

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

IN THE MATTER OF:

**QC Laboratories Inc.

(Respondent)**

PHMSA Case No. 11-0172-RMS-SW

COMPROMISE ORDER

By this Order I find that QC Laboratories Inc. committed seven (7) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$7,950 civil penalty for the violations.

I. Summary

Respondent:

QC Laboratories Inc.
3628 Silver Star Rd
Orlando, FL 32808
ATTN: Stan Sampson, Branch Manager

No. of Violations: 7

Total Payment Due: \$2,000

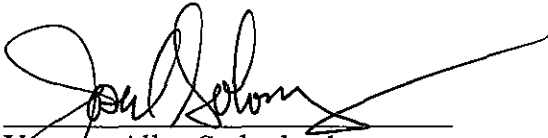
Total Held in Abeyance: \$5,950

II. Finding

This matter comes before me after QC Laboratories 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,

fa 

Vanessa Allen Sutherland
Chief Counsel
Pipeline and Hazardous Materials Safety Administration

Date: 3/15/2013

Attachments

CERTIFICATE OF SERVICE

This is to certify that on the 21st day of March, 2013, the undersigned served in the following manner the designated copies of this Order with attached addenda to each party listed below:

Stan Sampson, Branch Manager
QC Laboratories Inc.
3628 Silver Star Rd
Orlando, FL 32808

Original Order with
Copy of Agreement
Certified Mail
Return Receipt Requested

William Schoonover, Director
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Enforcement
1200 New Jersey Avenue, S.E.
Washington, D.C. 02590

One Copy (without
enclosures)
Via Electronic Mail

Billy Hines, Director
Pipeline and Hazardous Materials Safety Administration
Southwest Region Office, PHH-45
8701 S. Gessner, Suite 900
Houston, TX 77074

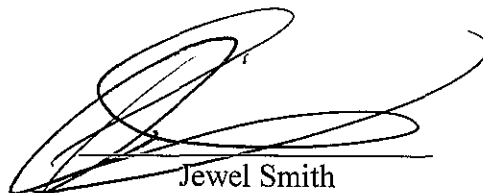
One Copy (without
enclosures)
Via Electronic Mail

Tyler Patterson, Attorney
Pipeline and Hazardous Materials Safety Administration
Office of Chief Counsel
1200 New Jersey Avenue, S.E. PHC-10, E24-311
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:

**QC Laboratories Inc.
(Respondent)**

PHMSA Case No. 11-0172-RMS-SW

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

QC Laboratories Inc. ("Respondent"), a non-destructive tester that places Class 7 materials into transportation,
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 regulated 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) 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 May 25, 2011, Investigators from PHMSA's Office of Hazardous Materials Safety Field Operations (OHMSFO) conducted a compliance inspection at Respondent's facility, in Orlando, Florida, pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's investigator reported eight (8) alleged violations of the HMR. On or about May 23, 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 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 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 January 18, 2012, an attorney from PHMSA's Hazardous Materials Safety issued a Notice of Probable Violation (NOPV) alleging seven violations of the HMR and proposing a \$9,550 civil penalty.

IV. Basis of Agreement

A. Reply to Notice. On February 16, 2012, the Respondent submitted a timely reply to the Notice.

B. Corrective Action. In letters dated June 20, 2012, February 16, 2012, March 27, 2012, September 18, 2012, and December 12, 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 documented corrective actions.

1. Respondent has registered as a party to the USNRC packaging approval.
2. Respondent has acquired a certificate of approval for the Type B package related to violation number 2.
3. Respondent has added a risk assessment for its security plan.
4. Respondent has provided in-depth security training to its employees.
5. Respondent is now using the correct USNRC package ID on its shipping papers and has identified monitoring times for its emergency response numbers.
6. Respondent is now listing correct activity and transport index on Yellow II labels.

PHMSA finds that the foregoing corrective actions have corrected all of the violations outlined in the Notice.

