

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

IN THE MATTER OF:

**Bonded Inspections, Inc.
(Respondent)**

PHMSA CASE NUMBER

11-0239-RMS-SW

COMPROMISE ORDER

By this Order I find that C & E Services, Inc. (Respondent) committed seven (7) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$9,000 civil penalty for these violations.

I. Summary

Respondent: Bonded Inspections, Inc.
3840 Marquis Dr.
Garland, TX 75042
ATTN: Mr. Steven Fain, President

Number of Violations: 7

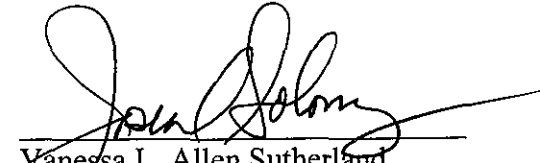
Total Payment Due: \$9,000

II. Finding

This matter comes before me after Bonded Inspections, 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.

It is so Ordered,


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

Date: 4/8/2013

Attachments

CERTIFICATE OF SERVICE

This is to certify that on the 10th day of April, 2013, the undersigned served in the following manner the designated copies of this Order with attached Addendums to each party listed below:

Mr. Tobie Tyrell
Bonded Inspections, Inc.
3840 Marquis Dr.
Garland, TX 75042

Original Order with
Copy of Agreement
Certified Mail
Return Receipt Requested

Mr. Billy Hines, Director
Pipeline and Hazardous Materials Safety Administration
Southwestern Region Office
8701 S. Gessner Rd., Ste 900
Houston, TX 77074

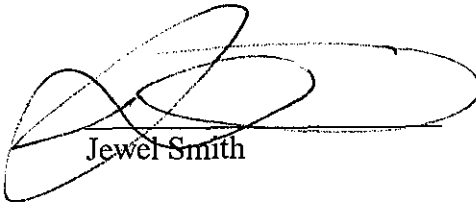
One Copy
(without enclosures)
Via Electronic Mail

Ms. Meredith L. Kelsch, Attorney
Pipeline and Hazardous Materials Safety Administration
Office of Chief Counsel
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:

**Bonded Inspections, Inc.
(Respondent)**

PHMSA Case No. 11-0239-RMS-SW

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement ("Agreement") are:

Bonded Inspections, Inc. ("Respondent"), a transporter of Class 7 hazardous materials, located in Garland, Texas,

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 transports 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) 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) PHMSA has sufficient proof to show, by a preponderance of the evidence, that Respondent violated 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 August 12, 2011, an investigator from PHMSA's Office of Hazardous Materials Enforcement (OHME), conducted a compliance inspection at Respondent's facility, located in Garland, Texas, pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's investigator reported twelve (12) alleged violations of the HMR. At the conclusion of the compliance inspection, PHMSA's Investigator 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 Director of OHME'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 investigator's report, on January 24, 2013, an attorney from PHMSA's Hazardous Materials Safety issued a Notice of Probable Violation (NOPV) alleging five (5) violations of the HMR and proposing a \$14,600 civil penalty.

IV. Basis of Agreement

A. Reply to Notice. On February 12, 2013, Respondent submitted a timely reply to the NOPV.

B. Corrective Action. In correspondence dated February 12, 23, and 28, 2013, Respondent submitted evidence of corrective actions it took in response to the exit briefing and NOPV to correct the alleged violations and to prevent future violations of the HMR. The following is a summary of all of Respondent's corrective actions.

With respect to Violation 1, Respondent registered with the Nuclear Regulatory Commission (NRC) as a party to the packaging approvals for packages 9035, 9157, 9185, and 9269. Respondent provided a copy of its request letter, dated August 16, 2011 (four days after PHMSA's inspection), as well as the NRC's letter granting party status for the four packages, dated September 15, 2011. No further mitigation is warranted.

With respect to Violation 2, Respondent replaced package markings bearing NRC approval "USA/9035/B(U)-85" with markings bearing NRC approval "USA/9035/B(U)-96," which is the most recent approved identification marking in the NRC certificate, Revision 22. Respondent also provided a photograph showing the new marking and a copy of the most recent revision of the NRC Certificate, Revision 22. No further mitigation is warranted.

With respect to Violation 3, Respondent added emergency response information to their shipping papers and revised them to include only one emergency contact telephone number for

Bonded Inspections, Inc. and Chemtrec. Respondent provided a copy of the emergency response information and telephone contacts as well as a sample shipping paper showing the revised contacts. No further mitigation is warranted.

With respect to Violation 4, Respondent added the transport index, NRC approval certificate number, and RQ (when appropriate) to its shipping papers. Respondent provided examples of a recent shipping paper and bills of lading, showing this information completed properly. No further mitigation is warranted.

