

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

IN THE MATTER OF:

**Oprandy's Fire and Safety Equipment
(Respondent)**

PHMSA Case No. 10-0154-CR-EA

COMPROMISE ORDER

By this Order I find that Oprandy's Fire and Safety Equipment committed eleven (11) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$7,800 civil penalty for the violations.

I. Summary

Respondent: Oprandy's Fire & Safety Equipment
26 North Main Street, Suite #2
Florida, New York 10921
Attn: Brian E. Scott, President

No. of Violations: 11



Total Payment Due: \$7,800

II. Finding

This matter comes before me after Oprandy's Fire and Safety Equipment, (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 L. Allen Sutherland
Chief Counsel

Pipeline and Hazardous Materials Safety Administration

Date: 5/15/2013

Attachments

CERTIFICATE OF SERVICE

This is to certify that on the 17th day of May, 2013, the undersigned served in the following manner the designated copies of this Order with attached addenda to each party listed below:

Oprandy's Fire & Safety Equipment
26 North Main Street, Suite #2
Florida, New York 10921
Attn: Brian E. Scott, President

Original Order with
Copy of Agreement
Certified Mail
Return Receipt Requested

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

One Copy (without
enclosures)
Via Electronic Mail

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

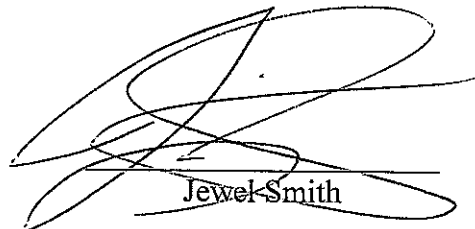
One Copy (without
enclosures)
Via Electronic Mail

Shawn C. Wolsey, 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

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

IN THE MATTER OF:

**Oprandy's Fire and Safety Equipment
(Respondent)**

PHMSA Case No. 10-0154-CR-EA

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Oprandy's Fire and Safety Equipment ("Respondent"), DOT approved cylinder retester, located in Florida, New York,

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 retests DOT specification cylinders, 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) the PHMSA's Office of Chief Counsel (49 U.S.C. § 5103(b) and 49 C.F.R. § 107.301); and

(2) Respondent received proper notice of PHMSA's actions in the proceeding.

III. Background

A. On April 9, 2010, Investigators from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a routine compliance inspection at

Respondent's facility, located in Florida, New York, pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's Investigators reported twelve (12) alleged violations of the HMR. After the conclusion of the compliance inspection, PHMSA's Investigators interviewed the Respondent's representative 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 OHME's Eastern Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Region Chief 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 Investigator's report, on July 26, 2012, an attorney from PHMSA's Hazardous Materials Safety Law Division issued a Notice of Probable Violation (NOPV) alleging eleven (11) violations of the HMR and proposing a \$31,200 civil penalty.

IV. Basis of Agreement

A. Reply to Notice. On August 27, 2012, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In its correspondence dated August 27, 2012, Respondent submitted evidence of corrective actions it had taken in response to the exit briefing.

Respondent's Corrective action
Respondent had all cylinders in question recalled and retested.
Respondent submitted detailed proof of all the retesting that was performed on the recalled cylinders.
Respondent is no longer testing cylinders.

C. Finances and Small Business Size. Evidence in the record substantiates that Respondent is a small business. On January 14, 2013, Respondent provided copies of their 2011 and 2012 Profit and Loss Statements. A review of these financial documents indicates that the baseline penalties proposed in the Notice of Probable Violations would exceed an amount that Respondent is able to pay and would have an adverse effect on Respondent's ability to continue in business. In this case, abatement is appropriate.

V. Compromise Penalty Amount

Viol. No.	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Representing, marking, and certifying DOT Special Permit (SP) 9894, 10905, and 10147 cylinders while failing to condemn the tested cylinders when they exhibit permanent expansion in excess of the authorized amount, in violation of 49 C.F.R. §§ 171.2(c), 180.205(i)(iv) or DOT-SP 9894.	\$11,000	\$2,750
2	Representing, marking, and certifying DOT specification 3A (DOT-3A) cylinders as having been successfully retested, when the hydrostatic testing was conducted below the minimum test pressure prescribed for these cylinders in violation of 49 C.F.R. §§ 171.2, 180.205(g)(5), and 180.209(a).	\$2,100	\$500
3	Representing, marking, and certifying DOT specification 3A (DOT-3A) cylinders as having been successfully retested, when the hydrostatic testing was performed using test equipment which was not demonstrated accurate within one percent of the calibrated cylinder values in violation of 49 C.F.R. §§ 171.2(c) and 180.205(g)(4).	\$3,650	\$900
4	Representing, marking, and certifying DOT specification and special permit cylinders as having been successfully retested, when the hydrotesting was performed using test equipment which -was not verified to be accurate within 500 psi of the test pressures in violation of 49 C.F.R. §§ 171.2(c) and 180.205(g)(3)(i).	\$3,650	\$900
5	Representing, marking, and certifying DOT specification and special permit cylinders as having been successfully requalified when the hydrostatic testing was performed without an approval, in violation of 49 C.F.R. §§ 171.2(c) and 180.205(b).	\$2,000	\$500
6	Representing, marking, and certifying DOT specification cylinders as having been successfully tested in accordance with the HMR, while failing to notify the Associate Administrator for Hazardous Materials Safety of a change in testing personnel, in violation of 49 C.F.R. §§ 107.805(g), 171.2(c) and US DOT Approval.	\$900	\$250
7	Representing, marking, and certifying DOT specification 3A cylinders as having been properly condemned, in accordance with the HMR, while	\$1,000	\$250

