

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

**IN THE MATTER OF:**

**RBP Chemical Technology, Inc.  
(Respondent)**

PHMSA Case No. 12-0004-SBD-CE

**COMPROMISE ORDER**

**By this Order I find that RBP Chemical Technology, Inc. committed two (2) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$4,000 civil penalty for the violations.**

**I. Summary**

Respondent: RBP Chemical Technology, Inc.  
150 South 118<sup>th</sup> Street  
Milwaukee, Wisconsin 53214  
Attn: Ernest Litynski,  
Vice President, Operations

No. of Violations: 2

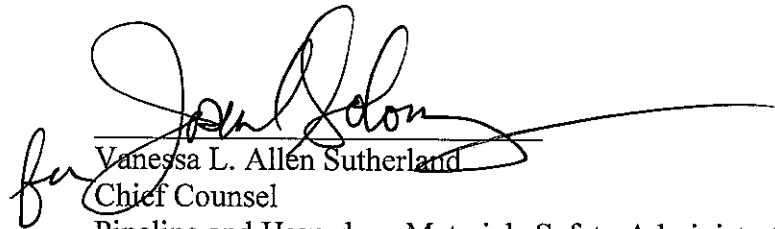
Total Payment Due: \$4,000

**II. Finding**

This matter comes before me after RBP Chemical Technology, 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: 4/19/2013

Attachments

**CERTIFICATE OF SERVICE**

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

RBP Chemical Technology, Inc.  
150 South 118<sup>th</sup> Street  
Milwaukee, Wisconsin 53214  
Attn: Ernest Litynski,  
Vice President, Operations

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

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

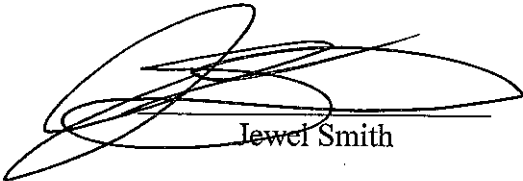
One Copy (without  
enclosures)  
Via Electronic Mail

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:**

**RBP Chemical Technology, Inc.  
(Respondent)**

PHMSA Case No. 12-0004-SBD-CE

**COMPROMISE AGREEMENT**

**I. Parties**

The Parties to this Compromise Agreement (Agreement) are:

**RBP Chemical Technology, Inc.** ("Respondent"), a manufacturer and packager of various class 3 and 8 chemicals, located in Milwaukee, Wisconsin,

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 and packages class 3 and 8 chemicals, 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 September 8, 2011, an Investigator from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a compliance inspection at Respondent's facility, in Milwaukee, Wisconsin, pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's investigator reported two (2) alleged violations of the HMR. On or about September 8, 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 November 28, 2012, an attorney from PHMSA's Hazardous Materials Safety issued a Notice of Probable Violation (NOPV) alleging two (2) violations of the HMR and proposing a \$5,275 civil penalty, which included a \$600 increase for a prior violation and a \$1,325 reduction for corrective actions taken by Respondent.

### IV. Basis of Agreement

A. Reply to Notice. On December 20, 2012, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In correspondence dated September 8, 2011, and December 20, 2012, 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 added an instruction to the batch ticket to address UN specification packaging and requires the certification date to be recorded. Respondent also provided a UN test report for IBC with serial number 44609, dated 9/8/11. Respondent also trained their employees on tote certifications on 9/29/11. Respondent provided copies of batch tickets which now have instructions to verify UN specification packaging and recording the dates. Respondent further explained that the

batch ticket records the date the container was checked prior to filling. If an IBC is found to be out of date, it is immediately moved to maintenance for certification testing. If the IBC passes certification testing, it is marked with a new date and released for use. Records are kept showing when containers are tested.

For violation 2, Respondent stated that they added an instruction to the batch ticket to address UN specification packaging closures. Respondent also purchased torque wrenches and supplied a purchase order from 9/22/11. Respondent trained their employees on package closures on 9/29/11. Finally, Respondent provided package closure instructions and UN package test reports for their UN specification packages. Respondent also provided copies of Product Transfer/Pour down Forms which have package closure instructions that the employees can reference. Finally, Respondent provided a copy of their Certificate of Calibration for their Rieke Torque Wrench, dated 9/10/12.

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 not requested mitigation based on finances.

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

#### V. Compromise Penalty Amount

Probable Violation	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Filling and offering in commerce UN1719, Caustic Alkali, Liquid, N.O.S. (Ethanamine, Potassium Hydroxide), 8, II in a UN 31H2 Intermediate Bulk Container (IBC) that was out of test, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), (f), (g) and (j), 173.32, 173.35(a) and 180.352(b).	\$3,075	\$2,350
2	Offering for transportation in commerce, UN1206, Heptanes, 3, II and UN1719, Caustic Alkali Liquid n.o.s. (Ethanamine, Potassium Hydroxide), 8, 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) and (i), 173.22(a)(4) and 173.24(f)(2).	\$2,200	\$1,650
<b>TOTAL</b>		<b>\$5,275</b>	<b>\$4,000</b>

#### 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 \$4,000.

## VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$4,000 as full satisfaction of the civil penalty proposed in the NOPV.

B. Payment. Respondent agrees to pay \$4,000, as full satisfaction of the civil penalty proposed in the Notice in the following manner:

**Respondent must pay \$4,000 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. 12-0004-SBD-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.

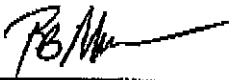
C. Respondent's failure to sign and return this agreement within thirty (30) days from its receipt will result in the withdrawal of this Agreement and the Chief Counsel will issue an Order pursuant to 49 C.F.R. §§ 107.317(d).

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**

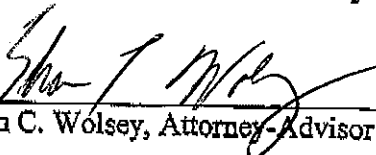
Federal Tax ID Number<sup>1</sup>: 39-0866582

By:   
Signature

Date: 4/17/13

PAUL B. NOWAK, CFO / TREASURER  
Printed Name, Title

**Pipeline and Hazardous Materials Safety Administration**

By:   
Shawn C. Wolsey, Attorney-Advisor

Date: 4/19/13

<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 \$4,000 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.