43-year-old, black male. According to the detective, in the course of their duties as workers at Port Everglades, the decedent's coworker (BME2008-0730) entered the hull of a ship to investigate a gas leak. He was overcome by Argon gas and collapsed, at which time the decedent and another coworker (BME2008-0732) entered the area and subsequently succumbed to the fumes, as well. All were pronounced at the scene.

*****DR WARDAK RESPONDED TO THE SCENE*****

THE ABOVE INFORMATION IS PRELIMINARY AND SUBJECT TO CHANGE WITH FURTHER INVESTIGATION.

Narrative/Summary Prepared by: Wendy Crane

Cause of Death: Chemical asphyxia
Due to: Displacement of ambient oxygen by argon gas
Due to:
Due to:

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Contributory Cause:

Manner of Death: Accident
Injury Inhaled argon gas
Description:
Autopsy at: ON 05/20/2008
Pathologist: Khalil Wardak, M.D.

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OFFICE OF THE MEDICAL EXAMINER
DISTRICT 17- BROWARD COUNTY, FLORIDA
5301 SW 31 Avenue

Fort Lauderdale, Florida 33312

954-327-6500

ME CASE # BME2008-0732
Name: DUTERTRE, RENE
Age: 25
DOB: EXEMPTION 6
RACE: White
SEX: M

REPORTED BY 1: Police Crime Scene Gattis ()-
BSO
BS08-05-5085
DATE REPORTED: 5/20/2008 TIME: 8:07:34AM

REPORTED BY 2: ()-

RESIDENCE: EXEMPTION 6

LAST SEEN ALIVE DATE: 05/20/2008 TIME: 3:20:00AM

INCIDENT: 4200 McIntosh Rd
Fort Lauderdale, FL
DATE: 05/20/2008 TIME: 3:22:00AM

DEATH: 4200 McIntosh Rd Fort Lauderdale, FL
DATE: 05/20/2008 TIME:
FOUND: Y

Narrative/Summary: O
n May 20, 2008 at approximately 0750 hours. Detective Gattis, of Broward Sheriff's Office, called to report the apparent work-related death of this 25-year-old, white male. According to the detective, the decedent, employed at Port Everglades, followed two other coworkers (BME2008-0730, BME2008-0731) into the hull of ship to investigate a gas leak and was overcome by Argon gas. All three were pronounced at the scene.

*****DR. WARDAK RESPONDED TO THE SCENE*****

N.O.K. Brianna Elrod, sister at (407-227-2019), Dawn Weissberg, fiance at (954-687-3349)

THE ABOVE INFORMATION IS PRELIMINARY AND SUBJECT TO CHANGE WITH FURTHER INVESTIGATION.

Narrative/Summary Prepared by: Wendy Crane

Cause of Death: Chemical asphyxia

Due to: Displacement of ambient oxygen by argon gas

Due to:

U.S. DOJ BUREAU OF MEDICAL EXAMINERS
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Due to:
Contributory Cause:

Manner of Death: Accident
Injury: Inhaled argon gas
Description:
Autopsy at: ON 05/20/2008
Pathologist: Khalil Wardak, M.D.

U.S. DOT/PHMSA/OHME/SOUTHERN REGION
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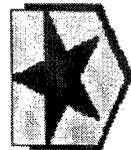
HAZARDOUS CARGO MANIFEST

FAL 2/Circ. 5/Rev. 1

JOB NUMBER: 00108009-02 IMO NUMBER: 198943 PORT OF LOADING: PORT EVERGLADES, FL.
 VESSEL NAME: MADELEINE MASTER NAME: SVELUYOV PORT OF DISCHARGE: CALLAO, PERU
 VOYAGE NO.: 875B NATIONALITY OF SHIP: PANAMA PORT OF TRANSIT: PANAMA

