

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

**IN THE MATTER OF:**

**Circor Instrumentation Technologies, Inc.  
dba Hoke Inc.  
(Respondent)**

PHMSA Case No. 11-0266-CM-CE

**COMPROMISE ORDER**

**By this Order I find that Circor Instrumentation Technologies, Inc. dba Hoke Inc. committed five (5) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$19,350 civil penalty for the violations.**

**I. Summary**

Respondent:           A. William Higgins, President and CEO  
                              Circor Instrumentation  
                              30 Corporate Drive, Suite 200  
                              Burlington, Massachusetts 01803

No. of Violations:    5

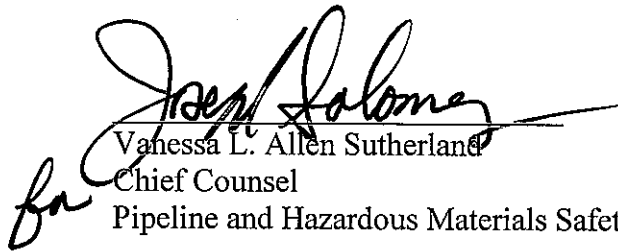
Total Payment Due: \$19,350

**II. Finding**

This matter comes before me after Circor Instrumentation Technologies, Inc. dba Hoke 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: 05/06/2013

Attachments

**CERTIFICATE OF SERVICE**

This is to certify that on the 7<sup>th</sup> 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:

A. William Higgins, President and CEO  
Circor Instrumentation  
30 Corporate Drive, Suite 200  
Burlington, Massachusetts 01803

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

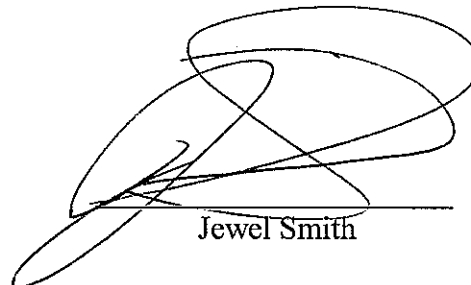
One Copy (without  
enclosures)  
Via Electronic Mail

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:**

**Circor Instrumentation Technologies, Inc.  
dba Hoke Inc.  
(Respondent)**

PHMSA Case No. 11-0266-CM-CE

**COMPROMISE AGREEMENT**

**I. Parties**

The Parties to this Compromise Agreement (Agreement) are:

**Circor Instrumentation Technologies, Inc., dba Hoke, Inc.**, (“Respondent”), a cylinder manufacturer, located in Spartanburg, South Carolina,

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 manufactures DOT specification cylinders, 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 June 14<sup>th</sup> and 15<sup>th</sup>, 2011, an Investigator from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a compliance inspection in Spartanburg, South Carolina, pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's inspector reported seven (7) alleged violations of the HMR. On or about June 15, 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 inspector 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 January 12, 2012, an attorney from PHMSA's Hazardous Materials Safety issued a Notice of Probable Violation (NOPV) alleging six violations of the HMR and proposing a \$29,300 civil penalty, which included a \$0 reduction for corrective actions taken by Respondent and one Quality Control Item.

### **IV. Basis of Agreement**

A. Reply to Notice. On October 1, 2012, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In a letters dated July 21, 2011 and October 1, 2012, January 7, 2013, and April 25, 2013, Respondent submitted evidence of corrective actions it had taken in response to the exit briefing and the Notice of Probable Violations. The following is a summary of all of Respondent's corrective actions.

For violation 1, Respondent stated that they will send a complete cylinder for testing when the quantity manufactured exceeds 30 cylinders. They modified QMI 130 to address the DOT Cylinder manufacturing and testing requirements. Respondent also discovered that the training for the personnel responsible for sending the samples out was inadequate. Respondent provided a revised copy of QMI 131. Respondent also provided

a copy of test report 1766HI, of a DOT-3A5000 cylinder, dated 11/19/12, showing that the entire cylinder was tested.

For violation 2, Respondent determined that they never received closure instructions for the drums. They purchased a breakaway torque wrench that can meet the correct foot pounds closure. They also obtained a copy of the closure instructions. Drums will be closed with the breakaway torque wrench in accordance with the closure instructions. Respondent provided a copy of the closure instructions and photographs of the torque wrench.

For violation 3, Respondent did not realize that the individuals that were identified during the audit were considered HAZMAT employees. Respondent created a training department, which utilizes the "training manager" electronic database. The database will enable Respondent to track each employee's assigned requirements to ensure compliance. All the HAZMAT employees were trained July 28, 2011. Respondent provided training records for their HAZMAT employees.

For violation 4, PHMSA's Central Region Attorney obtained a copy of Respondent's RIN (M5026), which was issued August 10, 2011 and expires August 10, 2016. Respondent also provided a copy of email correspondence dated June 17, 2011 with PHMSA authorizing them to use the symbol "HOKE". Based on the email, this violation is dismissed.

For violations 5 and 6, Respondent quarantined all DOT3BN cylinders (574 of them) until Respondent is certified by the DOT as a re-manufacturer or until such time as the cylinders are re-tested and certified by an authorized DOT facility. Respondent provided a copy of their Cylinder Heat Treat log showing that normalization has been completed. Respondent also provided a copy of test report 6D19273000 for a DOT-3BN cylinder, dated 6/12/12.

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 requested mitigation of the civil penalties, but not based on finances.

D. Informal Conference. This matter was resolved without the need of an informal conference.

#### V. Compromise Penalty Amount

Violation	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Representing, manufacturing, marking and offering	\$10,000	\$6,600

	a 3A cylinder as meeting the requirements of the Hazardous Materials Regulations (HMR), when a complete cylinder was not used for physical testing when the lot size exceeded 30 cylinders, in violation of 49 C.F.R. §§ 171.2(a), (g), and (h), 178.36(j) and (k).		
2	Offering for transportation in commerce, UN3288, Waste Toxic Solid, Inorganic, N.O.S. (Silver Cyanide, Chromium) 6.1, PG II, in UN standard marked and certified packaging that had not been closed in accordance with the manufacturer's closure instructions, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), (g) & (i), 173.22(a)(4) and 173.24(f)(2).	\$2,500	\$1,650
3	Allowing employees to perform a function subject to the requirements of hazardous materials regulations when the employee had not received initial and/or recurrent hazardous materials general awareness, function specific, safety, and security awareness training, in violation of 49 C.F.R. §§ 171.2(a), (b) and (e), 172.702(a), and 172.704(a)(1), (2), (3), and (4).	\$2,000	\$1,325
4	Manufacturing, representing, and marking a DOT Special Permit cylinder with a Manufacture Symbol "Hoke", while failing to have authorization from the Associate Administrator to use the specific manufacturing symbol, in violation of 49 C.F.R. §§ 171.2 (a), (g), and (h), and 178.35(f)(iii).	QC	Dismissed
5	Re-manufacturing, representing, and marking a DOT 3BN400 cylinder while failing to have authorization from the Associate Administrator to remanufacture, in violation of 49 C.F.R. §§ 107.801, 107.805(a), 171.2 (a), (g), and (h), 178.39(d), and 180.212(a).	\$10,800	\$7,125
6	Manufacturing, representing, and marking a DOT 3BN400 cylinder while listing an unauthorized manufacturing process on the Report of Inspection, in violation of 49 C.F.R. §§ 171.2 (a), (g), and (h), 178.39(d).	\$4,000	\$2,650
TOTAL	-----	\$29,300	\$19,350

#### 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 \$19,350.

## VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$19,350 as full satisfaction of the civil penalty proposed in the NOPV.

B. Payment. Respondent agrees to pay \$19,350, as full satisfaction of the civil penalty proposed in the Notice in the following manner:

**Respondent must pay \$19,350 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. 11-0266-CM-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:

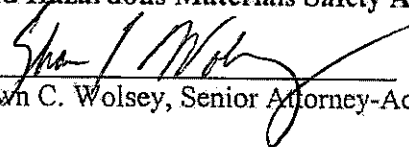
Shawn C. Wolsey,  
Office of the Chief Counsel  
United States Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
1200 New Jersey Avenue, S.E.  
PHC-10, E26-202  
Washington, D.C. 20590-0001

**Respondent**

Federal Tax ID Number<sup>1</sup>: 22-1426046

By:  Date: 5/2/2013  
Signature  
CHRIS SAHLMAN - VICE PRESIDENT / GENERAL MANAGER  
Printed Name, Title

**Pipeline and Hazardous Materials Safety Administration**

By:  Date: 5/2/13  
Shawn C. Wolsey, Senior Attorney-Advisor

<sup>1</sup> 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 **\$19,350** 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 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:</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.