

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

IN THE MATTER OF:

**Atlantic Drilling Supply

(Respondent)**

PHMSA Case No. 11-0181-RMS-SW

COMPROMISE ORDER

By this Order I find that Atlantic Drilling Supply committed four (4) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$7,575 civil penalty for the violations.

I. Summary

Respondent:

Atlantic Drilling Supply
4187 SW 34th St
Orlando, FL 32811
ATTN: Michael Gordon, Branch Manager

No. of Violations: 4

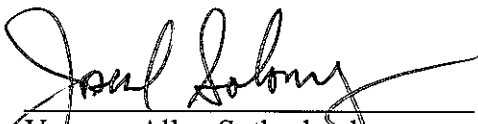

Total Payment Due: \$7,575

II. Finding

This matter comes before me after Atlantic Drilling Supply (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,


for  Vanessa Allen Sutherland
Chief Counsel
Pipeline and Hazardous Materials Safety Administration

Date: 1/9/2013

Attachments

CERTIFICATE OF SERVICE

This is to certify that on the 16th day of January, 2013, the undersigned served in the following manner the designated copies of this Order with attached addenda to each party listed below:

Michael Gordon, Branch Manager
Atlantic Drilling Supply
4187 SW 34th St
Orlando, FL 32811

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
Central Region Office, PHH-43
2300 East Devon Avenue, Suite 478
Des Plaines, Illinois 60018

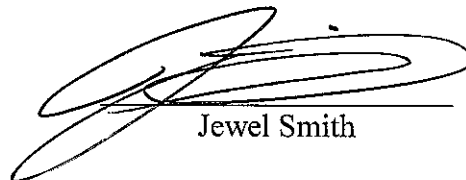
One Copy (without
enclosures)
Via Electronic Mail

Tyler Patterson, Attorney
Pipeline and Hazardous Materials Safety Administration
Office of Chief Counsel
1200 New Jersey Avenue, S.E. PHC-10, E26-204
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:

**Atlantic Drilling Supply
(Respondent)**

PHMSA Case No. 11-0181-RMS-SW

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Atlantic Drilling Supply (“Respondent”), a company that conducts nuclear gauge repair, calibration and leak testing, and 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 conducts nuclear gauge repair, calibration and leak testing, and places Class 7 materials into transportation, 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 26, 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 five (5) alleged violations of the HMR. On or about May 26, 2011, after the conclusion of the compliance inspection, PHMSA's Investigators 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 March 20, 2012, an attorney from PHMSA's Hazardous Materials Safety issued a Notice of Probable Violation (NOPV) alleging four violations of the HMR and proposing a \$15,135 civil penalty.

IV. Basis of Agreement

A. Reply to Notice. On April 15, 2012, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In correspondences dated June 2, 2011 and April 15, 2012, Respondent submitted evidence of corrective actions it had taken in response to the probable violations. The following is a summary of all of Respondent's documented corrective actions.

1. Respondent submitted valid mitigating evidence for incomplete Type A documentation.
2. Respondent prepares and retains shipping papers for all transports it conducts itself, not just common carrier shipments.
3. Respondent has corrected its shipping papers to verify the inclusion of activity and transport index calculations prior to shipment.

4. Respondent now includes a valid emergency response number on its shipping papers.

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

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

D. Informal Conference. This settlement was reached without the need for an Informal Conference.

V. Compromise Penalty Amount

HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
Offering for transportation in commerce a DOT specification 7A packaging containing RQ, UN3332, Radioactive Material, Type A Package, Special Form 7, without maintaining complete documentation of tests and an engineering evaluation or comparative data in violation of 49 C.F.R. §§ 171.2(a, b, e) and 173.415(a).	\$7,560	QC
Offering for transportation in commerce a hazardous material, RQ, UN3332, Radioactive Material, Type A Package, Special Form, 7, while failing to prepare and retain a shipping paper in violation of 49 C.F.R. §§ 171.2(a, b, e), 172.200(a), and 172.201(e).	\$3,375	\$3,375
Offering for transportation in commerce a hazardous material, RQ, UN3332, Radioactive Material, Type A Package, Special Form, 7, while failing to list all proscribed information on the shipping paper in violation of 49 C.F.R. §§ 171.2(a, b, e) and 172.203(d).	\$2,250	\$2,250
Offering for transportation in commerce a hazardous material, RQ, UN3332, Radioactive Material, Type A Package, Special Form, 7, while failing to maintain emergency response information required for a hazardous material and failing to have emergency response information immediately accessible to facility personnel in violation of 49 C.F.R. §§ 171.2(a, b, e), 172.600(c), and 172.602(c)(2).	\$1,950	\$1,950

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 justifies assessing a civil penalty of \$7,575.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$7,575 as full satisfaction of the civil penalty proposed in the NOPV.

B. Payment. Respondent agrees to pay \$7,575, as full satisfaction of the civil penalty proposed in the Notice in the following manner:

Respondent must pay \$7,575 within thirty (30) days of the ORDER, which the Chief Counsel will issue *after* the Respondent signs and returns this Agreement.

C. 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.

D. This Agreement resolves only the violations noted in PHMSA Case No. 11-0181-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.

E. 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.

F. 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 ten (10) 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 Number¹: 59-2841332

By: Michael Gordon Date: 12-26-12
Signature

MICHAEL GORDON BRANCH MGR.
Printed Name, Title

Pipeline and Hazardous Materials Safety Administration

By: Tyler Patterson Date: 1-7-13
Tyler Patterson, 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.