BOOKING REF. NO.	MARKS AND CONTAINER ID VEHICLE REG. NO(S)	EQPM.	NUMBERS AND KIND OF PACKAGES	PROPER SHIPPING NAME	DC DESCRIPTION	SUBSIDIARY RISK(S) LABELS	WEIGHT (LB)	STOWAGE POSITION ONBOARD
10024446	INO-902035-3	1 x 40RF	2400 CN	AEROSOLS (1L)	Class: 2.2 UN: 1950 Emergency Contact: 800-424-9300 Class: 3 UN: 1263 P.G.: III Flash Point: *23°C to 61°C c.c. Emergency Contact: 800-424-9300		2,716.00	
10024463	JBKU-211007-4 5201311	1 x 20TK	1 UN	ARGON, REFRIGERATED LIQUID	Class: 2.2 UN: 1951 Emergency Contact: 800-949-7937 Class: UN: Emergency Contact:		45,239.00	0.00
10024517	FSCU-320196-5	1 x 20CT	1 UN	REFRIGERATING MACHINES	Class: 2.2 UN: 2857 Emergency Contact: 800-424-9300		1,970.00	
10024525		1 x 20CT	12 BX	FIRE EXTINGUISHERS	Class: 2.2 UN: 1044 Emergency Contact: 703-527-3887 Class: 2.3 (2.1) UN: 1040 Emergency Contact: 813-248-0573		571.00	948.00

U.S. DOT/PHMSA/SOUTHERN REGION
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HAZARDOUS CARGO MANIFEST

JOB NUMBER: 00108009-02

IMO NUMBER: 196943

PORT OF LOADING: PORT EVERGLADES, FL.

VESSEL NAME: MADELEINE

MASTER NAME: MAMETSELYOV

PORT OF DISCHARGE: CALLAO, PERU

VOYAGE NO.: 87SB

NATIONALITY OF SHIP: PANTIGUAN

PORT OF TRANSIT: MENA

BOOKING REF. NO.	MARKS AND CONTAINER ID VEHICLE REG. NO(S)	NUMBERS AND KIND OF PACKAGES	EQPM.	PROPER SHIPPING NAME	DC DESCRIPTION	SUBSIDIARY RISK(S) LABELS	WEIGHT (LB)	STOWAGE POSITION ONBOARD

(As required by SOLAS 74, chapter VII, regulation 5.5, MARPOL 73/78, annex III, regulation 4(0) and chapter 5.4, paragraph 5.4.3.1 of the IMDG Code)

MASTER'S SIGNATURE _____ AGENT'S SIGNATURE _____

PLACE AND DATE _____ PLACE AND DATE _____

U.S. DOT/PHMSA/OHME/SOUTHERN REGION
 REPORT NUMBER: 08462028
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IMO DANGEROUS GOODS DECLARATION

1 Shipper/Consignor/Sender Airgas South-Miami 9030 N.W. 58th Street Miami, Florida 33178 Tel: (305) 470-8933 Fax: (305) 470-9099	2 Transport Document Number <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">3 Page of pages 1 of 1</td> <td style="width: 50%;">4 Shipper's Reference</td> </tr> </table>	3 Page of pages 1 of 1	4 Shipper's Reference
3 Page of pages 1 of 1	4 Shipper's Reference		
6 Consignee AGA SA PERU AV NESTOR GAMBETTA 880 CALLAO, PERU	5 Freight Forwarder's Reference 7 Carrier (to be declared by the Carrier)		

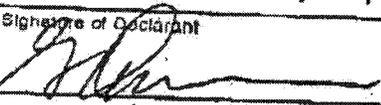
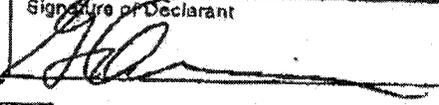
SHIPPER'S DECLARATION
 I hereby declare that the contents of this consignment are fully and accurately described below by the Proper Shipping Name, and are classified, packaged, marked and labeled/placarded and are in all respects in proper condition for transport according to the applicable international and national governmental regulations.

