

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

IN THE MATTER OF:

**Apache Farmers Cooperative
(Respondent),**

PHMSA Case No. 12-0113-CCT-SW

COMPROMISE ORDER

By this Order I find that Apache Farmers Cooperative (Respondent) committed four (4) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$7,000 civil penalty for these violations.

I. Summary

Respondent: Apache Farmers Cooperative

No. of Violations: 4

Maximum Possible Civil Penalty: \$ 220,000

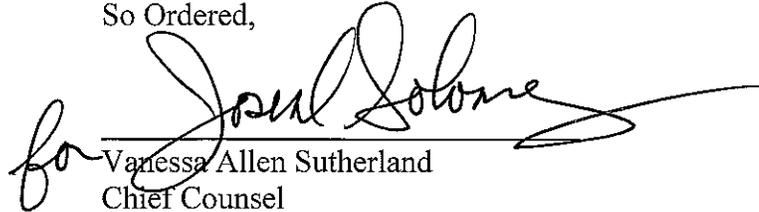
Total Payment Due: \$ 7,000

II. Finding

This matter comes before me after Apache Farmers Cooperative (Respondent) and the Pipeline and Hazardous Materials Safety Administration agreed to a disposition of this case. I find Respondent committed the violations described in the Compromise Agreement (Agreement), which I have attached hereto. I have reviewed the Agreement and I find that the terms as outlined therein are in the best interest of justice. The

Agreement, in its entirety, is incorporated and attached to this Order. All of the terms and conditions of the Agreement shall be given the full force and effect of an Order issued pursuant to the Federal hazardous materials transportation law, 49 U.S.C. § 5101, et seq., or the Hazardous Materials Regulations, 49 C.F.R. Parts 171 – 180.

So Ordered,

for 

Vanessa Allen Sutherland
Chief Counsel
Pipeline and Hazardous Materials Safety Administration

Dated: 3/13/2013

Attachments

CERTIFICATES OF SERVICE

This is to certify that on the 14th day of March 2013, the undersigned served in the following manner the designated copies of this Order with attached addenda to each party listed below:

Steven Sweeney, General Manager
Apache Farmers Cooperative
201 Floyd Avenue
Apache, Oklahoma 73003

Original Order with
Copy of Agreement
Certified Mail Return Receipt

Billy C. Hines, Jr., Regional Director
Southwest Office, OHME
8701 S. Gessner Road, Suite 900
Houston, TX 77074

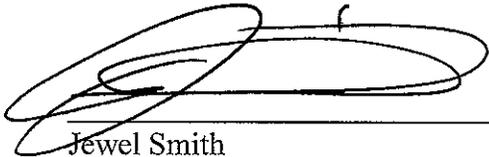
One Copy (Without Attachments)
Via Electronic Mail

Alice Koethe, Attorney
Pipeline and Hazardous Materials
Safety Administration
1200 New Jersey Ave, SE
Washington, DC 20590

One Copy
Personal Delivery

U.S. DOT Dockets
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Room W12-140
Washington, D.C. 20590

One Copy
Personal Delivery



Jewel Smith

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

IN THE MATTER OF:

Apache Farmers Cooperative (Respondent)

PHMSA Case No 12-0113-CCT-SW

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Apache Farmers Cooperative ("Respondent"),

and

The Pipeline and Hazardous Materials Safety Administration ("PHMSA"), a modal Administration of the United States Department of Transportation.

II. Authority/Jurisdiction

A. The Parties enter into this agreement under authority of 49 U.S.C. § 5123(e) and 49 C.F.R. § 107.327(a)(1).

B. For the Purposes of this Agreement, Respondent acknowledges:

(1) As a person who offers hazardous materials for transportation in commerce, Respondent is a regulated entity subject to the Hazardous Materials Regulations (HMR) and to the jurisdiction of (a) the Secretary of Transportation, (b) the PHMSA's Associate Administrator for Hazardous Materials Safety, and (c) PHMSA's Office of Chief Counsel (49 U.S.C. § 5103(b) and 49 C.F.R. § 107.301);

(2) The facts associated with this case are as alleged in the Inspection Report and the Notice and that based on these facts the Chief Counsel, in a final order, will find that Respondent committed violations of the Federal regulations listed in Section V below; and

(3) Respondent received proper notice of PHMSA's actions in this proceeding.

