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

IN THE MATTER OF:

**Phoenix Chemical Company,

(Respondent),**

PHMSA Case No. 05-0373-SP-SO

Docket No. PHMSA-2005-22335 - 3

COMPROMISE ORDER

By this Order I find that Phoenix Chemical Company (Respondent) committed four (4) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$7,075 civil penalty for these violations.

I. Summary

Respondent: Phoenix Chemical Company, Inc.
202 Gee Road
Calhoun, GA 30701
Attn: Mr. John Bryant, President

No. of Violations: 4

Maximum Possible Civil Penalty: \$130,000

Total Payment Due: \$7,075

II. Finding

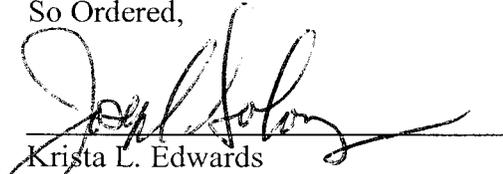
This matter comes before me after Respondent and the Pipeline and Hazardous Materials Safety Administration (PHMSA) agreed to a disposition of this civil enforcement action. I have reviewed the Compromise Agreement (Agreement) and I find the terms as outlined therein are in the best interest of justice. 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 \$7,075. Respondent must pay the civil penalty 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: 1/3/07

So Ordered,



Krista L. Edwards
Chief Counsel
Pipeline and Hazardous Materials Safety Administration

CERTIFICATE OF SERVICES

This is to certify that on the _____ day of JAN - 3 2007, 200__, the undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Mr. John Bryant, President
Phoenix Chemical Company, Inc.
202 Gee Road
Calhoun, GA 30701

Original Order with
Copy of Agreement
Certified Mail Return Receipt

Mr. Doug Smith, Enforcement Officer
Office of Hazardous Materials Enforcement
400 Seventh Street, S.W.
Washington, D.C. 02590-0001

One Copy (without enclosures)
Via Electronic Mail

Mr. John Heneghan, Chief
Hazardous Materials Enforcement Office
Southern Region, DHM - 46
233 Peachtree Street NE, Suite 602
Atlanta, GA 30303

One Copy (without enclosures)
Via Electronic Mail

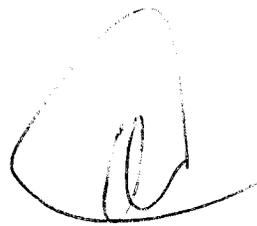
Thomas D. Seymour, Attorney
Research and Special Programs Administration
400 Seventh Street, S.W.
Washington, DC 20590-0001

One Copy
Personal Delivery

U.S. DOT Dockets
U.S. Department of Transportation
400 Seventh Street, S.W., RM PL-401
Washington, D.C. 20590

One Copy
Personal Delivery

JAN - 3 2007



Willard Walker

Agreement A

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

2005 FEB 21 11 40 AM
PHMSA

IN THE MATTER OF:
 Phoenix Chemical Company (Respondent)

PHMSA Case No. 05-0373-SP-SO
Docket No. PHMSA-2005-22335

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Phoenix Chemical Company ("Respondent"), manufacturer of chemicals, located in Calhoun, GA

and

The Pipeline and Hazardous Materials Safety Administration¹ ("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 in the ordinary course of business offers hazardous materials for transportation in commerce, Respondent is a regulated entity subject to the Hazardous Materials Regulations (HMR) and to the jurisdiction of (a) the Secretary of

¹ Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) was created to further the highest degree of safety in pipeline and hazardous materials transportation. See, section 108 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). See also, 70 Fed. Reg. 8299 (February 18, 2005) re-delegating the hazardous materials safety functions from the Research and Special Programs Administration to the Administrator, PHMSA.

Addendum A

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 May 24, 2005, an inspector from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted a routine compliance inspection at Respondent's business pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's inspector reported five (5) 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 chief of OHME's Southern Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Region Chief 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 September 2, 2005; an attorney from the PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging four (4) violations of the HMR and proposing a \$12,675 civil penalty.

IV. Basis of Agreement

A. Reply to Notice. On November 14, 2005, Respondent submitted a timely reply to the Notice.

B. Corrective Action. In its June 17, 2005 letter, 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 provided documentation showing the purchase of 5-gallon pails that are marked and certified as meeting UN performance Standards.
2	Respondent now keeps its security plan in a separate notebook accessible to employees with a need for access. Respondent also provided evidence that at

Addendum A

	the time of the inspection it had a security plan, but it was in its training folder and not in a separate folder as it is now.
3	Respondent provided documentation demonstrating the purchase of a torque wrench, which will enable Respondent to close its drums in accordance with the manufacturer's closure instructions.
4	Respondent provided documentation showing that its labels and shipping papers now contain the proper shipping name.

C. Other Factors as Justice May Require. Respondent argued and provided evidence that at the time of the inspection it had a copy of its security plan in its training book. As the HMR does not require a separate binder for the security plan, PHMSA has withdrawn violation number 2.

D. Extent of Violation No. 4. Respondent argued and the evidence supports that during the inspection, PHMSA's inspector reviewed between 6 months and 1 year of Respondent's shipping papers. Of the hundred of shipping papers reviewed by PHMSA's inspector, PHMSA located only one example of this violation. Accordingly PHMSA mitigated the civil penalty based on this statutory criterion.

E. 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 Penalty Amount
1	Respondent offered hazardous materials for transportation in commerce When Respondent used packagings that were not authorized for use in transporting hazardous materials, in violation of 49 C.F.R. §§ 171.2(a), 173.22, and 173.202.	\$5,250	\$4,725
2	WITHDRAWN	\$1,500	\$ 0
3	Respondent offered a hazardous material for transportation in commerce when the packaging containing the hazardous material was not closed in accordance with the manufacturers closure instructions, in violation of 49 C.F.R. §§ 171.2(c), 173.22(a)(4) and 173.24(f)(2).	\$1,875	\$1,675
4	Respondent prepared shipping papers for the transportation of hazardous materials when Respondent failed to use an approved format when it	\$4,050	\$675

Addendum A

	described the hazardous materials on the shipping paper and when Respondent failed to include an emergency response telephone number on its shipping paper, in violation of 49 C.F.R. §§ 171.2(a), 172.201(a)(1) and 172.604.		
TOTAL	-----	\$12,675	\$7,075 ..

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.

Documentation of Respondent's corrective actions for these violations, the extent of violation no. 4, the fact that Respondent is a small business and other factors as set forth above, justify assessing a civil penalty of \$7,075.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$7,075, as full satisfaction of the civil penalty proposed in the Notice. Respondent is to make the payment within 30 days from 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 Notice associated with this case.

C. This Agreement resolves only the violations noted in PHMSA Case No. 05-0373-SP-SO as referenced in Section V of this agreement and in the Notice. 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.

Addendum A

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 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 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:

Thomas D. Seymour, Senior Attorney
United States Department of Transportation
Pipeline and Hazardous Materials Safety Administration
400 Seventh Street, S.W., Room 8407
Washington, D.C. 20590-0001

Respondent

Federal Tax ID #: 58-2251163 ²

By: John Bryant, Pres.
John Bryant, President

Date:

² 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 A

Pipeline and Hazardous Materials Safety Administration

By: Thomas D. Seymour
Thomas D. Seymour, Senior Attorney

Date: 12/27/2006

Payment Information

Respondent must pay a total civil penalty of \$7,075 in accordance with the following:

Due date

Respondent must pay the civil penalty 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:

AMZ-300
Federal Aviation Administration
Mike Monroney Aeronautical Center
P.O. Box 25082
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:

AMZ-300
Federal Aviation Administration
Mike Monroney Aeronautical Center
P.O. Box 25082
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
RESEARCH AND SPECIAL PROGRAMS,
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.