10 Vessel/Flight & Date	11 Port/Place of Handling MIAMI, FLA	9 Additional Handling Information EMERGENCY TELEPHONE NUMBER 1-800-949-7937 1-703-527-3887
12 Port/Place of Discharge MIAMI, FLA	13 Destination CALLAO PERU	

14 Shipping Marks	*Number & Kind of Packages, Description of Goods	GW (kg)	CUBE (m ³)
	1 UNIT UN1951 ISO ARGON REFRIGERATED LIQUID CLASS 2.2		20,520 KGS

15 CTU ID No. JBKU 211007-4	16 Seal No.	17 CTU Size & Type	18 Tara Mass (kg)	19 Total Gross Mass (kg)
---------------------------------------	--------------------	-------------------------------	--------------------------	---------------------------------

CONTAINER/VEHICLE PACKING CERTIFICATE I hereby declare that the goods described above have been packed/loaded into the container/vehicle identified above in accordance with the applicable provisions of IMDG code 5.4.2. MUST BE COMPLETED AND SIGNED FOR ALL CONTAINER/VEHICLE LOADS BY PERSON RESPONSIBLE FOR PACKING/LOADING	21 Receiving Organization Receipt Received the above number of packages/containers/trailers in apparent good order and condition, unless stated hereon: RECEIVING ORGANIZATION REMARKS:
---	---

20 Name of Company AIRGAS SOUTH	Hauler's Name	22 Name of Company Preparing Note AIRGAS SOUTH
Name/Status of Declarant GUSTAVO DEQUESADA EX. REP.	Vehicle Registration No.	Name/Status of Declarant GUSTAVO DEQUESADA EX. REP.
Place and Date MIAMI, FLA 5/12/08	Driver's Name and Date	Place and Date MIAMI, FLA 5/12/08
Signature of Declarant 	Driver's Signature	Signature of Declarant 

STYLE F03 LABELMASTER® (800) 821-5888 www.labelmaster.com

U.S. DOT/PHMSA/OHME/SOUTHERN REGION
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MULTIMODAL DANGEROUS GOODS FORM

1 Shipper/Consignor/Supplier BUCKEYE FIRE EQUIPMENT COMPANY 110 KINGS ROAD KINGS MOUNTAIN, NC 28086		2 Transport document number 3 Page 1 of 1 pages	
4 Consignee AG SEGURIDAD E.I.R.L. MARTIN NAPANGA 233, MIRAFLORES, LIMA, PERU		5 Shipper's reference ORDER #315734 6 Freight forwarders reference 7 Other (to be completed by the carrier) <div style="font-size: 2em; font-family: cursive;">BR# 10024525</div> <div style="font-size: 2em; font-family: cursive;">INV 396031-9</div>	
8 This shipment is within the limitations prescribed for: (Delete non-applicable) PASSENGER AND CARGO AIRCRAFT		9 Additional handling information 24 HOUR EMERGENCY NUMBER 703-527-3887 CHEMTREC	
10 Vessel/flight no. and date	11 Port/place of loading	13 Shipping marks *Number and kind of packages, description of goods Gross mass (kg) Net mass Cube (m ³)	
12 Port/place of discharge	14 Destination		
UN1044, FIRE EXTINGUISHERS CLASS 2.2 12 FIBERBOARD BOXES SAID TO CONTAIN 1 CYLINDER EACH - 255.83 kg		U.S. DOT/PHMSA/OHMB/SOUTHERN REGION REPORT NUMBER: <u>08462028</u> EXHIBIT NUMBER: <u>6</u> PAGE NUMBER: <u>4</u> OF <u>8</u>	
15 Container identification and/or vehicle registration no.	16 Seal number(s)	17 Container/vehicle size & type	18 Total gross (including tare) (kg)
CONTAINER/VEHICLE PACKING CERTIFICATE I hereby declare that the goods described above have been packed/loaded into the container/vehicle contained above in accordance with the applicable provisions. ** MUST BE COMPLETED AND SIGNED FOR ALL CONTAINER/VEHICLE LOADS BY PERSON RESPONSIBLE FOR PACKING/LOADING		21 RECEIVING ORGANIZATION RECEIPT Received the above number of packages/containers/trailers in apparent good order and condition, unless stated herein. RECEIVING ORGANIZATION REMARKS:	
20 Name of Company	22 Name of company (OF SHIPPER PREPARING THIS NOTE)	BUCKEYE FIRE EQUIPMENT COMPANY Name/Status of declarant CINDY WEAVER/CALUS COORDINATOR Place and date KINGS MTN NC 06/29/08 Signature of declarant <div style="font-family: cursive; font-size: 1.5em;">Cindy Weaver</div>	
Name/Status of declarant	23 Hauler's name		
Place and date	Vehicle reg. no.		
Signature of declarant	Signature and date		
		DRIVER'S SIGNATURE	