III. Background

A. On April 11, 2012, PHMSA investigator Walter Rucker conducted a compliance inspection at Respondent's Apache, Oklahoma facility. Based on the results of this inspection, PHMSA's investigator reported four (4) alleged violations of the HMR. PHMSA's investigator provided an "exit briefing form" to Respondent's representative that summarized the alleged violations and the required corrective actions.

B. Upon completion of the compliance inspection, the investigator submitted a report to the Director of OHME's Southwest Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Region Chief referred the matter to PHMSA's Office of Chief Counsel thereby recommending the initiation of a civil penalty action against Respondent pursuant to 49 C.F.R. § 107.311.

C. Based on a preliminary assessment of the apparent nature, circumstances, extent, and gravity of the probable violations, as set forth in the Investigator's report, on January 7, 2013, an attorney from the PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging four (4) violations of the HMR and proposing a \$8,940 civil penalty, which included a \$2,050 reduction for corrective actions and one quality control item.

IV. Basis of Agreement

A. Reply to Notice. Respondent submitted a timely reply to the Notice.

B. Corrective Action. In its correspondence dated May 2, 2012, January 29, 2013, January 30, 2013, and February 4, 2013, Respondent submitted evidence of corrective actions it had taken and additional information. The following is a summary of all of Respondent's corrective actions.

Violation Number	Respondent's Corrective action
1	Respondent indicated that it updated its shipping papers and now includes all information required by the HMR. It provided supporting documentation in the form of updated shipping papers.
2	Respondent indicated that it removed nurse tank #13 from service at the time of the inspection and will not be placed back into service until it has passed the necessary ASME tests. Respondent provided supporting documentation in the form of photographs of the red tagged nurse tank.
3	Respondent indicated that the Security Plan was revised to address en route security.
4	Respondent provided security and in-depth security awareness training to all hazmat employees.

V. Violations and Civil Penalty

In a subsequent Order, the Chief Counsel will find that Respondent committed the following violations and will assess the following civil penalty:

Viol. No.	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Respondent offered and transported in commerce a hazardous material (NA 1993, Diesel Fuel, Class 3, PG III and UN1203, Gasoline, Class 3, PG II), which was not accompanied by a shipping paper displaying the information required by the the HMR, in violation of 49 CFR §§ 171.1(b), 171.2(a),(b),(e),&(i), 172.200(a), 172.201(d), 172.202, 172.604, 177.801, and 177.817(a).	\$2,250	\$1,910
2	Respondent offered for transportation in commerce a hazardous material (UN1005, Ammonia, Anhydrous, 2.2) in unauthorized non-specification cargo tanks (nurse tanks), which did not display legible ASME identification plates and had not been subjected to testing in accordance with 49 CFR §173.315(m)(2) and §180.407, in violation of 49 CFR §§ 171.1(b), 171.2(a), (b), (c), (e), & (g), 173.22(a)(2), 173.22a (a), 173.24(c), and §173.315(m)(2).	\$5,950	\$4,460
3	Respondent offered toxic inhalation hazard materials for transportation in commerce, while failing to develop and adhere to a security plan addressing en route security, in violation of 49 C.F.R. §§ 171.2 (b), 172.800 (b) and 172.802(a)(3).	\$0	\$0
4	Respondent allowed employees to perform functions subject to the HMR when the hazardous material employees had not received current training and testing, in violation of 49 C.F.R. §§ 171.2(a), (b), (e) & (f), 172.702(a), (b) & (d) and 172.704(a), (b), and (d).	\$740	\$630
TOTAL	-----	\$8,940	\$7,000

