

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

**IN THE MATTER OF:**

**ChemSync, Inc.**

**(Respondent),**

PHMSA Case No. 12-0114-SDIBC-SW

**COMPROMISE ORDER**

**By this Order I find that ChemSync, Inc. (Respondent) committed two (2) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$3,360 civil penalty for this violation.**

**I. Summary**

Respondent: ChemSync, Inc.

No. of Violations: 2

Maximum Possible Civil Penalty: \$ 110,000


Total Payment Due: \$ 3,360

**II. Finding**

This matter comes before me after ChemSync, 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.

So Ordered,

*for*   
\_\_\_\_\_  
Vanessa Allen Sutherland  
Chief Counsel

Dated: 01/16/2013 Pipeline and Hazardous Materials Safety Administration

Attachments

## CERTIFICATES OF SERVICE

This is to certify that on the 17<sup>th</sup> 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:

David Brown, President  
ChemSync, Inc.  
1005 County Road 217  
Giddings, Texas 78942

Original Order with  
Copy of Agreement  
Certified Mail Return Receipt

Billy C. Hines, Jr., Regional Director  
Southwest Region, OHME  
8701 S. Gessner Road, Suite 900  
Houston, TX 77074

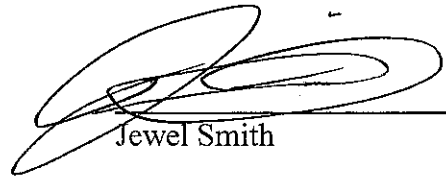
One Copy (Without Attachments)  
Via Electronic Mail

Alice Koethe, Attorney  
Pipeline and Hazardous Materials  
Safety Administration  
1200 New Jersey Ave, SE  
Washington, DC 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:**

**ChemSync, Inc. (Respondent)**

PHMSA Case No 12-0114-SDIBC-SW

**COMPROMISE AGREEMENT**

**I. Parties**

The Parties to this Compromise Agreement (Agreement) are:

**ChemSync, Inc. ("Respondent"),**

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 offers hazardous materials for transportation in commerce, 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) The facts associated with this case are as alleged in the Inspection Report and the Notice and that based on these facts the Chief Counsel, in a final order, will find that Respondent committed violations 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 April 12, 2012, PHMSA investigator Chevella Smith conducted a compliance inspection at Respondent's Giddings, Texas facility. Based on the results of this inspection, PHMSA's investigator reported two (2) alleged violations of the HMR. PHMSA's investigator provided an "exit briefing form" to Respondent's representative that summarized the alleged violations and the required corrective actions.

B. Upon completion of the compliance inspection, the investigator submitted a report to the Director of OHME's Southwest 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 Investigator's report, on August 29, 2012, an attorney from the PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging two (2) violations of the HMR and proposing a \$3,855 civil penalty, which included a \$625 reduction for corrective actions.

### IV. Basis of Agreement

A. Reply to Notice. Respondent submitted a timely reply to the Notice.

B. Corrective Action. In its correspondence dated September 27, 2012, 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 indicated that it obtained party status to Special Permits DOT-SP 11296 and DOT-SP 12412. Documentation of this party status was provided.
2	Respondent indicated that it trained and tested all hazardous materials employees in accordance with the HMR. It provided supporting documentation in the form of training certificates and training records.

### 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 for transportation and transported in commerce hazardous materials contained in Intermediate Bulk Containers (IBCs) and 55-gallon drums, and discharged the contents of these containers without removing them from a motor vehicle, in violation of 49 C.F.R. §§ 172.1(a), (b), (e), & (f) and 177.834(h).	\$1,875	\$1,875
2	Respondent allowed its employees to perform functions subject to the HMR while failing to provide each hazmat employee with all required hazardous materials safety training within the past three years, and did not create and retain hazardous materials training records in accordance with the HMR, in violation of 49 C.F.R. §§ 171.2(a) & (b), 172.702(a), (b), & (d), and 172.704(a) & (d).	\$1,980	\$1,485
<b>TOTAL</b>	-----	<b>\$3,855</b>	<b>\$3,360</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.

Documentation of Respondent's corrective actions for these violations justifies PHMSA in reducing the proposed civil penalty.

#### VII. Terms and Conditions

A. By this agreement, PHMSA agrees to assess a total civil penalty of \$3,360 for two violations of the HMR.

B. **Payment.** Respondent agrees to pay \$3,360 as full satisfaction of the civil penalty proposed in the Notice. **Respondent must pay the \$3,360 within thirty (30) days of the ORDER**, which the Chief Counsel will issue *after* the Respondent signs and returns this Agreement.

C. **Rights Waived.** 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;

(3) to seek judicial review or otherwise contest or challenge the validity of this Agreement or the Notice associated with this case.

D. Matters Resolved. This Agreement resolves only the violations noted in PHMSA Case No. 12-0114-SDIBC-SW as referenced in Section V of this agreement and in the Notice.

E. Prior Violation. 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.

F. Subsequent Order. 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.

G. Closing of the Case File. 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. Failure to comply with any of the terms of this agreement may result in review, suspension, and/or termination of existing special permits/approvals, pursuant to 49 C.F.R. §107.121 and 107.713.

E. Respondent must return the signed Agreement to:

Alice Koethe, Attorney  
United States Department of Transportation

Pipeline and Hazardous Materials Safety Administration  
1200 New Jersey Ave, S.E., Zone E-26 (PHC-10)  
Washington, D.C. 20590-0001

**Respondent**

Federal Tax ID #: 27-3080712<sup>1</sup>

By: *D. Brown* PRESIDENT  
Name, Title

Date: 1-8-13

**Pipeline and Hazardous Materials Safety Administration**

By: *Alice Koethe*  
Alice Koethe, Attorney

Date: *January 14, 2013*

<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.