

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

IN THE MATTER OF:

**Quanta Containers
(Respondent)**

PHMSA Case No. 12-0191-IBCR-CE

COMPROMISE ORDER

By this Order I find that Quanta Containers committed five (5) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$3,475 civil penalty for the violations.

I. Summary

Respondent: Vincent Concessi
Quanta Containers LLC
15801 Huron St.
Taylor, MI 48180

No. of Violations: 5

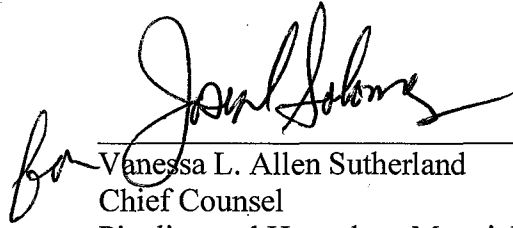
Total Payment Due: \$3,475

II. Finding

This matter comes before me after Quanta Containers, (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
Pipeline and Hazardous Materials Safety Administration

Date: 5/31/2014

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:

Vincent Concessi
Quanta Containers LLC
15801 Huron St.
Taylor, MI 48180

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

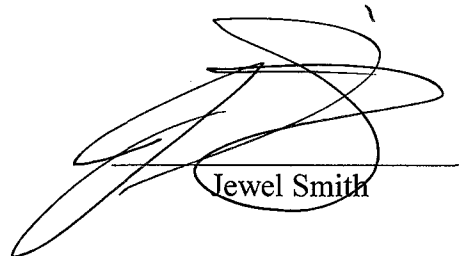
One Copy (without
enclosures)
Via Electronic Mail

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:

**Quanta Containers, LLC
(Respondent)**

PHMSA Case No. 12-0191-IBCR-CE

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Quanta Containers, LLC (“Respondent”), an IBC reconditioner, located in Taylor, Michigan

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 reconditions IBCs, 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 admission on the part of the Respondent that it committed the alleged violations found by PHMSA 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 2, 2011, an Investigator from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a compliance inspection at Respondent's facility, in Taylor, Michigan. This inspection was 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 2, 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. 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.

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 May 22, 2013, an attorney from PHMSA's Hazardous Materials Safety issued a Notice of Probable Violation (NOPV) alleging five violations of the HMR and proposing a \$15,900 civil penalty, which included a \$0 reduction for corrective actions taken by Respondent.

IV. Basis of Agreement

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

B. Corrective Action. In emails dated June 12, 2013 and May 30, 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 stated that they "had been misinformed regarding our responsibility to leave the manufacturers labels on the tote containers unless we had evidence of performing the necessary design qualification tests and having those reports on file. We immediately ceased removal of the original manufacturer's labels and will not reference the units as being manufactured by Quanta Containers LLC (M6002) until such time proper testing is conducted and on file." Respondent provided a photograph of the IBC manufacturer's labels.

Violation 2- Respondent stated that “following the inspection we initiated a new policy whereby all bottles, either new purchased or reconditioned are visual inspected and a leak test is performed on each prior to being shipped beyond Quanta. We were originally of the opinion that the manufacturers testing on new bottles was adequate and that we did not have to also provide that testing.” Respondent provided a copy of their revised Quality Assurance Program.

Violation 3- Respondent stated that “Closure Instructions for all containers provided to Quanta customers currently indicate the proper specifications for each of the different manufacturer's requirements. Respondent provided a copy of their closure instructions.

Violation 4- Respondent stated that “the supplier to Quanta of labels providing the reconditioning markings was corrected to the proper 12 mm in height immediately following our inspection.” Respondent provided a photograph of the marking, showing the proper size.

Violation 5- Respondent stated that “Function specific, security awareness and recurrent training records will now reflect that the employees have received all necessary training and it will be recurrent as required in 49 CFR parts 171 and 172.” Respondent provided copies of training records.

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 requested mitigation based on finances.

D. Informal Conference. An informal conference was conducted on May 9, 2014.

V. Compromise Penalty Amount

Probable Violation	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Representing, marking and certifying UN 31HA1 packagings as meeting the requirements of the Hazardous Materials Regulations, when the packagings were not subjected to design qualification testing, in violation of 49 C.F.R. §§ 171.2(a), 171.2(c), 171.2(g), 171.2(j), 178.2(a), 178.2(b), 178.2(d), 178.3(b), 178.801(a), 178.801(c)(2) and 178.801(d).	\$8,400	\$2,100
	Failing to perform an internal visual and leakproofness test on a UN specification intermediate bulk container as part of a repair, in	\$3,000	QC

2	violation of 49 CFR, §§ 171.2(a), 171.2(c), 171.2(g), 171.2(j), 180.2(a), 180.3(a), 180.350, 180.350(b) and 180.352(d).		
3	Representing and offering for commerce a UN certified packaging, and failing to include the correct closure instructions, in violation of 49 CFR, §§ 171.2(a), 171.2(c), 173.24(f)(2) and 178.2(c).	\$2,500	\$625
4	Failing to properly mark a specification intermediate bulk container, in violation of 49 C.F.R. §§ 171.2(a), 171.2(c), 171.2(g), 171.2(j), 178.2(b), 178.3(a), 178.703(a)(1), and 180.3(a).	\$500	\$250
5	Representing, marking and certifying UN specification packages as meeting the requirements of the Hazardous Materials Regulations and allowing an employee to perform a function subject to the requirements of the hazardous materials regulations, when function specific training was not conducted, recurrent hazardous materials training was not conducted and training records were not created and retained, in violation of 49 CFR, §§ 171.2(b), 172.700(b), 172.702(a), 172.702(b), 172.704(a)(2) and 172.704(d).	\$1,500	\$500
TOTAL		\$15,900	\$3,475

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 \$3,475.

VII. Terms and Conditions

A. Payment. Respondent agrees to pay the sum of \$3,475, as full satisfaction of civil penalty proposed in the Notice.

B. Deferment/Abeyance. Contingent upon Respondent meeting certain conditions, PHMSA shall hold \$12,425 of the assessed civil penalty in abeyance. PHMSA shall consider the \$12,425 deferred and held in abeyance for a period of one (1) year following the issuance of a FINAL ORDER in this matter. This abeyance/deferment is contingent upon Respondent's full compliance with the following:

(a) Respondent is to fully cooperate with PHMSA's investigators, who will perform an unannounced re-inspection of Respondent's facility at some time during the abeyance/deferment period;

(b) Respondent may not be found in violation of the same or substantially similar violations of the HMR, as cited in the NOPV; and

(c) Respondent must pay the portion of the civil penalty not held in abeyance as specified in this Agreement. Failure to comply with payment terms is considered a breach of the abeyance agreement.

C. Affect of a Breach of an Abeyance Condition. Should Respondent breach the condition(s) of the abeyance agreement, the Assistant Chief Counsel for Hazardous Materials Safety, in its sole discretion, may impose the entire amount, or any portion, of the civil penalty herein identified as deferred or held in abeyance. Furthermore, should PHMSA reinstate any portion thereof, or the entire civil penalty held in abeyance, Respondent may request payment terms; but, PHMSA retains full discretion as to any terms for the repayment of the imposed/reinstated civil penalty.

D. 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.

E. This Agreement resolves only the violations noted in PHMSA Case No. 12-0191-IBCR-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 constitutes a prior violation under 49 U.S.C. § 5123.

F. 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. 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 Acting Chief Counsel will issue an Order pursuant to 49 C.F.R. §§ 107.317(d) based on all the information in the record of this case.

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: 80-535920

By: *Vincent Concessi*
Signature

Date: 5-30-14

Vincent Concessi / President
Printed Name, Title

Pipeline and Hazardous Materials Safety Administration

By: *Shawn C. Wolsey*
Shawn C. Wolsey, Attorney-Advisor

Date: 5/30/14

¹ The Taxpayer Identifying Number is required by 31 U.S.C. § 7701(e)(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 **\$3,475** in accordance with the following:

Due date

Respondent must pay the civil penalty within 30 days of the date of the ORDER.

The remaining \$12,425 is held in abeyance for a period of not less than one (1) year from the date of the ORDER pending Respondent's compliance with the terms of the Agreement as incorporated into 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.