

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

IN THE MATTER OF:

**Dorchester Farmers Cooperative,

(Respondent),**

PHMSA Case Nos. 11-0091-SNT-CE
12-0074-SNT-CE

COMPROMISE ORDER

By this Order I find that Dorchester Farmers Cooperative (Respondent) committed six violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$21,715 civil penalty for these violations.

I. Summary

<u>Respondent:</u>	Dorchester Farmers Cooperative 208 West Depot Street Dorchester, Nebraska 86343
<u>No. of Violations:</u>	6
<u>Total Payment Due:</u>	\$21,715

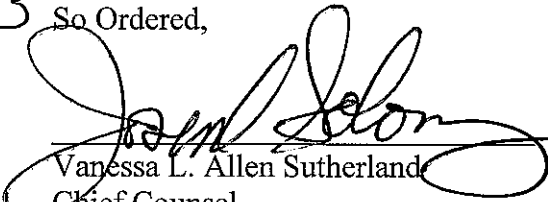
II. Finding

This matter comes before me after Respondent and the Pipeline and Hazardous Materials Safety Administration (PHMSA) agreed to a disposition of this civil enforcement action. I have reviewed the Compromise Agreement (Agreement) and I find the terms as outlined therein are in the best interest of justice. I find Respondent committed the violations as described in the Agreement, which is attached as Addendum

A to this Order, and I impose a civil penalty of **\$21,715**. Respondent must pay the civil penalty in accordance with the instructions contained in addendum B to this Order.

The attached Agreement, in its entirety, is incorporated into 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.

Dated: 5/30/2013 So Ordered,


Vanessa L. Allen Sutherland
Chief Counsel
ba Pipeline and Hazardous Materials Safety Administration

CERTIFICATE OF SERVICES

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 addendums to each party listed below:

Mr. Ron Velder, President
Dorchester Farmers Cooperative
208 West Depot Street
Dorchester, NE 86343

Original Order with
Copy of Agreement
Certified Mail Return Receipt

Mr. Thomas E. Jeffers, Attorney
Federal Trust Building
134 South 13th Street, Suite 400
Lincoln, NE 68508

One Copy
Certified Mail Return Receipt

Mr. Kip Wills, Chief
Hazardous Materials Enforcement Office
2300 East Devon Avenue, Suite 478
Des Plaines, IL 60018-4696

One Copy (without enclosures)
Via Electronic Mail

Amelia Samaras, Attorney
Pipeline and Hazardous Materials
Safety Administration
Office of Chief Counsel

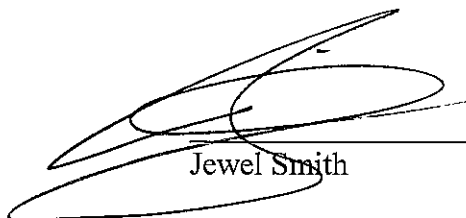
One Copy
Via Electronic Mail

Terry Pollard, Investigator
Hazardous Materials Enforcement Office
2300 East Devon Avenue, Suite 478
Des Plaines, IL 60018-4696

Via Electronic Mail

U.S. DOT Dockets
U.S. Department of Transportation
1200 New Jersey Ave., S.E.
East Building
Washington, D.C. 20590

One Copy
Personal Delivery


Jewel Smith

Payment Information

Dorchester Farmers Cooperative (Respondent) must pay a total civil penalty of \$21,715 in accordance with the following:

Due date

Respondent must make the payment of \$21,715 within **30** days of the date of this 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/>

**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.

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

IN THE MATTER OF:

**Dorchester Farmers Cooperative

(Respondent)**

PHMSA Case Nos. 11-0091-SNT-CE &
12-0074-SNT-CE

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Dorchester Farmers Cooperative ("Respondent"), an agricultural cooperative that acts as a shipper and carrier of hazardous materials, including the toxic inhalation hazard, anhydrous ammonia, with its headquarters located at 208 West Depot Street Dorchester, Nebraska 86343.

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 has inspected and certified hazardous materials cargo tanks, 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) 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 this proceeding.

III. Background

A. On October 27 and 28, 2010 in Roca, Nebraska and November 15, 2011 in Harbine, Nebraska, investigators from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted compliance inspections. During the course of two separate investigations (i.e. Investigation Report ## 104390004 and 11243054), PHMSA's investigators reported six alleged violations of the HMR. At the conclusion of the investigations, PHMSA's investigators conducted "exit briefings" during which the investigators discussed the alleged violations and the required corrective actions with Respondent's representative.

B. Upon completion of both investigations, the investigators submitted reports (i.e. Investigation Reports ## 104390004 and 11243054) to the chief of OHME's Central Region, who reviewed the reports for accuracy and sufficiency of evidence. Based on that review, the Region Chief referred the matters to PHMSA's Office of Chief Counsel thereby recommending the initiation of civil penalty actions 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 reports, on March 1, 2013, an attorney from the PHMSA Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging six violations of the HMR and proposing a \$16,615 total civil penalty for the October 2010 inspection in Roca, NE and a \$15,760 civil penalty for the November 2011 Harbine, NE investigation.

IV. Basis of Agreement

A. Reply to Notice. Respondent submitted a timely reply to the Notice and on March 28, 2013.

B. Corrective Action. In its March 28 letter, Respondent submitted evidence of corrective actions it had taken. It also advised PHMSA of corrective action documentation that had been submitted prior to the issuance of the Notice but was erroneously not considered in the calculation of the civil penalties proposed in the Notice. Upon further investigation, the PHMSA attorney determined that this was true and obtained further corrective action documentation. Due to the fact that Respondent had submitted this corrective action documentation to PHMSA prior to issuance of the Notice and shortly after the inspections were complete, the proposed civil penalties were recalculated to reflect corrective actions as follows:

Case No. 11-0091-SNT-CE (October 27 and 28, 2010 Roca, NE inspection), recalculated proposed civil penalty for Notice: **\$15,810**.

