

JUL 28 2009

Mr. Robert L. Rose
President
Tampa Pipeline Corporation
P.O. Box 35236
Sarasota, Florida 34242

Re: CPF No. 2-2005-6020

Dear Mr. Rose:

Enclosed is the Decision on the Petition for Reconsideration in the above-referenced case. For the reasons specified in the Decision, the Petition is denied. Payment of the \$6,000 civil penalty is due within 20 days of receipt of this Decision. The findings of the Final Order remain unaltered and stand as stated therein. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southern Region, OPS, this enforcement action will be closed.

This Decision is the final administrative action in this proceeding. Your receipt of that document constitutes service 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. Robert L. Rose (Registered Agent), 4120 Higel Avenue, Sarasota, Florida 34242
Linda Daugherty, Director, Southern Region, OPS

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5654]

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

_____)	
In the Matter of)	
)	
Tampa Pipeline Limited Partnership, n/k/a Tampa Pipeline Corporation,)	CPF No. 2-2005-6020
)	
Petitioner.)	
_____)	

DECISION ON PETITION FOR RECONSIDERATION

PROCEDURAL HISTORY

On September 21, 2005, the Director, Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, Southern Region (Director), issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) to Tampa Pipeline Limited Partnership (Tampa Pipeline or Petitioner).¹ The Notice covered Tampa Pipeline's 10.5-mile jet fuel line that services Tampa International Airport. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Tampa Pipeline had committed certain violations of 49 C.F.R. Part 195 and proposed a civil penalty of **\$6,000** for the alleged violations. Tampa Bay received the Notice by certified mail but failed to file a written response.

On June 29, 2006, pursuant to chapter 601, title 49 United States Code, the Associate Administrator for Pipeline Safety (Associate Administrator), PHMSA, issued a Final Order in this case, finding that Tampa Pipeline had committed various violations of the pipeline safety regulations, assessing a civil penalty of \$6,000, and ordering the company to take certain corrective actions. Petitioner received the Final Order by certified mail at its corporate headquarters on or around July 5, 2006.²

¹ According to the Articles of Merger filed with the Secretary of State of the State of Florida, Tampa Pipeline Limited Partnership merged with Tampa Pipeline Corporation on or around September 30, 2001. Tampa Pipeline Corporation and its related companies operate pipelines providing jet fuel to various airports: St. Louis Pipeline Corporation (St. Louis Pipeline); Illinois Petroleum Supply Corporation (Illinois Petroleum Supply); Illinois Pipeline Corporation (Illinois Pipeline); Idaho Pipeline Corporation (Idaho Pipeline); Tampa Airport Corporation (Tampa Airport Pipeline); San Antonio Pipeline Corporation (San Antonio Pipeline); and Pipelines of Puerto Rico, Inc. (San Juan Pipeline).

² Specifically, Mr. Robert Rose, president of Tampa Pipeline Corporation, signed the U.S. Postal Service Domestic Return Receipt, PS 3811 on or around July 5, 2006.

On July 24, 2006, Petitioner sent a letter to the Director requesting clarification of the civil penalty. Petitioner stated that it had failed to respond to the Notice since it believed the matter to be closed. In support of its position, Petitioner referred to a letter issued to Tampa Pipeline on April 5, 2006, closing an enforcement action, designated as CPF No. 2-2005-6013M, which had cited Tampa Pipeline for inadequate plans and procedures. The closure letter issued by PHMSA in that proceeding made no reference to the instant case, designated as CPF No. 2-2005-6020 and proposing a compliance order and civil penalty of \$6,000.

In response to the request for clarification, PHMSA and Tampa Pipeline exchanged various correspondence, in which the agency explained that the two cases were separate and the closure letter for CPF No. 2-2005-6013M had no effect on the ongoing proceedings in this case. Nevertheless, because Tampa Pipeline had never filed a response in this case and PHMSA sought to provide Petitioner with every opportunity to have its claims fully considered, the Director notified the company by letter dated January 19, 2007, that PHMSA would re-open this matter for a period of twenty days to allow Tampa Pipeline to file a Petition for Reconsideration. Petitioner subsequently filed its Petition for Reconsideration on February 6, 2007, and supplemented it on November 8, 2007 (Supplement), pursuant to PHMSA approval.

Based upon a full review of the record in this case and the Petition, I deny Tampa Pipeline's request for reconsideration for the reasons set forth more fully below.

