

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

IN THE MATTER OF:

**Gibson, Jeffery DBA Gibson Fireworks,
(Respondent)**

PHMSA CASE NUMBER

12-0188-SE-EA

COMPROMISE ORDER

By this Order I find that Gibson, Jeffery DBA Gibson Fireworks, (Respondent) committed four (4) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$1,245 civil penalty for these violations.

I. Summary

Respondent: Gibson, Jeffery DBA Gibson Fireworks
8177 Tidioute Enterprise Road
Titusville, Pennsylvania 16354
ATTN: Jeffery Gibson, President

Number of Violations: 4

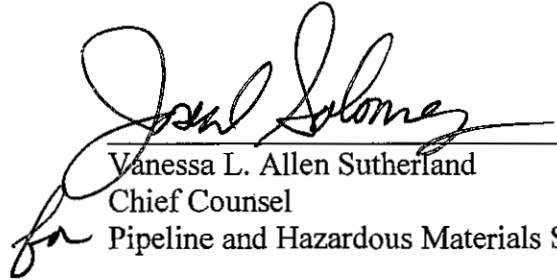
Total Payment Due: \$1,245

II. Finding

This matter comes before me after Gibson, Jeffery DBA Gibson Fireworks (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
for Pipeline and Hazardous Materials Safety Administration

Date: 3/6/2014

Attachments

CERTIFICATE OF SERVICE

This is to certify that on the 11th 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:

Mr. Jeffery Gibson
Gibson, Jeffery DBA Gibson Fireworks
8177 Tidioute Enterprise Road
Titusville, Pennsylvania 16354

Original Order with
Copy of Agreement
Certified Mail
Return Receipt Requested

Ms. Colleen Abbenhaus, Director
Pipeline and Hazardous Materials Safety Administration
Eastern Region Office, PHH-42
820 Bear Tavern Rd., Ste 306
Trenton, NJ 08628

One Copy
(without enclosures)
Via Electronic Mail

Mr. Aaron Mitchell, Acting Director
Office of Hazardous Materials Enforcement
Field Support Division, PHH-40
1200 New Jersey Ave., SE
Washington, DC 20590

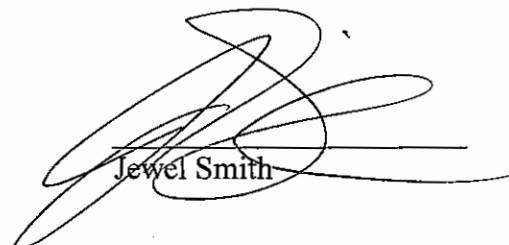
One Copy
(without enclosures)
Via Electronic Mail

Ms. Aris Generette, Attorney
Pipeline and Hazardous Materials Safety Administration
Office of Chief Counsel
1200 New Jersey Ave., SE
Washington, DC 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:

**Gibson, Jeffery DBA Gibson Fireworks,

(Respondent)**

PHMSA Case No. 12-0188-SE-EA

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Gibson, Jeffery DBA Gibson Fireworks (“Respondent”), who transports Division 1.3G fireworks for use in fireworks shows, located in Titusville, Pennsylvania,

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); and

(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 the proceeding.

III. Background

A. On July 10, 2012, an Investigator from PHMSA's Office of Hazardous Materials Safety Field Operations (OHMSFO) conducted a compliance inspection at the Titusville, Pennsylvania facility of Gibson Fireworks, (Gibson) pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's inspector reported four (4) alleged violations of the HMR. Following the compliance inspection, PHMSA's Investigator provided the exit briefing to Mr. Jeffery Gibson, President.

B. Upon completion of the compliance inspection, the inspector submitted a report to the Region Director of OHMSFO's Eastern 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 violation, as set forth in the inspector's report, on May 30, 2013, an attorney from PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging four (4) violations of the HMR and proposing a \$10,100 civil penalty.

IV. Basis of Agreement

A. Reply to Notice. On July 8, 2013, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In correspondence dated July 16, 2012, Respondent submitted evidence of corrective actions it had taken in response to the exit briefing. Respondent provided a shipping paper template, an outline of its security plan, an outline of training materials, sample hazardous materials employee training record, and registration certificate.

In its July 8, 2013 reply, Respondent reiterated its previous corrective actions, and requested a financial hardship consideration.

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 based on finances.

D. 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:

Violation No.	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Offering for transportation, and transporting in commerce, UN0335, Fireworks, 1.3G, II, without hazardous materials shipping papers, in violation of 49 C.F.R. §§ 171.2(a), (b), (e) and (f), 172.200(a), 172.202(a), and 177.817(a).	\$4,050	\$250
2	Transporting in commerce, UN0335, Fireworks, 1.3G, II, while failing to develop a transportation security plan for hazardous materials, in violation of 49 C.F.R. §§ 171.2(a), (b), (e) and (f), and 172.800(b)(1).	\$4,800	\$250
3	Offering for transportation and transporting in commerce, UN0335, Fireworks, 1.3G, II, while failing to create and maintain hazardous materials training records, in violation of 49 C.F.R. §§ 171.2(a), (b) and (e), and 172.704(d).	\$450	\$495
4	Transporting in commerce, UN0335, Fireworks, 1.3G, II, while failing to register as a transporter of more than 25 kilograms (55 pounds) of a Division 1.3 material in a motor vehicle, in violation of 49 C.F.R. §§ 171.2(a), (b), (d) and (f), 107.601(a)(2), 107.608(a) and (b).	\$800	\$250
TOTAL	-----	\$10,100	\$1,245

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 this violation and the fact that Respondent is a small business justify assessing a civil penalty of \$1,245.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$1,245 as full satisfaction of the civil penalty proposed in the Notice in five (5) monthly payments of \$249 each. Respondent must pay \$249 within thirty (30) days of the date of the Compromise Order. Respondent must pay an additional \$249 each thirty days after the first payment until the entire amount is paid.

B. The subject case, herein PHMSA Ref. No. 12-0188-SE-EA, and as referenced in Section V of this Agreement, and the remaining amount of \$8,855, which represents the difference between the \$1,245 compromise amount of the Agreement, and the \$10,100 civil penalty amount originally proposed in the Notice, shall be abated for a period of one (1) year from the date of the Compromise Order.

C. During the one (1) year abatement period referenced in Section VII, Paragraph B of this Agreement, PHMSA may conduct a compliance inspection at Respondent's business.

D. In the event that a compliance inspection conducted within the one (1) year abatement period of the Agreement reveals new violations, and results in the initiation of a PHMSA civil enforcement case against Respondent, the subject case, PHMSA Ref. No. 12-0188-SE-EA, and as referenced in Section V of this Agreement, shall be reactivated, and Respondent shall be liable for the abated amount of \$8,855 of the subject case.

E. Respondent may also be liable for any civil penalty amount of any PHMSA civil enforcement case against Respondent that arises from a compliance inspection conducted within the one (1) year abatement period of the Agreement.

F. 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.

G. This Agreement resolves only the violations noted in PHMSA Case No. 12-0188-SE-EA 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 this violation shall constitute a prior violation under 49 U.S.C. § 5123.

H. 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.

I. 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 payment and completion of the one (1) year abatement period in accordance with the terms and conditions of this Agreement, 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:

Aris Generette
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: 26-2458994

By: Jeffrey P. Gibson
Name Capacity or position

Date: _____

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.

Pipeline and Hazardous Materials Safety Administration

By: *Aris Generette*
Aris Generette, Attorney-Advisor

Date: 3/5/2014

ADDENDUM A

Payment Information

Respondent must pay a total civil penalty of **\$1,245** in accordance with the following:

Due date

Respondent must pay the first \$249 of the payment plan within 30 days of the date of the ORDER. Respondent must pay an additional \$249 each 30 days thereafter until the entire amount is paid. If Respondent defaults on any payment of this payment schedule, the entire amount of the remaining civil penalty shall, without further notice, become immediately due and payable as of the date that the first installment is due.

The remaining \$8,855 is held in abeyance for a period of not less than one year from the date of the ORDER pending Respondent's compliance with the terms of the Agreement as incorporated into 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: Shelby Jones
Federal Aviation Administration
Mike Monroney Aeronautical Center
AMZ-341
P.O. Box 25082
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: Shelby Jones

Federal Aviation Administration
Mike Monroney Aeronautical Center
AMZ-341
P.O. Box 25082
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.