PHMSA Case No. 12-0074-SNT-CE (November 15, 2011 Harbine, NE inspection), recalculated proposed civil penalty for Notice: **\$13,129**

Respondent also submitted further documentation of corrective actions on April 24 and 25, 2013. The following is a summary of all of Respondent's corrective actions.

Violation Number	Respondent's Corrective action
1	Respondent conducted inspections of all the tanks found to be operating with illegible data plates. Respondent provided copies of the inspection forms and provided photos of nurse tanks with proper test markings.
2	Respondent provided photos of markings and placards to show that tanks 5023, 5029, and 5040 are marked in accordance with 49 C.F.R. § 173.315(m)(2).
3	Respondent provided photos to show that "Anhydrous Ammonia" markings have now been applied to tanks 464, 465, 459, and 448.
4	Respondent provided photos to show that missing placards and markings have been applied to tanks 5022, 5036, 5032, and 5035.
5	Respondent pledged that loose mounting bolts on nurse tank farm wagons have been tightened. Respondent provided photos to demonstrate that bolts are now tightened.
6	This is a warning item. Respondent's updated inspection reports included the dated signature of the tank owner.

C. Finances. Respondent did not request mitigation based on finances.

D. Informal Conference. On May 1, 2013, the Office of Chief Counsel and Respondent's counsel (parties) held an informal conference. The parties discussed the allegations that resulted from the two, above described, investigations, which Respondent did not contest. The parties also discussed Respondent's commitment to safety and compliance with the HMR.

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	Adjusted NOPV Penalty Amount	Compromise Agreement Amount
1	Respondent offered for transportation and transported a hazardous material, RQ, Anhydrous Ammonia, 2.2 UN 1005, in an unauthorized, non-specification nurse tanks that had missing or illegible information on the tank's data plate, in violation of 49 C.F.R. §§ 171.2(a), (b), (c), (e), and (g); 173.22(a); and 173.315(m).	\$7,875	\$5,915
2	Respondent offered for transportation and transported a hazardous material, RQ, Anhydrous Ammonia, 2.2 UN 1005, in an unauthorized, non-specification nurse tanks that had missing or illegible information on the tank's data plate, in violation of 49 C.F.R. §§	\$7,560	\$5,670

	171.2(a), (b), (c), (e), and (g); 173.22(a); and 173.315(m).		
3	Respondent offered for transportation and transported a hazardous material, RQ, Anhydrous Ammonia, 2.2 UN 1005, in a bulk packaging while failing to have all required proper shipping name or common name markings and while using improperly-sized placards, in violation of 49 C.F.R. §§ 172.504(a), 172.519(c), 172.516(c)(7), 172.328(b), and 173.315(m)(1).	\$1,125	\$845
4	Respondent offered for transportation and transported a hazardous material, RQ, Anhydrous Ammonia, 2.2 UN 1005, in bulk packagings while failing to have all required markings and placards, in violation of 49 C.F.R. §§ 171.1(b), 171.2(a), (b), (e), and (f); 172.302(a); 172.313(a); 172.504(a); 172.516(a); 172.328(b); 173.315(m)(1); and 178.823(a).	\$5,569	\$4,175
5	Respondent offered for transportation and transported a hazardous material, RQ, Anhydrous Ammonia, 2.2 UN 1005, in unauthorized non-specification nurse tanks because it failed to ensure that the nurse tanks were securely mounted to a farm wagon, in violation of 49 C.F.R. §§ 171.1(b), 171.2(a), (b), (f), and (g); and 173.315(m).	\$6,810	\$5,110
6	Respondent offered and transported in commerce RQ, Anhydrous Ammonia, 2.2 UN 1005, a hazardous material in a nurse tank tested as prescribed by 49 C.F.R. § 173.315(m)(2), while failing to have complete tank test reports at the company's facility, in violation of 49 C.F.R. §§ 171.2 (a), (b), (c), (e), and (g); 173.315(m)(2); and 180.417(b) and (c).	Warning	Warning
PHMSA Case No: 11-0091-SNT-CE		\$15,810	\$11,870
PHMSA Case No: 12-0074-SNT-CE		\$13,129	\$9,845
TOTAL CIVIL PENALTY	----- ----	\$28,939	<u>\$21,715</u>

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 corrective actions;
- (4) Respondent's size;
- (5) Respondent's ability to pay the penalty and its ability to continue to do business; and
- (6) Other matters as justice may require.

VII. Terms and Conditions

A. By this agreement, PHMSA agrees to assess a total civil penalty \$21,715 for six violations of the HMR.

B. Payment. Respondent must pay \$21,715 within thirty days from the date of the Order, which the Chief Counsel will issue after 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; and
- (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 Nos. 11-0091-SNT-CE and 12-0074-SNT-CE as referenced in Section V of this agreement and in the Notice. 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.

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 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. Respondent must return the signed Agreement to:

Amelia Samaras, Attorney
United States Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of the Chief Counsel
1200 New Jersey Avenue, SE.
East Building, E26-302
Washington, DC 20590

Federal Tax ID #: 47-0155629¹

By: Ron Velder
Mr. Ron Velder, President
Dorchester Farmer's Cooperative

Date: 5/13/13

Pipeline and Hazardous Materials Safety Administration

By: Amelia Samaras
Amelia Samaras, Attorney

Date: 8/28/13

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.