

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

IN THE MATTER OF:

**Eaton & Sons, LLC,

(Respondent),**

PHMSA Case No. 11-0055-NTR-CE
& 11-0110-NTT-CE

COMPROMISE ORDER

By this Order I find that Eaton & Sons, LLC (Respondent) committed six violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$19,800 (\$18,800 held in abeyance) civil penalty for these violations.

I. Summary

Respondent: Eaton and Sons, LLC
8061 Lawrence Street,
Liberal Kansas 67905
Attn: Arnold Eaton, President

No. of Violations: 6

Total Payment Due: \$1,000

II. Finding

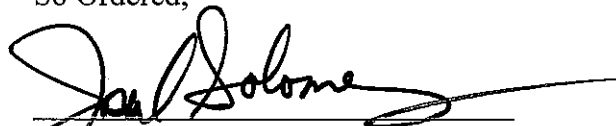
This matter comes before me after Respondent and the Pipeline and Hazardous Materials Safety Administration (PHMSA) agreed to a disposition of this civil enforcement action. I have reviewed the Compromise Agreement (Agreement) and I find the terms as outlined therein are in the best interest of justice. 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 \$19,800 (**\$18,800 held in abeyance**). Respondent must abide by the terms of the Compromise Agreement and pay the civil penalty and 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: 2/19/2013

So Ordered,



Vanessa L. Allen Sutherland
Chief Counsel

for Pipeline and Hazardous Materials Safety Administration

CERTIFICATE OF SERVICES

This is to certify that on the 25th day of February, 2013, the undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Mr. Arnold Eaton, President
Eaton and Sons, LLC
8061 Lawrence Street,
Liberal, Kansas 67905

One Copy
Via Certified Mail

Mr. Robert Clatterbuck, Acting Chief
Hazardous Materials Enforcement Office
2300 East Devon Avenue, Suite 478
Des Plaines, IL 60018-4696

One Copy (without enclosures)
Via Electronic Mail

Mr. Terry Pollard
Hazardous Materials Investigator
2300 East Devon Avenue, Suite 478
Des Plaines, IL 60018-4696

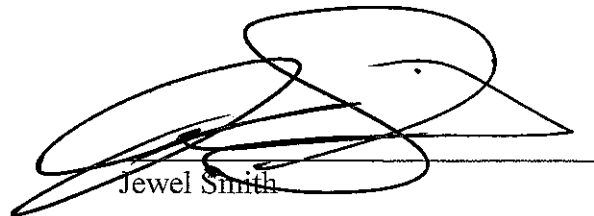
One Copy
Via Electronic Mail

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

One Copy
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

Eaton (Respondent) must pay a total civil penalty of \$1,000 in accordance with the following:

Due date

Respondent must make a payment of \$1,000 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: Ryan Inc
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: Taushayna Wright
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:

**Eaton & Sons, LLC
(Respondent)**

PHMSA Case Nos. 11-0055-NTR-CE &
11-0110-NTT-CE

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Eaton & Sons, LLC ("Respondent"), which performed hazardous materials cargo tank inspection and certification services, located at 8061 Lawrence Street, Liberal Kansas 67905

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 has inspected and certified hazardous materials cargo tanks, 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 July 28, 2010 and March 16, 2011, investigators from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted compliance inspections at the facilities of Respondent's clients to inspect nurse tanks it certified and its nurse tank testing procedure, pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. During the course of two separate investigations (i.e. Investigation Report ## 10438034 and 11438005), PHMSA's investigators reported six alleged violations of the HMR. At the conclusion of the investigations, PHMSA's investigators conducted "exit briefings" during which the investigators discussed the alleged violations and the required corrective actions with Respondent's representative.

B. Upon completion of both investigations, the investigators submitted reports (i.e. Investigation Reports ## 10438034 and 11438005) to the chief of OHME's Central Region, who reviewed the reports for accuracy and sufficiency of evidence. Based on that review, the Region Chief referred the matters to PHMSA's Office of Chief Counsel thereby recommending the initiation of civil penalty actions 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 September 7, 2012, an attorney from the PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging six violations of the HMR and proposing a \$ 19,800 total civil penalty for both investigations (PHMSA Case ## 11-0055-NTR-CE & 11-0110-NTT-CR).

IV. Basis of Agreement

A. Reply to Notice. Respondent submitted a timely reply to the Notice and on October 2, 2012.

B. Corrective Action. In its October 2, 2012 letter, Respondent submitted evidence of corrective actions it had taken. The following is a summary of all of Respondent's corrective actions.

Violation Number	Respondent's Corrective action
1	Respondent conducted new inspections and submitted the inspections reports for nurse tanks 111, 24, and 33.
2	Respondent conducted new inspections and submitted the inspections reports for nurse tanks 1, 6, 9, 10, 11, and 17.
3	Respondent did not provide documentation or explanation of corrective action for this violation.
4	Respondent did not provide documentation or explanation of corrective action for this violation.
5	Respondent did not provide documentation or explanation of corrective action for this violation.

6	Respondent reported that its president, Arnold Eaton attended the "Secondary DOT Cargo Tank Facility Interactive Workshop" in the Summer of 2011.
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C. Finances. Respondent requested mitigation based on finances.

D. Informal Conference. On November 19, 2012, the Office of Chief Counsel and Respondent (parties) held an informal conference. The parties discussed the allegations that resulted from the two, above described, investigations, which Respondent did not contest. The parties also discussed Arnold Eaton's proposal, as included in the Response, that Eaton & Sons, LLC and Arnold Eaton cease and desist all cargo tank testing, inspection, certification, including nurse tank testing, inspection, certification, and repair to the pressure vessel. Arnold Eaton and Eaton & Sons, LLC also proposed that Arnold Eaton and Eaton & Sons, LLC would not request renewal of its expired cargo tank (CT) number.

E. Extent of the Violation. PHMSA has had concerns about the testing/inspection practices of Eaton & Sons, LLC for some time. Three separate PHMSA investigations revealed deficiencies in the testing/inspection protocol of Respondent and Mr. Arnold Eaton. Given the nature of anhydrous ammonia that is transported by nurse tank, PHMSA considers Eaton & Sons, LLC offer to withdraw completely from all cargo tank and nurse tank testing, inspection, certification, and repair to the pressure vessel to be in the best interest of safety.

F. 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	NOPV Penalty Amount	Compromise Agreement Amount
1	Respondent certified nurse tanks for operation under DOT-SP 13554 ¹ when it had not performed proper external visual inspections on the tanks, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), (f), and (g); 173.22(a); 173.24(c); 180.407(d); 172.328(b); and 173.315(m). (11-0055-NTR-CE)	\$4,200	\$250
2	Respondent certified nurse tanks for operation under DOT-SP 13554 when it had not performed a proper external visual inspections on the tanks, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), (f), and (g); 173.22(a); 173.24(c); 180.407(d); 172.328(b); and 173.315(m).	\$5,200	\$250
3	Respondent certified nurse tanks for operation under	\$5,200	\$250

¹ DOT-SP 13554 has been codified into the HMR at 49 C.F.R. § 173.315(m)(2).

	DOT-SP 13554 when it had not properly performed the pressure test, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), (f), and (g); 180.2; 180.3; 180.407(g); 173.315(m); and DOT-SP 13554.		
4	Respondent certified nurse tanks for operation under DOT-SP 13554 when it had not properly performed the pressure test, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), (f), and (g); 180.2; 180.3; 180.407(g); 173.315(m); and DOT-SP 13554.	\$5,200	\$250
5	Respondent prepared and signed nurse tank inspection reports certifying compliance with DOT-SP 13554, while failing to include required information in the report, in violation of 49 C.F.R. §§ 171.1(b); 171.2 (a), (b), (c), (e), and (g); 180.417(b); and DOT-SP 13554.	-	-
6	Respondent failed to mark nurse tanks with the test date and special permit number after it conducted external visual inspections, thickness tests, and pressure tests on tanks it certified for operation under SP-DOT 13554, in violation of 49 C.F.R. §§ 171.1(a); 171.2(a), (c), (g), (h), (i), (j); 172.302(b) and (c); 180.2; 180.415(a) and (b); and DOT-SP 13554.	-	-
TOTAL CIVIL PENALTY	-----	\$19,800	
Amount held in abeyance		\$18,800	
Amount due if agreement upheld			\$1,000

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 agreement to withdraw completely from cargo and nurse tank testing, inspection, certification, and repair to the pressure vessel of any transportation-related container

or vehicle, along with the fact that Respondent is a small business, and Respondent's financial condition, justify assessing a civil penalty of \$19,800 but holding \$18,800 in abeyance.

HOWEVER, in the event that Respondent or Mr. Arnold Eaton do not abide by the terms of this agreement and engage in cargo tank or nurse tank testing, inspecting, certifying, or repairing, the remaining amount, as proposed in the Notice of \$18,800, will come immediately due to Eaton & Sons, LLC, Mr. Arnold Eaton, and/or any new enterprise employing him.

PHMSA will hold the remaining \$18,800 in abeyance, assuming that this agreement is upheld. PHMSA's continued abeyance of the remaining portion of the civil penalty is contingent upon Respondent and Mr. Arnold Eaton's compliance with the terms and conditions of this compromise agreement.

VII. Terms and Conditions

A. By this agreement, PHMSA agrees to assess a total civil penalty \$19,800 for six violations of the HMR, but agrees to hold a portion thereof (\$18,800) in abeyance for five years, provided Respondent meets the terms and conditions specified below. If the five year period passes without breach to this agreement, no civil penalty beyond the initial \$1,000 will come due. However, Respondent and Arnold Eaton will still be barred from all cargo tank and nurse tank testing, inspection, and certification and repair to the pressure vessel of any transportation-related package or vehicle, after the five year period has passed.

B. Deferment/Abeyance. Contingent upon Respondent meeting certain conditions, PHMSA shall hold \$18,800 of the assessed civil penalty in abeyance. PHMSA shall consider the \$18,800 deferred and held in abeyance for five years 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, Eaton & Sons, LLC and Arnold Eaton will permanently cease and desist all cargo tank testing, inspection and certification, including nurse tank testing, inspection, and certification.
- (b) Respondent may maintain its "R" stamp with the National Board, but it agrees not to perform weld repairs to the "pressure vessel" of any transportation-related package or vehicle. Any pressure-vessel under the jurisdiction of DOT, including rail tank cars, UN/DOT specification containers, non-spec containers regulated by DOT, cylinders, etc. are included in this agreement. Respondent may perform "non-pressure vessel" repairs, such as running gear repairs.
- (c) Respondent, Eaton & Sons, LLC, and Arnold Eaton will not request renewal of its expired cargo tank (CT) number; and
- (d) 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. Effect of a Breach of an Abeyance Condition. Should Respondent breach the conditions of the abeyance agreement, the Office of the Chief Counsel 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 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. Payment. Respondent agrees to pay the sum of \$1,000, as full satisfaction of civil penalty proposed in the Notice (assuming the terms of this agreement are kept).

(1) Respondent must pay \$333.34 within thirty days from the date of the Order, which the Chief Counsel will issue after Respondent signs and returns this agreement.

(2) Respondent must pay an additional \$333.33 each thirty days after making its first payment and until Respondent has paid the entire \$1,000 civil penalty that is due under the terms of this agreement.

E. Rights Waived. 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.

(4) in the event Respondent breaches any of the terms and conditions of the abeyance agreement, Respondent also waives any right, if any right may exist, to seek review or contest the reinstatement of any portion of the civil penalty held in abeyance.

F. Matters Resolved. This Agreement resolves only the violations noted in PHMSA Cases ## 11-0055-NTR-CE & 11-0110-NTT-CR as referenced in Section V of this agreement and in the Notice.

G. Prior Violation. 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.

H. Subsequent Order. 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.

I. Closing of the Case File. 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, and upon Respondent successfully satisfying the terms of the abeyance for the

specified time period, the Chief Counsel will close this case with prejudice to the Respondent (49 C.F.R. § 107.327(a)(1)(ii)). The prohibitions of this agreement, however, will still apply.

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 fifteen (15) 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
Office of the Chief Counsel
1200 New Jersey Avenue, SE.
East Building, E26-302
Washington, DC 20590

Or

amelia.samaras@dot.gov

Federal Tax ID #: 74 282 3539

By: Arnold R. Eaton
Mr. Arnold Eaton, President
Eaton & Sons, LLC

Date: 11 FEB 13

Pipeline and Hazardous Materials Safety Administration

By: Amelia Samaras
Amelia Samaras, Attorney

Date: 2/15/13

² 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.