

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

**IN THE MATTER OF:**

**DYNAenergetics US, Inc.,  
  
(Respondent).**

**PHMSA CASE NUMBER**

**12-0130-SE-SW**

**COMPROMISE ORDER**

**By this Order I find that DYNAenergetics US, Inc. (Respondent) committed two (2) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$5,700 civil penalty for these violations.**

**I. Summary**

Respondent: DYNAenergetics US, Inc.  
2704-A Delmar Dr.  
Victoria, TX 77901

No. of Violations: 2

Total Payment Due: \$5,700

**II. Finding**

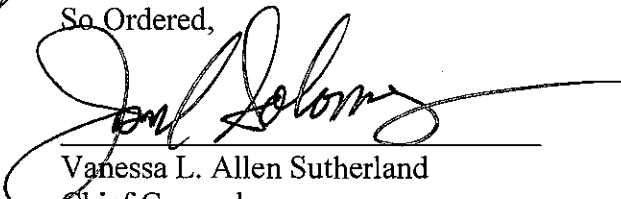
This matter comes before me after Respondent and the Pipeline and Hazardous Materials Safety Administration (PHMSA) agreed to a disposition of this civil enforcement action. I have reviewed the Compromise Agreement (Agreement) and I find that the terms as outlined therein are in the best interest of 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 \$5,700. Respondent must pay the civil penalty in accordance with the instructions contained in Addendum B to this Order.

The Agreement, in its entirety, is incorporated in 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.

Dated: 3/10/2014

So Ordered,



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

## CERTIFICATE OF SERVICE

This is to certify that on the 19<sup>th</sup> day of March, 2014, the undersigned served in the following manner the designated copies of this Order with attached Addendums to each party listed below:

Original Order with  
Copy of Agreement  
Certified Mail Return Receipt

Mary Tremblay  
Moyles and Tremblay Law, LLC  
116 Prospect Hill Road  
Colchester, CT 06415

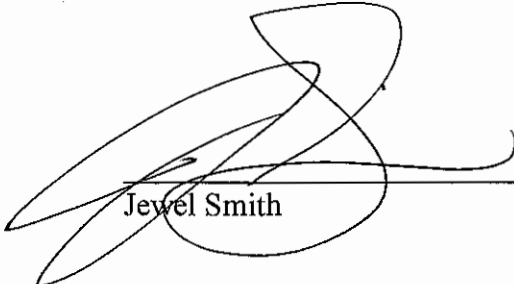
One Original  
First Class Mail – Return Receipt

Mr. Michael Donahue, Enforcement Officer  
Office of Hazardous Materials Enforcement  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 02590-0001

One Copy (without enclosures)  
Electronic Mail

Mr. Robert Strollo, Region Director (Acting)  
Hazardous Materials Field Operations  
Southwest Region, PHH-45  
8701 S. Gessner Road, Suite 900  
Houston, Texas 77074

One Copy (without enclosures)  
Electronic mail



Jewel Smith

# **ADDENDUM A**

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

**IN THE MATTER OF:**

**DYNAenergetics US, Inc.  
(Respondent)**

PHMSA CASE Number:

12-0130-SE-SW

**COMPROMISE AGREEMENT**

**I. Parties**

The Parties to this Compromise Agreement (Agreement) are:

**DYNAenergetics US, Inc.** ("Respondent"), a manufacturer and seller of industrial explosives, located in Victoria, TX

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 manufacturer and seller of industrial explosives, it 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 the 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 that Respondent violated the Federal regulations listed in Section V below; and

- (3) That it received proper notice of PHMSA's action in this proceeding.

### III. Background

A. On April 12, 2012, an Inspector from PHMSA's Office of Hazardous Materials Safety Field Operations (OHMSFO) 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 three (3) 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 Region Director of OHMSFO's Southwest Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Region Director 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 April 25, 2013, an attorney from PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging three (3) violations of the HMR and proposing a \$13,975 civil penalty.