CONSIDERATION OF PETITION FOR RECONSIDERATION

Tampa Pipeline seeks reconsideration of the Final Order in this case partially because the company failed to file a response to the Notice. Under § 190.215, an operator may file a petition for reconsideration of a final order issued pursuant to § 190.213, requesting that the Associate Administrator reconsider his decision. Although the Associate Administrator does not consider repetitious information, arguments or petitions, an operator may request consideration of additional facts or arguments, provided that the company explains the reason these arguments were not presented prior to issuance of the final order.³ The purpose of this rule is to allow an operator to present information or arguments that were unavailable or unknown prior to issuance of the final order, as well as to allow the agency to correct any error in the final order, but not to provide an operator with a right of appeal or a *de novo* review. Although it is unusual to entertain a petition for reconsideration when an operator has failed to file a response to the original Notice, I have made an exception in this case on account of the unique procedural history outlined above.

DISCUSSION

The Final Order found that Petitioner committed four violations of 49 C.F.R. Part 195, as follows:

³ 49 C.F.R. § 190.215.

Item 1: That Tampa Pipeline failed to have and follow a written operator qualification (OQ) program that identified all “covered tasks” on its pipeline;⁴

Item 2: That Tampa Pipeline failed to have and follow an OQ program that ensured through evaluation that personnel performing “covered tasks” on its pipelines were properly qualified;⁵

Item 3: That Tampa Pipeline failed to have and follow an OQ program that communicated changes in the program to individuals performing the covered tasks;⁶ and

Item 4: That Tampa Pipeline failed to have and follow an OQ program that established the necessary reevaluation intervals for personnel initially qualified for covered tasks.⁷

Tampa Pipeline was required to have all four of the Items set forth above in place as part of its written OQ program that was to be in effect by April 27, 2001.⁸

In its Petition, Tampa Pipeline raises two basic issues. First, it contests the allegations in Item 1. As noted above, the Final Order found that Petitioner failed to have a written qualification program to identify covered tasks in effect by April 27, 2001, the deadline established by 49 C.F.R. § 195.509(a). At the time of the inspection, Petitioner produced a blank, undated, covered task certification training sheet instead of a completed written qualification program. The training sheet listed 35 covered tasks but did not provide any further detail regarding the qualification program, method of evaluation, etc.⁹

In its Petition, Tampa Pipeline argues that the regulation does not define specific covered tasks. This is correct. However, § 195.501(b) specifically provides that it is the *operator’s* responsibility to meet the performance standards for an effective operation qualification program by assessing its own particular system and operations and identifying covered tasks specific to its pipeline. Tampa Pipeline was required to evaluate its facilities and list specific covered tasks in its written OQ plan. Petitioner failed to demonstrate compliance with this requirement during the 2005 inspection.

⁴ 49 C.F.R. § 195.505(a).

⁵ 49 C.F.R. § 195.505(b); Pursuant to 49 C.F.R. § 195.501(b), a covered task is “an activity, identified by the operator, that (1) is performed on a pipeline facility; (2) is an operations or maintenance task; (3) is performed as a requirement of this part; and (4) affects the operation or integrity of the pipeline”.

⁶ § 195.505(f).

⁷ § 195.505(g).

⁸ § 195.509(a).

⁹ See Exhibit 1 to Violation Report.

In addition, Petitioner argues that the company's OQ Program was inspected in 2001 and that the PHMSA inspectors did not object to its content at that time. Therefore, Tampa Pipeline asserts that its OQ program was "accepted" by PHMSA in 2001 and the company should not be assessed a civil penalty for a violation discovered four years later during the 2005 inspection. PHMSA did perform unit inspections at Petitioner's facilities in 2001 and 2003. Although a portion of the OQ plan might have been reviewed at the time of the unit inspection, the May 2005 inspection was the first designated Operator Qualification audit of Petitioner's pipeline system. Further, Petitioner is required to comply with the pipeline safety regulations at all times and to periodically review and modify its OQ program. Therefore, I do not find this argument persuasive.

Second, Tampa Pipeline presents various arguments why the civil penalty assessed in the Final Order should be reduced or eliminated. Upon review of the entire record in this case, I believe that the civil penalty assessed in the Final Order is appropriate under the factors set forth by 49 C.F.R. § 190.225. I find Petitioner's arguments to withdraw the assessed penalty for Items 1, 2, and 4 unpersuasive.

