

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

**IN THE MATTER OF:**

**National Packaging Services, Inc.  
(Respondent)**

PHMSA CASE Number:

**11-0155-PC-EA  
11-0061-TPL-SI  
12-0012-PC-EA**

**COMPROMISE ORDER**

**By this Order, I find that National Packaging Services, Inc. (Respondent) committed five violations of the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180, and I assess Respondent a \$28,790 civil penalty.**

**I. Summary**

Respondent: National Packaging Services, Inc.  
1000 New County Road, Building 3  
Secaucus, NJ, 07094

ATTN: Mr. Richard Gerstner, Vice President, Technical Services

No. of Violations: 5

Total Payment Due: \$28,790

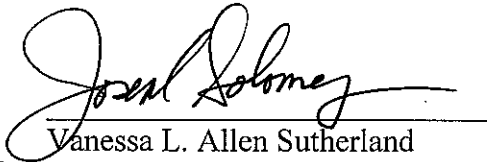
**II. Finding**

This matter comes before me after National Packaging Services, 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.

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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

*fa* Pipeline and Hazardous Materials Safety Administration

Date: 4/3/2013

Attachments

**CERTIFICATE OF SERVICE**

This is to certify that on the 3<sup>rd</sup> day of April, 2013, the undersigned served in the following manner the designated copies of this Order with attached addenda to each party listed below:

Richard Gerstner  
National Packaging Services, Inc.  
1000 New County Road, Building 3  
Secaucus, NJ, 07094

Original Order with  
Copy of Agreement  
Certified Mail  
Return Receipt Requested

Bill Schoonover, Deputy Associate Administrator  
Pipeline and Hazardous Materials Safety Administration  
Office of Hazardous Materials Field Operations  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

One Copy (without  
enclosures)  
Via Electronic Mail

Colleen Abbenhaus, Director  
Pipeline and Hazardous Materials Safety Administration  
Office of Hazardous Materials Field Operations  
Eastern Region, PHH-42  
820 Bear Tavern Road, Suite 306  
West Trenton, New Jersey 08628

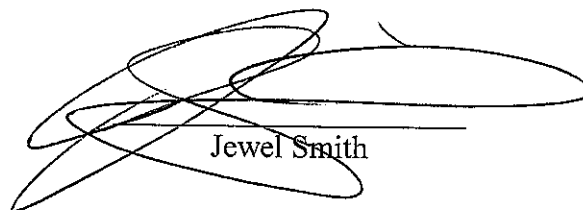
One Copy (without  
enclosures)  
Via Electronic Mail

Adam Horsley, Attorney  
Pipeline and Hazardous Materials Safety Administration  
Office of Chief Counsel  
1200 New Jersey Avenue, S.E.  
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

# **ADDENDUM A**

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

**IN THE MATTER OF:**

**National Packaging Services, Inc.  
(Respondent)**

PHMSA CASES:

**11-0155-PC-EA  
11-0061-TPL-SI  
12-0012-PC-EA**

**COMPROMISE AGREEMENT**

**I. Parties**

The Parties to this Compromise Agreement ("Agreement") are:

**National Packaging Services, Inc.** ("Respondent"), was a PHMSA Third-Party Certification Agency that operated under Competent Authority Approval CA2006070005, which was issued on August 9, 2006. Respondent also manufactures and distributes packaging.

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: a PHMSA Third-Party Certification Agency and manufacturer of packagings, it 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 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. A. On May 13, 2010, Investigators from PHMSA's Office of Hazardous Materials Safety Field Operations ("OHMSFO") 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 Investigators reported five (5) alleged violations of the HMR. At the conclusion of the compliance inspection, PHMSA's Investigator conducted an "exit briefing" during which the Investigator discussed the alleged violations and the required corrective actions with Respondent's representative. PHMSA's Investigator obtained samples of packaging for testing at the U.S. Army Materiel Command, Packaging, Storage and Containerization Center, Logistics Support Activity (LOGSA), and provided updated exit briefings to Respondent upon the completion of the testing.

B. Upon completion of the compliance inspection, and subsequent package testing at LOGSA, the Investigator submitted reports to the Director of OHMSFO's Special Investigations, and to the Director of PHMSA's Eastern Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Directors 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 Investigator's reports, on May 23, 2012, an attorney from PHMSA's Office of Chief Counsel issued a Notice of Probable Violation ("Notice") alleging five (5) violations of the HMR and proposing a \$35,980 civil penalty.

### IV. Basis of Agreement

A. Reply to Notice. On June 21, 2012, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In correspondence sent from October 29 to November 13, 2012, and January 14 to February 21, 2013, Respondent provided documentation of the corrective action it has taken to support mitigation of the proposed civil penalty. Respondent has:

- Imposed a sales moratorium on the UN 30-Gal HEXPACK on 1/18/11
- Converted the sales moratorium to a discontinuation of the product on 6/4/11
- Discontinued its activities as a Third-Party Certification Agency
- Stopped all testing under their former +BU authorization
- Notified PHMSA of their new location and mailing address
- Provided extensive training to all employees, including sales, office, and warehouse staff

- Provided curricula, tests and certifications related to the training provided to ensure full compliance with PHMSA's requirements
- Discontinued selling the NATPACK-X Cubic Yard Container (Carton manufactured by International Paper)

#### 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	Representing, marking, and certifying fiberboard combination packaging as meeting the UN 4G standard, when the design was incapable of passing the drop test prescribed in 49 CFR § 178.603, in violation of 49 CFR §§ 171.2(c), (g) and (j), 178.2(b), and 178.601(b).	\$8,400	\$6,300
2	Representing and certifying UN-standard packaging as meeting the requirements of the Hazardous Materials Regulations (HMR), without adhering to the terms of Competent Authority Approval CA2006070005, in violation of 49 CFR §§ 107.404(c), 171.2(b), (c) and (g), and CA2006070005, Fourth Revision.	\$11,250	\$8,440
3	Representing and certifying UN-standard packaging as meeting the requirements of the Hazardous Materials Regulations (HMR), when an insufficient number of test samples were used to conduct performance tests, in violation of 49 CFR §§ 171.2(c), (g) 178.2(b) and (d) and 178.601(d).	\$6,400	\$6,400
4	Failure to provide hazardous material employees with recurrent general awareness and security awareness training, as prescribed in 49 CFR §§ 172.704(a)(1) and (a)(4), and failing to provide function specific and safety training as prescribed in 49 CFR § 172.704(a)(2) in violation of 49 CFR §§ 171.2(a), (c) and (j) and 172.702(a) and (b).	\$1,530	\$1,350
5	Representing, marking and certifying fiberboard Intermediate Bulk Containers (IBCs) as meeting the UN11G standard, when the design was not capable of passing the drop test prescribed in 49 CFR § 178.810(a), and when the walls of the fiberboard did not have a minimum puncture resistance of 15 Joules, as prescribed for the design in 49 CFR §	\$8,400	\$6,300

	178.708(c)(2)(i), in violation of 49 CFR §§ 171.2(c), (g) and (j), 178.2(b), and 178.801(b).		
<b>TOTAL</b>	-----	<b>\$35,980</b>	<b>\$28,790</b>

**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.

Respondent's documented corrective action justifies assessing a reduced civil penalty of \$28,790.

**VII. Terms and Conditions**

A. Respondent agrees to pay a total civil penalty of \$28,790, as full satisfaction of the civil penalty proposed in the Notice, according to the following payment plan. Respondent is to make the payment of \$9,596 within 30 days from the date the Chief Counsel issues the Final Order, which will issue after Respondent signs and returns this Agreement. Respondent must pay an additional \$9,597 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.

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 noted in PHMSA Ref. Nos. 11-0155-PC-EA, 11-0061-TPL-SI, and 12-0012-PC-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 these violations shall constitute 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 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), for the full amount of the penalty proposed in the Notice.

D. Respondent must return the signed Agreement to:

Adam Horsley  
United States Department of Transportation  
Pipeline and Hazardous  
Materials Safety Administration  
1200 New Jersey Avenue, S.E.,  
PHC-10, Room E26-202  
Washington, D.C. 20590-0001

**Respondent**

Federal Tax ID #: 83-0426211<sup>1</sup>

By: Richard E. Gerstner Date: 1 APRIL 2013  
Name, Capacity or position RICHARD E. GERSTNER, V.P. - TECH SERVICES

**Pipeline and Hazardous  
Materials Safety Administration**

By: Adam Horsley Date: April 2, 2013  
Adam Horsley, Attorney-Advisor

<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.

# **ADDENDUM B**

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### *Payment Information*

Respondent must pay a total civil penalty of \$28,790 in accordance with the following:

#### Due date

Respondent must pay the first \$9,596 of the payment plan within 30 days of the date of this Order. Respondent must pay an additional \$9,597 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.

#### 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) 954-2685.

(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/>

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.