

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

IN THE MATTER OF:

**Yant Testing, Supply & Equipment, Inc.
(Respondent)**

PHMSA Case No. 13-0002-CR-CE

COMPROMISE ORDER

By this Order I find that Yant Testing, Supply & Equipment, Inc. committed three (3) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$7,875 civil penalty for the violations.

I. Summary

Respondent: Ron Arent, President
 Yant Testing, Supply & Equipment, Inc.
 3733 Arch Avenue,
 PO Box 994
 Grand Island, Nebraska 68802

No. of Violations: 3

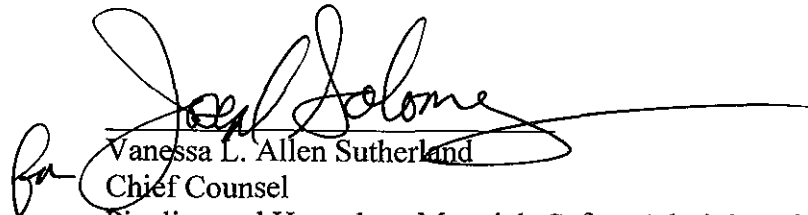
Total Payment Due: \$7,875

II. Finding

This matter comes before me after Yant Testing, Supply & Equipment, Inc., (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 L. Allen Sutherland
Chief Counsel
Pipeline and Hazardous Materials Safety Administration

Date: 6/7/2013

Attachments

CERTIFICATE OF SERVICE

This is to certify that on the 7th day of June, 2013, the undersigned served in the following manner the designated copies of this Order with attached addenda to each party listed below:

Ron Arent, President
Yant Testing, Supply & Equipment, Inc.
3733 Arch Avenue,
PO Box 994
Grand Island, Nebraska 68802

Original Order with
Copy of Agreement
Certified Mail
Return Receipt Requested

William Schoonover, Deputy Associate Administrator
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Enforcement
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

One Copy (without
enclosures)
Via Electronic Mail

Kipton Wills, Regional Director
Pipeline and Hazardous Materials Safety Administration
Central Region Office, PHH-43
2300 East Devon Avenue, Suite 478
Des Plaines, IL 60018-4696

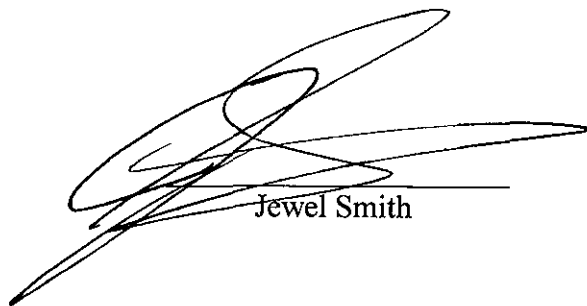
One Copy (without
enclosures)
Via Electronic Mail

Shawn C. Wolsey, Attorney
Pipeline and Hazardous Materials Safety Administration
Office of Chief Counsel
1200 New Jersey Avenue, S.E.
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:

**Yant Testing, Supply & Equipment Inc.
(Respondent)**

PHMSA Case No. 13-0002-CR-CE

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Yant Testing, Supply & Equipment, Inc. ("Respondent"), a cargo tank testing facility, located in Grand Island, Nebraska,
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 tests cargo tanks, 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. On January 24th and 25th, 2012, an Investigator from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a compliance inspection at Superior Deshler, Inc., in Deshler, Nebraska, pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305 and observed cargo tanks that Respondent had inspected and certified. PHMSA's investigator reported three (3) alleged violations of the HMR. On or about February 21, 2012, after the conclusion of the compliance inspection, PHMSA's Investigator contacted and interviewed the Respondent, and then conducted an "exit briefing" during which the investigator discussed the alleged violations and the required corrective actions with Respondent's representative.

B. Upon completion of the compliance inspection, the investigator submitted a report to the Director of OHME's Central Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Regional Director referred the matter 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 March 29, 2013, an attorney from PHMSA's Hazardous Materials Safety issued a Notice of Probable Violation (NOPV) alleging three violations of the HMR and proposing a \$10,500 civil penalty, which included a \$0 reduction for corrective actions taken by Respondent.

IV. Basis of Agreement

A. Reply to Notice. On April 23, 2013, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In letters dated April 23, 2013, Respondent submitted evidence of corrective actions it had taken in response to the exit briefing and NOPV. The following is a summary of all of Respondent's corrective actions.

For violation 1, Respondent stated that they have applied the required markings to Superior Deshler's vehicles and provided photographs.

For violation 2, Respondent stated that all test decals now show the date of inspection (month/year) and provided photographs.

For violation 3, Respondent stated that they have modified their test reports and provided examples.

PHMSA finds that the foregoing corrective actions have corrected the violations outlined in the Notice and no further corrective actions are required.

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

D. Informal Conference. The Notice of Probable Violation was resolved without the need of an informal conference.

V. Compromise Penalty Amount

Probable Violation	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Certifying and marking a DOT-specification cargo tank as passing an external visual inspection (V) when the cargo tank failed the external visual inspection, in violation of 49 C.F.R. §§ 171.1(a), 171.2(a), (c), (g) and (h)(1 and 3), 180.415(a) and (b)(3)(i).	\$7,500	\$5,625
2	Failing to accurately mark a DOT-specification MC 331 cargo tank, after testing, in violation of 49 C.F.R. §§ 171.1(a), 171.2(a), (b), (c), (g) and (h)(1 and 3), 180.415(a) and (b)(1).	\$1,000	\$750
3	Preparing a written cargo tank testing report and failing to include all the required information, in violation of 49 C.F.R. §§ 171.1(a), 171.2(a), (c), (g), (h)(1 and 3) & (j), 180.417(b)(1)(vi), (2)(iii) and (c)(1)(i and iv).	\$2,000	\$1,500
Total		\$10,500	\$7,875

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 \$7,875.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$7,875 as full satisfaction of the civil penalty proposed in the NOPV.

B. Payment. Respondent agrees to pay \$7,875, as full satisfaction of the civil penalty proposed in the Notice in the following manner:

Respondent must pay \$7,875 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. 13-0002-CR-CE 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.

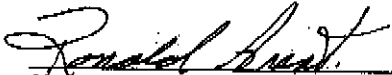
C. Respondent's failure to sign and return this agreement within thirty (30) days from its receipt will result in the withdrawal of this Agreement and the Chief Counsel will issue an Order pursuant to 49 C.F.R. §§ 107.317(d).

D. Respondent must return the signed Agreement to:

Shawn C. Wolsey,
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

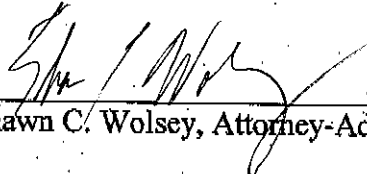
Federal Tax ID Number¹: 47-0699819

By: 
Signature

Date: 5-30-13

PRESIDENT RONALD ARANT
Printed Name, Title

Pipeline and Hazardous Materials Safety Administration

By: 
Shawn C. Wolsey, Attorney-Advisor

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.