

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

IN THE MATTER OF:

**Eastern Farmers Cooperative,

(Respondent),**

PHMSA Case No. 11-0092-SNT-CE

COMPROMISE ORDER

By this Order I find that Eastern Famers Cooperative (Respondent) committed three violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$10,500 civil penalty for these violations.

I. Summary

Respondent: Eastern Farmers Cooperative
P.O. Box 20
Brandon, SD 57005
Attn: Chuck Miller, General Manager

No. of Violations: 3

Total Payment Due: \$10,500

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 **\$10,500**. 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: 8/2/2013

So Ordered,



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

for

CERTIFICATE OF SERVICES

This is to certify that on the 5th day of August, 2013, the undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Eastern Farmers Cooperative
P.O. Box 20
Brandon, SD 57005
Attn: Chuck Miller, General Manager

Original Order with
Copy of Agreement
Certified Mail Return Receipt

Mr. Kip Wills, Region Director
Hazardous Materials Enforcement Office
2300 East Devon Avenue, Suite 478
Des Plaines, IL 60018-4696

One Copy
Via Electronic Mail

Mr. Patrick Lease, Investigator
Hazardous Materials Enforcement Office
3401 Centrelake Drive
Suite 550B
Ontario, CA 91761


One Copy
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

Payment Information

Eastern Farmers Cooperative (Respondent) must pay a total civil penalty of \$10,500 in accordance with the following:

Due date

Respondent must submit payment of \$10,500 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: 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/>

**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.

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

IN THE MATTER OF:
Eastern Farmers Cooperative, (Respondent)

PHMSA Case No. 11-0092-SNT-CE

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Eastern Farmer’s Cooperative (“Respondent”), a distributor, shipper, and carrier of hazardous materials, including the inhalation hazard anhydrous ammonia, with a headquarters mailing address of P.O. Box 20, Brandon, SD 57005
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 October 6, 2010, inspectors 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 three 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 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 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 12, 2013, an attorney from the PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging three violations of the HMR and proposing a \$14,000 civil penalty.

IV. Basis of Agreement

A. Reply to Notice. Eastern Farmer's Cooperative requested and was granted a 30-day extension to reply to the Notice. On June 11, 2013, Respondent submitted a timely reply to the Notice. In its reply, Respondent did not contest the alleged violations but provided documentation and evidence of complete corrective action.

B. Corrective Action. The following is a summary of all of Respondent's corrective actions.

Violation Number	Respondent's Corrective action
1	Respondent provided photographs of cleaned and legible data plates. Respondent reported that tanks with data plates that could not be cleaned were removed from service. Respondent was notified that that it could test the tanks pursuant to 49 C.F.R. § 173.315(m)(2) to determine if the tanks could continue to operate in transportation. However, Respondent informed me that it is company policy to remove tanks from service that have illegible data plates.
2	Respondent provided photographs of tightened bolts for each tank listed in this Probable Violation of the Notice. Tanks that had been removed from service were not pictured.

3	Respondent provided photographs of the nurse tanks with updated and correct placards and proper shipper name and “anhydrous ammonia” markings.
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C. Finances. Respondent did not request mitigation based on finances.

D. Informal Conference. On July 25, 2013, the Office of Chief Counsel and Respondent (parties) talked via phone about the case, including Respondent’s corrective actions and disposition of the case.

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 the hazardous material, RQ, Ammonia, anhydrous, 2.2 UN 1005, for transportation in commerce in unauthorized, non-specification packages because they did not have legible ASME data plates, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), (f), and (g); 173.22(a); 173.24(c); and 173.315(m).	\$7,000	\$5,250
2	Respondent offered the hazardous material, RQ, Ammonia, anhydrous, 2.2 UN 1005, for transportation in commerce in unauthorized, non-specification packages because they were not securely mounted on a farm wagon, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), (f), and (g); 173.22(a); 173.24(c); and 173.315(m).	\$7,000	\$5,250
3	Respondent offered for transportation and transported a hazardous material, RQ, Anhydrous Ammonia, 2.2 UN 1005, in a bulk packaging while failing to have all required proper shipping name or common name markings and while using improperly-sized placards, in violation of 49 C.F.R. §§ 172.504(a), 172.519(c), 172.516(c)(7), 172.328(b), 173.315(m)(1), 172.528(b), and 177.823(a).	Warning	Warning
TOTAL	-----	\$14,000	\$10,500

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 and the fact that Respondent is a small business, justify assessing a civil penalty of \$10,500.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$10,500 within thirty days from the date of the Order, which the Chief Counsel 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. 11-0092-SNT-CE 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 #: 410251095¹

By: Chuck Miller
~~Stanley Hippe, General Manager~~
Chuck Miller,

Date: 8-1-13

Pipeline and Hazardous Materials Safety Administration

By: Amelia Samaras
Amelia Samaras, Attorney

Date: 8/2/13

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.