### IV. Basis of Agreement

A. Reply to Notice. On May 28, 2013, Respondent submitted a timely reply to the Notice and requested an informal conference. On October 22, 2013, the parties participated in an informal conference.

B. Corrective Action. In a correspondence dated May 10, 2012, Respondent submitted evidence of corrective actions it had taken in response to the exit briefing. The following is a summary of all of Respondent's corrective actions.

Violation Number	Respondent's Corrective action
1	Respondent indicated that it had developed a security plan and that the plan is on site in printed form and has been distributed to its employees. Respondent also indicated that the subject plan contains a site specific page.
2	Respondent stated that its packaging conforms to the HMR. Respondent also stated that it uses, when necessary, a portable compartment that exceeds IME standards. Respondent provided photographs of a portable compartment and indicated that it had ordered an IME box.
3	Respondent stated that it had provided its hazmat employees with training on proper hazmat documentation and that it is now adding net explosive or net hazardous to the weight column on its declaration sheet, when required.

## 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	Offering for transportation, and transporting, in commerce, a quantity of a hazardous material (UN0059, Charges, shaped, without detonator, 1.1D, PG II), that requires a written security plan, while failing to develop a security plan and maintain a copy of the plan, as required, in violation of 49 CFR §§ 171.2 (b) & (f), 172.800(b)(1) and 172.802(d).	\$6,375	WARNING
2	Offering for transportation, and transporting, in commerce, a shipment of explosive materials (UN0255, Detonators, electric, 1.4B, PG II), (UN0065, Cord, detonating, 1.1D, PG II), and (UN0441, Charges, shaped, without detonator, 1.4S, PG II), on the same vehicle, in violation of 49 CFR §§ 171.2(a), (b), (e) & (f), 173.22(a)(1) & (2), 173.63(f)(2) and 177.835(g)(3).	\$7,125	\$5,344
3	Offering for transportation, and transporting, in commerce, a hazardous material (UN0440, Charges, shaped, without detonator, 1.4D, PG II), while failing to list the net explosive mass for a Class 1 material on the shipping paper, as required, in violation of 49 CFR §§ 171.2 (a), (b), (e) & (f) and 172.202(a)(5)(i).	\$475	\$356
<b>TOTAL</b>	-----	<b>\$13,975</b>	<b>\$5,700</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 violations;
- (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 justify assessing a civil penalty of \$5,700.

## **VII. Terms and Conditions**

A. Respondent agrees to pay the sum of \$5,700, 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:

(1) Any right to present further written or oral explanations, information, and arguments in this matter;

(2) Any right to Administrative appeal; and

(3) Any right 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 Ref. No. 12-0130-SE-SW as referenced in Section V of this Agreement. 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, Violations 2 and 3, as referenced in Section V of this Agreement, shall constitute a prior violation under 49 U.S.C. § 5123.

D. After Respondent returns this signed 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 this Agreement and the Chief Counsel




will issue an Order pursuant to 49 C.F.R. §§ 107.317(d), for the full amount of the penalty proposed in the Notice.

D. Respondent must return the signed Agreement to:

Vincent Lopez  
United States Department of Transportation  
Pipeline and Hazardous  
Materials Safety Administration  
1200 New Jersey Avenue, S.E.,  
PHC-10, Room E26-328  
Washington, D.C. 20590-0001

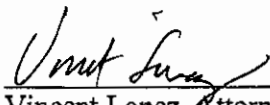
**Respondent**

Federal Tax ID #: 26-3474259<sup>1</sup>

By:  VP/Com  
Name, Capacity or position

Date: 07 MARCH 2014

**Pipeline and Hazardous  
Materials Safety Administration**

By:   
Vincent Lopez, Attorney-Advisor

Date: 03-10-14

<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 B**

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### *Payment Information*

Respondent must pay a total civil penalty of \$5,700 in accordance with the following:

#### Due date

Respondent must pay the civil penalty within 30 days of the date of this 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: Shelby Jones  
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: Shelby Jones  
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) 954-8893.