

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

IN THE MATTER OF:

**Advance Stores Company, Incorporated
(Respondent)**

PHMSA Case No. 12-0135-SBAT-CE
13-0024-SBBAT-CE

COMPROMISE ORDER

By this Order I find that IBC North America, Inc. committed six (6) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$16,925 civil penalty for the violations.

I. Summary

Respondent: Micah Thompson
Environmental Services Manager
Advance Auto Parts
5008 Airport Road, NW
Roanoke, Virginia 24012

No. of Violations: 6

Total Payment Due: \$16,825

II. Finding

This matter comes before me after Advance Stores Company, Incorporated, (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 L. Allen Sutherland
Chief Counsel
for Pipeline and Hazardous Materials Safety Administration

Date: 5/30/2014

Attachments

CERTIFICATE OF SERVICE

This is to certify that on the 2nd day of June, 2014, the undersigned served in the following manner the designated copies of this Order with attached addenda to each party listed below:

Micah Thompson
Environmental Services Manager
Advance Auto Parts
5008 Airport Road, NW
Roanoke, Virginia 24012

Original Order with
Copy of Agreement
Certified Mail
Return Receipt Requested

William Schoonover, Deputy Associate Administrator
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Enforcement
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

One Copy (without
enclosures)
Via Electronic Mail

Kipton Wills, Regional Director
Pipeline and Hazardous Materials Safety Administration
Central Region Office, PHH-43
2300 East Devon Avenue, Suite 478
Des Plaines, IL 60018-4696

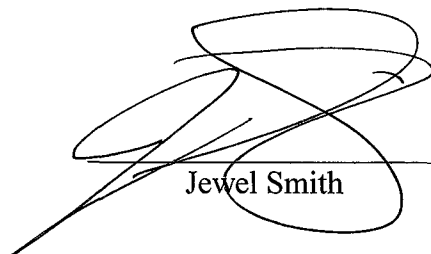
One Copy (without
enclosures)
Via Electronic Mail

Shawn C. Wolsey, Attorney
Pipeline and Hazardous Materials Safety Administration
Office of Chief Counsel
1200 New Jersey Avenue, S.E.
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:

**Advance Stores Company, Incorporated
(Respondent)**

PHMSA Case No. 12-0135-SBAT-CE
13-0024-SBBAT-CE

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Advance Stores Company, Incorporated (“Respondent”), a distributor of automotive batteries, located in Roanoke, Virginia,
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 distributes automotive batteries, 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 acknowledgment by the Respondent that PHMSA has made a finding of violations 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. On November 1, 2011, an Investigator from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a compliance inspection at Respondent's facility, in Clawson, Michigan. On November 4th and 8th, 2011, an Investigator from PHMSA's OHME also conducted a compliance inspection at Respondent's Distribution Center, located in Delaware, Ohio. These inspections were conducted pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's investigators reported five (5) alleged violations of the HMR. On or about November 8, 2011, after the conclusion of the compliance inspection, PHMSA's Investigator contacted and interviewed the Respondent, and then conducted an "exit briefing" during which the investigator discussed the alleged violations and the required corrective actions with Respondent's representative.

B. On February 28th, 2012, an Investigator from PHMSA's OHME conducted a compliance inspection at Respondent's return center, located in Roanoke, Virginia, pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's investigators reported one (1) alleged violations of the HMR. On or about April 3, 2012, after the conclusion of the compliance inspection, PHMSA's Investigator contacted and interviewed the Respondent, and then conducted an "exit briefing" during which the investigator discussed the alleged violations and the required corrective actions with Respondent's representative.

C. Upon completion of the compliance inspections, the investigators submitted their reports to the Regional Director of OHME's Central Region, who reviewed the reports for accuracy and sufficiency of evidence. Based on that review, the Regional 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.

D. 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 20, 2013, an attorney from PHMSA's Hazardous Materials Safety issued a Notice of Probable Violation (NOPV) alleging six violations of the HMR and proposing a \$32,300 civil penalty, which included a \$3,000 reduction for corrective actions taken by Respondent.

IV. Basis of Agreement

A. Reply to Notice. On March 25, 2013, Respondent contacted PHMSA and requested an extension. On May 21, 2013, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In emails dated May 1, 2012, May 21, 2013 and March 27, 2014, Respondent submitted evidence of corrective actions it had taken in response to the exit briefing and NOPV. The following is a summary of all of Respondent's corrective actions.

Violation 1- Respondent provided a test report 14-02-27, dated March 17, 2014 for the Rescue Battery Recovery Box, UN4G / Z28.2 / S / ** / USA / +AI 4428. Upon discussions with Respondent, it was agreed that this violation would become a quality control item. Respondent has agreed to work with PHMSA and Battery recyclers to resolve the leaking battery shipment issue.

Violation 2- On November 9, 2011, the day after the inspection, Respondent notified all distribution centers and stores of the requirement to use the proper Class 8 label (with UN Number and proper shipping name.) Respondent provided a copy of the immediate email that was sent to the distribution centers and stores informing them of the proper labels, which included a PDF of a proper label. This violation will receive a 25% reduction for corrective action plus an additional 10% for the timing of the response, for a total of 35% reduction.

Violation 3- Respondent advised that it is not its policy to allow shipments of fully regulated hazardous materials using plastic totes, nor is there authorization to place hazard labels on the Gaylords. Respondent believes this to be an isolated incident. Notification has been made to distribution centers to ensure any labels attached to totes or Gaylords are removed. Respondent provided photographs of totes and Gaylords without labels.

