

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

IN THE MATTER OF:

**Burlington Cooperative Association,

(Respondent),**

PHMSA Case No. 11-0066-CCT-SW

COMPROMISE ORDER

By this Order I find that Burlington Cooperative Association (Respondent) committed two violations 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: Burlington Cooperative Association
P.O. Box 9
Burlington, OK 73722
Attn: Brent Garvey, President

No. of Violations: 2

Total Payment Due: \$5,250

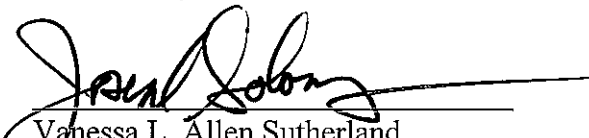
II. Finding

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: 2/19/2013 So Ordered,



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

CERTIFICATE OF SERVICES

This is to certify that on the 21st day of February, 2013, the undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Mr. Billy Hines, Chief
Hazardous Materials Enforcement Office
8701 S. Gessner Road, Suite 900
Houston, TX 77074

One Copy (without enclosures)
Via Electronic Mail

Mr. Brent Garvey, President
P.O. Box 9
Burlington, OK 73722

One Copy
Via Certified Mail

Mr. Walter Rucker
Hazardous Materials Investigator
8701 S. Gessner Road, Suite 900
Houston, TX 77074

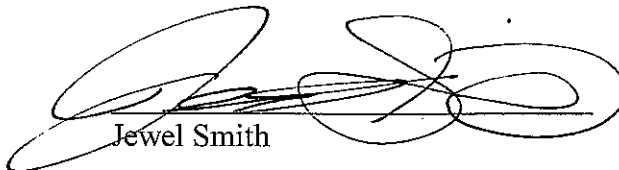
One Copy (without enclosures)
Via Electronic Mail

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

One Copy
Via Electronic Mail

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

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

IN THE MATTER OF:

**Burlington Cooperative Association,

(Respondent)**

PHMSA Case No. 11-0066-CCT-SW

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Burlington Cooperative Association (“Respondent”), a distributor and shipper of hazardous materials, including anhydrous ammonia, gasoline, and propane in the course of its business, located at 602 Main Street, Burlington, Oklahoma 73722
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 March 16, 2011, 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 two alleged violations 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 Southwest 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 11, 2013, an attorney from the PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging two violations of the HMR and proposing a \$6,750 civil penalty.

IV. Basis of Agreement

A. Reply to Notice. On January 25, 2013, Burlington Cooperative Association responded to the Notice and requested further corrective action credit.

B. Corrective Action. In its April 4, 2011 letter, Respondent submitted 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 | Respondent provided inspection reports for the nurse tanks found to be operating without legible data plates. Respondent also provided photographs showing that the tanks are now properly marked with "anhydrous ammonia" on the heads. Thickness, external visual, and pressure testing markings have also been added, and loose bolts on the farm wagon have been tightened. |
| 2 | Respondent provided a copy of its emergency discharge control procedures. The procedures state that they must be carried on board the vehicle. |

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

D. Informal Conference. On January 25, 2013, the Office of Chief Counsel and Karen Detherage, Respondent's representative, (parties) held an informal conference. Ms. Detherage clarified/further explained the corrective actions Respondent had taken and its ongoing efforts, including internal inspections, to maintain compliance with the HMR.

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, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), (f), and (g); 172.328(b); and 173.315(m). | \$5,250 | \$4,100 |
| 2 | Respondent transported the hazardous material UN 1075, Liquefied petroleum gas (LPG), 2.1, in cargo tank motor vehicles (CTMVs) while failing to carry written emergency discharge control procedures on or within the CTMB, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), and (f) and 177.840(l).. | \$1,500 | \$1,150 |
| TOTAL | ----- | \$6,750 | \$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 the civil penalty proposed in the Notice. Respondent is to make the payment within 30 days from the date the Chief Counsel issues the Final Order, which 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. 11-0066-CCT-SW 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 #: 73-0166177¹

By: Brent Garvey
Brent Garvey, President

Date: 2/6/2013

Pipeline and Hazardous Materials Safety Administration

By: Amelia Samaras
Amelia Samaras, Attorney

Date: 2/13/13

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.