



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

901 Locust Street, Suite 462
Kansas City, MO 64106-2641

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

August 31, 2011

Mr. Russ Maroney
Ergon Trucking
Vice President – Operations
2829 Lakeview Drive
P.O.B. 1639
Jackson, Mississippi 32215

CPF 3-2011-5011

Dear Mr. Maroney:

On May 10, 2010 through May 14, 2010, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected your operations and maintenance and operator qualification programs on the Ergon Trucking Pipeline (Ergon) in Magnolia, Ohio.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. §195.505 Qualification program.

(b) Ensure through evaluation that individuals performing covered tasks are qualified;

§195.503 Definitions.

Qualified means that an individual has been evaluated and can:

- (a) perform assigned covered tasks and**
- (b) recognize and react to abnormal operating conditions.**

Ergon did not qualify all personnel that perform covered tasks on their pipeline under the provisions of their Operator Qualification (OQ) program. Under certain conditions, unqualified refinery personnel are used to remove pigs from the pig trap on the Ergon pipeline at Newell, WV. Ergon was unable to provide any documentation to indicate that refinery personnel were qualified to perform the covered task 'E2 – Launching and Receiving Pigs', or had been directed and observed by a qualified individual to perform the covered task.

2. §195.505 Qualification program.

(b) Ensure through evaluation that individuals performing covered tasks are qualified;

§195.503 Definitions.

Qualified means that an individual has been evaluated and can:

- (a) perform assigned covered tasks and**
- (b) recognize and react to abnormal operating conditions.**

Ergon did not adequately evaluate qualified individuals that monitor the pipeline. The OQ program failed to identify abnormal operating conditions (AOCs) associated with pressure monitoring, volume determination, shutdown situations and leak identification, and documentation was not available to ensure that individuals were evaluated on their ability to recognize and react to those AOCs determined by Ergon.

3. §195.505 Qualification program.

(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.

The Ergon OQ program did not include appropriate training to ensure individuals performing covered tasks have the necessary knowledge and skills to perform tasks in a manner that ensures the safe operation of pipeline facilities. Ergon's written OQ plan states that training will be provided, as appropriate, but Ergon could not provide documentation that training was being performed for any of the 23 covered tasks of the Ergon OQ program. Specifically, Ergon did not provide training to employees that startup, shutdown, operate, and monitor the Ergon pipeline. Training is required for employees to recognize AOCs on

the pipeline prior to startup, during operation, and when shut-in based on operational data such as pressure, flow rates, and volume changes.

4. §195.589 What corrosion control information do I have to maintain?

(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.

Ergon did not document the inspection of exposed and removed pipe for external and internal corrosion. In 2007, Ergon replaced pipe near the pump station, SR 542, Lake Mohawk, and River Hill, where employees examined the exposed or removed pipe for internal and external corrosion but did not document these inspections.

5. §195.589 What corrosion control information do I have to maintain?

(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.

Ergon did not document atmospheric corrosion inspections. Ergon has above ground piping at the pump station, Mohawk Lake Main Line Block Valve and the termination of the pipeline in Newell, WV, but an atmospheric corrosion inspection report was not documented for the 39-month period preceding PHMSA's inspection visit.

Proposed Compliance Order

With respect to item numbered 1-3, and 5, pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Ergon Trucking. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Warning Items

With respect to item number 4, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct this item. Be advised that failure to do so may result in Ergon Trucking being subject to additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being

made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 3-2011-5011** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. A. Barrett', written in a cursive style.

David Barrett
Director, Central Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Ergon Trucking a Compliance Order incorporating the following remedial requirements to ensure the compliance of Ergon Trucking with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to the performance of unqualified individuals performing covered tasks on the Ergon Trucking (Ergon) facilities; qualify refinery personnel to perform the covered task 'E2 – Launching and Receiving Pigs', or ensure that they are directed and observed by a qualified individual to perform the covered task. Documentation must be completed and maintained for the qualification of refinery personnel. Alternatively, a procedure addressing the use of qualified personnel to perform or direct and observe refinery personnel performing E2 shall be developed if Ergon does not qualify refinery personnel.

Ergon shall submit the qualification records of those refinery personnel qualified to perform E2, or a procedure to address how Ergon will manage the performance of E2 within 30 days after receipt of a Final Order.

2. In regard to Item Number 2 of the Notice pertaining to the identification of abnormal operating conditions (AOCs) during the monitoring of the Ergon pipeline; develop a list of AOCs that might be encountered during the monitoring of the pipeline and the actions that should be taken when operating personnel recognize an AOC.

