

OCTOBER 12, 2012

Mr. Larry F. Clynch
Chief Executive Officer
TPM, Incorporated
P. O. Box 486
Alpharetta, Georgia 30009-0486

CPF No. 2-2010-6007

Dear Mr. Clynch:

Enclosed is my Decision on the Petition for Reconsideration filed by TPM, Incorporated, in the above-referenced case. The Decision grants in part, and denies in part, TPM's Petition. I affirm the findings of violation in the Final Order but grant the Petition in part by reducing the assessed penalty to \$63,410. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. 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. Wayne T. Lemoi, Director, Southern Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

_____)	
In the Matter of)	
)	
TPM, Incorporated,)	CPF No. 2-2010-6007
)	
Respondent.)	
_____)	

DECISION ON PETITION FOR RECONSIDERATION

On February 22, 2012, pursuant to 49 U.S.C. § 60122 and 49 C.F.R. § 190.213, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), issued a Final Order in this proceeding, finding that TPM, Incorporated (TPM or Petitioner), had committed three violations of the Pipeline Safety Regulations, codified at 49 C.F.R. Part 195. The Final Order assessed a civil penalty of \$74,600 for certain line markers, valve maintenance, and atmospheric corrosion control violations.

On March 6, 2012, TPM submitted a Petition for Reconsideration (Petition) of the Final Order, requesting that PHMSA reconsider the penalty in light of additional information submitted by TPM and because the penalty “would greatly damage our small business and could cause great doubt and difficulty for continuation of a small business.”¹ TPM reiterated arguments put forward in its Response to the three allegations of violation in the Notice of Probable Violation and Proposed Civil Penalty (Notice), namely, that (1) identifying the product being transported in the pipeline on line markers had led to an increase in criminal activity, (2) it had indeed performed atmospheric corrosion checks along the system, and (3) its block valve sites and meter skids had been painted in 2010, as required by 49 C.F.R. Part 195.² Petitioner requested that PHMSA reduce the total assessed penalty from \$74,600 to \$3,000.

On March 21, 2012, the Office of Chief Counsel, PHMSA, responded to the Petition, noting that TPM was seeking relief from the Final Order based upon the claim that the proposed penalty would jeopardize TPM’s ability to continue in business as a going concern. By letters dated May 9 and July 20, 2012, Petitioner submitted federal corporate income tax returns and other financial information to support its claim of financial hardship, including a statement that TPM had experienced a significant reduction-in-force since the time of the PHMSA inspection.

¹ Petition at 1.

² *In the Matter of TPM Pipeline Company*, Final Order, dated July 22, 2011, CPF No. 3-2009-5018; Responses dated November 19, 2009, February 5, 2010 and March 17, 2010 (collectively, Response).

For the reasons set forth below, I affirm the findings of violation in the Final Order but grant the Petition in part by reducing the assessed penalty to \$63,410, payable in six installments.

Standard of Review

A respondent is afforded the right to petition the Associate Administrator for reconsideration of a Final Order. However, that right does not constitute an appeal or an opportunity to seek a de novo review of the record. Instead, it is a venue for presenting the Associate Administrator with information that was not previously available or requesting that any errors in the Final Order be corrected. Requests for consideration of additional facts or arguments must be supported by a statement of reasons as to why those facts or arguments were not presented prior to the issuance of the Final Order. Repetitious information or arguments will not be considered.³

Analysis

In its Petition, TPM did not submit any new arguments but reiterated the arguments and explanations made in its Response. The Petitioner also submitted articles on the theft of anhydrous ammonia, a chart showing dates of attempted breaches of its facility, and invoices for paint purchased to use on block valve sites and meter skids exposed to the atmosphere and susceptible to atmospheric corrosion.⁴

In Item 1 of the Final Order, I found that TPM had failed to place and maintain line markers over its buried pipeline that properly named the hazardous liquid being transported. TPM's line markers used the word "Petroleum" to identify the product being transported, when, in fact, the product was anhydrous ammonia, a hazardous liquid that is neither petroleum nor a petroleum product. Petitioner was fully aware of this agency's explicit requirement that all operators identify the nature of the product being transported in their lines. In fact, in June 2006,⁵ Respondent petitioned PHMSA for a special permit to replace the words "*anhydrous ammonia*" on its pipeline markers with the words "*chemical pipeline*." On March 20, 2008, PHMSA denied the permit application, fully explaining its reasons. TPM chose not to appeal that final agency action but appears to have simply ignored both the requirements of § 195.410 and the agency's denial of the special permit application and proceeded to put misleading information on its line markers.

In Item 2 of the Final Order, I found that Petitioner had failed to provide protection for each block valve on its pipeline from unauthorized operation and vandalism. TPM failed to secure the valve chain on block valve #1 and the gate lock on block valve #4, leaving them unprotected

³ 49 C.F.R. § 190.215(c).

⁴ Atmospheric corrosion occurs on a pipeline when moisture from the air, along with contaminants, comes into contact with the exposed metal.

⁵ TPM Waiver Request (June 12, 2006), Docket # PHMSA-2007-28019, available at <http://www.regulations.gov/#!searchResults;a=PHMSA;dk=N;cp=C;sd=true;rpp=10;po=0;dktid=PHMSA-2007-28019>.

from operation by unauthorized parties and from vandalism. The gravity of the violation was substantial due to a combination of factors, including the increased risk of vandalism via the unlocked gate, the significant threat to the safe operation of the pipeline, and the possible harm that could result from a release of anhydrous ammonia in a High Consequence Area near the Mississippi River in Memphis.

In Item 3 of the Final Order, I found that TPM had failed to demonstrate it had conducted proper atmospheric corrosion control inspections on all of its above-ground valves and that it had performed complete corrosion surveys. While Petitioner submitted an invoice for paint, it does not constitute evidence that contradicts the Final Order. I find no basis to conclude that TPM performed the atmospheric corrosion control inspections on all portions of its pipeline system exposed to the atmosphere.

Conclusion

Based on a review of the record and the information provided in the Petition, I find, pursuant to 49 C.F.R. § 109.215(c), that TPM's petition is repetitious. Consequently, there is no need to consider the additional information and arguments presented in the Petition relating to the findings of violation in the Final Order. Notwithstanding such finding, I have considered all the information and arguments submitted by Petitioner and find no basis to reconsider or alter the findings of violation in the Final Order. Therefore, I deny the Petition and affirm the findings of violation set forth in the Final Order.

As for TPM's contention that it is a small business and that the assessed civil penalty would adversely impact its ability to remain in business, a review of the record and financial documents submitted by TPM reveals that Petitioner has other streams of revenue. However, I agree that Petitioner is a small business and accept that it has experienced a reduction-in-force from 12 full-time employees to two full-time and two part-time employees. Therefore, after review of the record and consideration of the assessment criteria, I assess TPM a reduced civil penalty of \$63,410.

While the \$63,410 civil penalty assessed in the Final Order is now due, I hereby order that the penalty may be paid in six installments. The first payment of \$10,570 is due on or before November 1, 2012, with the remaining five equal installments of \$10,568 being due and payable on the first day of each succeeding month. The payment instructions were set forth in detail in the Final Order. Federal regulations (49 C.F.R. § 89.21(b)(3)) require that all payments be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$63,410 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

This Decision on Reconsideration is the final administrative action in this proceeding.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued