



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

Office of
Chief Counsel

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Washington, D.C. 20590-0001
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***Hazardous Materials Safety Law
Division***

OFFER OF COMPROMISE

PHMSA Case No. 21T-0410-CA-EA

Date Issued: April 7, 2023

Respondent: Lake Champlain Transportation Company
King Street Dock
Burlington, Vermont 05401
ATTN: Ms. Heather Stewart, Operations Manager

Dear Ms. Stewart:

I have considered the information regarding the alleged probable violations that you have submitted on behalf of Lake Champlain Transportation Company (LCTC). I believe it is in the best interests of the parties to settle this case.

In light of the information the Pipeline and Hazardous Materials Safety Administration (PHMSA) has received, I propose a compromise of this case for a civil penalty of \$760. The reduction takes into account the corrective actions that LCTC has taken to ensure compliance with the Hazardous Materials Regulations (HMR).

If this proposed compromise is acceptable to LCTC, the Chief Counsel will issue a final Order providing that:

- (1) LCTC violated the HMR as specified in the Ticket;
- (2) LCTC must pay the \$760 compromise offer amount within thirty (30) days of the date of the Compromise Order;

- (3) the compromise constitutes a waiver of LCTC's rights to contest the terms and conditions of the Order and to appeal the penalty assessed in the Order; and
- (4) the violations will constitute a prior violation under 49 U.S.C. § 5123 in the event that LCTC commits any future violations of the Federal laws governing the transportation of hazardous materials, 49 U.S.C. § 5101 et seq. or the HMR.

I have enclosed a copy of a Compromise Agreement with the aforementioned terms for your consideration. Please provide a response within twenty (20) days of receiving this letter. If you agree, please 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.

If you have any questions, please contact me at the electronic mail address, or phone number listed on this letterhead.

Sincerely,

ARIS D
GENERETTE

Digitally signed by ARIS
D GENERETTE
Date: 2023.04.07
14:25:21 -04'00'
Aris Generette

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

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

IN THE MATTER OF:

**Lake Champlain Transportation Company,
(Respondent)**

PHMSA Case No. 21T-0410-CA-EA

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Lake Champlain Transportation Company ("Respondent"), who ferries, via vessel, cargo tanks carrying hazardous materials for transportation in commerce, headquartered in Burlington, Vermont,

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 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 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); and

(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 the proceeding.

III. Background

A. In response to a complaint, on October 20 and 21, 2021, PHMSA's investigators conducted a compliance inspection pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's investigators reported alleged violations of the HMR. PHMSA's Investigator provided the exit briefing to Ms. Heather Stewart, Operations Manager.

B. Upon completion of the compliance inspection, the investigator submitted a report to the Region Director of OHMSFO's Eastern Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Region Director issued a ticket on December 22, 2021, pursuant to 49 C.F.R. § 107.310 (a) & (b). On February 9, 2022, the Region Director issued a revised ticket. On February 28, 2022, Respondent submitted a timely response to the revised ticket, pursuant to 49 C.F.R. §§ 107.310(c) and 107.317. Accordingly, the matter was referred to PHMSA's Office of Chief Counsel for review, with a civil penalty of \$950, as referenced in the ticket.

IV. Basis of Agreement

A. Reply to Ticket. Respondent submitted a timely reply to the Ticket on February 9, 2022.

B. Corrective Action. In correspondence dated November 12, 2021, Respondent submitted evidence of corrective actions it had taken in response to the exit briefing. Respondent provided evidence of its registration, a copy of a retained shipping paper, and developed procedures and training materials for acceptance of shipping papers.

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

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

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:

Violation No.	HMR Violation	Ticket Penalty Amount	Compromise Penalty Amount
1	Failing to register as a carrier of hazardous materials, in violation of 49 C.F.R. §107.608.	\$480	\$384
2	Transporting hazardous materials by vessel without a shipping paper, in violation of 49 C.F.R. § 176.24(a).	\$470	\$376
TOTAL	-----	\$950	\$760

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.

In response to the exit briefing. Respondent provided evidence of its registration, a copy of a retained shipping paper, and developed procedures and training materials for acceptance of shipping papers. Documentation of these corrective actions justifies assessing a civil penalty of \$760.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$760 as full satisfaction of the civil penalty proposed in the Ticket. 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:

(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 Ticket associated with this case.

C. This Agreement resolves only the violations noted in PHMSA Ticket No. 21T-0410-CA-EA 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 this violation 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 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 twenty (20) 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), for the full amount of the penalty proposed in the Ticket.

D. Respondent must return the signed Agreement to:

Aris Generette
United States Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, S.E.
PHC-10, E26-202

Washington, D.C. 20590-0001

Respondent

Federal Tax ID Number¹: 03-0259960

By: Heather Stenmark
Name, Capacity or position

Date: April 17, 2023

Pipeline and Hazardous Materials Safety Administration

By: _____
Aris Generette, Attorney-Advisor

Date: _____

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.

ADDENDUM A

Payment Information

Respondent must pay a total civil penalty of **\$760** in accordance with the following:

Due date

Respondent must pay the civil penalty within 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: Abby Tuong
DOT/PHMSA/MMAC
AMZ-325/HQ-RM 181
6500 South MacArthur Blvd.
Oklahoma City, OK 731269
Telephone (405) 954-8845

(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: Abby Tuong
DOT/PHMSA/MMAC
AMZ-325/HQ-RM 181
6500 South MacArthur Blvd.
Oklahoma City, OK 731269
Telephone (405) 954-8845

(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:</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.