IMO DANGEROUS GOODS DECLARATION

1 Shipper Andersen Products, Inc. 3202 Caroline Drive Haw River NC 27253 US	2 Transportation Document Number <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">3 Page 1 of 1 Pages</td> <td style="width: 40%;">4 Shipper's Reference 703004</td> </tr> </table>	3 Page 1 of 1 Pages	4 Shipper's Reference 703004
3 Page 1 of 1 Pages	4 Shipper's Reference 703004		
6 Consignee American EOGas S.A.C. Jiron J.J. Pasos No. 775 Alt. Cdra. 2 y 3 Av. San Martin Pueblo Libre, Lima 21 PE Flavio Ramirez	5 Freight Forwarder's Reference 7 Carrier (to be declared by the Carrier)		

SHIPPER'S DECLARATION
 I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name(s), 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.

10 Vessel/Flight and Date 11 Port/Place Handling	9 Additional Handling Information RQ: 15.75 Kgs <div style="font-size: 1.5em; font-family: cursive;">BK# 10024525</div>
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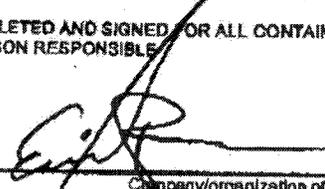
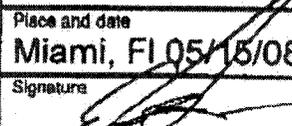
14 Shipping Marks	Number and Kind of Packages, Description of Goods	GW (kg)	CUBE (m3)
1/8-8/8 Cartons	UN 1040: Ethylene Oxide, Class 2.3 (2.1), PIH Category D, RQ: 15.75 KGS Chem Tel 813-248-0573	430 KGS	948 LBS

15 CTU ID No.	16 Seal No.	17 CTU Size and Type	18 Tare Mass (kg) 396.6	19 Total Gross Mass (kg) 430.0
CONTAINER/VEHICLE PACKING CERTIFICATE I hereby declare that the goods described above have been packed/loaded into the container/vehicle identified above in accordance with the applicable provisions.		21 Receiving Organization Receipt Received the above number of packages/containers/trailers in apparent good order and condition, unless stated herein: RECEIVING ORGANIZATION REMARKS:		
20 Name of Company Andersen Products, Inc.		Hauler's Name		22 Name of Company Preparing Note Andersen Products, Inc.
Name/Status of Declarant Amanda Roediger, Exports Manager		Vehicle Registration No.		Name/Status of Declarant Amanda Roediger, Exports Manager
Place and Date Haw River, NC, USA; 5/8/08		Driver Name and Date		Place and Date Haw River, NC, USA, 5/8/08
Signature of Declarant <i>Amanda Roediger</i>		Driver's Signature		Signature of Declarant <i>Amanda Roediger</i>

U.S. DOT/PHMSA/OHME/SOUTHERN REGION
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IMO DANGEROUS GOODS DECLARATION

This form meets the requirements of SOLAS 74 chapter VII, Regulation 5; MARPOL 73/78 Annex III, regulation 4 and the IMDG Code, Chapter 5.4

