

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

IN THE MATTER OF:

**China National Samkwong Fireworks Co., Ltd.
(Respondent)**

PHMSA CASE Number:
10-0174-SE-EA

COMPROMISE ORDER

By this Order I find China National Samkwong Fireworks Co., Ltd. committed one (1) violation of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$7,500 civil penalty for the violations.

I. Summary

Respondent: China National Samkwong Fireworks Co., Ltd.
1713 Leighton Centre
77 Leighton Rd., China

ATTN: Mr. John Brooke, U.S. Designated Agent

No. of Violations: 1

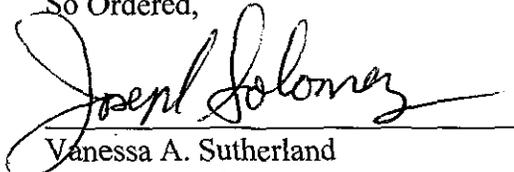
Total Payment Due: \$7,500

II. Finding

This matter comes before me after Respondent and the Pipeline and Hazardous Materials Safety Administration (PHMSA) 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 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.

So Ordered,



Vanessa A. Sutherland
Chief Counsel

for Pipeline and Hazardous
Materials Safety Administration

Dated: 9/20/2013

Attachments

CERTIFICATE OF SERVICE

This is to certify that on the 21th day of Sept, 2013, the undersigned served in the following manner the designated copies of this Order with attached Addendums to each party listed below:

Mr. John Brooke
U.S. Designated Agent
112 E. Gilbert Street
Muncie, IN 47308

Original Order with
Copy of Agreement
Certified Mail
Return Receipt Requested

Colleen Abbenhaus, Eastern Region Director
Pipeline and Hazardous Materials Safety Administration
Eastern Region Office, PHH-42
West Trenton, New Jersey 08628

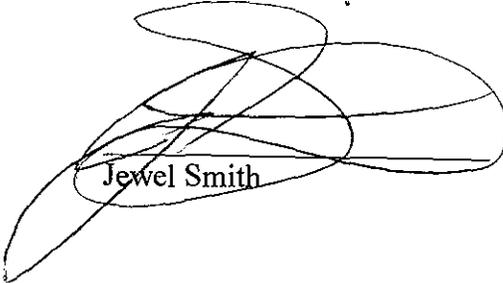
One Copy (without
enclosures)
Via Electronic Mail

Christina Tackett, Attorney - Advisor
Pipeline and Hazardous Materials Safety Administration
Office of Chief Counsel
1200 New Jersey Avenue, S.E., E26-237
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

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

IN THE MATTER OF:

**China National Samkwong Fireworks Co., Ltd.
(Respondent)**

PHMSA CASE Number:

10-0174-SE-EA

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

China National Samkwong Fireworks Co., Ltd. (Respondent)

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 the 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 shipper of hazardous material, it 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 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 July 28, 2010, PHMSA's Investigator from the Eastern Region Office of Hazardous Materials Enforcement (OHME) conducted a routine compliance inspection at Elkton Sparkler Company's facility in Elkton, MD. During the investigation, the Investigator observed and photographed a package shipped by Respondent. Based on the evidence and information gathered during the inspection, the Investigator reported one (1) violation of the HMR.

B. Upon completion of the compliance inspection, the Inspectors submitted a report to PHMSA's OHME Eastern Region Office, where the report was reviewed for accuracy and sufficiency of evidence. Based on that review, the OHME Eastern Region Office referred the matter to PHMSA's Office of Chief Counsel and recommended 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 April 12, 2011, 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 \$17,000 civil penalty.

IV. Basis of Agreement

A. Reply to Notice. Respondent requested an extension of time to respond to the Notice, which was granted. On June 14, 2011, Respondent submitted a timely reply to the Notice. On March 1, 2013, an informal conference was conducted.

B. Corrective Action. In correspondence dated March 1, 2012, Respondent submitted evidence of corrective actions it had taken in response to the exit briefing. The following is a summary of Respondent's corrective actions.

Violation Number	Respondent's Corrective Action
1	Respondent provided documentation of revised shipping and labeling procedures with photographs showing correct labeling and use of specification packaging.

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	Offering for transportation in commerce, hazardous material, samples of explosives (fireworks), when a tentative shipping description and class had not been assigned by a DOT-approved explosives testing agency, the explosives were not	\$17,000	\$7,500

	packaged in UN standard packages, and the packages were not marked "SAMPLE FOR LABORATORY EXAMINATION", in violation of 49 C.F.R. §§ 171.2(b) and (e), 173.21(a), 173.54(a), and 173.56(d)(1), (2), and (3)(i). labeled, and the emergency response information was not provided, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), 171.22(f)(2), 171.22(g)(1), 172.200(a), 172.300(a), 172.400(a)(1), 172.600(c), and 173.22(a)(1).		
TOTAL	-----	\$17,000	\$7,500

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.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$7,500 as full satisfaction of the civil penalty proposed in the Notice within thirty (30) days of the date of the Compromise Order.

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 cited in PHMSA Case Number 10-0174-SE-EA, referenced in Section V of this Agreement. If Respondent commits any future violations of the Federal hazardous material transportation law, 49 U.S.C. § 5101 *et seq.*, the HMR, or any condition of a special permit, approval, or order issued by PHMSA, the violation referenced in Section V of this Agreement will be considered 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 due, 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:

Christina Tackett
United States Department of Transportation
Pipeline and Hazardous
Materials Safety Administration
1200 New Jersey Avenue, S.E.
PHC-10, E26-327
Washington, D.C. 20590-0001

Respondent

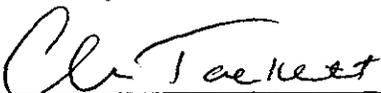
Federal Tax ID #: _____¹

By: 

Ricky Szeto, Sales Manager

Date: 18 SEP 2013

**Pipeline and Hazardous
Materials Safety Administration**

By: 

Christina L. Tackett, Senior Attorney-Advisor

Date: 9/19/13

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.

Payment Information

Respondent must pay a total civil penalty of \$7,500 in accordance with the following:

Due Date

Underwater Adventures, Inc. must pay the total civil penalty within thirty (30) days of receipt of the Compromise 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: Shelby Jones
Federal Aviation Administration
Mike Monroney Aeronautical Center
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:

Financial Operations Division
Attn: Shelby Jones
Federal Aviation Administration
Mike Monroney Aeronautical Center
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
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.