

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

IN THE MATTER OF:

**Container Life Cycle Management
dba Indianapolis Drum Service
(Respondent)**

PHMSA Case No. 11-0242-IBCDR-CE;

COMPROMISE ORDER

By this Order I find that Container Life Cycle Management, dba Indianapolis Drum Service committed seven (7) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$2,225 civil penalty for the violations.

I. Summary

Respondent: Container Life Cycle Management,
dba Indianapolis Drum Service,
C/O: Lawrence W. Bierlein, Esq.
1101 30th Street, N.W., Suite 500
Washington, D.C. 20007

No. of Violations: 7

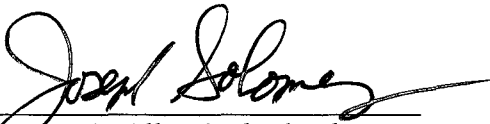
Total Payment Due: \$2,225

II. Finding

This matter comes before me after Container Life Cycle Management, dba Indianapolis Drum Service, (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,


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

Date: 5/29/2014

Attachments

CERTIFICATE OF SERVICE

This is to certify that on the 2nd day of June, 2014, the undersigned served in the following manner the designated copies of this Order with attached addenda to each party listed below:

Container Life Cycle Management,
dba Indianapolis Drum Service
C/O: Lawrence W. Bierlein, Esq.
1101 30th Street, N.W., Suite 500
Washington, D.C. 20007

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

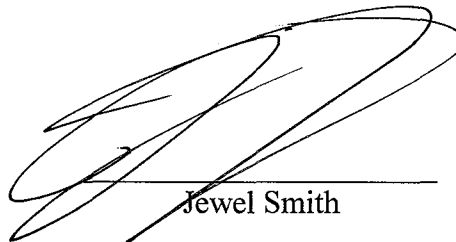
One Copy (without
enclosures)
Via Electronic Mail

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:

**Container Life Cycle Management
dba Indianapolis Drum Service
(Respondent)**

PHMSA Case No. 11-0242-IBCDR-CE

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Container Life Cycle Management, dba Indianapolis Drum Service (“Respondent”), a plastic drum and IBC reconitioner and IBC re-tester, located in Indianapolis, Indiana,

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 reconditions plastic drums and IBCs and retests IBCs, 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 acknowledgment by the Respondent that PHMSA has made a finding of violations 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 August 3rd and 4th, 2011, Investigators from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a compliance inspection at Respondent's facility, in Indianapolis, Indiana, pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's investigator reported seven (7) alleged violations of the HMR. On or about August 4, 2011, 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 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 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 April 30, 2012, an attorney from PHMSA's Hazardous Materials Safety issued a Notice of Probable Violation (NOPV) alleging seven (7) violations of the HMR and proposing a \$9,725 civil penalty, which included a \$275 reduction for corrective actions taken by Respondent and two quality control items.

IV. Basis of Agreement

A. Reply to Notice. On June 8, 2012, Respondent requested an extension to respond. On July 2, 2012, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In correspondence dated August 30, 2011, December 14, 2012, and May 20, 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 "in our opinion, this is a misinterpretation or misreading of the regulations. Since this is a new bottle the manufacturer, not the rebottler, has the responsibility to certify that it has been visually inspected externally and internally according to 178.8 (c)(4) and (5). Further, according to 178.801(f)(i)(ii)(2) the leakproofness test that the manufacturer must perform can be performed without the outer IBC body... Therefore, we believe that we are in compliance with DOT regulations

because all tests and inspections have been conducted per sections 178.801 and 180.352. Respondent provided a letter from Schuetz dated 4/10/12, stating that Schuetz performed the leakproofness test and visual inspection. Respondent also provided training records for visually inspecting all the new bottles as they come off of the truck.

For violation 2, Respondent stated that “routine maintenance includes replacing the valve, and since this is routine maintenance the person performing routine maintenance and applying a mark is not certifying the original design, but only identifying their company as having done routine maintenance. This is why there is a “leak tightness” test of the work done in maintenance, rather than a full leakproofness test. Each IBC that IDS certifies does pass a “leak tightness” test. Respondent provided a copy of Tote Line #3 SOP. The penalty assessed in this compromise agreement is for failure to correct the bent cages as part of the maintenance of the intermediate bulk container.

