

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

IN THE MATTER OF:

**Farmer's Grain Company, Inc.,

(Respondent),**

PHMSA Case No. 11-0071-SCT-SW

COMPROMISE ORDER

By this Order I find that Farmer's Grain Company, Inc. (Respondent) committed two violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$7,965 civil penalty for these violations.

I. Summary

Respondent: Farmer's Grain Company, Inc.
302 W. Broadway
Pond Creek, OK 73766
Attn: Roscoe Grimes, President

No. of Violations: 2

Total Payment Due: \$7,965

II. Finding

This matter comes before me after Respondent and the Pipeline and Hazardous Materials Safety Administration (PHMSA) agreed to a disposition of this civil enforcement action. I have reviewed the Compromise Agreement (Agreement) and I find the terms as outlined therein are in the best interest of justice. I find Respondent

committed the violations as described in the Agreement, which is attached as Addendum A to this Order, and I impose a civil penalty of \$7,965. Respondent must pay the civil penalty in accordance with the instructions contained in addendum B to this Order.

The attached Agreement, in its entirety, is incorporated into 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.

Dated: 2/13/2013

So Ordered,



Vanessa L. Allen Sutherland

Chief Counsel

Pipeline and Hazardous Materials Safety Administration

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CERTIFICATE OF SERVICES

This is to certify that on the 13th 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:

Mr. Roscoe Grimes, President
Farmer's Grain Company, Inc.
302 W. Broadway
Pond Creek, OK 73766

One Copy

Mr. Billy Hines, Director
PHMSA Hazardous Materials Safety
Southwest Region Office
8701 S. Gessner Road, Suite 900
Houston, TX 77074

One Copy (without enclosures)
Via Electronic Mail

Mr. Walter Rucker
Hazardous Materials Investigator
PHMSA Hazardous Materials Safety
Southwest Region Office
8701 S. Gessner Road, Suite 900
Houston, TX 77074

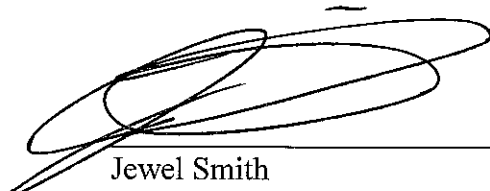
One Copy (without enclosures)
Via Electronic Mail

Amelia Samaras, Attorney
Pipeline and Hazardous Materials
Safety Administration
Office of Chief Counsel

One Copy
Via Electronic Mail

U.S. DOT Dockets
U.S. Department of Transportation
1200 New Jersey Ave., S.E.
East Building
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:

**Farmers Grain Company, Inc.,

(Respondent)**

PHMSA Case No. 11-0071-SCT-SW

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Farmers Grain Company, Inc. ("Respondent"), a distributor, offer, and shipper of agricultural fertilizers, including hazardous material anhydrous ammonia, located at 302 W. Broadway, Pond Creek, Oklahoma 73766
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 transports hazardous materials, 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 15, 2011, an inspector from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a routine compliance inspection at Respondent's business pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's inspector reported two alleged violations of the HMR. At the conclusion of the compliance inspection, PHMSA's inspector conducted an "exit briefing" during which the inspector discussed the alleged violations and the required corrective actions with Respondent's representative.

B. Upon completion of the compliance inspection, the inspector submitted a report to the chief 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 inspector's report, on October 15, 2012, an attorney from the PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging two violations of the HMR and proposing a \$10,150 civil penalty.

IV. Basis of Agreement

A. Reply to Notice. On November 12, 2012, Respondent submitted a timely reply to the Notice. In its reply, Respondent sought further reduction in civil penalties and submitted evidence of further corrective actions.

B. Corrective Action. In its March 31, 2011, April 13, 2011, November 12, 2012, and January 17, 2013 letters, Respondent submitted evidence of corrective actions it had taken. The following is a summary of all of Respondent's corrective actions.

Violation Number	Respondent's Corrective action
1	Immediately after the inspection, Respondent took the nurse tanks found to have probable violations out of service. Afterwards, Respondent provided copies of inspections reports for all tanks with illegible data plates. Respondent also provided photographs of proper test markings and the required "anhydrous ammonia" marking on each head. Respondent also committed to have properly tightened all loose farm wagon bolts.
2	Respondent stated that the MC-331 marking had been covered and that the tank is now operating as a non-specification nurse tank, compliant with 49 C.F.R. § 173.315(m)(1).

C. Finances. Respondent did not request mitigation based on finances.

D. Informal Conference. The parties communicated by email. Respondent did not request an informal conference, as it appears no matters are in dispute.

E. Small Business Size. Evidence in the record also substantiates that Respondent is a small business.

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 a hazardous material, RQ, Ammonia, anhydrous, 2.2 UN 1005, for transportation in commerce in unauthorized, non-specification packages because various tanks were not securely mounted on a farm wagon, did not have a legible ASME data plate, did not have the required placards, did not have the required identification number markings, and did not have the required shipping name markings, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), and (f); 172.302(a)(1); 172.328(a)(2) and (b); 173.22(a); 173.24(c); and 173.315(m)(2)	\$5,950	\$4,465
2	Respondent offered a hazardous material, RQ, Ammonia, anhydrous, 2.2 UN 1005, for transportation in commerce in an MC 331 cargo tank that was overdue for the prescribed periodic retest, in violation of 49 C.F.R. §§ 171.2(a), (b), (c), (e), (f) and (g); 173.33(a)(3); and 180.407(a) and (c).	\$4,200	\$3,500
TOTAL	-----	\$10,150	\$7,965

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 corrective actions;
- (4) Respondent's size;

and

- (5) Other matters as justice may require.

Documentation of Respondent's corrective actions for these violations and the fact that Respondent is a small business, justify assessing a civil penalty of \$7,965.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$7,965, as full satisfaction of the civil penalty proposed in the Notice. Respondent is to make the payment within 30 days from the date the Chief Counsel issues the Final Order, which 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 No. 11-0071-SCT-SW 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 a prior violation under 49 U.S.C. § 5123.

D. 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.

E. 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. Respondent must return the signed Agreement to:


Amelia Samaras, Attorney
United States Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Mail Stop: E26-105
1200 New Jersey Ave., SE
Washington, D.C. 20590-0001

Or

amelia.samaras@dot.gov


Respondent

Federal Tax ID #: 73-0236330¹

By:  GM
Name, Title
Farmers Grain Company, Inc.

Date: 1/30/13

Pipeline and Hazardous Materials Safety Administration

By: 
Amelia Samaras, Attorney

Date: 2/8/13

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 of Civil Penalty

The U.S. Department of Transportation's Federal Aviation Administration (FAA) is authorized to receive and process payments of civil penalties assessed by PHMSA.

Respondent must pay a total civil penalty of \$7,965 within 30 days of the date of this Order. Respondent must pay the civil penalty by (1) wire transfer, (2) certified check or money order, or (3) credit card via the Internet, in accordance with the following instructions.

(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 attachment to this Addendum. Please direct any questions concerning wire transfers to:

AMZ-341
Federal Aviation Administration
Mike Monroney Aeronautical Center
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:

AMZ-341
Federal Aviation Administration
Mike Monroney Aeronautical Center
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 Decision. 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 Decision.

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 Decision 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=/ALC-69-14-0001	10. <u>REASONS FOR PAYMENT</u> <i>Example: PHMSA Payment for Case #/Ticket</i>

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, it must be used for all wire transfer to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/ALC-69-14-0001" 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.