

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

IN THE MATTER OF:

**East Central Iowa Cooperative
(Respondent)**

PHMSA CASE Number:
12-0190-CRSCC-CE

COMPROMISE ORDER

By this Order I find East Central Iowa Cooperative committed four (4) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$5,190 civil penalty for the violation.

I. Summary

Respondent:

East Central Iowa Cooperative
1467 West Airline Hwy.
Waterloo, IA 50703

ATTN: Mr. Mark L. Grove, CEO

No. of Violations:

4

Total Payment Due:

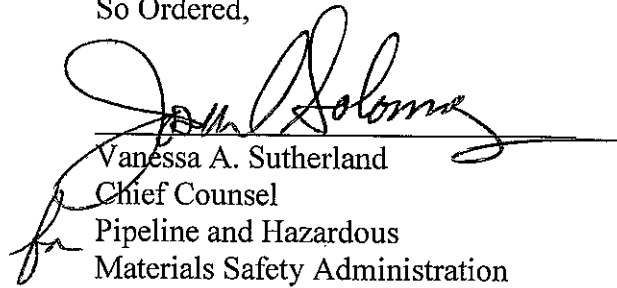
\$5,190

II. Finding

This matter comes before me after Respondent and the Pipeline and Hazardous Materials Safety Administration (PHMSA) 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 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.

So Ordered,


Vanessa A. Sutherland
Chief Counsel
Pipeline and Hazardous
Materials Safety Administration

Dated: 7/17/2013

Attachments

CERTIFICATE OF SERVICE

This is to certify that on the 30th day of July, 2013, the undersigned served in the following manner the designated copies of this Order with attached Addendums to each party listed below:

Mr. Mark L. Grove, CEO
1467 West Airline Hwy.
Waterloo, IA 50703

Original Order with
Copy of Agreement
Certified Mail
Return Receipt Requested

Kipton Wills, Central Region Chief
Pipeline and Hazardous Materials Safety Administration
Eastern Region Office, PHH-42
West Trenton, New Jersey 08628

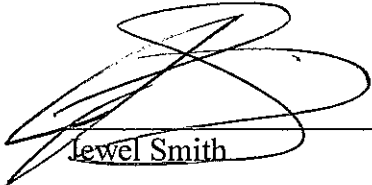
One Copy (without
enclosures)
Via Electronic Mail

Christina Tackett, Attorney - Advisor
Pipeline and Hazardous Materials Safety Administration
Office of Chief Counsel
1200 New Jersey Avenue, S.E., E26-237
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:

**East Central Iowa Cooperative
(Respondent)**

PHMSA CASE Number:

12-0190-CRSCC-CE

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

East Central Iowa Cooperative (Respondent), located in Waterloo, IA

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 the 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 cylinder requalifier and shipper of hazardous materials, it is a regulated entity subject to the Hazardous Materials Regulations (HMR) and to the jurisdiction of (a) the Secretary of Transportation, (b) 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 March 21 and 22, 2011, an Investigator from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a routine compliance inspection at Respondent's place of business. Based on the evidence and information gathered during the inspection, the Investigators reported four (4) violations of the HMR. The Investigator conducted an "exit briefing" at Respondent's facility 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 Inspectors submitted a report to OHME's Central Region Office, where the report was reviewed for accuracy and sufficiency of evidence. Based on that review, the OHME's Central Region Office referred the matter to PHMSA's Office of Chief Counsel and recommended 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 February 21, 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 \$9,895 civil penalty.

IV. Basis of Agreement

- A. Reply to Notice. On March 4, 2013, Respondent submitted a timely reply to the Notice. On April 16, 2013, Respondent participated in an informal conference call with PHMSA.
- B. Corrective Action. In correspondence dated April 16, 2013, Respondent submitted evidence of corrective actions it had taken in response to the exit briefing. The following is a summary of Respondent's corrective actions.

Violation Number	Respondent's Corrective Action
1	Respondent provided documentation demonstrating that it has been issued a valid RIN.
2	Respondent provided documentation that it replaced the battery in the remote.
3	Respondent provided the table of contents of its security plan.
4.	Respondent provided documentation that its hazardous materials employees have received training.

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	Requalifying DOT-4BA 240 and DOT-4E 240 propane cylinders while failing to possess a current requalifier identification number (RIN), in violation of 49 C.F.R. §§ 107.801(a), 107.805(a), 171.1(a), 171.2(a), (c), (g), 180.2(a) and (b), 180.3(a), and 180.205(a) and (b).	\$1,600	\$1,600
2	Operating a cargo tank motor vehicle, in metered propane delivery service, with no remote means to close the internal self-closing stop valve, in violation of 49 C.F.R. §§ 171.2 (c), 171.2(a), and 173.315(n)(3).	\$4,200	\$2,100
3	Offering for transportation and transporting in commerce, a hazardous material, in a large bulk quantity while failing to develop and implement a hazardous materials security plan, in violation of 49 C.F.R. §§ 171.2(a) and (b), 172.800(a) and (b), and 172.802(a).	\$3,600	\$1,120
4	Allowing an employee to perform a function subject to the Hazardous Materials Regulations when Security awareness and in-depth security training was not conducted and records were not maintained, in violation of 49 C.F.R. §§ 171.1(b), 171.2(a) and (b), 172.702(a), 172.704(a)(4-5) and (d).	\$495	\$370
TOTAL		\$9,985	\$5,190

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 Respondent's ability to pay the civil penalty proposed in the Notice justify assessing a civil penalty of \$5,190.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$5,190 as full satisfaction of the civil penalty Within thirty (30) days of receipt of the Compromise Order.

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 cited in PHMSA Case No. 12-0190-CRSCC-CE, referenced in Section V of this Agreement. If Respondent commits any future violations of the Federal hazardous material transportation law, 49 U.S.C. § 5101 *et seq.*, the HMR, or any condition of a special permit, approval, or order issued by PHMSA, the violations referenced in Section V of this Agreement will be considered 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 due, 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:

Christina Tackett
United States Department of Transportation
Pipeline and Hazardous
Materials Safety Administration
1200 New Jersey Avenue, S.E.
PHC-10, E26-327

Washington, D.C. 20590-0001

Respondent

Federal Tax ID #: 42-0648399¹

By: Mark J. [Signature] GM/CEO Date: 7/10/13
Name, Capacity or position

**Pipeline and Hazardous
Materials Safety Administration**

By: Christina L. Tackett Date: 7/12/13
Christina L. Tackett, Senior Attorney-Advisor

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.

Payment Information

Respondent must pay a total civil penalty of \$5,190 in accordance with the following:

Due Date

Underwater Adventures, Inc. must pay the total civil penalty within thirty (30) days of receipt of the Compromise 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
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:

Financial Operations Division
Attn: Shelby Jones
Federal Aviation Administration
Mike Monroney Aeronautical Center
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
RESEARCH AND SPECIAL PROGRAMS,
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.