For violation 3, Respondent stated that “removal of embossed marking on containers: Specification markings may not be removed from a container according to 171.2(g)(2). If one reconditions a container but don’t recertify that container then 171.2(c) applies. Since 171.2(c) applies to all containers. The 15-gallon plastic containers we process for non-regulate material service were not recertified for hazardous materials, therefore we do not put markings prescribed in 173.28 on the containers. IDS did not and have not offered or represented the 15-gallon drums as meeting the requirements for transporting hazardous material. Since IDS did not offer these containers as meeting those requirements there is no violation of said regulation. Put “Not for regulated use” on bills of lading

For violation 4, Respondent stated that they “created a new marking system. Now applying labels instead of stenciling. See picture 1.” Respondent provided a copy of a label which shows the marking “USA/R1176/08-11/RL”.

For violation 5, Respondent stated that they “created new haz mat training records to include the missing elements. See attachments 1, 2, 3, 4, 5.” Respondent provided a training record dated August 19, 2011, along with examples of the questions and answers from that training. Respondent also provided a copy of training records for visually inspecting all the new bottles as they come off of the truck, dated June 15, 2012.

For violation 6, which is a quality control item, Respondent stated that they would “do study to possibly redo bills of lading.

For violation 7, which is a quality control item, Respondent stated that they would “install new gauge and retrain employees on replacing worn equipment. See picture 2.” Respondent provided a photograph of a pressure gauge that reads around 0 psi.

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. An informal conference was conducted on November 20, 2012.

V. Compromise Penalty Amount

Probable Violation	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Failing to perform an internal visual and leakproofness test on a UN specification intermediate bulk container as part of a repair as prescribed in 180.352(d)(1), in violation of 49 C.F.R. §§ 171.2(a), 171.2(c), 171.2(g), 171.2(j), 180.2(a), 180.350, 180.350(b) and 180.352(d).	\$3,000	QC
2	Failing to properly perform routine maintenance on a UN specification intermediate bulk container as prescribed in 180.350(c), in violation of 49 C.F.R. §§ 171.2(a), 171.2(c), 171.2(g), 171.2(j), 180.2(a), 180.3(a), 180.350 and 180.350(c).	\$2,500	\$1,250
3	Offering specification plastic drums marked as a specification UN 1H1 plastic drums when the drums had not been leak tested, in violation of 49 C.F.R. §§ 171.2(a), 171.2(g), 171.2(j), 173.28(a) and 173.28(b)(2) and (c).	\$3,000	\$0
4	Representing, marking, certifying, reconditioning, and offering plastic UN specification 1H1 drums as meeting the requirements of the Hazardous Materials Regulations (HMR), while failing to mark the reconditioned drums, in violation of 49 C.F.R. §§ 171.2(a) 171.2(c), 171.2(g), 171.2(j), 173.28(c)(3), 178.3(a) and 178.503(c).	\$425	\$325
5	Representing, marking and certifying a UN specification package as meeting the requirements of the Hazardous Materials Regulations while allowing an employee to perform a function subject to the requirements of the hazardous materials regulations, when records of hazmat training were not created and retained, in violation of 49 C.F.R. §§171.2(a), 171.2(b), and 172.704(d).	\$800	\$650
6	Representing, offering and selling a packaging or container as meeting the requirements for a UN certified packages and failing to provide the original manufacturer's closure notifications, in violation of 49 C.F.R. §§ 171.2(a), 171.2(c), 171.2(g) and 178.2(c).	QC	QC

7	Failing to properly perform a leakproofness test on a UN specification intermediate bulk container, in violation of 49 C.F.R. §§ 171.2(a), 171.2(c), 171.2(g), 171.2(j), 180.3(a), 180.352(a) and 180.352(b)(1).	QC	QC
TOTAL		\$9,725	\$2,225

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 \$2,225.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$2,225 as full satisfaction of the civil penalty proposed in the NOPV.

B. Payment. Respondent agrees to pay \$2,225, as full satisfaction of the civil penalty proposed in the Notice in the following manner:

Respondent must pay \$2,225 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. 11-0242-IBCDR-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

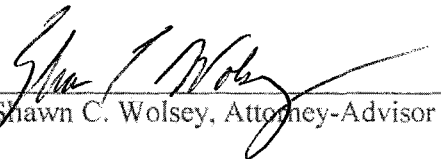
Federal Tax ID Number¹: 27-3015681

By: 
Signature

Date: 5/22/14

LAWRENCE W. BIERLEIN, ATTORNEY FOR INDIANAPOLIS
Printed Name, Title
ORCA SERVICE

Pipeline and Hazardous Materials Safety Administration

By: 
Shawn C. Wolsey, Attorney-Advisor

Date: 5/22/14

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 **\$2,225** 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) 954-8845.

(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 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) 954-8845.