VI. Factors Considered in Determining the Civil Penalty

In determining the amount of a civil penalty, PHMSA considered the following statutory criteria (49 U.S.C. § 5123(c)):

- (1) The nature, circumstances, extent, and gravity of the violations;
- (2) The degree of culpability and history of prior violations;
- (3) Respondent's size;

- (4) Respondent's ability to pay the penalty and its ability to continue to do business; and
- (5) Other matters as justice may require.

Documentation of Respondent's corrective actions for these violations and Respondent's small business status justifies PHMSA in reducing the proposed civil penalty.

VII. Terms and Conditions

A. By this agreement, PHMSA agrees to assess a total civil penalty of \$7,000 for four violations of the HMR.

B. Payment. Respondent agrees to pay \$7,000 as full satisfaction of the civil penalty proposed in the Notice. **Respondent must pay the \$7,000 within thirty (30) days of the ORDER**, which the Chief Counsel will issue *after* the Respondent signs and returns this Agreement.

C. Rights Waived. By entering into this agreement, Respondent waives any right:

(1) to present further written or oral explanations, information, and arguments in this matter;

(2) to Administrative appeal;

(3) to seek judicial review or otherwise contest or challenge the validity of this Agreement or the Notice associated with this case.

D. Matters Resolved. This Agreement resolves only the violations noted in PHMSA Case No. 12-0113-CCT-SW as referenced in Section V of this agreement and in the Notice.

E. Prior Violation. In the event Respondent commits any future violations of the Federal hazardous material transportation law, 49 U.S.C. § 5101 *et seq.*, the HMR, or any exemption, or order issued thereunder these violations shall constitute a prior violation under 49 U.S.C. § 5123.

F. Subsequent Order. After Respondent signs and returns this Agreement, PHMSA's representative will present the Agreement to the Chief Counsel requesting that the Chief Counsel adopt the terms of this Agreement by issuing a Compromise Order (49 C.F.R. § 107.327(a)(1)). The terms of this Agreement constitute an offer of compromise until accepted by the Chief Counsel.

G. Closing of the Case File. After issuance of the Compromise Order, Respondent must pay the civil penalty in accordance with the terms of this Agreement. Upon receipt of Respondent's final payment, the Chief Counsel will close this case with prejudice to the Respondent (49 C.F.R. § 107.327(a)(1)(ii)).

VIII. Miscellaneous Provisions

- A. By signing this Agreement, Respondent or its representative warrants to have read the agreement and understood its terms and conditions.
- B. The individuals signing on behalf of the Respondent and PHMSA represent that they are authorized to sign and have authority to enter into this Agreement.
- C. Respondent's failure to sign and return this agreement within thirty (30) days from its receipt will result in the withdrawal of the offer of compromise contained within this Agreement and the Chief Counsel will issue an Order pursuant to 49 C.F.R. § 107.317(d).
- D. Failure to comply with any of the terms of this agreement may result in review, suspension, and/or termination of existing special permits/approvals, pursuant to 49 C.F.R. §107.121 and 107.713.
- E. Respondent must return the signed Agreement to:

Alice Koethe, Attorney
United States Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Ave, S.E., Zone E-26 (PHC-10)
Washington, D.C. 20590-0001

Respondent

Federal Tax ID #: 730237300¹

By: Steve Spruny - G.M.
Name, Title

Date: 2-26-2013

Pipeline and Hazardous Materials Safety Administration

By: Alice Koethe
Alice Koethe, Attorney

Date: 3/13/2013

¹ The Taxpayer Identifying Number is required by 31 U.S.C. § 7701(c)(3). PHMSA will use this number for purposes of collecting and reporting on any delinquent amounts arising out of this agreement.

