

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

**IN THE MATTER OF:**

**Applied Standards Inspection, Inc.  
(Respondent)**

**PHMSA CASE NUMBER**

**12-0061-RAM-SW**

**COMPROMISE ORDER**

**By this Order I find that Applied Standards Inspection, Inc. (Respondent) committed four (4) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$7,000 civil penalty for these violations.**

**I. Summary**

Respondent: Applied Standards Inspection, Inc.  
4781 Highway 69 South  
Beaumont, TX 77705  
ATTN: Mr. Emmanuel Schwartz, President

Number of Violations: 4


Total Payment Due: \$7,000

**II. Finding**

This matter comes before me after Applied Standards Inspection, Inc. (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,

  
\_\_\_\_\_  
for Vanessa L. Allen Sutherland  
Chief Counsel  
Pipeline and Hazardous Materials Safety Administration

Date: 3/11/2013

Attachments

## CERTIFICATE OF SERVICE

This is to certify that on the 12<sup>th</sup> day of March, 2013, the undersigned served in the following manner the designated copies of this Order with attached Addendums to each party listed below:

Emmanuel Schwartz  
Applied Standards Inspection, Inc.  
4781 Highway 69 South  
Beaumont, TX 77705

Original Order with  
Copy of Agreement  
Certified Mail  
Return Receipt Requested

Mr. Billy Hines, Director  
Pipeline and Hazardous Materials Safety Administration  
Southwestern Region Office, PHH-45  
8701 S. Gessner Rd., Ste 900  
Houston, TX 77074

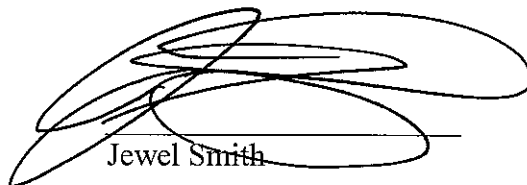
One Copy  
(without enclosures)  
Via Electronic Mail

Meridith L. Kelsch, Attorney  
Pipeline and Hazardous Materials Safety Administration  
Office of Chief Counsel  
1200 New Jersey Ave., SE  
Washington, DC 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:**

**Applied Standards Inspection, Inc.  
(Respondent)**

PHMSA Case No. 12-0061-RAM-SW

**COMPROMISE AGREEMENT**

**I. Parties**

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

**Applied Standards Inspection, Inc.** ("Respondent"), an industrial radiographer that transports radioactive hazardous materials, located in Beaumont, Texas,  
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 C.F.R. § 107.327(a)(1).

B. For the Purposes of this Agreement, Respondent acknowledges:

(1) As a person who transports hazardous materials, Respondent is a regulated entity subject to the Hazardous Materials Regulations (HMR) and to the jurisdiction of (a) the Secretary of Transportation, (b) 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) 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) Respondent received proper notice of PHMSA's actions in the proceeding.

### III. Background

A. On December 1, 2011, an investigator from PHMSA's Office of Hazardous Materials Enforcement (OHME), conducted a compliance inspection at Respondent's facility, located in Beaumont, Texas, pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's investigator reported four (4) alleged violations of the HMR. 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 a report to the Director of OHME's Southwestern Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Region Director referred the matter 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 investigator's report, on January 10, 2013, an attorney from PHMSA's Hazardous Materials Safety issued a Notice of Probable Violation (NOPV) alleging four (4) violations of the HMR and proposing a \$9,125 civil penalty, which included a reduction of \$2,375 for corrective actions taken by Respondent.

### IV. Basis of Agreement

A. Reply to Notice. On January 18, 2013, Respondent submitted a timely reply to the NOPV.

B. Corrective Action. In correspondence dated December 5, 2011 and January 18, 2013, Respondent submitted evidence of corrective actions it took in response to the exit briefing and NOPV to correct the alleged violations and to prevent future violations of the HMR. The following is a summary of all of Respondent's corrective actions.

With respect to Violation 1, on December 5, 2011, Respondent registered with the Nuclear Regulatory Commission (NRC) as a party to Certificates of Compliance 9157, 9185, and 9269, the NRC-approved packages it uses to transport Class 7 materials. No further mitigation is warranted.

With respect to Violation 2, Respondent modified its shipping paper to include the number and type of packages, to list SI units first, followed by curies in parentheses, and added the NRC approval certificate marking. Respondent also trained the employee who was mismarking the transport index, and trained its employees on correct labeling. Respondent provided a recent shipping paper demonstrating it now contains all required information in the correct format. No further mitigation is warranted.

With respect to Violation 3, Respondent provided photographs of a recent shipment, demonstrating required marking with the proper shipping name and identification number. No further mitigation is warranted.

With respect to Violation 4, Respondent modified its security plan to include a risk assessment and the name and job title of the responsible manager. No further mitigation is warranted.

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

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

#### V. Compromise Penalty Amount

Violation number	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Offering for transportation in commerce, a reportable quantity of hazardous material, UN2916, Radioactive Material, Type B(U) package, 7, containing Ir-192, in cameras approved by the NRC under Certificate of Compliance 9157, while failing to register with the NRC as a party to the packaging approval, in violation of 49 C.F.R. §§ 171.2(a), (b), 173.1(b), 173.401, 173.471(a).	\$2,550	\$1,125
2	Offering for transportation in commerce, hazardous material, RQ, UN2916, Radioactive Material, Type B(U) package, 7, containing Ir-192, while failing to include required information on the shipping papers, in violation of 49 C.F.R. §§ 171.2(a), (b), 172.200(a), 172.203(d)(3), (d)(5), (d)(7), and 173.403.	\$1,700	\$1,100
3	Offering for transportation in commerce, hazardous material, RQ UN2916, Radioactive Material, Type B(U) package, 7, containing Ir-192, while failing to mark the proper shipping name and identification number on the packaging, in violation of 49 C.F.R. §§ 171.2(a), (b), 172.300(a), and 172.301(a).	\$3,375	\$3,375
4	Offering for transportation in commerce, a radioactive material, Type B(U) package containing IR-192 in a quantity of concern, while failing to include in the transportation security plan, a complete risk assessment or the job title of the managing official, in violation of 49 C.F.R. §§ 171.2(a), (b), 172.800(a), (b)(15), 172.802(a), and (b)(1).	\$1,500	\$1,400
TOTAL		\$9,125	\$7,000

## 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 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 \$7,000.

## VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$7,000 as full satisfaction of the civil penalty proposed in the NOPV. Respondent is to make the payment within thirty (30) days of the date the Chief Counsel issues the Final Order, which will issue after Respondent signs and returns this Agreement.

B. 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.

C. This Agreement resolves only the violations noted in PHMSA Case No. 12-0061-RAM-SW 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 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.

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 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:

Meridith L. Kelsch  
Office of the Chief Counsel  
United States Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
1200 New Jersey Avenue, S.E.  
PHC-10, E26-331  
Washington, D.C. 20590-0001

AGREED AND ACCEPTED BY:

**Applied Standards Inspection, Inc.**

Federal Tax ID Number<sup>1</sup>: 74-2194819

By: *Emmanuel Schwartz*  
Signature

Date: 3-6-13

Emmanuel Schwartz  
Printed Name

President  
Title

**Pipeline and Hazardous Materials Safety Administration**

By: *Meridith L. Kelsch*  
Meridith L. Kelsch, Attorney-Advisor

Date: 3/7/2013

<sup>1</sup> 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 B

### *Payment Information*

Respondent must pay a total civil penalty of **\$7,000** in accordance with the following:

#### Due date

Respondent must pay the civil penalty within thirty (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: Robin Cecil  
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: 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 ninety (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 # ____</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.