

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

**IN THE MATTER OF:**

**Midway Coop, Inc.,  
  
(Respondent),**

PHMSA Case No. 11-0009-SNT-CE

**COMPROMISE ORDER**

**By this Order I find that Midway Coop, Inc. (Respondent) committed seven violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$10,387 civil penalty for these violations.**

**I. Summary**

Respondent: Midway Coop, Inc.  
210 West Harrison St.  
Osborne, KS 67473  
Attn: Larry Stanley, Chairperson

No. of Violations: 7

Total Payment Due: \$10,387

**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 **\$10,387**. 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: MAR 08 2013 So Ordered,

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

### CERTIFICATE OF SERVICES

This is to certify that on the 8<sup>th</sup> day of March, 2013, the undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Larry Stanley, Chairperson  
Midway Coop, Inc.  
210 West Harrison St.  
Osborne, KS 67473

Copy of Agreement with enclosures  
Certified Mail Return Receipt

Mr. Robert Clatterbuck, Acting Director  
Hazardous Materials Enforcement Office  
2300 East Devon Avenue, Suite 478  
Des Plaines, IL 60018-4696

One Copy (without enclosures)  
Via Electronic Mail

Amelia Samaras, Attorney  
Pipeline and Hazardous Materials  
Safety Administration  
Office of Chief Counsel

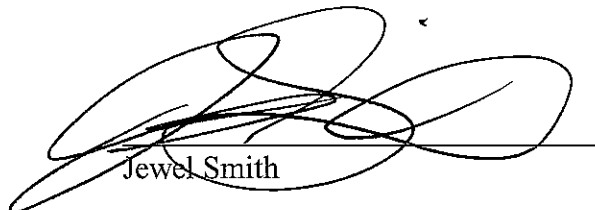
One Copy  
Via Electronic Mail

Mr. Terry Pollard, Investigator  
Hazardous Materials Enforcement Office  
2300 East Devon Avenue, Suite 478  
Des Plaines, IL 60018-4696

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***

Midway Coop (Respondent) must pay a total civil penalty of \$10,387 in accordance with the following:

#### Due date

Respondent must make the payment of \$10,387 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: Taushayna Wright  
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: 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.

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

**IN THE MATTER OF:**

**Midway Coop, Inc.,  
  
(Respondent)**

PHMSA Case No. 11-0009-SNT-CE

**COMPROMISE AGREEMENT**

**I. Parties**

The Parties to this Compromise Agreement (Agreement) are:

Midway ("Respondent"), an agricultural fertilizer retailer that offers for transportation and transports hazardous materials in the course of its business, located at 210 West Harrison Street, Osborne, Kansas 67473.

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 March 11, 2010, an inspector 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 seven 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 July 9, 2012, an attorney from the PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging seven violations of the HMR and proposing a \$13,850 civil penalty.

### IV. Basis of Agreement

A. Reply to Notice. On July 25, 2012, Respondent submitted a timely reply to the Notice. In its reply, Respondent requested an informal conference and submitted corrective action documentation. The letter included corrective action documentation. Respondent also submitted other corrective action documentation on November 20, 2012.

B. Corrective Action. In its letters, Respondent submitted evidence of corrective actions it had taken. The following is a summary of all of Respondent's corrective actions.

Violation Number	Respondent's Corrective action
1	Respondent stated that it marked all nurse tank heads with the proper shipping name and tightened loose farm wagon bolts. It provided representative photos to document these corrective actions. It also provided nurse tank inspection reports for the tanks with illegible data plates so that the tanks could continue to operate in commerce pursuant to 49 C.F.R. §173.315(m)(2).
2	Prior to the time of inspection, Respondent renewed special permit 13554. AT this time, the special permit no longer needs to be updated, as the special permit was incorporated into the Hazardous Materials Regulations (HMR) at 49 C.F.R. § 173.315(m)(2). Please ensure you comply with this provision for maintenance of nurse tanks operating without a legible data plate.
3	Respondent provided photos of nurse tanks properly marked with the proper shipping name on each side and end of the tank. Respondent also provided photos of placards that it attests are of the proper dimension. Respondent confirms that this documentation is representative of its nurse tank fleet.



4	Respondent stated that, "The permanent affixed Class 2.1 hazardous material placard has been replaced with a "flip" style placard that can be changed." Respondent has provided a photo of the flip style placard on the propane tank cart.
5	Respondent has provided in-depth security training and provided copies of some of its training materials.
6	Respondent provided updated nurse tank and cargo tank inspection reports.
7	Respondent provided an updated shipping paper that includes the packing group. ** However, as part of this agreement, Respondent agrees to correct the following errors in the shipping paper it provided. 1.) the hazard class of "3" for the flammable liquid, gasoline is missing, 2.) "Fuel oil, diesel" is not a proper shipping name. Correct the shipping name to "fuel oil" or "diesel fuel." Please include updated shipping paper with this signed agreement.**

C. Finances. Respondent has not requested mitigation based on finances.

D. Informal Conference. On November 20, 2012, the Office of Chief Counsel and Respondent (parties) held an informal conference. Respondent clarified/further explained the corrective actions it had taken, and committed to providing further corrective action documentation, which it did.

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 a hazardous material, RQ, Ammonia, anhydrous, 2.2 UN 1005, for transportation in commerce in an unauthorized, non-specification package because they were not marked as required with the proper shipping name, were not securely mounted on a farm wagon, and did not have a legible ASME data plate, 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).	\$6,300	\$4,725
2	Respondent offered a hazardous material, RQ, Ammonia, anhydrous, 2.2 UN 1005, for transportation in commerce in an unauthorized, non-specification package, in violation of 49 C.F.R. §§ 171.1(b); 171.2(a), (b), (c), (e), and (g); 173.22(a); 173.22a(a); 173.315(m); and DOT SP 13554.	\$6,650	\$4,987
3	Respondent offered a hazardous material, RQ, Ammonia, anhydrous, 2.2 UN 1005, for transportation in commerce without marking the proper shipping name or common name on each side	\$900	\$675

	and end of the cargo tank and with placards that were the incorrect size, in violation of 49 C.F.R. §§ 171.1(b); 171.2(a), (b), (e), and (f); 172.328(b); 172.504(a); 172.516(c)(7); 172.519(c); and 173.315(m).		
4	Respondent operated a commercial motor vehicle in commerce that was marked and placarded for Liquefied Petroleum Gas, 2.1, UN1075, when the motor vehicle did not transport the hazardous material or its residue, in violation of 49 C.F.R. §§ 171.1(b); 171.2(a); 172.303(a) and 172.502(a)(1)(i).	-	-
5	Respondent allowed an employee to perform functions subject to the Hazardous Materials Regulations when security awareness training and in-depth security training were not conducted as required and when current hazmat training records were not retained as required, in violation of 49 C.F.R. §§ 171.1(b), 171.2(a) and (b), 172.702(a), and 172.704(a)(4) and (5) and (d).	-	-
6	Respondent offered for transportation and transported the hazardous materials: 1.) Anhydrous ammonia, 2.2 UN1005; 2.) Liquefied petroleum gas, 2.1, UN 1075; 3.) Gasoline, 3, UN 1203, II; and 4.) Fuel oil, Combustible Liquid, NA 1993, III in cargo tanks while failing to have complete tank/cargo tank inspection reports, completed by the inspector at its facility, in violation of 49 C.F.R. §§ 171.1(b); 171.2(a), (b), (c), (e), and (g); 180.417(b) and (c); and DOT-SP 13554.	-	-
7	Respondent transported the hazardous materials, Gasoline, 3, UN1203, PG II and Fuel Oil, Combustible Liquid, NA 1993, PGIII, while failing to properly describe the materials by failing to provide: 1.) the date of shipment, 2.) the hazard class, 3.) the packing group, 4.) additional information after the basic description and failing to store a hazardous materials shipping paper in a vehicle when the driver is not at the vehicle's controls in either a holder mounted to the inside of the driver's door or on the driver's seat in the vehicle, in violation of 49 C.F.R. §§ 171.1(b); 171.2(a), (b), (e), and (f); 172.200(a); 172.201(a)(4) and (e); 172.202(a); 172.817(e); and 177.800(a).	-	-
TOTAL	-----	\$13,850	\$10,387

**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 corrective actions
- (4) Respondent's size; 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 \$10,387.

## VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$10,387, 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 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. 11-0009-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 #: 48-0359855<sup>1</sup>

By: Dell C. Pinner General Manager Date: 3/5/13  
Name, Title  
Midway Coop, Inc.

**Pipeline and Hazardous Materials Safety Administration**

By: Amelia Samaras Date: 3/5/13  
Amelia Samaras, Attorney

<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.