Payment Information

Payment Method

Respondent must pay the civil penalty of \$7,000 by one of the following: (1) wire transfer, (2) certified check or money order, or (3) credit card via the Internet.

(1) Wire Transfer

Detailed instructions for sending a wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury are contained in the enclosure to this Order. Please direct questions concerning wire transfers to:

Financial Operations Division
Attn: Taushayna Wright
Federal Aviation Administration
Mike Monroney Aeronautical Center
AMZ-341
P.O. Box 269039
Oklahoma City, OK 73125
Telephone (405) 954-8893.

(2) Check or Money Order

Make check or money order payable to "U.S. Department of Transportation" (include the Ref. No. of this case on the check or money order) and send to:

Chief, Financial Operations Division
Attn: Robin Cecil
Federal Aviation Administration
Mike Monroney Aeronautical Center
AMZ-341
P.O. Box 269039
Oklahoma City, OK 73125.

(3) Credit Card

To pay electronically using a credit card, visit the following website address and follow the instructions:

<https://www.pay.gov/paygov/>

Interest and Administrative Charges

If Respondent pays the civil penalty by the due date, no interest will be charged. If Respondent does not pay by that date, the FAA's Financial Operations Division will start collection activities and may assess interest, a late-payment penalty, and administrative charges under 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 49 C.F.R. § 89.23.

The rate of interest is determined under the above authorities. Interest accrues from the date of this Order. A late-payment penalty of six percent (6%) per year applies to any portion of the debt that is more than 90 days past due. The late-payment penalty is calculated from the date Respondent receives the Order.

Treasury Department Collection

FAA's Financial Operations Division may also refer this debt and associated charges to the U.S. Department of Treasury for collection. The Department of the Treasury may offset these amounts against any payment due Respondent (31 C.F.R. § 901.3).

Under the Debt Collection Act (see 31 U.S.C. § 3716(a)), a debtor has certain procedural rights prior to an offset. You, as the debtor, have the right to be notified of: (1) the nature and amount of the debt; (2) the agency's intention to collect the debt by offset; (3) the right to inspect and copy the agency records pertaining to the debt; (4) the right to request a review within the agency of the indebtedness and (5) the right to enter into a written agreement with the agency to repay the debt. This Order constitutes written notification of these procedural rights.

**INSTRUCTIONS FOR ELECTRONIC FUNDS TRANSFER TO
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION**

1. <u>RECEIVER'S ABA NO.</u> 021030004	2. <u>TYPE SUBTYPE</u> (provided by sending bank)
3. <u>SENDING BANK ARB NO.</u> (provided by sending bank)	4. <u>SENDING BANK REF NO.</u> (provided by sending bank)
5. <u>AMOUNT</u>	6. <u>SENDING BANK NAME</u> (provided by sending bank)
7. <u>RECEIVER NAME:</u> TREAS NYC	8. <u>PRODUCT CODE</u> (Normally CTR, or sending bank)
9. <u>BENEFICIAL (BNF)- AGENCY</u> <u>LOCATION CODE</u> BNF=/AC-69140001	10. <u>REASONS FOR PAYMENT</u> <i>Example:</i> PHMSA Payment for Case #/Ticket

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for Block (1), (5), (7), (9), and (10). The information provided in blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the

Pipeline and Hazardous Materials Safety Administration, Department of Transportation

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this nine digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE:**
\$10,000.00

Block #7 - RECEIVER NAME- "TREAS NYC." Ensure the sending bank enters this abbreviation, which must be used for all wire transfer to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/AC-69140001"
Ensure the sending bank enters this information. This is the Agency Location Code for Pipeline and Hazardous Materials Safety Administration, Department of Transportation

Block #10 - REASON FOR PAYMENT – "AC-Payment for PHMSA Case#" To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number."

Note: - A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You, as the sender, can assist this process by notifying, at the time you send the wire transfer, the General Accounting Division at (405) 954-8893.