With respect to Violation 5, Respondent applied two unobscured labels and completed the activity, contents, and transport index information on the labels. Respondent provided a photograph of these labels. No further mitigation is warranted.

With respect to the Quality Control items, Respondent made appropriate adjustments so that only packages that constitute overpacks are marked as such, and the NRC approval certificate numbers match on shipping papers and corresponding labels. Respondent provided supporting shipping papers and bills of lading. No further mitigation is warranted.

PHMSA finds that the foregoing corrective actions have corrected the violations outlined in the NOPV and no further corrective actions are required.

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

V. Compromise Penalty Amount

Violation number	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Offering for transportation in commerce hazardous materials, UN2916, Radioactive Material, Type B(U) Package, 7, in Type B(U) packages, while failing to register with the Nuclear Regulatory Commission (NRC) as a party to the packaging approval, in violation of 49 C.F.R. §§ 171.2(a), (b), (f), 173.401, and 173.471(a).	\$3,000	\$2,240
2	Offering for transportation in commerce hazardous materials, UN2916, Radioactive Material, Type B(U) Package, 7, in a Type B(U) package approved by NRC, while failing to mark the outside of the package with the package identification marking indicated in the NRC packaging approval, in violation of 49 C.F.R. §§ 171.2(a), (b), (f), 173.401, and 173.471(b).	\$800	\$250
3	Offering for transportation in commerce Class 7 hazardous materials, while failing to maintain the emergency response information while the hazardous material was present at its facility and include on the shipping paper a readily-	\$4,300	\$2,400

	identifiable emergency response telephone number that would be available during transportation and knowledgeable of the material being shipped, in violation of 49 C.F.R. §§ 171.2(a), (b), (f), 172.600, 172.602(a), (c)(2), and 172.604.		
4	Offering for transportation in commerce, hazardous materials (1) that meet the definition of a hazardous substance radionuclide, in quantities exceeding the Reportable Quantity, while failing to include RQ in the basic description on the shipping papers, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), (f), 171.8, 172.101 (Appendix A, Table 2), 172.203(c)(2); (2) while failing to include the package identification number for an NRC-approved packaging in the manner indicated in the approval, in violation of 49 C.F.R. §§ 171.2(a), (b), 172.203(d)(7), and 173.471(c); and (3) while failing to include on the shipping paper the transport index of the package complying with the definition (i.e. failing to indicate a number rounded up to the next tenth), in violation of 49 C.F.R. §§ 171.2(a), (b), 172.200(a), 172.203(d)(5), 173.403.	\$3,500	\$1,870
5	Offering for transportation in commerce, Class 7 hazardous materials while failing to properly label the packagings, in that there were not two radioactive labels affixed to opposite sides, the labels were partially obscured, and the contents, activity, and transport index were not included on the label, in violation of 49 C.F.R. §§ 171.2(a), (b), (f), 172.400, 172.403(a), (f), (g), and 172.406(f).	\$3,000	\$2,240
Quality Control	Offering for transportation in commerce, Class 7 radioactive hazardous materials, while including conflicting NRC-approval certificate numbers on the shipping papers and labels and improperly including an overpack label on package 9157, in violation of 49 C.F.R. §§ 171.2(a), (b), 172.401(b), and 173.25(a)(4).	QC	QC
Quality Control	Offering for transportation in commerce, Class 7 radioactive hazardous material, while failing to retain a copy of the shipping paper after the material was accepted by the initial carrier, in violation of 49 C.F.R. §§ 171.2(a), (b), and 172.201(e).	QC	QC
TOTAL	-----	\$14,600	\$9,000

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 \$9,000.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$9,000 as full satisfaction of the civil penalty proposed in the NOPV. Respondent is to make the payment within thirty (30) days of the date the Chief Counsel issues the Final Order, which will issue after Respondent signs and returns this Agreement.

B. 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.

C. This Agreement resolves only the violations noted in PHMSA Case No. 11-0239-RMS-SW as referenced in Section V of this Agreement. 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.

D. 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.

E. 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 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:

Meridith L. Kelsch
Office of the Chief Counsel
United States Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, S.E.
PHC-10, E26-331
Washington, D.C. 20590-0001

AGREED AND ACCEPTED BY:

Bonded Inspections, Inc.

Federal Tax ID Number¹: 751186942

By: _____

Signature

Date: 4-4-13

STEVE FAEN
Printed Name

PRESIDENT
Title

Pipeline and Hazardous Materials Safety Administration

By: _____

Meridith L. Kelsch, Attorney-Advisor

Date: 4/5/2013

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 B

Payment Information

Respondent must pay a total civil penalty of **\$9,000** in accordance with the following:

Due date

Respondent must pay the civil penalty within thirty (30) days of the date of 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 ninety (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 # _____</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.