

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

IN THE MATTER OF:

**Horizon Medical Services

(Respondent)**

PHMSA Case No. 11-0295-RAM-EA

COMPROMISE ORDER

By this Order I find that Horizon Medical Services committed four (4) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$7,500 civil penalty for the violations.

I. Summary

Respondent:

Horizon Medical Services
3920 NW 49th Street
Tamarac, FL 32309
ATTN: Dr. Mark Pomper, Owner

No. of Violations: 4

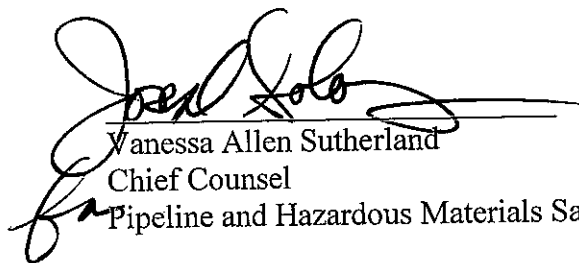
Total Payment Due: \$7,500

II. Finding

This matter comes before me after Horizon Medical Services (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.

It is so Ordered,



Vanessa Allen Sutherland
Chief Counsel
Pipeline and Hazardous Materials Safety Administration

Date: 5/20/2013

Attachments

CERTIFICATE OF SERVICE

This is to certify that on the 22nd day of May, 2013, the undersigned served in the following manner the designated copies of this Order with attached addenda to each party listed below:

Dr. Mark Pomper
Horizon Medical Services
3920 NW 49th Street
Tamarac, FL 33309

Original Order with
Copy of Agreement
Certified Mail
Return Receipt Requested

William Schoonover, Director
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Safety Field Operations
1200 New Jersey Avenue, S.E.
Washington, D.C. 02590

One Copy (without
enclosures)
Via Electronic Mail

Colleen Abbenhaus, Director
Pipeline and Hazardous Materials Safety Administration
Eastern Region Office
820 Bear Tavern Rd., Suite 306
West Trenton, NJ 08628

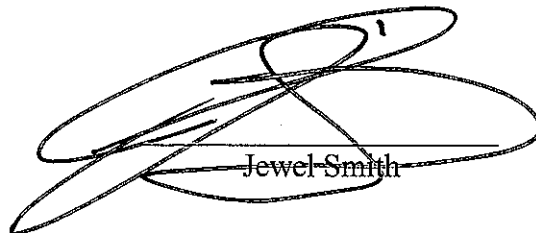
One Copy (without
enclosures)
Via Electronic Mail

Tyler Patterson, Attorney
Pipeline and Hazardous Materials Safety Administration
Office of Chief Counsel
1200 New Jersey Avenue, S.E. PHC-10, E24-311
Washington, D.C. 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:

**Horizon Medical Services
(Respondent)**

PHMSA Case No. 11-0295-RAM-EA

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Horizon Medical Services (“Respondent”), a medical service company which delivers radiation therapy to clinics and patients’ homes operating in Tamarac, Florida, 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 in commerce Iridium-192 sources, 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); and

(2) Although the parties have agreed to a compromise of this proceeding, such compromise constitutes an admission on the part of the Respondent that it committed the alleged violations found by PHMSA and/or an agreement with the facts alleged by PHMSA; 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 the proceeding.

III. Background

A. Investigators from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a compliance inspection of Respondent's facility in Tamarac, Florida on September 27, 2011, 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. After the conclusion of the compliance inspection, PHMSA's Investigators contacted and interviewed the Respondent, and then 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 director of OHMSFO's Eastern Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Region Director referred the matters to PHMSA's Assistant Chief Counsel for Hazardous Materials Safety 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 August 17, 2012, an attorney from PHMSA's Hazardous Materials Safety issued a Notice of Probable Violation (NOPV) alleging two violations of the HMR and proposing a \$11,850 civil penalty.

IV. Basis of Agreement

A. Reply to Notice. On October 24, 2012, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In a letters dated October 24, 2011, November 22, 2011, August 29, 2011, and October 24, 2012, Respondent submitted evidence of corrective actions it had taken in response to the exit briefing. The following is a summary of all of Respondent's documented corrective actions.

1. Respondent has trained all of its hazmat employees through the Radiation Safety Academy of Gaithersburg, MD.
2. Respondent has obtained certification test reports for its Type A packages.
3. Respondent has revised its hazmat shipping documents that include its use of an authorized Emergency Response Number.
4. Respondent has updated its transportation procedures to include marking and labeling its Type A package.

PHMSA finds that the foregoing corrective actions have corrected the violations outlined in the Notice.

C. Finances. Respondent has not requested mitigation based on finances

D. Informal Conference. The terms of this settlement was reached without the need for an Informal Conference.

V. Compromise Penalty Amount

HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
Offering a hazardous material (radioactive materials) for transportation in commerce while failing to have a shipping paper indicating the date of the transport, failing to indicate the activity and transport index of the radioactive material on that date, and failing to have an authorized emergency response number in violation of 49 C.F.R. §§ 172.200, 172.201(e), 172.203(d), and 172.604(a, b).	\$1,950	\$1,400
Offering a hazardous material (radioactive materials) for transportation in commerce while failing to properly mark and label the package in violation of 49 C.F.R. §§ 172.300, 172.301, 172.310, 172.400, and 172.403.	\$4,650	\$3,100
Offering a hazardous material (radioactive materials) for transportation in commerce while failing to provide general awareness, security awareness, safety, and function specific training to hazmat employees in violation of 49 C.F.R. §§ 171.2, 172.702, and 172.704.	\$1,500	\$1,000
Offering a hazardous material (radioactive materials) for transport in commerce while failing to keep a record of the Type A package testing documents in violation of 49 C.F.R. §§ 173.415(a).	\$3,750	\$2,000

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 violation;
- (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 justifies assessing a civil penalty of \$7,500.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$7,500 as full satisfaction of the civil penalty proposed in the NOPV.

B. Payment. Respondent agrees to pay \$7,500, as full satisfaction of the civil penalty proposed in the Notice in the following manner:

Respondent must pay \$7,500 within thirty (30) days of the ORDER, which the Chief Counsel will issue *after* the Respondent signs and returns this Agreement.

C. 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 NOPV associated with this case.

D. This Agreement resolves only the violations noted in PHMSA Case No. 11-0295-RAM-EA as referenced in Section V of this agreement and in the NOPV. 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 this violation shall constitute a 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 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 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:

Tyler Patterson,
Office of the Chief Counsel
United States Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, S.E.
PHC-10, E26-202
Washington, D.C. 20590-0001

Respondent

Federal Tax ID Number¹: 650430512

By: Mark E Pomper Date: 5/6/2013
Signature

Mark E Pomper MD, President
Printed Name, Title

Pipeline and Hazardous Materials Safety Administration

By: Tyler Patterson Date: 5/20/2013
Tyler Patterson, Attorney-Advisor

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.

ADDENDUM A

Payment Information

Respondent must pay a total civil penalty of \$7,500 in accordance with the following:

Due date

Respondent must pay the civil penalty within 30 days of the date of the 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/>

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 ABA 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.