Shipper Trames Corporation 7270 N.W. 35 th Terrace Suite # 202 Miami, Fl 33122	Booking # 10024517
Consignee Union South International SAC Ave Elmer Faucett # 1743 Urbanizacion Bellavista Callao, Peru Ph : 452-5550	Carrier Interocean
Container/Vehicle Packing Certificate I hereby declare that the goods described below have been packed/loaded into the container/vehicle identified below in accordance with IMDG Code, paragraph 5.4.2 MUST BE COMPLETED AND SIGNED FOR ALL CONTAINERS OR VEHICLE LOADS BY PERSON RESPONSIBLE Signature: X 	Ship's name and voyage No. Madeline Voyage # 87SB
Name/Title, Company/organization of signatory Erik Ramos /Consultant Hazmat Discount Packaging, Inc	Port of loading: Peru Port of discharge: Port Everglades Port of Callao,
Place and date Miami, Fl 05/15/08	Additional handling information <p align="center" style="font-size: 2em;">FSLH 320196-5</p>
Marks & Nos. if applicable, identification or registration number(s) Container # Seal #	UN Number, proper shipping name, Hazard class/division, packaging group (where assigned) **, flashpoint (in °C.o.c) *, control and emergency temperatures* *, identification of the goods as MARINE POLLUTANT* *, EMS No. and MPAG Table No., number and type of packages UN 2857, Refrigerating Machines, Class 2.2., EMS F-C, S-V, 1 Steel Water Cooler containing 54.5 pounds of R22,
Gross weight : 1,970 Lbs/894 Kgs	Goods delivered as: <input type="checkbox"/> Break-bulk cargo <input checked="" type="checkbox"/> Unitized cargo <input type="checkbox"/> Bulk packages Type of unit (container, trailer, tank vehicle, etc.) <input type="checkbox"/> Open <input checked="" type="checkbox"/> Closed
Chemtrec : 1-800-424-9300 1-703-527-3887	
U.S. DOT/PHMSA/OHME/SOUTHERN REGION REPORT NUMBER: <u>08462028</u> EXHIBIT NUMBER: <u>5</u> PAGE NUMBER: <u>6</u> OF <u>8</u>	
ADDITIONAL INFORMATION (In certain circumstances special information/certificates are required, see IMDG Code, Sub-paragraphs 5.4.1.1.2 through 5.4.1.10)	
SHIPPER'S DECLARATION I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name(s), and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national government regulations.	Name/status, company/organization of signatory Erik Ramos, Consultant Hazmat Discount Packaging Place and date Miami, Fl 05/15/08 Signature 

DANGEROUS GOODS DECLARATION

This form may be used as a Dangerous Goods Declaration as it meets the requirements of SOLAS 74, Chapter VII, , regulation 4 ;
MARPOL73/78 Annex III, regulation 4.

Shipper ANDES CHEMICAL CORP 11125 NW 29th Street Doral, FL 33172 USA	1	Reference Number(s): 31006 / BOOKING 10024462	2
		Carrier:	4
Consignee SOCIEDAD QUIMICO INDUSTRIAL , AV AGENTINA #2963 LIMA, PERU,	3	Name/status, company/organization of signatory	5
CONTAINER/VEHICLE PACKING CERTIFICATE I hereby declare that the goods described here have been packed/loaded into the container /vehicle identified in accordance with the applicable provisions. + MUST BE COMPLETED AND SIGNED FOR ALL CONTAINER/VEHICLE LOADS BY PERSON RESPONSIBLE FOR PACKING/LOADING		Place and date	
		Signature on behalf of packer	
Ship's name and voyage no. MADLINE 87	6	Port of loading	7
Port of discharge	8		
Shipping Marks	*Number and Kind of packages, Description of good	Gross Mass(Kg). Net mass (Kg)	Goods delivered as <input type="checkbox"/> Breakbulk cargo <input type="checkbox"/> Unitized cargo <input type="checkbox"/> Bulk packages Type the unit (container, trailer, tank, vehicle, etc.) <input type="checkbox"/> Open <input type="checkbox"/> Closed
2 DR X UN 1263, PAINT RELATED MATERIAL, CLASS 3 P.G. III, FLASH 14.4 C, EMS F-E,S-E 399.16 NET KGS		446.34 GROSS KGS	EMERGENCY RESPONSE: Chemtrec(800) 424-9300 / Int'l # (703) 527-3887
		Name/Status, Company/organization of signatory TERRY MARINE, ANDES CHEMICAL	
DECLARATION I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name(s), and are classified, packaged, marked and labelled/placarded, and are in all respects in proper condition for transport according to the applicable international and national governmental regulations.	Place and date Miami, FL 05/08/08	Signature on behalf of shipper 	

DANGEROUS GOODS

*You must specify: UN No., Proper Shipping Name, Hazard class, packing group, (where assigned) marine pollutant and observe the mandatory requirements under applicable national and international governmental regulations. For purposes of the IMDG Code ~~to U.S. DOT/PHMSA/OHME/SOUTHERN REGION~~

+ For the purpose of the IMDG code, see 5.4.2.

IMDG CODE
Amdt 33-06

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IMO DANGEROUS GOODS DECLARATION

#24446

Shipper NAPA DISTRIBUTION CENTER 9250 NW 58 STREET MIAMI, FLORIDA 33178	1	Reference number(s) EMERGENCY CONTACT: (703) 527-3887	2
Consignee HYDRAULIC SYSTEMS SAC AVENIDA INDUSTRIAL 580 LIMA-PERU	3	Carrier	4
Container packing certificate/vehicle declaration	5	Name/status, company/organization of signatory	
DECLARATION It is declared that packing of the goods into the unit has been carried out in accordance with the provisions of 5.4.2.1. TO BE COMPLETED FOR SHIPMENTS IN CONTAINERS OR VEHICLES		Place and date MIAMI, FLORIDA 05/14/08	
		Signature on behalf of packer	
Ship's name and voyage No.	6	Port of loading	7
Port of discharge CALLAO-PERU	8		

Shipping marks	Number and kind of packages; description of goods **	Gross mass (kg)	Net mass (kg)	Cube (m³)	Goods delivered as:
2400 CNTS.	UN1950, AEROSOLS, MARINE POLLUTANT, EMS F-D S-U, PGIII, LIMITED QUANTITY. 1232.00 KGS BOOK# 10024516				<input type="checkbox"/> Breakbulk cargo <input type="checkbox"/> Unitized cargo <input type="checkbox"/> Bulk packages Type of unit (container, trailer, tank vehicle, etc.) <input type="checkbox"/> Open <input type="checkbox"/> Closed Insert "X" in appropriate box (This column may be left empty apart from the heading, in which case insert appropriate description)

** See 5.4.1.1.

The IMDG code page number should not appear on this form.

ADDITIONAL INFORMATION in certain circumstances special information/certificates are required, see IMDG Code, Sections 5.4.1.

DECLARATION 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 labelled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations.	Name/status, company/organization of signatory MARIA CONTADOR/NAPA DISTRIBUTION CENTER	11
	Place and date MIAMI, FLORIDA 05/14/08	
	Signature on behalf of shipper	

STYLE FM-IMO-96

Magaya Cargo System. www.magaya.com

U.S. DOT/PHMSA/OHME/SOUTHERN REGION
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Hazardous Cargo Permitted Upper Deck

Bay 29	Class	Bay 18	Bay 10	Bay 6	Bay 3
	1 AS	1 AS	1 AS	1 AS	1 AS
	2 2	2 2	2 1	2 1	2 2
	4 1	2 3	2 2	2 2	2 3
	6 1	3 3	2 3	2 3	3 3
	8	4 1	3 all	3 all	4 1
	9	4 2	4 all	4 all	4 2
		4 2	5 1	5 1	4 3
		5 1	6 1	6 1	5 1
		6 1 solids only	8	8	6 1 solids only
		8	9	9	8

U.S. DOT/PHMSA/OHME/SOUTHERN REGION
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