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98 FEB -9 PM 3:21

WILLIAM P. JACKSON. JR.

February 9, 1998

WPJ@TRANSLAW.COM

GERALD E. JESSUP (1911-1994)

Mr. George Reagle
Associate Administrator
for Motor Carriers
Federal Highway Administration
400 Seventh Street, SW
Room 3103 HMT-1
Washington, DC 20590

FHWA-972471-20

VIA COURIER

Reference: HMC-06

Dear Mr. Reagle:

Enclosed for filing, in accordance with your order dated February 4, 1998, is a copy of the Settlement Agreement entered into between the Federal Highway Administration and KMCO, Inc., in connection with the settlement of the above matter. Please let me know if anything further is required.

very truly yours

William J. Jackson, Jir.

WPJ/jmb

cc: Lorraine A. Godbolt, Esquire
 U.S. DOT Dockets
 Region 6 Docket Clerk

## BEFORE THE

## FEDERAL HIGHWAY ADMINISTRATION

## U.S. DEPARTMENT OF TRANSPORTATION

In the Matter of	) (
KMCO, Inc.	) ( TX-94-392-246-HM ) (

### SETTLEMENT AGREEMENT

The parties to this agreement are:

KMCO, Inc. (hereinafter called the SHIPPER), an intrastate shipper of hazardous materials,

#### and

FEDERAL HIGHWAY ADMINISTRATION, Department of Transportation, (hereinafter called the ADMINISTRATION).

The parties agree as follows:

- 1. That the ADMINISTRATION has made a claim for THIRTY THOUSAND DOLLARS (\$30,000.00) against the SHIPPER under the Motor Carrier Safety Act of 1984, 49 U.S.C. § 521(b), as amended, for violations of 49 C.F.R. §§ 171 and 172. Notice of the claim was forwarded to the SHIPPER on October 24, 1994. No payment was made by the SHIPPER or accepted by the ADMINISTRATION prior to the execution of this agreement by the parties.
- 2. Pursuant to the Federal Claims Collection Act of 1966 (31 U.S.C. §§ 3701 and 3717) and the regulations of the ADMINISTRATION (49 C.F.R. Part 386), the parties desire to settle this claim. This SETTLEMENT AGREEMENT (AGREEMENT) is expressly authorized by 49 C.F.R. § 386.1(c). This AGREEMENT represents the compromise of the disputed claims referred to in this AGREEMENT. The parties have entered into this AGREEMENT to avoid the continued expense of litigation and for settlement purposes only.
- 3. In consideration of the full compromise and settlement of the claim, the SHIPPER agrees to pay the ADMINISTRATION, and the ADMINISTRATION agrees to accept the sum of TWENTY THOUSAND DOLLARS (\$20,000.00).
- 4. That SHIPPER shall submit payment by certified or cashier's check payable to the Federal Highway Administration in the amount stated in paragraph 3 on or before the thirtieth day following execution of this settlement agreement by both parties. The check shall be sent to the Federal Highway Administration, P. O. Box 100147, Atlanta, GA 30384-0147, and shall bear the following notations: OMC No.: TX-94-392-246-HM; the SHIPPER's Tax Identification Number; and AR #11-12.
- 5. That failure by the SHIPPER to pay in accordance with the terms of this agreement, which has been adopted as a Final Order pursuant to 49 C.F.R. §

- 386.16(c) (vi), will result in the loss of any reductions in penalties for claims found to be valid and the original amount of THIRTY THOUSAND DOLLARS (\$30,000.00) claimed will be due immediately with interest from the date of the original claim.
- 6. This settlement agreement is not binding upon the ADMINISTRATION until it is executed by the Regional Director, Office of Motor Carriers. prior to the execution of this agreement by the Regional Director, Office of Motor Carriers, this agreement is an offer in compromise by the SHIPPER which may not be withdrawn for a period of thirty (30) days after the date the SHIPPER executes it.
- 7. The SHIPPER acknowledges that it has received adequate notice of the ADMINISTRATION'S claim and waives any and all rights it may have to further notice or to further details of the violations that gave rise to the claim.
- 8. The SHIPPER waives any right(s) it may have under the amendments to the Equal Access to Justice Act found in the Contract with America Advancement Act of 1996, Pub.L.No. 104-121, Subtitle C, 110 Stat. 847 (1996), including the award of fees and other expenses related to defending any excessive penalty demand, if any, made by the FHWA, for events occurring on or before October 24, 1994, and related to the subject matter of this AGREEMENT.

KMCO, Inc.

By 11/5/98

(1/2,10)

Regional Director

Office of Motor Carriers