Violation 4- Respondent advised that they relied on its hazardous waste vendor to provide the proper labels and packaging materials and was unaware of the requirement to become party to the special permit. Respondent is now a party to the special permit and provided a copy of SP11296, issued April 9, 2013 and expires March 31, 2015. Respondent had a contract with a company to provide all pre-transportation functions for the hazardous waste shipments. For this reason, this violation is reduced to a warning.

Violation 5- Respondent immediately provided recurrent training to the hazardous materials employees referenced in the NOPV and provided copies of the training records from December 20, 2011.

Violation 6- Respondent stated that they would "cut the cables on the jumpstarters to prevent any possible chance of a short circuit from occurring." Respondent also provided a color photograph of the cable cut from the jumpstarter. Respondent also stated that they would "mark all the core boxes (Gaylords) with a "Non-Spillable Battery" label.

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

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

D. Informal Conference. An informal conference was conducted on April 10, 2014.

V. Compromise Penalty Amount

Probable Violation	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
12-0135-SBAT-CE 1	Offering and transporting in commerce, a hazardous material, UN 2794, Batteries wet filled with acid, 8, III, in an unauthorized fiberboard specification combination packaging, in violation of 49 C.F.R. §§ 171.2(a), 171.2(b), 171.2(e), 171.2(f), 173.3(c), and 173.22(a).	\$5,000	QC
12-0135-SBAT-CE 2	Offering for transportation in commerce, UN 2794, Batteries wet filled with acid, 8, III and UN 2796, Battery fluid, acid, 8, II in an overpack that was not properly marked with the proper shipping name, identification number and orientation arrows, in violation of 49 C.F.R. §§171.2(a), 171.2(b), 171.2(e), 172.312, 173.22(a), and 173.25(a)(2).	\$5,500	\$3,575
12-0135-SBAT-CE 3	Offering and transporting in commerce a package marked as containing a hazardous material, UN 2794, Batteries wet filled with acid, 8, III, when no hazardous material was present, in violation of 49 C.F.R. §§ 171.2(k), 172.303(a), and 172.401(a).	\$800	\$600
12-0135-SBAT-CE 4	Certifying and offering packagings marked DOT-SP 11296 while failing to be party to the special permit, in violation of 49 C.F.R. §§ 171.2(a), 171.2(b), 171.2(c), 171.2(e), 171.2(f), 171.2(g), 173.22a(a), and DOT-SP 11296.	\$7,000	Warning
12-0135-SBAT-CE 5	Offering for transportation and transporting in commerce hazardous materials, UN 2794, Batteries wet filled with acid, 8, III and UN 2796, Battery fluid, acid, 8, II while allowing an employee to perform a function subject to the requirements of the hazardous materials regulations when recurrent general awareness/familiarization training, function-specific training, safety training, and security awareness training were not conducted as prescribed in 172.704(a)(1),(2),(3) and (4), and	\$2,000	\$1,500

	training records were not created retained, in violation of 49 C.F.R. §§ 171.2(a), 171.2(b), 172.702 (a), 172.704(a)(1-4), 172.704(c) and 172.704(d).		
13-0024-SBBAT-CE 6	Offering for transportation, UN2600, Batteries, wet, non-spillable, electric storage, 8, III, undeclared, by failing to properly classify, describe, package, mark, label and placard the shipment as required, in violation of 49 C.F.R. §§ 171.2(a),(b)&(e), 172.200, 172.300 172.400 and 172.500.	\$12,000	\$11,250
TOTAL		\$32,300	\$16,925

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 \$16,925.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$16,925 as full satisfaction of the civil penalty proposed in the NOPV.

B. Payment. Respondent agrees to pay \$16,925, as full satisfaction of the civil penalty proposed in the Notice in the following manner:

Respondent must pay \$16,925 within thirty (30) days of the ORDER, which the Chief Counsel will issue *after* the Respondent signs and returns this Agreement.

- 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 Nos. 12-0135-SBAT-CE and 13-0024-SBBAT-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.

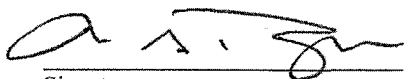
C. Respondent's failure to sign and return this agreement within thirty (30) days from its receipt will result in the withdrawal of this Agreement and the Chief Counsel will issue an Order pursuant to 49 C.F.R. §§ 107.317(d).

D. Respondent must return the signed Agreement to:

Shawn C. Wolsey,
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

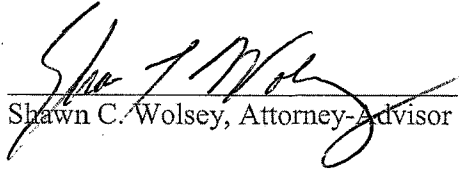
Federal Tax ID Number¹: 540118110

By: 
Signature

Date: May 30, 2014

Micah S. Thompson - Environmental Services Manager
Printed Name, Title

Pipeline and Hazardous Materials Safety Administration

By: 
Shawn C. Wolsey, Attorney-Advisor

Date: 5/30/14

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.

ADDENDUM A

Payment Information

Respondent must pay a total civil penalty of **\$16,925** in accordance with the following:

Due date

Respondent must pay the civil penalty within 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: Shelby Jones
Federal Aviation Administration
Mike Monroney Aeronautical Center
AMZ-325
P.O. Box 269039
Oklahoma City, OK 73125
Telephone (405) 954-8845.

(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: Shelby Jones
Federal Aviation Administration
Mike Monroney Aeronautical Center
AMZ-325
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) 954-8845.