Petitioner argues that since PHMSA had never assessed a civil penalty against Tampa Pipeline in the past, it should not impose one here. Petitioner acknowledges that it has been the company's apparent practice to wait for a PHMSA inspector either to advise it of regulatory changes or to identify inadequate procedures prior to amending its own manuals. Specifically, Petitioner states that "... if DOT advises [Tampa Pipeline] that DOT requires different procedures or that the laws or regulations have changed, then [Tampa Pipeline] [is] advised and Tampa Pipeline makes the requested changes."¹⁰

Such a "wait-and-see" approach to regulatory compliance has never been endorsed by PHMSA and has not served Tampa Pipeline well in this case. Petitioner has an obligation to maintain its operations in compliance with the pipeline safety regulations at all times. Petitioner's pipeline provides jet fuel to the Tampa International Airport in a highly populated area. Having unqualified personnel working on the pipeline increases the risk of an accident with potentially grave consequences. Operator qualification is particularly critical in preventing accidents caused by judgment error or lack of training. Pipeline operators must continually reassess and modify their operations, not only to maintain compliance with the regulations but also to avoid risks to public safety and the surrounding environment. Petitioner does not have the luxury of waiting for an OPS inspection to determine whether or not its operations are in compliance.

Petitioner also argues that a civil penalty should not be assessed for Items 2 or 4 of the Final Order since these violations amounted to an "oversight." Petitioner failed to grade the qualification exam for two employees (Item 2) and establish reevaluation intervals (Item 4). Since these violations have now been corrected, Tampa Pipeline suggests that the civil penalty should be withdrawn. Post-inspection actions, however, are not grounds for eliminating or reducing a civil penalty. Pipeline operators are required to maintain compliance with the

¹⁰ Supplement, at 2.

pipeline safety regulations at all times. At the time of the inspection, Petitioner was in violation of the requirements of the pipeline safety regulations and Petitioner has failed to present any justification for its noncompliance.

In the Petition, the president of Tampa Pipeline Corporation presents a general argument why civil penalties are not appropriate in this case. He states:

In my general understanding penalties are an enforcement tool to address deliberate violation of the rules and procedures. At no point did Tampa Pipeline knowingly disobey the rules, we relied on the fact that the OQ program of 2001 was accepted by DOT, and on notice of requested changes we promptly made the respected changes.¹¹

There is nothing in the statute or regulations, however, to suggest that civil penalties are designed only to address deliberate violations.¹² In fact, 49 U.S.C. § 60122(a) states the following:

(a) General penalties.--(1) A person that the Secretary of Transportation decides, after written notice and an opportunity for a hearing, has violated section 60114(b), 60114(d), or 60118(a) of this title or a regulation prescribed or order issued under this chapter **is liable** to the United States Government for a civil penalty of not more than \$100,000 for each violation. A separate violation occurs for each day the violation continues. The maximum civil penalty under this paragraph for a related series of violations is \$1,000,000.¹³ (emphasis added)

The Final Order made findings that Tampa Pipeline was in violation of the stated regulations. The company has not offered any information in its Petition to indicate that any of those findings were in error. Further, upon review of the civil penalty factors, a civil penalty is appropriate for these violations. The fact that Tampa Pipeline's failure to comply with the pipeline safety regulations may have not been a deliberate choice bears no relationship to the civil penalty assessed in this matter.

CONCLUSION

In conclusion, I affirm the findings of the June 29, 2006 Final Order. Tampa Pipeline has not supplied any new evidence or arguments that warrant a modification or reversal of the findings

¹¹ Supplement, at 4.

¹² 49 U.S.C. 60101 *et seq.*

¹³ The Pipeline Safety Improvement Act of 2002 (PSIA), Pub. L. No. 107-355, § 8(b)(1), 116 Stat. 2992 (emphasis added). PSIA was the governing statute at the time of the inspection. Although the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act) is the current law, the text of § 60122(a) remains unchanged.

or the civil penalty assessed. The findings in the Final Order and the terms of the Compliance Order remain in effect. The total civil penalty assessed in this matter is \$6,000. It is noteworthy that under 49 C.F.R. § 190.215(d), a petition for reconsideration stays the civil penalty assessed but not the required corrective action. To date, PHMSA has not received any information indicating that Petitioner has complied with the terms of the Compliance Order. Petitioner must immediately comply with the terms of the Compliance Order.

This decision on petition for reconsideration is the final administrative action in this proceeding.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued