

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

IN THE MATTER OF:

GrainCo FS, Inc.,

(Respondent),

PHMSA Case No. 11-0077-SNT-CE

COMPROMISE ORDER

By this Order I find that GrainCo FS, Inc. (Respondent) committed one violation of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$5,250 civil penalty for these violations.

I. Summary

Respondent: GrainCo FS, Inc.
3107 North Highway 23
Ottawa, IL 601350
Attn: Michael Builta, General Manager

No. of Violations: 1

Total Payment Due: \$5,250

II. Finding

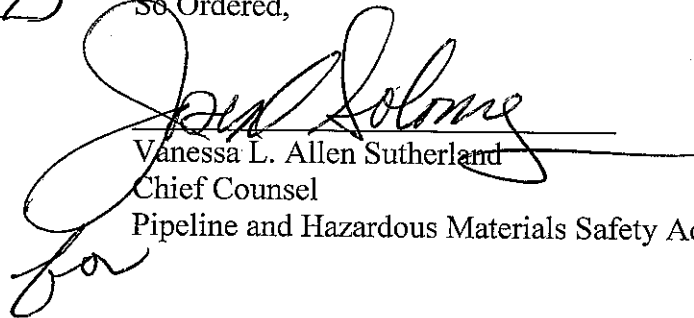
This matter comes before me after Respondent and the Pipeline and Hazardous Materials Safety Administration (PHMSA) agreed to a disposition of this civil enforcement action. I have reviewed the Compromise Agreement (Agreement) and I find the terms as outlined therein are in the best interest of justice. 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 **\$5,250**. 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: 6/7/2013

So Ordered,



Vanessa L. Allen Sutherland
Chief Counsel
Pipeline and Hazardous Materials Safety Administration

CERTIFICATE OF SERVICES

This is to certify that on the 10th day of June, 2013, the undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Mr. Michael Builta, General Manager
GrainCo FS, Inc.
3107 North Highway. 23
Ottawa, IL 61350

Original Order with
Copy of Agreement
Certified Mail Return Receipt

Mr. Kip Wills, Region Director
Hazardous Materials Enforcement Office
2300 East Devon Avenue, Suite 478
Des Plaines, IL 60018-4696

One Copy (without enclosures)
Via Electronic Mail

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

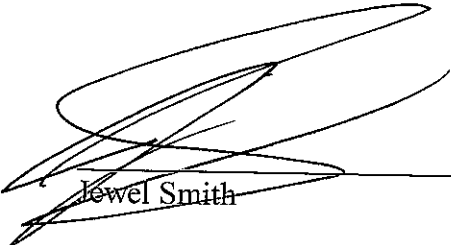
One Copy
Via Electronic Mail

Mr. Tim Buffum, Investigator
Hazardous Materials Enforcement Office
2300 East Devon Avenue, Suite 478
Des Plaines, IL 60018-4696

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

Payment Information

GrainCo FS, Inc. (Respondent) must pay a total civil penalty of \$5,250 in accordance with the following:

Due date

Respondent must make the payment of \$5,250 within **30** days of the date of this Order.

Payment Method

Respondent must pay the civil penalty 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: Robin Cecil
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/>

**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: 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, 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.

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

IN THE MATTER OF:

**Grainco FS, Inc.,

(Respondent)**

PHMSA Case No. 11-0077-SNT-CE

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Grainco FS Inc. ("Respondent"), a distributor, shipper, and carrier of hazardous materials, including the inhalation hazard anhydrous ammonia and propane, located at 3107 North Highway 23, Ottawa, IL 61350
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 December 9, 2010, 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 one alleged violation 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 Central 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 January 31, 2013, an attorney from the PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging five violations of the HMR and proposing a \$7,000 civil penalty.

IV. Basis of Agreement

A. Reply to Notice. After receiving and requesting an extension, on May 3, 2013, Respondent submitted a reply to the Notice. In its reply, Respondent did not specifically contest the alleged violations but did provide corrective action documentation. The PHMSA attorney then followed up with requests for further corrective action documentation, which Grainco did provide.

B. Corrective Action. In its March 13, 2013 follow up letter, Respondent submitted further 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	For each nurse tank listed in the Notice and others, Respondent provided either (1) an inspection report to show that the tank successfully underwent pressure, thickness, and external visual examinations and is now properly operating under 49 C.F.R. § 173.315(m)(2) OR a photograph of the tank removed from the farm wagon with black spray paint applied and placards removed to show that the tank would not be used to transport anhydrous ammonia. The tanks that did not pass the pressure, thickness, and external visual tests were sold for scrap metal.

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

D. Informal Conference. On various dates, including May 7 and May 21, 2013, the Office of Chief Counsel and Respondent (parties) discussed the case and Respondent's corrective actions via email.

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 nurse tanks that did not have legible ASME data plates and/or were not marked as required with the proper shipping name, and/or were not properly mounted to a farm wagon, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), and (f); 172.302(a)(1); 172.328(a)(2) and (b); and 173.315(m).	\$7,000	\$5,250
TOTAL	-----	\$7,000	\$5,250

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 corrective actions; 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 **\$5,250**.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$5,250, as full satisfaction of civil penalty proposed in the Notice 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 No. 11-0077-SNT-CE 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 #: 36-1315960 ¹

By: 
Michael Buita, ~~President~~

Date: 5-29-13

GENERAL MANAGER

Pipeline and Hazardous Materials Safety Administration

By: 
Amelia Samaras, Attorney

Date: 6/7/13

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.

- Signed Agreement
- Sent Certified Mail: 5/29/13
- Certified mail: 7012 1010 8003
3657 2941

Kmb