

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

**IN THE MATTER OF:**

**MGM Investment Properties, LLC, d/b/a  
VistaServ  
(Respondent)**

PHMSA CASE Number:

**12-0150-SP-SO**

**COMPROMISE ORDER**

**By this Order, I find that MGM Investment Properties, LLC, d/b/a VistaServ (Respondent) committed four violations of the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180, and I assess Respondent a \$14,705 civil penalty.**

**I. Summary**

Respondent:           MGM Investment Properties, LLC, d/b/a VistaServ  
                              1509 Edgar Place  
                              Sarasota, FL 34240

ATTN: Michael Miller, Managing Member

No. of Violations:    4

Total Payment Due:  \$14,705

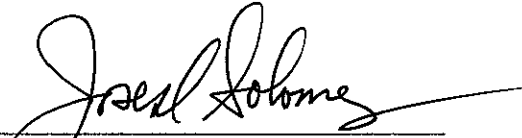
**II. Finding**

This matter comes before me after MGM Investment Properties, LLC, d/b/a VistaServ (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

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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: 3/19/2013

Attachments

**CERTIFICATE OF SERVICE**

This is to certify that on the 22<sup>nd</sup> day of March, 2013, the undersigned served in the following manner the designated copies of this Order with attached addenda to each party listed below:

Michael Miller  
MGM Investment Properties, LLC, d/b/a VistaServ  
1509 Edgar Place  
Sarasota, FL 34240

Original Order with  
Copy of Agreement  
Certified Mail  
Return Receipt Requested

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

One Copy (without  
enclosures)  
Via Electronic Mail

John P. Heneghan, Director  
Pipeline and Hazardous Materials Safety Administration  
Office of Hazardous Materials Field Operations  
Southern Region, PHH-46  
233 Peachtree Street NE, Suite 602  
Atlanta, Georgia 30303

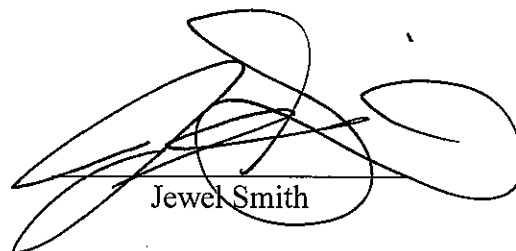
One Copy (without  
enclosures)  
Via Electronic Mail

Adam Horsley, 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

# **ADDENDUM A**

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U.S. Department  
of Transportation

Pipeline and Hazardous  
Materials Safety Administration

Office of  
Chief Counsel

1200 New Jersey Avenue, S.E.,  
PHC-10, Room E26-202  
Washington, D.C. 20590-0001  
Phone: (202)366-8000  
Fax: (202) 366-7041  
E-mail: adam.horsley@dot.gov

**Hazardous Materials Safety  
Law Division**

March 5, 2013

MGM Investment Properties, LLC, d/b/a VistaServ  
1509 Edgar Place  
Sarasota, FL 34240  
ATTN: Michael Miller, Managing Member

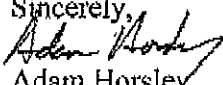
**SUBJECT: Compromise Agreement – PHMSA Ref. No. 12-0150-SP-SO**

Dear Mr. Miller:

I have enclosed a copy of a Compromise Agreement for your consideration. Kindly execute the Agreement and return the original to me. When I have received the Agreement, I will request that the Chief Counsel adopt its terms and conditions by issuing an Order. When the Order is issued, I will send you a copy of the Order and the fully executed Agreement. The Order will also contain an Addendum that will explain when and how you are to make payment. Please do not send a payment until you have received the signed Order.

Any person who is ordered to pay a civil penalty must provide the agency with its Federal Tax Payer ID (31 U.S.C. § 7701(c)(3)). The Agreement contains a space just above the signature line for this information. PHMSA will use this number for the purposes of collecting and reporting any delinquent amount.

When you send the original Agreement by mail please send an additional copy via facsimile to (202) 366-7041. If you have any questions, please contact me at the postal address, electronic mail address, or phone number listed on this letterhead.

Sincerely,  
  
Adam Horsley  
Attorney-Advisor

Enclosure: Compromise Agreement  
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

<p><b>IN THE MATTER OF:</b></p> <p><b>MGM Investment Properties, LLC, d/b/a VistaServ (Respondent)</b></p>
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PHMSA CASES:  
  
12-0150-SP-SO

**COMPROMISE AGREEMENT**

**I. Parties**

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

**MGM Investment Properties, LLC, d/b/a VistaServ** ("Respondent"), is a manufacturer of hazardous materials, including cleaning supplies, detergents, and degreasers, and a offeror /transporter of hazardous materials.

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(c) and 49 CFR § 107.327(a)(1).

B. For the Purposes of this Agreement, Respondent acknowledges:  
As an offeror/transporter of hazardous materials, 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 CFR § 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. A. On June 6, 2012, an Investigator from PHMSA's Office of Hazardous Materials Safety Field Operations ("OHMSFO") conducted a routine compliance inspection at Respondent's business pursuant to 49 U.S.C. § 5121 and 49 CFR § 107.305. PHMSA's Investigator reported four (4) alleged violations of the IIMR. 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 reports to the Director of PHMSA's Southern Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Directors referred the matter to PHMSA's Office of Chief Counsel, thereby recommending the initiation of a civil penalty action against Respondent pursuant to 49 CFR § 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 reports, on December 28, 2012, an attorney from PHMSA's Office of Chief Counsel issued a Notice of Probable Violation ("Notice") alleging four (4) violations of the HMR and proposing a \$18,455 civil penalty.

### IV. Basis of Agreement

A. Reply to Notice. On January 24, 2013, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In correspondence sent on February 26, 2013, Respondent provided documentation of the corrective action it has taken to support mitigation of the proposed civil penalty. Respondent has:

- Provided documentation showing proof of purchase of outer packagings to use in with the 2 ½ gallon and 1 gallon containers.
- Provided photographic evidence showing the presence of the new labels on the specified containers to demonstrate compliance with 49 CFR § 172.400(a) and (b).
- Provided photographic evidence showing that Respondent now marks all 1 and 2 ½ gallon containers with the proper shipping name and UN identification number, and labels such containers with the proper "Class 8" corrosive label.
- Provided proof of purchase of the required Class 8 corrosive labels.
- Provided sample training and test documents to show compliance with 49 CFR § 172.704(d)

## 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	NOPV Penalty Amount	Compromise Penalty Amount
1		\$7,875	\$6,565
2		\$5,000	\$3,750
3		\$4,500	\$3,375
4		\$1,080	\$1,015
<b>TOTAL</b>	-----	<b>\$18,455</b>	<b>\$14,705</b>

## 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.

Respondent's documented corrective action justifies assessing a reduced civil penalty of \$14,705.

## VII. Terms and Conditions

A. Respondent agrees to pay a total civil penalty of \$14,705, as full satisfaction of the civil penalty proposed in the Notice, according to the following payment plan. Respondent is to make the payment of \$2,450 within 30 days from the date the Chief Counsel issues the Final Order, which will issue after Respondent signs and returns this Agreement. Respondent must pay an additional \$2,451 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.

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 violations noted in PHMSA Ref. No. 12-0150-SP-SO, 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 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 CFR § 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 CFR § 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 CFR §§ 107.317(d), for the full amount of the penalty proposed in the Notice.

D. Respondent must return the signed Agreement to:

Adam Horsley  
United States Department of Transportation  
Pipeline and Hazardous  
Materials Safety Administration  
1200 New Jersey Avenue, S.E.,  
PHC-10, Room E26-202  
Washington, D.C. 20590-0001

**Respondent**

Federal Tax ID #: 260216779<sup>1</sup>

By: Michael G. Willey, Mar. 13  
Name, Capacity or position

Date: MARCH - 3-14-13

**Pipeline and Hazardous  
Materials Safety Administration**

By: Adam Horsley  
Adam Horsley, Attorney-Advisor

Date: 3/15/2013

<sup>1</sup> 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**

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### *Payment Information*

Respondent must pay a total civil penalty of \$14,705 in accordance with the following:

#### Due date

Respondent must pay the first \$2,450 of the payment plan within 30 days of the date of this Order. Respondent must pay an additional \$2,451 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: Robin Cecil  
Federal Aviation Administration  
Mike Monroney Aeronautical Center  
AMZ-341  
P.O. Box 269039  
Oklahoma City, OK 73125  
Telephone (405) 954-2685.

(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 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.