

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

IN THE MATTER OF:

**C & E Services, Inc.
(Respondent)**

PHMSA CASE NUMBER

12-0040-SD-EA

COMPROMISE ORDER

By this Order I find that C & E Services, Inc. (Respondent) committed three (3) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$6,300 civil penalty for these violations.

I. Summary

Respondent: C & E Services, Inc.
(dba Chemical and Engineering Specialty)
1950 Old Gallows Rd.
Ste 550
Vienna, VA 22182
ATTN: Mr. Carl Biggs, President

Number of Violations: 3

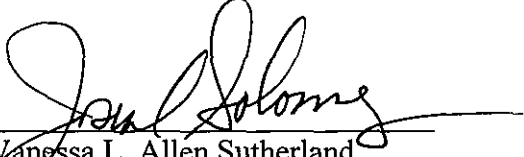
Total Payment Due: \$6,300

II. Finding

This matter comes before me after C & E Services, 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,


for 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. Carl Biggs
C & E Services, Inc.
1950 Old Gallows Rd., Ste 550
Vienna, VA 22182

Original Order with
Copy of Agreement
Certified Mail
Return Receipt Requested

Ms. Colleen Abbenhaus, Director
Pipeline and Hazardous Materials Safety Administration
Eastern Region Office, PHH-42
820 Bear Tavern Rd., Ste 306
Trenton, NJ 08628

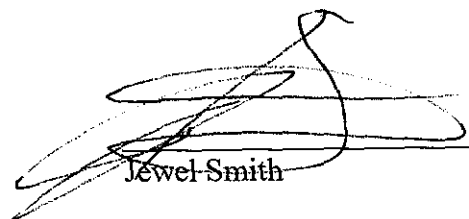
One Copy
(without enclosures)
Via Electronic Mail

Ms. Meridith 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:
C & E Services, Inc. (Respondent)

PHMSA Case No. 12-0040-SD-EA

COMPROMISE AGREEMENT

I. Parties

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

C & E Services, Inc. ("Respondent"), a shipper of hazardous materials, located in Vienna, VA,

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 ships 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 January 18, 2012, an investigator from PHMSA's Office of Hazardous Materials Enforcement (OHME), conducted a compliance inspection at Respondent's facility, located in Vienna, VA, pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's investigator reported three (3) 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 Eastern 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 November 23, 2012, an attorney from PHMSA's Hazardous Materials Safety issued a Notice of Probable Violation (NOPV) alleging three (3) violations of the HMR and proposing a civil penalty in the amount of \$8,250, which included a reduction in the amount of \$250 for corrective actions taken by Respondent.

IV. Basis of Agreement

A. Reply to Notice. On December 4 and 19, 2012, Respondent submitted a timely reply to the NOPV.

B. Corrective Action. On January 18, 2012 and in correspondence dated December 19, 2012 and February 5, 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 provided completed shipping papers, showing they include all required information. No further mitigation is warranted.

With respect to Violation 2, Respondent submitted training records and materials, demonstrating it provided hazardous materials training to its employees on December 13, 2012. No further mitigation is warranted.

With respect to Violation 3, respondent registered with PHMSA and provided a copy of the registration. 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 and transporting in commerce a hazardous material, while failing to execute a complete shipping paper, in violation of 49 C.F.R. §§ 171.2(e), 172.200(a), 172.201, 172.202, 172.203(k), and 172.204(a).	\$5,000	\$3,750
2	Failing to ensure employees who perform functions subject to the requirements of the hazardous material regulations received hazardous materials training, in violation of 49 C.F.R. §§ 171.2(a), 172.702(a), and 172.704.	\$2,250	\$1,650
3	Offering for transportation and transporting in commerce a hazardous material, while failing to register, in violation of 49 C.F.R. §§ 107.601(a), 107.608, and 172.504(a).	\$1,000	\$900
TOTAL	-----	\$8,250	\$6,300

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 \$6,300.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$6,300 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. 12-0040-SD-EA 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:

C & E Services, Inc.

Federal Tax ID Number: 54-1305220

By: Carl L. Biggs
Signature

Date: 3-22-2013

CARL L. Biggs
Printed Name

President
Title

Pipeline and Hazardous Materials Safety Administration

By: Meridith L. Kelsch
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 \$6,300 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.