

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

**IN THE MATTER OF:**

**California Acetylene**

**(Respondent),**

PHMSA Case No. 11-0170-CR-WE

**COMPROMISE ORDER**

**By this Order I find that California Acetylene (Respondent) committed three (3) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$5,755 civil penalty for these violations.**

**I. Summary**

Respondent: California Acetylene

No. of Violations: 3

Maximum Possible Civil Penalty: \$ 165,000

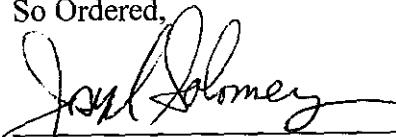
Total Payment Due: \$ 5,755

**II. Finding**

This matter comes before me after California Acetylene (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,



Vanessa Allen Sutherland  
Chief Counsel

Pipeline and Hazardous Materials Safety Administration

Dated: 2/11/2013

Attachments

## CERTIFICATES OF SERVICE

This is to certify that on the 11<sup>th</sup> day of February, 2013, the undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Melody Anderson, Operations Director  
California Acetylene  
201 North Main Street  
Riverside, California 92501

Original Order with  
Copy of Agreement  
Certified Mail Return Receipt

Sean Lynum, Regional Director  
Western Office, OHME  
3401 Centrelake Drive, Suite 550B  
Ontario, CA 91761

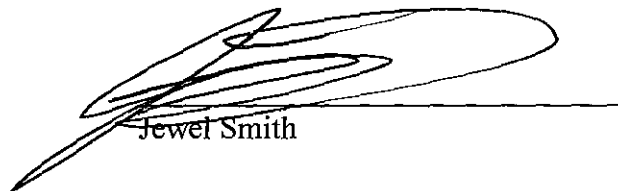
One Copy (Without Attachments)  
Via Electronic Mail

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:**

**California Acetylene (Respondent)**

PHMSA Case No. 11-0170-CR-WE

**COMPROMISE AGREEMENT**

**I. Parties**

The Parties to this Compromise Agreement (Agreement) are: California Acetylene, located in Riverside, CA

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 an entity that holds a requalification identification number (RIN) and 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) PHMSA has sufficient proof to show, by a preponderance of the evidence, Respondent's violation 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 March 22, 2011, PHMSA investigators Rene Silva and Vincent Mercadante conducted a compliance investigation at Respondent's facility, "California Acetylene," in Riverside, California pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's investigators reported four (4) alleged violations of the HMR. At the conclusion of the compliance inspection, PHMSA's investigators conducted an "exit briefing" during which the investigators discussed the alleged violations and the required corrective actions with Respondent's representative.

B. Upon completion of the compliance inspection, the investigators submitted a report to the chief of OHME's Western Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Region Chief referred the matters to PHMSA's Office of Chief Counsel thereby recommending the initiation of 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 May 9, 2012, an attorney from the PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) for case number 11-0170-CR-WE alleging three (3) violations of the HMR and proposing a \$8,510 civil penalty, including a \$290 reduction for corrective action.

### IV. Basis of Agreement

A. Reply to Notice. On June 1, 2012, Respondent requested an extension, which PHMSA granted. On July 9, 2012, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In its July 9, 2012, and January 22, 2013 responses, Respondent noted that it had completed the following corrective actions:

Violation Number	Respondent's Corrective Action
1	Respondent indicated that it will no longer offer or transport manifolded cylinders. It provided supporting documentation in the form of a photograph of the shipping configuration currently used for the hydrogen cylinders.
2	Respondent indicated that it had begun to hold daily safety meetings which include job specific and general awareness training for all employees and general awareness training for new hires. Respondent included updated and complete hazmat training records for all of its hazmat employees in each of the areas required by the HMR.
3	Respondent indicated that it now keeps a copy of DOT SP-14659 on file at its facility. It also indicated that it includes the special permit information on its shipping papers, and included supporting evidence in the form of an executed shipping paper.

## 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 for transportation in commerce and transported in commerce hazardous materials (UN1049, Hydrogen, compressed, 2.1) contained in manifolded cylinders, when the cylinder valves and pressure relief devices were not protected from damage by framing, a cabinet, or other method, in violation of 49 C.F.R. §§ 171.2(a), (e), & (g), and 173.301(g).	\$7,000	\$4,550
2	Respondent allowed employees to perform functions subject to the HMR when it could not provide current training and testing records for each hazardous materials employee, in violation of 49 C.F.R. §§ 171.2(a), (b), (e) & (f), 172.702(a), (b) & (d) and 172.704(a), (b), (c) and (d).	\$760	\$530
3	Respondent offered hazardous materials for transportation in commerce under the terms of a Special Permit, while failing to include information pertaining to the Special Permit on the shipping paper, and failing to maintain a copy of the Special Permit, in violation of 49 C.F.R. §§ 171.2(a), (b), (e) & (f), 173.22a (a) & (b), and 172.203(a).	\$750	\$675
TOTAL		\$8,510	\$5,755

## 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 the full facts, including Respondent's corrective actions and size, justify assessing a civil penalty of \$5,755.

## **VII. Terms and Conditions**

A. Payment. Respondent agrees to pay the sum of \$5,755 as full satisfaction of the civil penalty proposed in the Notice.

(1) Respondent must pay \$5,755 within thirty days from the date of the Order, which the Chief Counsel will issue after Respondent signs and returns this agreement.

B. 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; and

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

C. This Agreement resolves only the violations noted in PHMSA Case 11-0170-CR-WE as referenced in Section V of this agreement and in the Notice. 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 one prior violation under 49 U.S.C. § 5123.

E. 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.

F. 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 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).

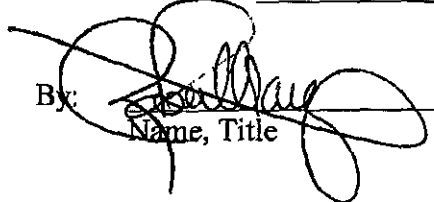
D. Failure to comply with any of the terms of this agreement may result in review, suspension, and/or termination of existing special permits/approvals, pursuant to 49 C.F.R. §107.121 and 107.713.

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., SE, Zone E26 (PHC-10)  
Washington, D.C. 20590

**Respondent**

Federal Tax ID #: 37-1453014<sup>1</sup>

By:  \_\_\_\_\_  
Name, Title

Date: 2/8/2013

**Pipeline and Hazardous Materials Safety Administration**

By:  \_\_\_\_\_  
Alice Koethe, Attorney

Date: 2/8/2013

<sup>1</sup> 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 \$5,755 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: Taushayna Wright  
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 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.