The list of AOCs and operator's actions in response to AOCs shall be submitted to the Director, Central Region for approval within 30 days after receipt of the Final Order.

3. In regard to Item Number 2 of the Notice pertaining to the identification of abnormal operating conditions (AOCs) during the monitoring of the Ergon pipeline; evaluate each operator that monitors the pipeline to ensure they can recognize and react to each AOC.

Within 30 days of the Director's approval of the AOCs and operator actions; evaluate and qualify all operating personnel that monitor the Ergon pipeline and submit documentation to the Director.

4. In regard to Item Number 3 of the Notice pertaining to the appropriate training of personnel; provide training to ensure individuals that startup, shutdown, operate and monitor the pipeline understand what actions are to be taken when AOCs or abnormal operational data are observed.

Within 30 days of the receipt of the Final Order, submit a proposed training program for individuals that startup, shutdown, operate and monitor the pipeline for the Director's approval.

Within 30 days of Director's approval of the training program, complete training of personnel and submit documentation to the Director, Central Region.

5. In regard to Item Number 3 of the Notice pertaining to the training of personnel as appropriate; review the entire operator qualification program and the Ergon covered tasks, determine what additional training is required to ensure that those individuals performing covered tasks have the necessary knowledge, skills, and abilities to perform the covered tasks in a manner that ensures the safe operation of your pipeline facilities. Once determined, provide the training to all affected individuals and document the completion of the training.

Within 30 days of receipt of the Final Order, submit a proposed program for additional training for the Director's approval.

Within 60 days of the Director's approval of the training program, complete training of individuals and submit documentation of the completed training to the Director.

6. In regard to Items Number 5 of the Notice pertaining to documentation of atmospheric corrosion inspections, provide documentation that the inspection of the above ground piping at the pump station, Mohawk Lake Main Line Block Valve and the termination of the pipeline has been completed.

Documentation of the completion of the atmospheric corrosion inspections shall be submitted to the Director, Central Region within 30 days after the receipt of a Final Order.

7. It is requested that Ergon maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to David Barrett, Director, Central Region, Pipeline and Hazardous Materials Safety Administration. Costs shall be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Response Options for Pipeline Operators in Compliance Proceedings

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

a. When the Notice contains a proposed CIVIL PENALTY* --

1. If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to issue an order making findings of violation and upon confirmation that the payment has been received PHMSA will close the case with prejudice to the respondent. Payment terms are outlined below;
2. If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order assessing a penalty amount up to the amount proposed in the Notice. Refer to 49 C.F.R. § 190.225 for assessment considerations, which include the respondent's ability to pay and the effect on the respondent's ability to stay in business, upon which civil penalties are based;
3. If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination or mitigation of the proposed civil penalty; or
4. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

b. When the Notice contains a proposed COMPLIANCE ORDER* --

1. If you are not contesting the compliance order, notify the Regional Director that you intend to take the steps in the proposed compliance order;
2. If you are not contesting the compliance order but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and issue a compliance order;
3. If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part; or
4. Request a hearing as described below to contest the allegations and/or proposed compliance order items.

c. When the Notice contains a WARNING ITEM --

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. Procedures for Responding to a NOTICE OF AMENDMENT*--

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. If you are not contesting the Notice, notify the Regional Director of your plans to address the inadequacies identified in the Notice;
- b. If you are not contesting the Notice but wish to submit written explanations, information, or other materials you believe warrant modification of the Notice of Amendment in whole or in part, or you seek clarification of the terms of the

Notice of Amendment, you may submit such materials. This authorizes PHMSA to make findings and issue an Order Directing Amendment;

- c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or
- d. Request a hearing as described below to contest the allegations in the Notice.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

III. Procedure for Requesting a Hearing

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

IV. Extensions of Time

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

V. Freedom of Information Act

Any material provided to PHMSA by the respondent, and materials prepared by PHMSA including the Notice and any order issued in this case, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If you believe the information you are providing is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption

provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to http://www.sba.gov/ombudsman/dsp_faq.html.

VII. **Payment Instructions**

Civil Penalty Payments of Less Than \$10,000

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration
Mike Monroney Aeronautical Center
Financial Operations Division (AMZ-341) P.O. Box 269039
Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

Civil Penalty Payments of \$10,000 or more

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) <u>RECEIVER ABA NO.</u> 021030004	(2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank)
(3) <u>SENDING BANK ABA 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 as provided by sending bank)
(9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> BNF = /ALC-69-14-0001	(10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for blocks (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 9-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. It must be used for all wire transfers to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/ALC-69-14-0001". Ensure the sending bank enters this information. This is the Agency Location Code for the 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, and country."

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 the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

February 2009