	failing to notify the cylinder owner in writing, in violation of 49 C.F.R. §§ 171.2(c) and 180.205(i)(3).		
8	Representing and certifying DOT specification and special permit cylinders as having been properly requalified, in accordance with the HMR, while failing to maintain copies of the current RIN approval, applicable Compressed Gas Association (CGA) pamphlets, and DOT special permits, in violation of 49 C.F.R. §§ 171.2(c) and 180.215(a).	\$900	\$250
9	Representing and certifying DOT specification and special permit cylinders as having been properly requalified, in accordance with the HMR, while failing to maintain complete calibration records, in violation of 49 C.F.R. §§ 171.2(c) and 180.215(b)(1).	\$2,100	\$500
10	Representing and certifying DOT specification and special permit cylinders as having been properly requalified, in accordance with the HMR, while failing to maintain complete test records in violation of 49 C.F.R. §§ 171.2(c) and 180.215(b)(2).	\$3,000	\$750
11	Representing and certifying DOT specification and special permit cylinders as having been properly requalified, in accordance with the HMR, while failing to provide hazmat employees with general awareness, safety, function specific, and security awareness training, in violation of 49 C.F.R. §§ 171.2(c) and 172.702(a).	\$900	\$250
TOTAL	-----	\$31,200	\$7,800

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 \$7,800 payable in ten payments, and holding the remaining \$23,400 in abeyance.

VII. Terms and Conditions

A. Payment. Respondent agrees to pay the sum of \$7,800, as full satisfaction of civil penalty proposed in the Notice in ten (10) monthly payments.

(1) Respondent must pay the first \$1,300 of the payment plan within thirty days of the date of the Compromise Order.

(2) Respondent must pay an additional eight payments of \$725 each thirty days, with the final payment being \$700, until the entire amount is paid.

B. Deferment/Abeyance. Contingent upon Respondent meeting certain conditions, PHMSA shall hold \$23,400 of the assessed civil penalty in abeyance. PHMSA shall consider the \$23,400 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:

(1) 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;

(2) Respondent may not be found in violation of the same or substantially similar violations of the HMR, as cited in the NOPV; and

(3) 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.

C. Effect 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.

D. 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.

E. This Agreement resolves only the violations noted in PHMSA Case No. 10-0154-CR-EA 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.

F. After Respondent signs and returns this Agreement, PHMSA's representative will present the Agreement to the Acting Chief Counsel requesting that the Acting 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 Acting Chief Counsel.

G. 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 Acting 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.

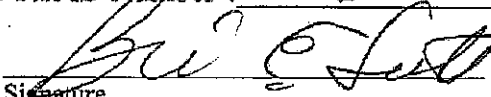
C. Respondent's failure to sign and return this agreement within ten (10) days from its receipt will result in the withdrawal of this Agreement and the Chief Counsel will issue an Order pursuant to 49 C.F.R. §§ 107.317(d).

D. Respondent must return the signed Agreement to:

Shawn C. Wolsey,
Office of the Chief Counsel
United States Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, S.E.
Zone E24, E24-311
Washington, D.C. 20590-0001

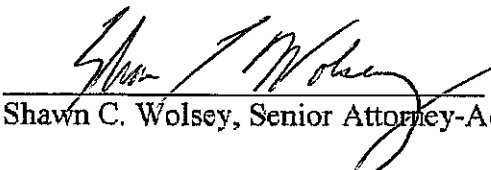
Respondent

Federal Tax ID Number¹: 06-1454239

By:  Date: May 14, 2013
Signature

Brian E. Scott, President
Printed Name, Title

Pipeline and Hazardous Materials Safety Administration

By:  Date: 5/14/13
Shawn C. Wolsey, Senior Attorney-Advisor

¹ The Taxpayer Identifying Number is required by 31 U.S.C. § 7701(c)(3). PEHMSA 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 **\$7,800** in accordance with the following:

Due date

Respondent will have ten payments. Respondent must pay the first \$1,300 of the payment plan within 30 days of the date of the ORDER. Respondent must pay eight payments of \$725 each 30 days thereafter with the final payment being \$700, 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.

Handwritten signature
5/14/13

The remaining \$23,400 is held in abeyance for a period of not less than one (1) year from the date of the ORDER pending Respondent's compliance with the terms of the Agreement as incorporated into 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: 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: 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.