

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

IN THE MATTER OF:

**El Paso Valley Cotton Association,

(Respondent),**

PHMSA Case No. 12-0084-CCT-SW

COMPROMISE ORDER

By this Order I find that El Paso Cotton Association (Respondent) committed five violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$9,920 civil penalty for these violations.

I. Summary

Respondent: El Paso Valley Cotton Association
Attn: Grey Spence, President
13209 Richfield St.
Clint, Texas 79836

No. of Violations: 5

Total Payment Due: \$9,920

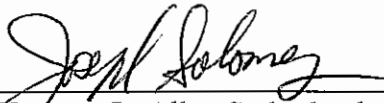
II. Finding

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 **\$9,920**. 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: 3/21/2014 So Ordered,



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

CERTIFICATE OF SERVICES

This is to certify that on the 21st day of March, 2014, the undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

El Paso Valley Cotton Association
Attn: Grey Spence, President
13209 Richfield St.
Clint, Texas 79836

Original Order with
Copy of Agreement
Certified Mail Return Receipt

Mr. Robert Strollo, Acting Director
Hazardous Materials Enforcement Office
8701 S. Gessner Road, Suite 900
Houston, TX 77074

One Copy (without enclosures)
Via Electronic Mail

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

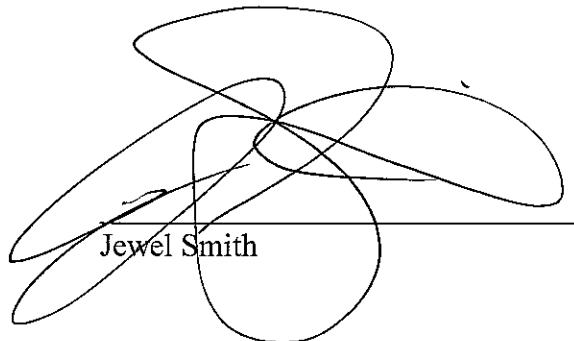
One Copy
Via Electronic Mail

Mr. Walter Rucker, Investigator
Hazardous Materials Enforcement Office
8701 S. Gessner Road, Suite 900
Houston, TX 77074

One Copy (without enclosures)
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

El Paso Valley Cotton Association (Respondent) must pay a total civil penalty of \$9,920 in accordance with the following:

Due date

Respondent must make the payment of \$9,920 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:</i> PHMSA Payment for Case #/Ticket

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:

**El Paso Valley Cotton Association,

(Respondent)**

PHMSA Case No. 12-0084-CCT-SW

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

El Paso Valley Association (“Respondent”), a distributor, shipper, and carrier of hazardous materials, including the inhalation hazard anhydrous ammonia and ammonium polysulfide, located at 13209 Richfield St. Clint, Texas 79836
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) 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 March 27, 2012, an inspector from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a routine compliance inspection at Respondent's business pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's inspector reported five alleged violations of the HMR. At the conclusion of the compliance inspection, PHMSA's inspector conducted an "exit briefing" during which the inspector discussed the alleged violations and the required corrective actions with Respondent's representative.

B. Upon completion of the compliance inspection, the inspector submitted a report to the chief of OHME's Southwest Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Region Chief referred the matter to PHMSA's Office of Chief Counsel 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 August 14, 2013, an attorney from the PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging five violations of the HMR and proposing a \$14,355 civil penalty. However, it was later determined that the more corrective action credit should have been awarded, and the Proposed civil penalty assessment should have been \$13,320.

IV. Basis of Agreement

A. Reply to Notice. On September 10, 2013, Respondent submitted a timely reply to the Notice. In its reply, Respondent did not contest the alleged violations but explained corrective actions and requested that the proposed civil penalty be reduced by 50%. The PHMSA attorney then followed up with questions about Respondent's hazmat training and explained that the training records provided did not demonstrate full compliance with the HMR.

B. Corrective Action. In its February 18 follow up letter, Respondent submitted documentation showing that its hazmat employees recently received hazmat training and submitted complete training records. The following is a summary of all of Respondent's corrective actions.

Violation Number	Respondent's Corrective action
1	Respondent provided an outline of its DOT security plan.
2	Respondent provided representative photographs of anhydrous ammonia nurse tanks that are now properly marked and placarded.

3	Respondent provided representative copies of delivery tickets/shipping papers that now include a proper shipping description. After discussion with the PHMSA attorney, Respondent provided a further updated shipping paper that displayed an emergency response telephone number.
4	After consulting with the PHMSA attorney, Respondent's hazmat employees underwent full hazmat training and provided training documentation.
5	Respondent provided copies of Hazardous Materials Certificate of Registration from 2002 up to the present.

C. Finances. Respondent did not request mitigation based on financial hardship and did not submit financial documents for PHMSA's consideration.

D. Informal Conference. On various dates, including December 4, 2013 and February 20, 2014, the Office of Chief Counsel and Respondent (parties) talked via phone about the case, corrective actions, and regulatory requirements.

E. Small Business Size. Evidence in the record also substantiates that Respondent is a small business.

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 Penalty Amount
1	Respondent offered material for transportation in commerce that is poisonous by inhalation, UN1005, Ammonia, anhydrous, 2.2, while failing to develop and adhere to a transportation security plan for hazardous materials, in violation of 49 C.F.R. 171.2(b) and (f), 172.800(b), and 172.802(b).	\$3,375	\$2,530
2	Respondent offered the hazardous material, RQ, Ammonia, anhydrous, 2.2 UN 1005, for transportation in commerce in unauthorized, non-specification nurse tanks because the tanks were missing required markings and placards, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), (f), and (g); 173.22(a); 173.24(c); and 173.315(m).	\$1,500	\$1,125
3	Respondent offered UN2818, Ammonium polysulfide solution, 8 (6.1), PGIII for transportation in commerce, but failed to accompany the shipment with a hazardous	\$3,200	\$2,400

	materials shipping paper, in violation of 49 C.F.R. §§ 171.2 (a), (b), (e), and (i); 172.202(a)(1) and (a)(2);		
4	Respondent allowed employees to perform functions subject to the Hazardous Materials Regulations when employees had not received hazardous materials employee training, including, general awareness/familiarization, function specific, security awareness, or in-depth security training, in violation of 49 C.F.R. §§171.2(a), (b), (e) and (i); 172.702, and 172.704(a) and (d).	\$1,780	\$1,335
5	Respondent offered and transported hazardous materials, including UN 1005, Anhydrous ammonia, 2.2 and UN 2818, Ammonium polysulfide, 8, (6.1) PG III in non-DOT specification cargo tanks, while failing to register as an offeror of hazardous materials with the U.S. Department of Transportation, Hazardous Materials Registration Program, in violation of 49 C.F.R. §§171.2(b) and (d); 107.601(a)(6), and 107.608(b).	\$3,375	\$2,530
TOTAL	-----	\$13,230	\$9,920

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 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 and the fact that Respondent is a small business, justify assessing a civil penalty of \$9,920.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$9,920, as full satisfaction of civil penalty proposed in the Notice.

- (1) Respondent must pay the full civil penalty amount within thirty days from the date of the Order, which the Chief Counsel 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 Notice associated with this case.

C. This Agreement resolves only the violations noted in PHMSA Case No. 12-0084-CCT-SW 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.

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 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 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

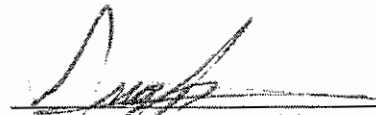
Mail Stop: E26-105
1200 New Jersey Ave., SE
Washington, D.C. 20590-0001

Or

amelia.samaras@dot.gov

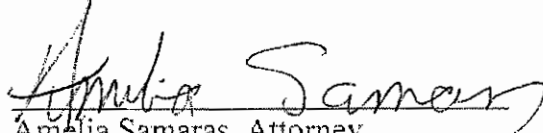
Respondent

Federal Tax ID #: 74-1001255¹

By: 
Shannon Skov, President
GRO SPENCE

Date:

Pipeline and Hazardous Materials Safety Administration

By: 
Amelia Samaras, Attorney

Date: 3/11/14

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.