

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

IN THE MATTER OF:

**National Cylinder Services, LLC,

(Respondent).**

PHMSA CASE NUMBER

12-0082-CR-WE

COMPROMISE ORDER

By this Order I find that National Cylinder Services, LLC (Respondent) committed one (1) violation of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$4,050 civil penalty for this violation.

I. Summary

Respondent: National Cylinder Services, LLC
4601 Dardanelle Dr.
Orlando, FL 32808

No. of Violations: 1

Total Payment Due: \$4,050

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 that the terms as outlined therein are in the best interest of justice. I find Respondent committed the violation as described in the Agreement, which is attached as Addendum A to this Order, and I impose

a civil penalty of \$4,050. Respondent must pay the civil penalty in accordance with the instructions contained in Addendum B to this Order.

The Agreement, in its entirety, is incorporated in 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.

Dated: 8/7/2013

So Ordered,



Vanessa L. Allen Sutherland
Chief Counsel

fa
Pipeline and Hazardous
Materials Safety Administration

CERTIFICATE OF SERVICE

This is to certify that on the 13th day of August, 2013, the undersigned served in the following manner the designated copies of this Order with attached Addendums to each party listed below:

Original Order with
Copy of Agreement
Certified Mail Return Receipt

National Cylinder Services, LLC
4601 Dardanelle Dr.
Orlando, FL 32808
ATTN: Mr. H. William Berg, Jr.

One Original
First Class Mail – Return Receipt

Enforcement Officer
Office of Hazardous Materials Enforcement
1200 New Jersey Avenue, S.E.
Washington, D.C. 02590-0001

One Copy (without enclosures)
Electronic Mail

Mr. Sean Lynum, Region Director
Hazardous Materials Field Operations
Western Region, PHH-44
3401 Centrelake Drive, Suite 550B
Ontario, California 91761

One Copy (without enclosures)
Electronic Mail



Jewel Smith

ADDENDUM A

THIS PAGE INTENTIONALLY LEFT BLANK

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

IN THE MATTER OF:

**National Cylinder Services, LLC
(Respondent)**

PHMSA CASE Number:

12-0082-CR-WE

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

National Cylinder Services, LLC ("Respondent"), a DOT specification cylinder requalifier, located in Orlando, FL

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 DOT specification cylinder requalifier, it 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 the 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 that Respondent violated the Federal regulations listed in Section V below; and

(3) That it received proper notice of PHMSA's action in this proceeding.

III. Background

A. On March 6, 2012, an Inspector from PHMSA's Office of Hazardous Materials Safety Field Operations (OHMSFO) conducted a routine compliance inspection at Respondent's Littleton, CO business pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's Inspector reported three (3) 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 director of OHMSFO's Western Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Region Director 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 March 29, 2013, an attorney from PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging one (1) violation of the HMR and proposing a \$5,400 civil penalty (the Notice also included 2 Quality Control (QC) items).

IV. Basis of Agreement

A. Reply to Notice. On May 9, 2013, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In a correspondence dated March 12, 2012, Respondent submitted evidence of corrective actions it had taken in response to the exit briefing. The following is a summary of all of Respondent's corrective actions.

Violation Number	Respondent's Corrective action
1	Respondent indicated that it disputes that the relevant CGA pamphlets require a complete visual inspection utilizing a light and mirror for each cylinder. Regardless, it indicated that it currently examines each cylinder with the bore light and mirrors. It provided supporting documentation in the form of a photograph of a technician performing a visual inspection with a bore light and mirror. Based on this corrective action, PHMSA reduced the proposed civil penalty associated with this probable violation by \$600 (10%). In order to receive further civil penalty mitigation, Respondent should provide evidence that it changed its practice in order to avoid recurrence of the violation.

C. 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 violation and will assess the following civil penalty:

Viol. No.	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Respondent represented, certified, and marked DOT cylinders as having been successfully retested in accordance with the HMR, when Respondent failed to perform a complete visual inspection in accordance with CGA Pamphlets C-6, C-6.1, and C-6.3, in violation of 49 CFR §§ 171.2(a), (c) & (g), 180.205(a), (d) & (f).	\$5,400	\$4,050
TOTAL	-----	\$5,400	\$4,050

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 this violation and the fact that Respondent is a small business, justify assessing a civil penalty of \$4,050 payable in six (6) monthly installments of \$675.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$4,050, as full satisfaction of civil penalty proposed in the Notice in six (6) monthly payments of \$675 each.

(1) Respondent must pay the first \$675 of the payment plan within thirty days of the date of the Compromise Order.

(2) Respondent must pay an additional \$675 each thirty days after that until the entire amount is paid.

B. By entering into this Agreement, Respondent waives:

(1) Any right to present further written or oral explanations, information, and arguments in this matter;

(2) Any right to Administrative appeal; and

(3) Any right 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 violation noted in PHMSA Ref. No. 12-0082-CR-WE 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 this violation shall constitute a prior violation under 49 U.S.C. § 5123.

D. After Respondent returns this signed 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 this Agreement and the Chief Counsel will issue an Order pursuant to 49 C.F.R. §§ 107.317(d), for the full amount of the penalty proposed in the Notice.

D. Respondent must return the signed Agreement to:

Vincent Lopez
United States Department of Transportation
Pipeline and Hazardous
Materials Safety Administration
1200 New Jersey Avenue, S.E.,
PHC-10, Room E26-328
Washington, D.C. 20590-0001

Respondent

Federal Tax ID #: 20-4076663¹

By: Harold D. Dwyer, Jr. MANAGING MEMBER Date: 7/23/13
Name, Capacity or position

**Pipeline and Hazardous
Materials Safety Administration**

By: Vincent Lopez Date: 08-05-13
Vincent Lopez, Attorney-Advisor

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

THIS PAGE INTENTIONALLY LEFT BLANK

Payment Information

Respondent must pay a total civil penalty of \$4,050 in accordance with the following:

Due date

Respondent must pay the first \$675 of the payment plan within 30 days of the date of this Order. Respondent must pay an additional \$675 each 30 days thereafter until the entire amount is paid. If Respondent defaults on any payment of this payment schedule, the entire amount of the remaining civil penalty shall, without further notice, become immediately due and payable as of the date that the first installment is due.

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-341
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-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 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) 954-8893.