

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

IN THE MATTER OF:

**Industrial Fumigant Company

(Respondent)**

PHMSA Case No. 11-0220-SC-CE

COMPROMISE ORDER

By this Order I find that Industrial Fumigant Company committed three (3) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$12,375 civil penalty for the violations.

I. Summary

Respondent:

Industrial Fumigant Company
13420 W. 99th Street
Lenexa, Kansas 66215
ATTN: Dale Vestal, Regulatory Compliance Manager

No. of Violations: 3

Total Payment Due: \$12,375

II. Finding

This matter comes before me after Industrial Fumigant Company (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,



Vanessa Allen Sutherland
Chief Counsel

Pipeline and Hazardous Materials Safety Administration

Date:

5/30/2013

Attachments

CERTIFICATE OF SERVICE

This is to certify that on the 31st 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:

Dale Vestal, Regulatory Compliance Manager
Industrial Fumigant Company
13420 W. 99th Street
Lenexa, Kansas 66215

Original Order with
Copy of Agreement
Certified Mail
Return Receipt Requested

William Schoonover, Director
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Safety Field Operations
1200 New Jersey Avenue, S.E.
Washington, D.C. 02590

One Copy (without
enclosures)
Via Electronic Mail

Kipton Wills, Director
Pipeline and Hazardous Materials Safety Administration
Central Region Office
2300 East Devon Avenue, Suite 478
Des Plaines, IL 60018

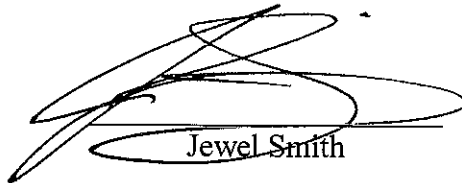
One Copy (without
enclosures)
Via Electronic Mail

Tyler Patterson, Attorney
Pipeline and Hazardous Materials Safety Administration
Office of Chief Counsel
1200 New Jersey Avenue, S.E. PHC-10, E24-311
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:

**Industrial Fumigant Company
(Respondent)**

PHMSA Case No. 11-0220-SC-CE

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Industrial Fumigant Company ("Respondent"), a national company that provides food industry pest management and sanitation solutions located in Lenexa, Kansas,

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 uses offers and transports in commerce Class 2 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); 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. Investigators from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a compliance inspection of Respondent's facility in Wichita, Kansas on May 9, 2012, pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's investigators reported three (3) alleged violations of the HMR. After the conclusion of the compliance inspection, PHMSA's Investigators contacted and interviewed the Respondent, and then conducted an "exit briefing" during which the investigators discussed the alleged violations and the required corrective actions with Respondent's representative.

B. Upon completion of the compliance inspection, the investigators submitted a report to the director of OHMSFO's Central Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Region Director referred the matters 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 5, 2012, an attorney from PHMSA's Hazardous Materials Safety issued a Notice of Probable Violation (NOPV) alleging two violations of the HMR and proposing a \$16,500 civil penalty.

IV. Basis of Agreement

A. Reply to Notice. On April 2, 2012, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In a letters dated June 27, 2011 and April 2, 2012, Respondent submitted evidence of corrective actions it had taken in response to the exit briefing. The following is a summary of all of Respondent's documented corrective actions.

1. Respondent has requalified its cylinders.
2. Respondent has marked and labeled its cylinders according the requirements of the HMR.

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

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

D. Informal Conference. The terms of this settlement was reached without the need for an Informal Conference.

V. Compromise Penalty Amount

HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
Filling and offering for transportation in commerce a hazardous material, UN3162, Liquefied Gas, toxic, n.o.s. (contains phosphine), 2.3, inhalation hazard zone D, packaged in Luxfer 3AL series cylinders that were past due for periodic requalification in violation of 49 C.F.R. §§ 171.2, 173.301(a)(6), 180.3(c), and 180.207(c).	\$7,000	\$5,250
Offering for transportation in commerce a hazardous material, UN3162, Liquefied Gas, toxic, n.o.s. (contains phosphine), 2.3, inhalation hazard zone D, while failing to label the packages as proscribed in violation of 49 C.F.R. §§ 171.2 and 172.400(a).	\$5,000	\$3,750
Offering for transportation in commerce a hazardous material, UN3162 Liquefied Gas, toxic, n.o.s. (contains phosphine), 2.3, inhalation hazard zone D, while failing to mark the packages with proper shipping name and identification in violation of 49 C.F.R. §§ 171.2, 172.300(a), and 172.301(a).	\$4,500	\$3,375

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 \$12,375.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$12,375 as full satisfaction of the civil penalty proposed in the NOPV.

B. Payment. Respondent agrees to pay the sum of \$12,375, as full satisfaction of civil penalty proposed in the Notice in one (1) payment of \$2,275 and five (5) monthly payments of \$2,000 each.

(1) Respondent must pay the first \$2,375 of the payment plan within thirty days of the date of the Compromise Order.

(2) Respondent must pay an additional \$2,000 each thirty days after that until the entire amount is paid.

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. 11-0220-SC-CE 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.

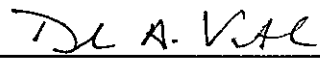
C. Respondent's failure to sign and return this agreement within thirty (30) days from its receipt will result in the withdrawal of this Agreement and the Chief Counsel will issue an Order pursuant to 49 C.F.R. §§ 107.317(d).

D. Respondent must return the signed Agreement to:

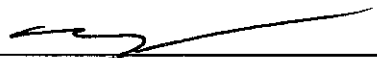
Tyler Patterson,
Office of the Chief Counsel
United States Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, S.E.
PHC-10, E26-202
Washington, D.C. 20590-0001

Respondent

Federal Tax ID Number¹: 44-0529835

By:  Date: 5-21-13
Signature
Dale A. Vestal, Regulatory Compliance Manager
Printed Name, Title

Pipeline and Hazardous Materials Safety Administration

By:  Date: 5-30-13
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.

ADDENDUM A

Payment Information

Respondent must pay a total civil penalty of \$12,375 in accordance with the following:

Due date

Respondent must pay the first \$2,375 of the payment plan within 30 days of the date of the ORDER. Respondent must pay an additional \$2,000 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) 954-8893.

(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.