C. Finances. Respondent has requested mitigation based on finances and has submitted the appropriate documentation.

D. Informal Conference. An Informal Conference was held via teleconference on February 29, 2012.

V. Compromise Penalty Amount

HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
Offering and transporting in commerce a hazardous material in a Type B(U) package, RQ, UN2916, Radioactive Material, Type B(U) Package, 7, while failing to register with the United States Nuclear Regulatory Commission (USNRC) as a party to the packaging approval in violation of 49 C.F.R. §§ 171.2(a, b, f, i) and 173.471(a).	\$750	\$750
Offering and transporting in commerce a hazardous material in a Type B(U) package, RQ, UN2916, Radioactive Material, Type B(U) Package, 7, Special Form, while failing to maintain a complete safety analysis or certificate of competent authority in violation of 49 C.F.R. §§ 171.2(a, b, e, f) and 173.476(a).	\$1,875	\$1,875
Offering and transporting in commerce a known radionuclide listed by the USNRC as a quantity of concern while failing to develop a security plan with a written risk assessment in violation of 49 C.F.R. §§ 171.2(a, b, e, f), 172.800(b)(15), and 172.802(b, c).	\$1,125	\$855
Offering and transporting in commerce a hazardous material in a Type B(U) package, RQ, UN2916, Radioactive Material, Type B(U) Package, 7, while failing to provide in-depth security training to hazmat employees in violation of 49 C.F.R. §§ 171.2(b), 172.702(a), and 172.704(a)(5).	\$495	\$495
Offering and transporting in commerce a hazardous material in a Type B(U) package, RQ, UN2916, Radioactive Material, Type B(U) Package, 7, while failing to list the correct USNRC package identification number on the shipping paper in violation of 49 C.F.R. §§ 171.2(a, b, e, f) and 172.203(d)(7).	\$1,000	\$750
Offering and transporting in commerce a hazardous material in a Type B(U) package, RQ, UN2916, Radioactive Material, Type B(U) Package, 7, while listing multiple emergency response telephone numbers on a shipping paper, that are not monitored 24 hours a day, without specifying times for each in	\$1,300	\$975

violation of 49 C.F.R. §§ 171.2(a, b, e) and 172.604(a)(2).		
Offering and transporting in commerce a hazardous material in a Type B(U) package, RQ, UN2916, Radioactive Material, Type B(U) Package, 7, Special Form, Ir-192 777TBg, (21Ci) Transport Index 0.3, while failing to enter the correct activity and transport index on the Radioactive Yellow II labels in violation of 49 C.F.R. §§ 171.2(a, b, e, f) and 172.403(g)(2, 3).	\$3,000	\$2,250

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 and analysis of Respondent's financial documentation justifies assessing a civil penalty of \$2,000, with an abeyance of \$5,950.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$2,000. The remainder of the civil penalty (\$5,950) will be held in abeyance.

B. Payment. Respondent agrees to pay \$2,000, as full satisfaction of the civil penalty proposed in the Notice in the following manner:

Respondent must pay \$2,000 within thirty (30) days of the ORDER, which the Chief Counsel will issue *after* the Respondent signs and returns this Agreement.

C. Deferment/Abeyance. Contingent upon Respondent meeting certain conditions, PHMSA shall hold \$5,950 of the assessed civil penalty in abeyance. PHMSA shall consider the \$5,950 deferred and held in abeyance for a period of one (1) year following the issuance of a FINAL ORDER in this matter. This abeyance/deferment is contingent upon Respondent's full compliance with the following:

- (a) Respondent is to fully cooperate with PHMSA's investigators, who will perform an unannounced re-inspection of Respondent's facility at some time during the abeyance/deferment period;
- (b) Respondent may not be found in violation of the same or substantially similar violations of the HMR, as cited in the NOPV; and

(c) Respondent must pay the portion of the civil penalty not held in abeyance as specified in this Agreement. Failure to comply with payment terms is considered a breach of the abeyance agreement.

D. **Affect of a Breach of an Abeyance Condition.** Should Respondent breach the condition(s) of the abeyance agreement, the Assistant Chief Counsel for Hazardous Materials Safety, in its sole discretion, may impose the entire amount, or any portion, of the civil penalty herein identified as deferred or held in abeyance. Furthermore, should PHMSA reinstate any portion thereof, or the entire civil penalty held in abeyance, Respondent may request payment terms; but, PHMSA retains full discretion as to any terms for the repayment of the imposed/reinstated civil penalty.

E. 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.

F. This Agreement resolves only the violations noted in PHMSA Case No. 11-0172-RMS-SW 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.

G. 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.

H. 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:

Tyler Patterson,
Office of the Chief Counsel
United States Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, S.E.
PHC-10, E26-204
Washington, D.C. 20590-0001

Respondent

Federal Tax ID Number: 59-1095059

By: 
Signature

Date: 01-21-13

Randy Stewart Dir.
Printed Name, Title

Pipeline and Hazardous Materials Safety Administration

By: 
Tyler Patterson, Attorney-Advisor

Date: 3-12-2013

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.

ADDENDUM A

Payment Information

Respondent must pay a total civil penalty of \$2,000 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: Ryan Incaudo
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: Ryan Incaudo
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.