

APR 26 2010

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

Re: CPF No. 2-2008-6002

Dear Mr. Rose:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$398,000, and specifies actions to be taken by Tampa Pipeline Corporation to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southern 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: Ms. Linda Daugherty
Director, Southern Region, PHMSA

Mr. Henry D. Fellows, Jr.
Fellows LaBriola LLP
Suite 2300 South Tower
225 Peachtree Street, N.E.
Atlanta, Georgia 30303-1731

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7009 1410 0000 2472 2476]

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

)	
In the Matter of)	
)	
Tampa Pipeline Corporation,)	CPF No. 2-2008-6002
)	
Respondent.)	
)	

FINAL ORDER

On July 30 – August 2, 2007, 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 Tampa Pipeline Corporation (TPC), and its subsidiary, Tampa Bay Pipeline Company (TBPC) (collectively, TPC or Respondent), in Tampa, Florida. On November 26 – 27, 2007, a representative of OPS conducted another inspection of Respondent’s facility and records following a pipeline release that occurred on November 12, 2007. Respondent operates approximately 100 miles of pipeline transporting anhydrous ammonia, a highly volatile liquid (HVL), and approximately 10 miles of hazardous liquid pipeline transporting refined petroleum products, all within the State of Florida.

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated May 7, 2008, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed certain violations of 49 C.F.R. Part 195 and proposed a civil penalty of \$398,000 for the alleged violations. The Notice also proposed to order that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated June 4, 2008. Respondent offered information in response to some of the allegations, requested an extension of time to more fully respond, asked to meet with the Director to discuss the Notice, and requested a hearing. The Director granted the extension but denied the request to meet outside of a hearing. Respondent submitted its complete response to the Notice by letter dated September 2, 2008 (Response). The company again contested several allegations of violation and requested elimination or mitigation of the civil penalty and withdrawal of the proposed compliance order.

In accordance with 49 C.F.R. § 190.211, a hearing was held on April 21, 2009, in Atlanta, Georgia, with an attorney from the Office of Chief Counsel, PHMSA, presiding. After the

hearing, Respondent provided a post-hearing brief by letter dated May 22, 2009 (Brief). Throughout this proceeding, Respondent has been represented by counsel.

FINDINGS OF VIOLATION

The Notice alleged that Respondent committed the following violations of 49 C.F.R. Part 195:

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(3), which states:

§ 195.404 Maps and records.

(a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information:

(1)

(3) The maximum operating pressure of each pipeline

The Notice alleged that Respondent violated § 195.404(a)(3) by failing to maintain current records of the maximum operating pressure (MOP) of each pipeline. Specifically, the Notice alleged that Respondent could not produce records that established MOP for its pipelines, even though the pipeline system had been designed to operate at stress levels below regulatory limits.

In its Response and at the hearing, TPC did not contest this allegation but provided information concerning corrective actions it had taken to amend its operations and maintenance (O&M) procedures. In its Brief, however, Respondent stated, “This concern was unfounded because § 4.9.2 of the 2006 O&M Manual that was in place at the time of the 2007 inspection listed the MOP.”¹

After reviewing the evidence referenced by Respondent, I find that § 4.9.2 of Respondent’s 2006 O&M Manual listed only certain device pressure settings but did not list the MOP for each pipeline.² Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(a)(3) by failing to have current records of the MOP of each pipeline.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a), which states:

§ 195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute’s (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* § 195.3)

¹ Brief at 2.

² Response, Exhibit (Tab) 4 at 25.

The Notice alleged that Respondent violated § 195.440(a) by failing to implement a written continuing public education program that followed the guidance provided in API RP 1162.³ Specifically, the Notice alleged that § 4.7.0 of Respondent's O&M procedures required the company to communicate annually to certain emergency officials, but Respondent had not communicated with such officials annually since January 1, 2006.

In its Response and at the hearing, TPC did not contest this allegation but provided information concerning corrective action it had taken to amend its O&M procedures. In its Brief, Respondent further acknowledged that it had not communicated a baseline message to all emergency responders. Accordingly, after considering all of the evidence, I find Respondent violated 49 C.F.R. § 195.440(a) by failing to implement a written continuing public education program that followed the guidance provided in API RP 1162.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c), which states:

§ 195.440 Public awareness.

(a)

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety

The Notice alleged that Respondent violated § 195.440(c) by failing to follow the program recommendations of API RP 1162, including baseline and supplemental requirements. Specifically, the Notice alleged that § 4.7.0 of Respondent's O&M procedures failed to define a minimum communications coverage area distance, and failed to determine specific affected public stakeholder addresses in accordance with API RP 1162.

In its Response, TPC did not contest this allegation but provided information concerning corrective action it had taken to amend its O&M procedures to further define the term "Affected Public." At the hearing, Respondent contended that § 195.440 had been amended by PHMSA, and that the previous version permitted operators to use mass media to comply with the regulation. In its Brief, Respondent further stated that in 2005 and 2007, the company had conducted mass media public awareness by placing over 46,108 inserts in *The Tampa Tribune*.

While it is true that PHMSA amended § 195.440 in May 2005, this occurred more than two years prior to PHMSA's inspection of Respondent in this case. Therefore, Respondent was required to be in compliance with the current requirements of § 195.440 at the time of the PHMSA inspection. After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.440(c) by failing to define a minimum communications coverage area distance, and by failing to determine specific affected public stakeholder addresses in accordance with the requirements of API RP 1162.

³ API RP 1162, "Public Awareness Programs for Pipeline Operators," is incorporated by reference at 49 C.F.R. § 195.3(c).

Item 5: 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:

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

The Notice alleged that Respondent violated § 195.505(b) by failing to follow a written qualification program to ensure through evaluation that individuals performing covered tasks were qualified.⁴ Specifically, the Notice alleged that Respondent permitted an employee to perform two covered tasks without qualifying that individual under the company’s operator qualification (OQ) program. Respondent’s records allegedly demonstrated that a person with the title “Ammonia Operator” had been performing two covered tasks without a valid qualification for at least a year.⁵

In its Response, TPC acknowledged that the particular individual “was technically not qualified on paper,” but reasoned that he was an experienced Ammonia Operator.⁶ Furthermore, Respondent stated that the individual was eventually evaluated under the company’s OQ program during the PHMSA inspection and the results of that evaluation demonstrated the individual had the necessary knowledge and skills to meet the appropriate qualification requirements. At the hearing, the PHMSA inspector agreed that the individual in question had satisfied the company’s OQ evaluation during the PHMSA inspection.

In its Brief, Respondent again admitted that it had not conducted a timely performance evaluation of the individual, but contended that he had many years of experience operating pipelines and that the company’s “failure to satisfy a technical requirement was a simple oversight that had no impact on safety.”⁷ Respondent also indicated that it had instituted mechanisms for preventing this type of oversight in the future.

Qualifications under a valid OQ program are not merely “paper requirements,” but are fundamental to safety because they ensure that employees whose duties affect the integrity of a pipeline have been evaluated and determined to be able to perform those tasks safely. In addition, qualification ensure that employees performing such tasks can recognize and react to

⁴ 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 49 C.F.R. Part 195; and (4) affects the operation or integrity of the pipeline. 49 C.F.R. § 195.501. “Qualified” means that an individual has been evaluated and can: (a) perform assigned covered tasks; and (b) recognize and react to abnormal operating conditions. 49 C.F.R. § 195.503.

⁵ The covered tasks were Task 43.3, “Monitor Pressures, Flows, Communications and Line Integrity and Maintain Them Within Allowable Limits,” and Task 43.4, “Manually or Remotely Open or Close Valves or Other Equipment.”

⁶ Response at 5.

⁷ Brief at 3.

unsafe and abnormal conditions that could arise during their performance. Although the individual in question may have had years of experience in the field and could readily demonstrate his ability to meet qualification requirements when finally evaluated during the PHMSA inspection, the evidence demonstrates he had been allowed to perform two covered tasks for at least a year without being properly qualified under Respondent’s OQ program. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to follow a written OQ program to ensure through evaluation that an Ammonia Operator was qualified to perform two covered tasks.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.583(a), which states:

§ 195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months....

The Notice alleged that Respondent violated § 195.583(a) by failing to inspect an exposed pipe at the south end of Licata Bridge for evidence of atmospheric corrosion at least once every three calendar years, but with intervals not exceeding 39 months. The Notice further alleged that the coating was in poor condition, the pipeline was suffering from severe atmospheric corrosion, and a corrosion analysis indicated that the pipe wall had lost as much as 56% of its thickness yet Respondent’s inspection records failed to identify deteriorated coating and atmospheric corrosion on the exposed pipe. The Notice also indicated that Respondent’s written procedures required atmospheric corrosion inspections to be conducted as part of the company’s bi-weekly pipeline patrols.

In its Response and at the hearing, TPC acknowledged that its inspections of the exposed pipe in question were not at the intervals specified in the regulation. Respondent contended, however, that it had determined the pipeline was not being operated in an unsafe manner, based on a calculation of the remaining pipe wall strength, which demonstrated that the pipeline could still be safely operated at a pressure above MOP. In its Brief, Respondent again acknowledged that it had not adequately documented external corrosion on the pipeline, but contended that such gap was “mitigated” by the fact that the pipeline had not been operated in an unsafe condition. Respondent further indicated it had taken certain measures to prevent this from occurring in the future.

The contention by Respondent that the pipeline was never operated in an unsafe manner may be relevant to the gravity of the violation but does not negate the evidence demonstrating that the company failed to inspect the exposed pipeline at the intervals specified in the regulation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.583(a) by failing to inspect the exposed pipe at the south end of Licata Bridge for evidence

of atmospheric corrosion at least once every three calendar years, with intervals not exceeding 39 months.

Item 9: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(12), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1)

(12) Establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication

The Notice alleged that Respondent violated § 194.402(c)(12) by failing to prepare and follow written procedures for establishing and maintaining liaison with fire, police, and other appropriate public officials. The regulation requires that operators maintain an ongoing liaison program with governmental entities, such as local first responders, who might respond to a pipeline emergency involving that operator's facilities. Such procedures must ensure that an operator learns the responsibilities and resources of each government organization involved and that public officials become acquainted with the operator's ability to respond to pipeline emergencies and its means of communications.

Specifically, the Notice alleged that the events following the November 12, 2007 release demonstrated that TPC lacked such procedures. The Notice and Violation Report⁸ alleged that around 5:40 p.m. on November 12, 2007, an ammonia leak was discovered on the Respondent's line. The leak was the result of a deliberate act of vandalism committed by three teenagers who drilled into the pipeline, thinking, as they later told police, that there was money inside the pipe.⁹ One of the boys suffered chemical burns from exposure to the ammonia vapor that was released as a result of their vandalism.¹⁰

The Violation Report further alleged that the leak was discovered shortly after the incident by the crew of a Hillsborough County Fire Rescue (HCFR) engine that happened to be crossing the Alafia River near the leak site. The crew reported the event to the Hillsborough County

⁸ OPS Pipeline Safety Violation Report (May 7, 2008) (Violation Report).

⁹ Response, Exhibit 1 (Incident Report of the Hillsborough County Sheriff's Office).

¹⁰ *Id.*

Emergency Dispatch as a “major release,” thus triggering a robust response by local emergency personnel at the scene. Residents within a one-mile radius of the site were evacuated—later reduced to one-half mile—and a local elementary school closed. A significant quantity of ammonia was discharged into the atmosphere, at which point it immediately vaporized, forming a highly toxic vapor cloud that settled over the failure site and the Alafia River. Officials later estimated that 10,000 - 20,000 pounds of ammonia were released.¹¹

The Violation Report further alleged that HCFR promptly established a Unified Command on site and remained on the scene for 40 hours, using approximately 6.5 million gallons of potable water to mitigate and control the release. The leak was not contained until around 10:00 a.m. on Wednesday, November 14, two days after the initial release.

The Notice and Violation Report alleged that a number of difficulties arose during the emergency response efforts which were attributable to TPC’s failure to develop a compliant liaison program with first responders prior to the incident. According to documents provided by HCFR, the failure to establish and follow an effective liaison included:

- A failure to develop an appropriate protocol with HCFR regarding the use of Level A Hazmat Suits in the event of an emergency.¹² TPC allegedly had such safety suits available but was unable to produce any records showing that its personnel were properly trained in their use. Absent such training and a prior agreement as to who should be authorized to use such equipment, HCFR refused to allow TPC personnel access to the failure site until local officials had determined that the area was safe. This lack of access, in turn, hampered TPC’s attempts to stop the leak and repair the pipe.
- A failure to provide HCFR in advance with pipeline drawings showing the location of valves and previous “hot taps” on the pipeline. According to HCFR, the availability of such drawings might have enabled emergency responders to move more quickly to “flare off” the ammonia.¹³
- A failure to address HCFR’s need for emergency communications with TPC in the event of a pipeline emergency. TPC allegedly failed to maintain personnel at the HCFR Command Center at all times during the incident. A representative of HCFR allegedly had to call TPC’s general manager at his home a few hours into the incident in order to get him to come to the command center to provide assistance.¹⁴

¹¹ Violation Report at 10, 11.

¹² Level A Hazmat Suits are total containment suits that protect an individual against all forms of chemicals: solids, liquids and gasses/vapors. Level A suits include a full-facepiece self-contained breathing apparatus or supplied-air respirator worn inside the suit.

¹³ Violation Report, Exhibit 10 at 2.

¹⁴ *Id.* at 10, 12.

- A failure to establish who should be responsible for maintaining a supply of pipeline leak clamps and other emergency response equipment that might be needed to respond properly to an anhydrous ammonia leak.

The Notice further noted that an “After Action Review Meeting” was convened by HCFR on November 27, 2007, with various affected parties, including Respondent, participating and reviewing the actions taken by everyone in response to the incident. The meeting generated a report that included various recommendations on how the parties could improve their response efforts in the event of future accidents.¹⁵

In its Response, TPC denied that it had failed to prepare and follow adequate procedures for establishing and maintaining liaison with HCFR prior to the November 2007 accident. The company acknowledged that TPC personnel could have repaired the leak much sooner than they did, but contended that the company had been denied access to the site by HCFR and the Hillsborough County Sheriff’s Office (HCSO). Since the company could not gain access to the failure site, TPC argued that it made no difference as to whether the company could have used Level A Hazmat Suits or pipeline repair clamps. As evidence of its liaison program, TPC asserted that in June 2006, the company’s General Manager had attended a Florida State Pipeline Safety Meeting for the purpose of obtaining additional training and education on liaison efforts with HCFR.

In its Brief, Respondent cited additional contacts and communications it had had with various federal, state, and local officials prior to the November 2007 release. For example, Respondent asserted that in June 1995, it had provided information to the Tampa Bay Local Emergency Planning Committee for a report on TPC’s ammonia pipeline. Respondent also said that it had interacted with the U.S. Environmental Protection Agency in connection with a similar but larger ammonia release in 2003 near the Fish Hawk subdivision (2003 Release). Respondent met with the U.S. Coast Guard on January 21, 2004, during a federal Port Security Assessment, as well as with the National Transportation Safety Board on April 5, 2004, during a government survey of its supervisory control and data acquisition system. Respondent also asserted that it had interacted with HCFR and HCSO on September 29, 2006, when local residents reported smelling ammonia.

Respondent further contended in its Brief that it had developed liaison specifically with the HCSO, as evidenced by the fact that the company had provided maps of its pipeline system to the HCSO in 2003 and 2005, and that TPC had hired various members of the HCSO to provide off-duty security services. Respondent credited its efforts responding to the November 2007 release, at least in part, on the fact that several HCFR representatives were involved in responding to the 2003 Release and were aware of Respondent’s response capabilities.

Section § 195.402(c)(12) requires pipeline operators to prepare and follow procedures for establishing and maintaining liaison with fire, police, and other appropriate public officials.

¹⁵ In its Response, TPC argued it was inaccurate for the Notice to refer to the November 2007 release as an “accident” because it was caused by deliberate vandalism. The term “accident” in the context of the pipeline safety regulations, however, refers to an unintended release of product from the pipeline. *See* 49 C.F.R. § 195.50. The term does not connote fault on the part of the operator for the release.

Through such procedures and ongoing communications, operators are able to gain a clear understanding of the responsibilities and resources of each government organization that may respond to a pipeline emergency and the local officials, in turn, are able to learn about an operator's abilities to respond to such emergencies and its means of communication.

“Maintaining liaison with response officials on an ongoing basis is an important [part] of pipeline safety because it ensures that the responsible officials are kept up-to-date on the operational status of pipelines in their area and facilitates emergency response planning and the ability to rapidly establish communications in the event of an incident.”¹⁶

PHMSA has interpreted this regulation (and the corresponding provision for gas pipelines under § 192.615(c)) as requiring pipeline operators to establish programs that are specifically designed to maintain liaison with response officials in all cities and counties where a pipeline is located.¹⁷ The liaison must cover all possible emergency scenarios to ensure proper coordination with those officials who would respond to potential emergencies.¹⁸ Operators are expected to maintain liaison through regular meetings held at least once a year.¹⁹ Meetings should be conducted face-to-face, but if methods other than face-to-face meetings are used, the operator must be able to convincingly demonstrate that such methods are at least as effective as face-to-face meetings.²⁰ Operators are also expected to document their liaison activities by producing appropriate records, such as copies of invitations sent by the company to response officials, lists of officials who attended liaison meetings, agendas showing topics addressed during the meetings, and materials provided to officials at the meetings or sent to those officials who did not attend.²¹

I have reviewed the entire record in this case to determine whether or not Respondent had established and maintained proper liaison with the appropriate response officials in Hillsborough

¹⁶ *In the Matter of the Premcor Refining Group, Inc.*, Final Order, CPF No. 3-2004-5008, 2006 WL 3825320 (Feb. 16, 2006). Cases are also available at www.phmsa.dot.gov/pipeline/enforcement.

¹⁷ *In the Matter of Ozark Gas Transmission System*, Warning Letter, CPF No. 27111-W, 1997 WL 34614812 (Jul. 24, 1997) (warning that failure to establish liaison in all areas and counties traversed by the pipeline constituted a probable violation); *In the Matter of Cook Inlet Pipeline Co.*, Warning Letter, CPF No. 59506W, 1999 WL 34788505 (Jul. 7, 1999) (warning that the operator's interactions with officials outside of its established liaison program did not satisfy the requirement to maintain ongoing liaison because the interactions did not cover all pipeline emergency scenarios). Note also that Webster's New World Dictionary (Second College Edition, 1980) defines “liaison” as “a linking up or connecting of the parts of a whole, as of military units, in order to bring about proper coordination of activities.”

¹⁸ *Cook Inlet*, CPF No. 59506W.

¹⁹ *Premcor*, CPF No. 3-2004-5008 (finding a violation for failing to hold liaison activities during calendar year 2002); *In the Matter of AmeriGas Propane, L.P.*, Final Order, CPF No. 3-2006-0004, 2009 WL 1211365 (Apr. 15, 2009) (finding a violation for failing to conduct liaison activities for the years 2002-2004).

²⁰ *Interpretation for Ms. Mary L. McDaniel, P.E.*, #PI-93-003 (Feb. 4, 1993) (available at <http://www.phmsa.dot.gov/pipeline/regs/interps>) (interpreting §§192.615(c) and 195.402(c)(12) to require that operators meet face-to-face with public officials and maintain an ongoing face-to-face liaison after the initial meeting); *but see In the Matter of Colorado Interstate Gas Co.*, Final Order, CPF No. 54013, 1997 WL 34614757 (May 9, 1997) (stating that other forms of maintaining liaison with public officials may be acceptable).

²¹ *In the Matter of Ozark Gas Transmission, LLC*, Warning Letter, CPF No. 29102W, 1999 WL 34788548 (Aug. 18, 1999) (warning that a violation may be found if the operator could not provide documentation of liaison visits).

County as of the date of the November 2007 release. As discussed above, the appropriate officials included the HCFR and HCSO.

Respondent has presented examples of the company's various interactions with HCFR and HCSO prior to the November 2007 release. In affidavits submitted with the Brief, two long-time TPC officials asserted that they had had "numerous opportunities to interface with state, local, and federal public officials under both emergency and normal operating scenarios."²² They listed several of the examples already discussed, most of which were in response to the 2003 Release.

I reject Respondent's assertion that such sporadic contacts from 2003 to 2007 constituted an adequate liaison program with first responders in Hillsborough County. Such examples, rather than supporting TPC's claim, actually demonstrate that the company's interactions with local officials consisted of little more than intermittent meetings, most of which were held in response to the 2003 Release. The meetings did not indicate that any sort of regular, pro-active, working relationship had been established or that the parties were prepared to respond in a coordinated fashion to all types of pipeline emergencies. Particularly following the 2003 Release, the company should have recognized the importance of a robust liaison program that would be designed to provide all affected parties with the data, equipment and tools they needed to respond effectively and quickly to pipeline emergencies.

Respondent has failed to provide documentation of any regularly scheduled meetings with local officials or to produce any other indicia of an ongoing liaison program specifically designed to provide the parties with necessary information to respond effectively and quickly to pipeline emergencies.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(12) by failing to maintain ongoing liaison with HCFR and HCSO, to learn and stay up-to-date on the responsibilities and resources of such government organizations in responding to pipeline emergencies, and to keep local officials up-to-date regarding the operator's ability to respond to pipeline emergencies and its means of communication.

Item 10: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(e)(2), (e)(3), and (e)(7), which state:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies

(e) *Emergencies.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety when an emergency condition occurs . . .

²² Brief, Exhibits A, B (affidavits dated May 21, 2009).

- (1)
- (2) Prompt and effective response to a notice of each type emergency, including fire or explosion occurring near or directly involving a pipeline facility, accidental release of hazardous liquid or carbon dioxide from a pipeline facility, operational failure causing a hazardous condition, and natural disaster affecting pipeline facilities.
- (3) Having personnel, equipment, instruments, tools, and material available as needed at the scene of an emergency
- (7) Notifying fire, police, and other appropriate public officials of hazardous liquid or carbon dioxide pipeline emergencies and coordinating with them preplanned and actual responses during an emergency, including additional precautions necessary for an emergency involving a pipeline system transporting a highly volatile liquid

The Notice alleged that Respondent violated § 195.402(e) by failing to prepare and follow written procedures to provide safety when an emergency occurs, including procedures for the following: prompt and effective response to an accidental release of hazardous liquid from the pipeline (subsection (e)(2)); having personnel, equipment, instruments, tools, and material available as needed at the scene of an emergency (subsection (e)(3)); and notifying fire, police, and other appropriate public officials of a pipeline emergency and coordinating with them preplanned and actual responses during an emergency, including additional precautions necessary for an emergency involving a pipeline system transporting a highly volatile liquid (subsection (e)(7)).

Specifically, the Notice alleged that following the November 2007 release, Respondent installed a stopple and “hot tap” on the pipeline around 6:00 p.m. on November 13 to facilitate flaring, approximately 24 hours after the ammonia release was first discovered. The Notice further alleged that HCFR had expressed concern about the excessive amount of time it took Respondent to bring in personnel to perform this operation and about the reluctance of Respondent’s own personnel to perform the work. In summary, the Notice alleged that TPC’s emergency response actions demonstrated that the company failed to provide a “prompt and effective” response to the emergency by having the necessary personnel and equipment “available as needed at the scene of a pipeline emergency,” and by coordinating with local first responders “preplanned and actual responses during an emergency, including additional precautions for an emergency involving . . . a highly volatile liquid” such as anhydrous ammonia.

In its Response, TPC denied the allegation by referring to its comments to Item 9. In summary, the company disagreed that the actions it had taken following the November 2007 release demonstrated it had inadequate emergency response procedures. As noted above, Respondent explained that while the company could have repaired the leak much sooner than it did, HCFR would not allow TPC to enter the site until the pipeline had reached zero pressure.²³ Respondent further explained that HCSO had declared the site a crime scene, so TPC was not permitted access to the site until police had completed their investigation.²⁴ The “unified command

²³ Response at 7.

²⁴ *Id.*

structure,” according to Respondent, “directly prevented TBPL from making any attempt to limit or minimize the volume of ammonia that would eventually escape from the damaged section of pipeline.”²⁵ Respondent pointed out that it had two people on the south side and two on the north side of the bridge to help. The company concluded that its personnel were acting as promptly as possible, given the instructions it received from HCFR and HCSO and the congested traffic near the bridge.

At the hearing, Respondent again referred to its comments made to Item 9, and in its Brief, Respondent combined its comments for Items 9, 10, 11, and 12. The company argued that it promptly responded to the release immediately after receiving notice, kept its employees on scene for the duration of the event, and worked with HCFR to contain the leak. For example, Respondent’s on-duty operator first received a call about the release at 5:40 p.m. and immediately shut down the entire pipeline system and notified two managers of the event. The pipeline was fully shut down by 5:50 p.m., and TPC employees were directed to the scene of the release. On their way, the employees closed isolation valves on both the north and south side of the Alafia River bridge where the release occurred. Within approximately one hour of receiving notice of the release, the company had closed the isolation valves on either side of the leak. Check valves on either side further isolated the leak area.

Respondent indicated that a company manager had remained at TPC headquarters to help organize the repair of the pipeline and to consult with HCFR or HCSO, if necessary. Respondent also had contractors on scene to do work as needed. On November 13, 2007, the day following the release, Respondent informed HCFR that it had determined there were 21 tons of product between the two isolation valves on either side of the leak and 4.9 tons between the two check valves, but the company was unable to determine how long it would take to “blow down” the pressure in the pipe because its employees were not allowed access to the site to evaluate the size and shape of the hole or to determine whether the check valves had, in fact, closed. This information, Respondent claimed, was necessary to make a reasonable estimate of the amount of ammonia that remained between the valves.

Respondent indicated further that it had participated with HCFR and HCSO in the decision to place a stopple on the pipeline and to let the pipeline blow down to zero pressure before repairing it. Respondent then installed a stopple after flying in a senior technician from Texas to verify the alignment for the final drilling. The pressure in the pipeline was completely blown down by the morning of November 14, 2007, at which point the company replaced the damaged section of pipe. Respondent also indicated that it had made extensive efforts to remedy any deficiencies in its emergency response procedures following the November 2007 release.

Section 195.402(a) requires that Respondent “prepare and follow . . . a manual of written procedures for . . . handling abnormal operations and emergencies.” As noted above, §§ 195.402(e)(2), (e)(3), and (e)(7) specify some of the emergency measures that must be included in an operator’s manual of written procedures. I have reviewed the record to determine whether Respondent had in fact prepared written procedures that complied with § 195.402 (e)(2), (e)(3), and (e)(7) as of the date of the inspection.

²⁵ Response at 8.

Section 195.402(e)(2) requires that Respondent have written procedures for “[p]rompt and effective response to a notice of each type emergency, including fire or explosion occurring near or directly involving a pipeline facility, accidental release of hazardous liquid or carbon dioxide from a pipeline facility, operational failure causing a hazardous condition, and natural disaster affecting pipeline facilities.” Respondent’s 2006 O&M Manual governed the company’s emergency response operations at the time of the November 2007 release.²⁶ Section 6 of the Manual provided general directions for a pipeline employee receiving a report of an emergency, including instructions on how to record certain information, how to determine the location and type of an emergency, and how to notify the “On-Call person.” The procedure further specified that the company’s Operation Control Center would “shut down the pipeline system in a manner to minimize the pressure in the pipeline (at the response location) and to reduce the amount of product that is released.” The procedure also specified that someone must “[t]ake life saving actions as necessary, including, but not limited to, evacuation, road blocks and traffic control.”

Section 6 is less than two pages in length and is written in a manner that provides only the most rudimentary guidance for company personnel attempting to respond to, or train for, an actual emergency. The procedures fail to cover with specificity the actions necessary to respond to a release, as evidenced by the actions actually taken by the company in response to the November 2007 incident. For example, the procedures do not specify where personnel would be positioned during an emergency; how the company would coordinate with HCFR and HCSO; which valves should be closed to isolate the pipeline; the location of such valves; the methods available for minimizing the release of product or repairing the pipeline (such as use of a stopple); the circumstances under which such methods should be used; whether the company would contract for alignment when installing a stopple and whether that contractor would still be hired during an emergency if he had to be flown in from out of state. All of these and other actions were taken by TPC in response to the November 2007 release, yet none were specified in sufficient detail in its procedures that the company would be able to provide a prompt and effective response to an emergency.

Section 195.402(e)(3) specifies that the written procedures must provide for “[h]aving personnel, equipment, instruments, tools, and material available as needed at the scene of an emergency.” Section 6 of Respondent’s procedures indicate that someone must “call for assistance to get appropriate work/repair and leak detection equipment dispatched to [the] site,” but fails to identify the phone numbers to be called or the persons responsible for providing such assistance. More importantly, the procedure fails to explain what “appropriate work/repair . . . equipment” would be needed, where it would be located, and who would be responsible for relocating the equipment to the site of the emergency and using it. Also absent from the procedure is any direction about maintaining personnel at the scene of an emergency, and what materials or tools must be there.

Section 195.402(e)(7) specifies that the written procedures must provide for “[n]otifying fire, police, and other appropriate public officials of hazardous liquid or carbon dioxide pipeline emergencies and coordinating with them preplanned and actual responses during an emergency,

²⁶ Response, Exhibit 4 at 43.

including additional precautions necessary for an emergency involving a pipeline system transporting a highly volatile liquid.” Section 6 of Respondent’s procedure specifies that someone must “[n]otify the proper authorities,” but fails to identify who the proper authorities are. Markedly absent from the procedure is a contact list for the local fire, police, and other public emergency agencies. The procedure also lacks any provisions specifying how the operator is supposed to coordinate with fire and police during preplanned and actual emergency responses. In addition, there is no apparent attempt to specify additional precautions for emergencies involving anhydrous ammonia, other than a description of appropriate leak detection equipment.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(e) by failing to prepare and follow written emergency response procedures that met the requirements of § 195.402(e)(2), (e)(3), and (e)(7).²⁷

Item 11: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(e)(8), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies

(e) *Emergencies.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety when an emergency condition occurs . . .

(8) In the case of failure of a pipeline system transporting a highly volatile liquid, use of appropriate instruments to assess the extent and coverage of the vapor cloud and determine the hazardous areas.

The Notice alleged that Respondent violated § 195.402(e)(8) by failing to prepare and follow written procedures for the use of appropriate instruments to assess the extent and coverage of a vapor cloud and to determine the hazardous area in the case of failure of a pipeline transporting an HVL such as anhydrous ammonia. Specifically, the Notice alleged that § 6.3.1(B) of Respondent’s O&M procedures did not provide for the use of appropriate instruments to assess the extent and coverage of the vapor cloud resulting from the release of anhydrous ammonia.

The Notice further alleged that the procedures allowed for the use of only a single leak-detection device and allowed for the determination of dispersion limits merely within the immediate vicinity of a release. The Notice also alleged that Respondent’s O&M procedures neither required, nor provided adequate means for, determining the potential cloud location, size, dispersion, and movement so that a monitoring plan with appropriate instruments could be developed and implemented to identify accurately the cloud coverage and hazardous areas. In

²⁷ Respondent strongly asserted that it had promptly and appropriately responded to the November 2007 release. I make no determination regarding the sufficiency of the actual response, because the allegation and finding are that the company failed to prepare and follow written emergency procedures that complied with § 195.402(e)(2), (e)(3), and (e)(7).

addition, the Notice alleged that the procedures failed to require the use of information such as terrain elevations, underground drainage systems, weather and wind information, spill volume, length of time since release, and expected duration of release to develop an adequate response plan, as well as failing to specify the number of available detection instruments and personnel reflective of the requirements of the plan.

In its Response, TPC referred to its comments responding to Item 9, but I find those comments unresponsive to the allegation that the company lacked written procedures for the use of appropriate instruments to assess the extent and coverage of a vapor cloud and for determining the size of the hazardous area. At the hearing, Respondent contended that it had instruments available to identify the extent and coverage of the vapor cloud, but representatives from the Florida Department of Environmental Protection had already begun monitoring the cloud so there was no need for Respondent to duplicate the agency's efforts. The company acknowledged, however, that its written procedures did not discuss the company's responsibilities where an entity other than Respondent was monitoring the vapor cloud.

In its Brief, Respondent combined its comments for Items 9, 10, 11, and 12, and contended that immediately upon learning of the leak, the company implemented certain emergency procedures outlined in its O&M Manual. Respondent pointed to no evidence, however, that such procedures included a requirement to use appropriate instruments to assess the extent and coverage of a vapor cloud and to determine the hazardous area in accordance with § 195.402(e)(8). Respondent indicated that it had revised the relevant O&M procedures to provide a method of determining the concentration of anhydrous ammonia in the atmosphere and the limits of the dispersion of vapor cloud.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(e)(8) by failing to prepare and follow a manual of written procedures for the use of appropriate instruments to assess the extent and coverage of vapor cloud and to determine the hazardous area in the event of a pipeline failure.

Item 12: The Notice alleged that Respondent violated 49 C.F.R. § 195.403 as follows:

A. The Notice alleged that Respondent violated § 195.403(a), which states:

§ 195.403 Emergency response training.

(a) Each operator shall establish and conduct a continuing training program to instruct emergency response personnel to:

(1) Carry out the emergency procedures established under 195.402 that relate to their assignments;

(2) Know the characteristics and hazards of the hazardous liquids or carbon dioxide transported, including, in case of flammable HVL, flammability of mixtures with air, odorless vapors, and water reactions . . .

(5) Learn the potential causes, types, sizes, and consequences of fire and the appropriate use of portable fire extinguishers and other on-site fire control equipment, involving, where feasible, a simulated pipeline emergency condition.

The Notice alleged that Respondent violated § 195.403(a) by failing to establish and conduct a continuing training program to instruct emergency response personnel to: carry out the company's emergency procedures (subsection (a)(1)); know the characteristics and hazards of the hazardous liquids transported (subsection (a)(2)); and learn the potential causes, types, sizes, and consequences of fire, involving, where feasible, a simulated pipeline emergency condition (subsection (a)(5)). Specifically, the Notice alleged that Respondent's O&M procedures failed to specify the frequency with which personnel were required to review emergency response procedures, failed to include instructions for knowing the characteristics and hazards of anhydrous ammonia, and failed to require, where feasible, company personnel to learn the use of fire control equipment in a simulated pipeline emergency condition. The Notice further noted that although anhydrous ammonia is not itself considered flammable, Respondent stored flammable substances such as gasoline and propane at pump stations, where their accidental ignition could result in a pipeline emergency condition.

In its Response, TPC did not contest this allegation and explained that it had revised its procedures to address the emergency response training requirements of § 195.403(a). In its Brief, Respondent combined its comments for Items 9, 10, 11, and 12, but did not contest the allegation by contending or presenting documentation that it had established and conducted a compliant continuing training program for emergency response.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.403(a) by failing to establish and conduct a continuing training program that specified the frequency with which personnel were required to review emergency response procedures, that included instructions for knowing the characteristics and hazards of anhydrous ammonia, and that required, where feasible, company personnel to learn the use of fire control equipment in a simulated pipeline emergency condition.

B. The Notice alleged that Respondent violated 49 C.F.R. § 195.403(b), which states:

§ 195.403 Emergency response training.

- (a)
- (b) At the intervals not exceeding 15 months, but at least once each calendar year, each operator shall:
 - (1) Review with personnel their performance in meeting the objectives of the emergency response training program set forth in paragraph (a) of this section; and
 - (2) Make appropriate changes to the emergency response training program as necessary to ensure that it is effective.

The Notice alleged that Respondent violated § 195.403(b) by failing to review with TPC personnel their performance in meeting the objectives of the company's emergency response training program, and by failing to make appropriate changes to the program at intervals not exceeding 15 months, but at least once each calendar year. Specifically, the Notice alleged that Respondent's procedures did not require performance reviews at the required intervals and did not convey the performance items to be reviewed.

In its Response, TPC did not contest this allegation and explained that it had revised its procedures to address the emergency response training requirements of § 195.403. In its Brief, Respondent combined its comments for Items 9, 10, 11, and 12, but did not contest the allegation by contending or presenting documentation that it had reviewed with TPC personnel their performance or made appropriate changes to the program at the required intervals.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.403(b) by failing to review with TPC personnel their performance in meeting the objectives of the company's emergency response training program, and to make appropriate changes to the program at intervals not exceeding 15 months, but at least once each calendar year.

C. The Notice alleged that Respondent violated 49 C.F.R. § 195.403(c), which states:

§ 195.403 Emergency response training.

(a)

(c) Each operator shall require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under 195.402 for which they are responsible to ensure compliance.

The Notice alleged that Respondent violated § 195.403(c) by failing to require and verify that TPC supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they were responsible to ensure compliance. Specifically, the Notice alleged that Respondent did not have procedures specifying how it would require and verify that supervisors maintain a thorough knowledge of the company's emergency response procedures.

In its Response, TPC did not contest this allegation and explained that it had revised its procedures to address the emergency response training requirements of § 195.403(c). In its Brief, Respondent combined its comments for Items 9, 10, 11, and 12, but did not contest the allegation by contending or presenting documentation that it had required and verified that supervisors maintain a thorough knowledge of the company's emergency response procedures. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.403(c) by failing to require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they were responsible to ensure compliance.

In summary, I find that Respondent violated 49 C.F.R. § 195.403(a), (b), and (c), by failing to establish and conduct an emergency response training program in accordance with the regulatory requirements discussed above.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations.

The Notice proposed a total civil penalty of \$398,000 for the violations of 49 C.F.R. §§ 195.505(b) (Item 5), 195.583(a) (Item 7), and 195.402(c)(12) (Item 9).

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require.

Item 5: The Notice proposed a civil penalty of \$43,000 for Respondent's violation of 49 C.F.R. § 195.505(b). As discussed above, I found that Respondent violated § 195.505(b) by failing to follow its written OQ program and to ensure through evaluation that an employee performing certain covered tasks was qualified.

Respondent requested that PHMSA eliminate or significantly reduce the penalty for Item 5 because of certain mitigating factors. The company explained that the employee in question had extensive experience with anhydrous ammonia, was qualified to perform other covered tasks, became qualified immediately upon learning of the issue without needing any additional training, and had not been responsible for any safety problems or pipeline incidents. Respondent contended further that the violation was a simple oversight that had no impact on safety, and that the company had taken actions to prevent such a violation from occurring in the future.

As discussed above, proper implementation of an OQ program ensures that employees performing work that affects pipeline integrity have been evaluated and can perform covered tasks safely and that they can recognize and react to unsafe and abnormal conditions that might arise. I find that Respondent's failure to qualify the ammonia operator in this case was not a "simple oversight," because the employee was inappropriately permitted to perform the covered tasks for at least an entire year. Fortunately, the individual was able to pass his qualification evaluation immediately upon Respondent's learning of the issue, which demonstrates that the individual possessed the necessary abilities and that safety probably was not compromised.

With regard to history of prior offenses, the record demonstrates that Respondent had previously been cited for other violations of the operator qualification regulations. In 2006, PHMSA issued a Final Order to Respondent finding more than ten separate violations of the OQ regulations

(§§ 195.505–195.509), and assessing civil penalties totaling \$71,500.²⁸ Respondent’s history of such prior offenses outweighs any reason to reduce the civil penalty based on the mitigating information submitted by Respondent, or any other assessment criteria. I also find the company is the culpable party, meaning that Respondent is the entity fully responsible for ensuring that TPC implements an effective OQ program.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$43,000 for its violation of 49 C.F.R. § 195.505(b).

Item 7: The Notice proposed a civil penalty of \$45,000 for Respondent’s violation of 49 C.F.R. § 195.583(a). As discussed above, I found that Respondent violated § 195.583(a) by failing to inspect the exposed pipe at the south end of the Licata Bridge for evidence of atmospheric corrosion at least once every three calendar years, but with intervals not exceeding 39 months.

Respondent requested that PHMSA eliminate or significantly reduce the penalty for Item 7 because the exposed pipe that experienced atmospheric corrosion was never operated in an unsafe manner. In particular, the company explained that immediately upon learning of the corroded pipe, the company calculated the remaining strength of the pipe based on the pit-depth measured at the corrosion.²⁹ The calculation revealed that the pipeline could be operated safely at pressures up to 767 pounds per square inch gauge (psig). Since the MOP of the pipeline was 594 psig, and the actual operating pressure was 180 psig, Respondent reasoned there was never an unsafe pressure condition on this pipeline, despite the missed inspections.

I acknowledge the record shows that the actual operating pressure of the line was 180 psig and that the atmospheric corrosion discovered during the PHMSA inspection did not yet pose an immediate threat to the integrity of the pipeline. The level of corrosion, however, indicated a maximum wall thickness loss of 56%, yet Respondent’s inspection records never indicated any deteriorated coating or atmospheric corrosion on the exposed pipe. Furthermore, the corroded pipe was located in a High Consequence Area (HCA).³⁰ Continued atmospheric corrosion, without remediation, poses an unacceptable risk to the public and environment, particularly in HCAs. Therefore, the nature, circumstances, and gravity of the violation support the proposed civil penalty.

Respondent also argued that immediately upon learning of the corroded pipe, TPC conducted an analysis of the pipe, replaced it soon thereafter, and established procedures for surveying its facilities for external corrosion in accordance with § 195.583(a). I have considered Respondent’s history of prior offenses and any purported good-faith attempt to comply with the pipeline safety regulations. The company’s replacement of the corroded pipe and its development of new corrosion inspection procedures following the OPS inspection were actions that any reasonable and prudent operator would take to come into compliance. They do not

²⁸ *In the Matter of Tampa Bay Pipeline Corp.*, Final Order, CPF No. 2-2005-6012, 2006 WL 4453900 (Dec. 1, 2006), *affirmed on reconsideration*, 2008 WL 902910 (Mar. 31, 2008).

²⁹ Response at 6; Brief at 4.

³⁰ HCAs include commercially navigable waterways, high population areas, and areas unusually sensitive to environmental damage. See 49 C.F.R. § 195.450.

constitute a good-faith effort to comply with the regulations *prior to* the discovery of the violation by PHMSA. Further, Respondent is the culpable party for this violation, meaning that the company is the entity fully responsible for following an adequate corrosion inspection program.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$45,000 for its violation of 49 C.F.R. § 195.583(a).

Item 9: The Notice proposed a civil penalty of \$310,000 for Respondent's violation of 49 C.F.R. § 195.402(c)(12). As discussed above, I found that Respondent violated § 195.402(c)(12) by failing to maintain liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that might respond to a hazardous liquid pipeline emergency and to acquaint local officials with the operator's ability in responding to a hazardous liquid pipeline emergency and its means of communication. Failure to maintain effective liaison can result in misunderstandings, erroneous expectations, and delayed communications and responses on the part of both the responding local officials and the pipeline operator.

In its Response, TPC argued that no civil penalty should be assessed because: (1) the release event was caused by the intentional criminal act of a juvenile; (2) the company made a good-faith effort, both before and after the November 2007 release, to comply with the regulations; and (3) the fines would affect Respondent's ability to continue doing business. I will respond to each of these arguments separately.

With regard to Respondent's first contention, the company argued that the leak was not an accident, but, rather, the result of an intentional criminal act. The company contended that under Florida law, "[e]ven though one's negligence may be a cause in fact of another's loss, he will not be liable if an independent, intervening and unforeseeable criminal act also causes the loss."³¹ Respondent requested that PHMSA take into account the criminal nature of the event that caused the pipeline release in this matter, an event over which Respondent had no control.

In response, I reject the notion that the criminal acts of the juvenile have any bearing on Respondent's violation of § 195.402(c)(12) or the proposed civil penalty for Item 9. Regardless of the cause of the pipeline failure, Respondent was required to have in place certain emergency planning programs to enable a safe, prompt, and coordinated response. The criminal acts in no way caused or mitigated Respondent's violation of § 195.402(c)(12) for failing to establish and maintain an acceptable liaison program. This violation occurred well before the release event took place on November 12, 2007.

With regard to Respondent's second contention, the company argued that it had made a good-faith effort to comply with § 195.402(c)(12), both prior to and after the November 2007 leak. These interactions have been discussed in detail above and I have found that they did not

³¹ Response at 10 (citations omitted).

constitute an adequate liaison program. In fact, these contacts were noticeably lacking in the sort of regularity, substance, and documentation normally found in a liaison program under § 195.402(c)(12).

Respondent argued further that the company had demonstrated good faith by its history of successfully containing anhydrous ammonia leaks without injury to the public and with minimal (or no) environmental damage. On the contrary, it is difficult to comprehend why, given the strikingly similar accident that TPC had suffered only four years prior to this incident, the company had failed to take more aggressive action to establish and maintain an appropriate liaison program with the same local fire and police agencies involved in responding to the 2003 Release. I find that Respondent's actions prior to the November 2007 release do not constitute a good-faith attempt to comply with § 195.402(c)(12) that would warrant any reduction in the proposed penalty.

Respondent also argued that it demonstrated good faith by hiring a contractor to assist in compliance with all PHMSA pipeline safety regulations. Respondent submitted evidence of the costs for such work by the contractor.³² Such evidence, however, does not indicate that the work done by the contractor was ever related to compliance with the requirements at issue in this Item.

Respondent further argued that it had demonstrated good faith by responding promptly to the November 2007 release, by making improvement to its emergency response procedures, and by reimbursing local agencies for their response activities. Again, I find that such actions, particularly the company's emergency response and subsequent corrective actions, are ones that would be expected of any prudent operator and would not constitute a reason to reduce the civil penalty for a violation that had already been committed.

With regard to Respondent's third general contention, the company argued that payment of the proposed penalty would "adversely affect the financial condition" of the company.³³ PHMSA has instructed Respondent in a previous enforcement matter that asserting a claim of financial hardship requires the company to submit "accurate and reliable information on the financial condition" of the company.³⁴ Specifically, Respondent was informed that the company must provide "the most recent audited financial statement for [the company], or its parent corporation, or other affiliated entity upon which Tampa Bay relies for financing."³⁵ Respondent has been warned that failure to provide such documentation would be grounds for denial of such a claim. Since Respondent has again asserted this argument without providing any supporting documentation, I find no basis for reducing or eliminating the proposed penalty on grounds of financial hardship.

³² Brief at 7, 8.

³³ Response at 11.

³⁴ *In the Matter of Tampa Bay Pipeline Corp.*, Decision on Reconsideration, CPF No. 2-2005-6012, 2008 WL 902910, at 2 (Mar. 31, 2008).

³⁵ As explained in the agency's decision in that case, PHMSA advised Respondent of this requirement by letters dated January 26, 2007, and February 15, 2007.

Finally, Respondent noted that two employees of HCFR had “personal knowledge regarding TBPL’s responsiveness following the criminal attack upon the pipeline” and argued that “PHMSA must interview them before PHMSA can decide if fines are warranted against TBPL.”³⁶ The two individuals in question were available by phone at the hearing, but Respondent did not request their testimony. Moreover, the company provided no proffer of the evidence that could be provided by these witnesses, nor did it make any showing that TPC would be prejudiced by their failure to be interviewed. I find that there is sufficient evidence contained in the record to determine whether respondent violated § 192.402(c)(12), and, under the assessment criteria, to determine what an appropriate civil penalty is. Therefore, I find it is not necessary for PHMSA to separately interview these two witnesses before assessing a civil penalty.

I find that the nature, circumstances, and gravity of the violation support the proposed civil penalty for Item 9. In particular, the fact that Respondent had experienced a similar release in 2003 yet still failed to establish and maintain an acceptable liaison program with the same local response organizations aggravates the circumstances of the violation. Furthermore, TPC’s non-compliance posed a threat to public safety and the environment because the company failed to coordinate emergency response planning in an HCA. Respondent is the culpable party, meaning that the company is the entity responsible for establishing and maintaining an effective liaison program. Neither the company’s history of prior offenses nor its efforts following the November 2007 release warrant reduction of the penalty.

Accordingly, I assess Respondent a civil penalty of \$310,000 for its violation of 49 C.F.R. § 195.402(c)(12).

In summary, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of **\$398,000**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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 \$398,000 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. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

³⁶ Response at 2.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to the violations of 49 C.F.R. §§ 195.404(a)(3) (Item 2), 195.440(a) (Item 3), 195.440(c) (Item 4), 195.402(c)(12) (Item 9), 195.402(e)(2), (e)(3), and (e)(7) (Item 10), 195.402(e)(8) (Item 11), and 195.403 (Items 12A-C).

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids by pipeline or who owns or operates a hazardous liquid pipeline facility is required to comply with the applicable safety standards established under chapter 601.

In its Response, TPC contended that it had “already corrected the items which are the subject of the Proposed Compliance Order.”³⁷

With respect to Item 2, Respondent contended that it had satisfied this requirement through procedural revisions submitted to OPS staff. After a review of the record, I find that the proposed compliance terms associated with Item 2 have been satisfied. Therefore these terms are not included in the Compliance Order.

With respect to Item 3, Respondent contended that it had satisfied this requirement by revising its Public Awareness Plan. The record does not demonstrate, however, that Respondent complied with all the proposed compliance terms associated with Item 3. In particular, there is no record that Respondent provided each emergency responder with the company’s baseline message.

With respect to Item 4, Respondent contended that it had satisfied this requirement by revising its Public Awareness Plan. The record does not demonstrate, however, that Respondent complied with all the proposed compliance terms associated with Item 4. In particular, Respondent had not adequately identified the “Affected Public” by including the various audiences listed in § 3.1 of API RP 1162. Respondent also had not submitted documentation of “Affected Public” addresses or any record of having provided the “Affected Public” with the company’s baseline message.

With respect to Items 9, 10, and 12, Respondent contended that it had satisfied the liaison requirements by revising its procedures, and that such revisions had been approved by OPS staff. The record does not demonstrate, however, that Respondent has prepared written procedures for a liaison program or emergency response and training procedures that satisfy the proposed compliance terms, or that OPS staff has approved such revisions.³⁸

With respect to Item 11, Respondent contended that it had satisfied the emergency response requirements by revising its procedures to provide the method for determining the concentration of anhydrous ammonia in the atmosphere and the limits of the vapor cloud dispersion in the

³⁷ Response at 1.

³⁸ Although Respondent provided copies of emails that purported to show OPS had approved its revised procedures, the emails in question pertained to different procedures that had been revised pursuant to a different case (CPF No. 2-2008-6001M). I find nothing in the record demonstrating OPS has approved the procedures at issue in this Item.

immediate vicinity of a release. These actions, however, only partially comply with the proposed compliance terms because they do not indicate who will use such methods, how such persons will be trained, and when such methods will be used, among other things.

Accordingly, 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 § 195.440(a) (**Item 3**), Respondent must update as necessary the Emergency Responders List in its O&M Manual and provide each emergency responder with the company's baseline message pursuant to its Public Awareness Program. Document these actions upon completion.
2. With respect to the violation of § 195.440(c) (**Item 4**), Respondent must:
 - a. Identify the "Affected Public" and define a minimum communications coverage area distance. Document consideration of whether to implement the supplemental element of widening the coverage area beyond the 1/8th mile minimum distance on each side of the pipeline. Determine and document specific affected public stakeholder addresses; and
 - b. Provide the identified "Affected Public" with the company's baseline message. Document the method and dates of providing the "Affected Public" with the company's baseline message.
3. With respect to the violation of § 195.402(c)(12) (**Item 9**), Respondent must revise or prepare procedures for establishing and maintaining liaison that contain detailed information describing how such liaison will be maintained with all applicable emergency response organizations. The procedures must contain a list with names, addresses, and phone numbers of the applicable emergency response organizations in all the cities and counties in which Respondent operates a regulated pipeline, and must provide for the documentation of liaison activities.
4. With respect to the violation of § 195.402(e)(2), (e)(3), and (e)(7) (**Item 10**), Respondent must revise its procedures for emergency response to meet the requirements of § 195.402(e). Revision of the procedures must involve coordination with all applicable emergency response organizations in the cities and counties in which Respondent operates a regulated pipeline. Maintain documentation to demonstrate that Respondent coordinated, or provided an opportunity for coordination, with all applicable emergency response organizations through the revision of TPC's emergency procedures. The emergency procedures must contain a list of all supplies and equipment to be provided by Respondent for responding to a pipeline emergency—and specifically a pipeline emergency involving anhydrous ammonia. The procedures must also contain a list of all supplies and equipment expected to be provided by the appropriate emergency response organizations during

a pipeline emergency—and specifically a pipeline emergency involving anhydrous ammonia.

5. With respect to the violation of § 195.402(e)(8) (**Item 11**), Respondent must revise its emergency response procedures for using appropriate instruments to assess the extent and coverage of a vapor cloud and determine the hazardous areas in the event of a failure of a pipeline system transporting anhydrous ammonia. The procedures must provide for Respondent to perform the following activities upon short notice during a pipeline emergency involving the release of anhydrous ammonia (and convey how these provisions will be performed, i.e., who, what, how, when):
 - a. Assessment of the extent and coverage of a vapor cloud by use of a vapor dispersion model, including allowance for variable inputs relating to foreseeable weather and pipeline operating conditions; and
 - b. Estimation of the time duration of an anhydrous ammonia release, considering the length of affected pipeline, the initial shut-in pressure, and the size of the discharge points (leaks, flare points, etc.).
6. With respect to the violation of § 195.403 (**Item 12**), Respondent must revise its procedures to adequately address the emergency response training requirements of § 195.403. The revised procedures must contain specific requirements for conducting cooperative emergency drills and exercises with the appropriate emergency response organizations in all the counties and cities in which Respondent operates a regulated pipeline.
7. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and report the total cost as follows: (a) total cost associated with preparation and revision of plans and procedures, and performance of studies and analyses; and (b) total cost associated with physical changes, if any, to the pipeline infrastructure, including replacements and additions.
8. Complete each of the above items and submit documentation of compliance within 60 days of receipt of this Final Order. Documentation shall be submitted to the Director, Southern Region, Office of Pipeline Safety, PHMSA, 233 Peachtree Street, Suite 600, Atlanta, GA 30303.

WARNING ITEMS

With respect to Items 1, 6, and 8, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.402(a) (**Item 1**) – Respondent’s alleged failure to review its manual of written procedures during the 2006 calendar year, in order to make appropriate changes as necessary to ensure that the manual is effective.

49 C.F.R. § 195.573(a)(1) (**Item 6**) – Respondent’s alleged failure to conduct tests on cathodically protected pipelines during the 2006 calendar year, in order to determine whether such protection complied with § 195.571, even though the tests conducted in 2005 and 2007 were within 15 months of each other.

49 C.F.R. § 195.589(c) (**Item 8**) – Respondent’s alleged failure to maintain a record of each inspection conducted under § 195.579(c), in order to examine the internal surface of pipe removed from a pipeline for evidence of corrosion.

Although warning items do not necessitate a response, Respondent chose to respond to Items 1, 6, and 8. In response to Item 1, Respondent indicated that the company had reviewed its manual of written procedures in 2006, as evidenced by the revision date of May 4, 2006, on its O&M Manual. In addition, Respondent produced emails from 2006 recording changes that had been made to such procedures. Respondent acknowledged, however, that it had not officially documented its 2006 review of the O&M Manual. Since Item 1 is not an allegation of violation, but rather a warning, I do not determine whether the weight of evidence supports a finding of violation or withdrawal of the allegation. Rather I note that a failure to review written procedures during a calendar year would constitute a probable violation of § 195.402(a), and Respondent is hereby advised to maintain records demonstrating compliance in the future or the company may be subject to an enforcement action.

In Response to Item 6, Respondent explained that it had conducted its annual 2006 cathodic protection survey in December 2005, ten days before the regulation required that it be completed. Section 195.573(a)(1) is unambiguous in its requirement that cathodic protection surveys be performed each calendar year. Therefore, had Respondent conducted a cathodic protection survey in December 2005, the company was required to complete the next survey before the end of calendar year 2006. Respondent did not complete its next survey until early 2007. Respondent is hereby advised that in the event OPS finds a violation for this item in a subsequent inspection, Respondent may be subject to future enforcement action.

In Response to Item 8, Respondent acknowledged that it had not kept records of internal inspections, but contended that it had in fact inspected internal pipe surfaces for evidence of corrosion whenever a section of pipe had been removed. The company also kept coupons demonstrating only minimal evidence of corrosion. Section 195.589(c) is clear that Respondent must keep specific records, which the company acknowledged was not done. Respondent is hereby advised that in the event OPS finds a violation for this item in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent may petition the Associate Administrator for reconsideration of this Final Order. A petition must be sent to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, and a copy sent to the Chief Counsel, PHMSA, at the same address.

PHMSA is willing to accept petitions received no later than 20 days after receipt of service of the Final Order by the Respondent, provided such petitions contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon service of this document in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued