

APR 16 2012

Mr. Robert Lampton
President
Ergon Trucking, Inc.
2829 Lakeland Drive
P.O. Box 1639
Jackson, MS 39232-7611

Re: CPF No. 3-2011-5011

Dear Mr. Lampton:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions that need to be taken by Ergon Trucking, Inc., to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Central Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Jake Neihaus, Senior Environmental Scientist, Ergon Trucking, Inc.
Mr. David Barrett, Director, Central Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164203505146]

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of)

Ergon Trucking, Inc.,)

Respondent.)

CPF No. 3-2011-5011

FINAL ORDER

On May 10-14, 2010, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Ergon Trucking, Inc. (Ergon or Respondent), in Magnolia, Ohio. Ergon operates a 38.75-mile, 8-inch pipeline that transports crude oil from Magnolia, Ohio, to a refinery in Newell, West Virginia.¹

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated August 31, 2011, a Notice of Probable Violation and Proposed Compliance Order (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Ergon violated 49 C.F.R. §§ 195.505 and 195.589 and proposed ordering Respondent to take certain measures to correct the alleged violations. The warning item required no further action, but advised the operator to take appropriate corrective action or be subject to future potential enforcement action.

Ergon responded to the Notice by letter dated October 17, 2011 (Response). Respondent did not contest the Notice and indicated forthcoming amendments to its Operator Qualification (OQ) program.

FINDINGS OF VIOLATION

In its Response, Ergon did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program.
The program shall include provisions to:

¹ Pipeline Safety Violation Report (August 31, 2011) (Violation Report) at 2.

- (a) . . .
- (b) Ensure through evaluation that individuals performing covered tasks are qualified;....²

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified. Specifically, the Notice alleged that Ergon personnel removed internal inspection devices, generally known as “pigs,” from the pig trap at the Newell refinery. Upon the request of a PHMSA inspector, Respondent could provide no documentation either that refinery personnel had been qualified or that qualified personnel had directed and observed the performance of covered task “E2 - Launching and Receiving Pigs,” as required by Ergon’s own OQ program. The company’s operations supervisor acknowledged that unqualified refinery employees regularly unloaded pigs when Ergon employees were unavailable.³

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that personnel performing covered tasks were qualified.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.505, as quoted above, by failing to ensure through evaluation that individuals performing covered tasks were qualified. Specifically, the Notice alleged that Ergon was unable to demonstrate that personnel performing the covered task “Monitoring Pipeline Pressure” had been properly evaluated and were able to recognize and react to abnormal operating conditions (AOCs). A PHMSA inspector noted that Respondent’s OQ program had no procedures, guidance, or training for the identification of several AOCs associated with pressure monitoring, volume determination, shutdown situations and leak detection.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that Ergon personnel performing the covered task “Monitoring Pipeline Pressure” were qualified.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(h), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (a) . . .
- (h) After December 16, 2004, provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities;....

² Under 49 C.F.R. § 195.503, “*Qualified* means that an individual has been evaluated and can: (a) Perform assigned covered tasks and (b) Recognize and react to abnormal operating conditions.”

³ Violation Report at 2.

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(h) by failing to have and follow, after December 16, 2004, a written qualification program with provisions to provide training, as appropriate, to ensure that individuals performing covered tasks had the necessary knowledge and skills to perform covered tasks in a manner ensuring the safe operation of the pipeline. Specifically, the Notice alleged that Ergon had failed to provide training for any of the 23 covered tasks in its OQ program. While Respondent's written OQ plan provided for appropriate training, employees were not trained in such covered tasks as startup, shutdown, operation, or monitoring of the pipeline.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(h) by failing to provide training to ensure that individuals performing covered tasks had the necessary knowledge and skills to perform covered tasks in a manner ensuring the safe operation of the pipeline.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.589(c), which states:

§ 195.589 What corrosion control information do I have to maintain?

(a) . . .

(c) You must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. You must retain these records for at least 5 years, except that records related to §§ 195.569, 195.573(a) and (b), and 195.579(b)(3) and (c) must be retained for as long as the pipeline remains in service.

The Notice alleged that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by [Subpart H – Corrosion Control] in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures did not exist. Specifically, the Notice alleged that Ergon failed to document atmospheric corrosion inspections for its above-ground piping in the 39 months prior to PHMSA's May 14, 2010 inspection.⁴

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain documentation of atmospheric corrosion inspections for the 39-month period preceding PHMSA's inspection.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, 3 and 5 in the Notice for violations of 49 C.F.R. §§ 195.505 and 195.589. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is

⁴ Above-ground piping exists at the pump station, Mohawk Lake Main Line Block Valve, and the termination of the pipeline in Newell, West Virginia. No atmospheric corrosion inspection report was available for any of these locations.

required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.505(b) (**Item 1**), Respondent must ensure that qualified refinery personnel conduct the covered task “E2- Launching and Receiving Pigs (E2)” or ensure that refinery personnel are directed and observed by a qualified individual. Ergon must either: (1) complete and maintain documentation for the qualification of refinery personnel performing this task; or (2) develop a procedure addressing the use of qualified personnel to perform, direct, and observe refinery personnel performing covered Task E2. Respondent must either submit the qualification records of all refinery personnel qualified to perform Task E2 or the procedure addressing the proposed management of Task E2 within 30 days of receipt of the Final Order, to the Director.
2. With respect to the violation of § 195.505(b) (**Item 2**), Respondent must develop a list of potential AOCs for the Ergon pipeline and corresponding action items, following identification of such conditions. Respondent must evaluate and qualify all operating personnel monitoring the Ergon pipeline and submit this documentation to the Director within 60 days of receipt of the Final Order.
3. With respect to the violation of § 195.505(h) (**Item 3**), Respondent must provide training to ensure that individuals conducting startup, shutdown, operation, and monitoring of the pipeline understand the actions required once AOCs or abnormal operational data are discovered. Respondent must submit a proposed training program for individuals performing startup, shutdown, operation, and monitoring of the pipeline for approval of the Director within 30 days of the receipt of the Final Order.

Within 30 days of receiving the Director’s approval, the Respondent must complete all training and submit supporting documentation to the Director. Respondent must also review its OQ program and list of covered tasks to determine the additional training required to ensure that individuals performing covered tasks possess the requisite training for safe operation of Ergon’s pipeline facilities. A proposed training program must be submitted for the Director’s approval within 30 days of receipt of the Final Order. Within 60 days of receiving the Director’s approval, all company personnel must be trained and supporting documentation submitted to the Director.
4. With respect to the violation of § 195.589(c) (**Item 5**), Respondent must provide documentation that it has inspected all above-ground piping, including at the pump station, the Mohawk Lake Main Line Block Valve and the termination of the pipeline. Documentation of the completed atmospheric corrosion inspections must be submitted to the Director within 30 days of the receipt of the Final Order.
5. It is requested that Ergon maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director.

Costs shall be reported in two categories: 1) total costs associated with preparation/revision of plans, procedures, studies and analyses; and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items, upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEM

With respect to Item 4, the Notice alleged a probable violation of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered a warning item. The warning was for:

49 C.F.R. § 195.589 (**Item 4**) - Respondent's alleged failure to maintain records required to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures do not exist.

If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. Unless the Associate Administrator, upon request, grants a stay, the terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued