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

IN THE MATTER OF:	
Exos Aerospace & Technology, Inc. **(Respondent)**	PHMSA Case Number: **21-0213-SH-SW**

By this Order I find that Exos Aerospace & Technology, Inc. (Respondent), committed three (3) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a $15,150 civil penalty for the violations, with all but $1,000 held in abeyance for one (1) year.

COMPROMISE ORDER

I. Summary

Respondent: Exos Aerospace & Technology, Inc.
200 FM 1903
Greenville, TX 75402
ATTN: David Mitchell, President

No. of Violations: 3

Total Payment Due: $1,000 ($14,150 held in abeyance for one (1) year)

II. Finding

This matter comes before me after Exos Aerospace & Technology, 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 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,

ADAM SCHAEFER HORSLEY

Digitally signed by ADAM SCHAEFER HORSLEY
Date: 2023.08.02 13:32:26 -04'00'

p.p.______________________________
Vasiliki Tsaganos
Acting Chief Counsel
Pipeline and Hazardous Materials Safety Administration

Date: 8/2/23

Attachments

Addendum A (Payment Information)
Addendum B (Compromise Agreement)

ADDENDUM A

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Payment Information

Respondent must pay a total civil penalty of $1,000 (with $14,150 held in abeyance for one (1) year) in accordance with the following:

Due Date

Respondent must pay the $1,000 current 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:

DOT/PHMSA/MMAC
AMK-325/HQ-RM 181
6500 S MacArthur Blvd
Oklahoma City, OK 73169
(405) 954-9309

(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:

DOT/PHMSA/MMAC
AMK-325/HQ-RM 181
6500 S MacArthur Blvd
Oklahoma City, OK 73169
(405) 954-9309

(3) Credit Card.

To pay electronically using a credit card, visit the following website address and follow the instructions:

https://www.pay.gov/public/form/start/1078346

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. RECEIVER'S ABA NO. 021030004	2. TYPE SUBTYPE (provided by sending bank)
3. SENDING BANK ARB NO. (provided by sending bank)	4. SENDING BANK REF NO. (provided by sending bank)
5. AMOUNT	6. SENDING BANK NAME (provided by sending bank)
7. RECEIVER NAME: TREAS NYC	8. PRODUCT CODE (Normally CTR, or sending bank)
9. BENEFICIAL (BNF)- AGENCY LOCATION CODE BNF=/AC-69140001	10. REASONS FOR PAYMENT *Example:* 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) 954-9309.

ADDENDUM B

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

IN THE MATTER OF:	
Exos Aerospace Systems & Technologies, Inc. (Respondent)	PHMSA CASE Number: **21-0213-SH-SW**

COMPROMISE AGREEMENT

I. Parties

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

Exos Aerospace Systems & Technologies, Inc. ("Respondent"), a shipper and carrier of Division 2.2 and Class 3 hazardous materials for internal use within its commercial business,

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 CFR § 107.327(a)(1).

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

(1) As a shipper and carrier of Division 2.2 and Class 3 hazardous materials in commerce, it 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 the Chief Counsel (49 U.S.C. § 5103(b) and 49 CFR § 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 May 26, 2021, an Investigator from PHMSA's Office of Hazardous Materials Safety Field Operations ("OHMSFO") conducted a routine compliance inspection at Respondent's business pursuant to 49 U.S.C. § 5121 and 49 CFR § 107.305. PHMSA's Investigator reported three (3) 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 OHMSFO's Southwest Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Director referred the matter to PHMSA's Office of Chief Counsel thereby recommending the initiation of a civil penalty action against Respondent pursuant to 49 CFR § 107.311.

C. Based on a preliminary assessment of the apparent nature, circumstances, extent, and gravity of the probable violation, as set forth in the Investigator's report, on September 30, 2021, an attorney from PHMSA's Office of Chief Counsel issued a Notice of Probable Violation ("Notice") alleging three (3) violations of the HMR and proposing a $15,150 civil penalty, which included a reduction for corrective action.

IV. Basis of Agreement

A. <u>Receipt of Notice.</u> On October 26, 2021, Respondent acknowledged receipt ofthe Notice by electronic mail.

B. <u>Informal Response / Reply to Notice.</u> Also on October 26, 2021, Respondent provided an informal response to the Notice and requested further consideration. On March 10, 2023, by virtual meeting, PHMSA and Respondent's representatives conducted an informal negotiation and then provided further business information, which together resulted in this agreement.

<u>Corrective Action.</u> In its June 14, 2021, message, Respondent addressed the actions it has taken to correct the violations alleged in this Notice and to prevent futureviolations of the HMR. Respondent described and documented its corrective action as follows:

- <u>Violation No.1</u>: Respondent removed the containers from service and replaced them with UN standard drums offered by the supplier of the hazardous material.
- <u>Violation No.2</u>: Respondent updated training and re-trained both of its hazmat employees.
- <u>Violation No.3</u>: Respondent removed the incorrectly marked containers from service and replaced them with correctly marked UN standard drums

offered by the supplier of the hazardous material.

C. Financial Consideration. Respondent has submitted evidence of the impact of the proposed civil penalty on its ability to continue to business, meriting abeyance of a portion of the penalty.

V. Violation 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 and transporting in commerce a hazardous material in unauthorized, non-UN standard packaging when specification packaging is prescribed, in violation of 49 C.F.R. §§ 171.2(a), (b), (e), and (i), 173.22(a)(2), 172.24(c), and 173.202(a).	$6,525	**$254**
2	Allowing an employee to perform functions subject to the requirements of the HMR, while failing to provide general awareness training, function-specific training, safety training, and security awareness training, in violation of 49 C.F.R. §§ 171.2(a), (e), and (f), 172.702(b), and 172.704(a).	$3,000	**$493**
3	Marking, offering, and transporting a non-UN standard packaging as meeting the requirements of the HMR when it does not, in violation of 49 C.F.R. § 171.2(g).	$5,625	**$253**
TOTAL	------------------------------------	$15,150	**$1,000 ($14,150 abated after one (1) year)**

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.

During the informal conference conducted by virtual meeting March 10, 2023, Respondent's representatives emphasized the remedial measures it took in response to this inspection, its history of compliance, its status as a small business, and its change in business circumstances between 2021 and 2023, all supporting a reduction of the amount due by agreement.

VII. Terms and Conditions

A. Respondent agrees to pay a current civil penalty of $1,000, within 30 days from the date the Chief Counsel issues the Compromise Order, after Respondent signs and returns this Agreement. The remainder of the agreement penalty ($14,150) shall be held in abeyance and abated over a period of one (1) year from the compromise order.

B. During the one (1) year abatement period, PHMSA may conduct compliance inspections of Respondent's businesses, facilities, and shipments.

C. In the event that Resondent commits another violation, similar to those referenced in this Agreement, within the one (1) year abatement period, Respondent agrees that the abated amount ($14,150) shall be reactivate and shall be immediately due. In addition, Respondent will be liable for any penalty amount that arises from the new violation found during the inspection.

D. 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.

E. This Agreement resolves only the violations noted in PHMSA Ref. No. **21-0213-SH-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.

F. 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 CFR § 107.327(a)(1)). The terms of this Agreement constitute an offer of compromise until accepted by the Chief Counsel.

G. 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 CFR § 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 CFR §§ 107.317(d), for the full amount of the penalty proposed in the Notice.

D. Respondent must return the signed Agreement to:

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

Respondent

Federal Tax ID #: 47-3491152 [1]

By: ______________________ Joseph LaGrave, Lead Systems Integrator. Date: 5-30-23
Name, Capacity or position

Pipeline and Hazardous
Materials Safety Administration

HARLAN SAWYER DALZELL Digitally signed by HARLAN SAWYER DALZELL Date: 2023.08.02 10:57:45 -04'00'

By: ______________________ Date: 8/2/23
Harlan Dalzell, Attorney-Advisor

[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.