

FELLOWS LABRIOLA LLP

JUN 14 2010

*Peachtree Center
Suite 2300 South Tower
225 Peachtree Street, N.E.
Atlanta, Georgia 30303-1731*

Henry D. Fellows, Jr.
hfellows@fellab.com

*Telephone (404) 586-9200
Facsimile (404) 586-9201
www.fellab.com*

Writer's Direct Dial Number
(404) 586-2050

June 11, 2010

BY FEDERAL EXPRESS

Mr. Jeffrey D. Wiese
Associate Administrator for Pipeline Safety
Office of Pipeline Safety, PHMSA
U.S. Department of Transportation
1200 New Jersey Ave., S.E.
East Building, 2nd Floor
Washington, D.C. 20590

Re: **Tampa Pipeline Corporation, CPF 2-2008-6002--
Petition for Reconsideration and Stay**

Dear Mr. Wiese:

On behalf of Tampa Bay Pipeline Company ("TBPL") and its parent corporation, Tampa Pipeline Corporation ("TPC"), we are submitting a **limited** Petition for Reconsideration only as to Item 9 for TBPL's alleged violation of 49 C.F.R. § 195.402(c)(12). In addition, due to the cancer surgery of Mr. Glenn Howell, the General Manager of TBPL, we respectfully request an extension of time until September 1, 2010, for our clients to satisfy the requirements of the Compliance Order. For the reasons below, we request that PHMSA not impose a fine of \$310,000, or at least reduce the fine of \$310,000, against TBPL and its parent corporation, TPC.

At the outset, it should be noted that while the emergency response to the November, 2007 leak event could have been better, it was a success because there was neither any loss of life nor any injuries to the general public. TBPL's good faith actions both prior to and after the November, 2007 leak provide material reasons for PHMSA to eliminate or, at a minimum, reduce the proposed civil penalty.

Prior to the November, 2007 leak, representatives of TBPL communicated with various federal, state, and local officials regarding TBPL's pipeline system, everyday operations, and emergency response capabilities. Affidavit of Glenn Howell at ¶ 5; Affidavit of Bruce Helms at ¶ 6. The affidavits of Mr. G. Howell and Mr. Helms are attached hereto as Exhibits A and B, respectively.

At a minimum, TBPL interacted with federal, state, and local officials on the following dates:

- During 2003, TBPL, Hillsborough County Fire Rescue ("HCFR"), and Hillsborough County Sherriff's Office ("HCSO") successfully responded to a leak caused by a criminal trespasser near the Fish Hawk subdivision. The leak was quickly and efficiently remedied with no injuries and little (or no) impact to the environment. G. Howell Aff. at ¶ 6; Helms Aff. at ¶ 7.
- On May 30, 2003, Mr. G. Howell and Mr. Helms attended a meeting at the Hillsborough County Emergency Operations Center to discuss the emergency response to the incident at the Fish Hawk subdivision. G. Howell Aff. at ¶ 7; Helms Aff. at ¶ 9.
- On June 3, 2003, Mr. G. Howell met with Investigator Daniel Green of the Environmental Protection Agency and a U.S. DOT criminal investigator with regard to the Fish Hawk leak. G. Howell Aff. at ¶ 8.
- On June 4, 2003, Mr. Helms met with Mr. Robert Hopkins at the TBPL office and provided him with maps of the TBPL pipeline. At a later time, Mr. Helms traveled to the HCSO and spent four (4) hours going over the maps with Mr. Hopkins. Helms Aff. at ¶ 10.
- On April 5, 2004, the National Transportation Safety Board performed a survey of the Supervisory Control and Data Acquisition (SCADA) system utilized by TBPL. G. Howell Aff. at ¶ 9.
- On January 21, 2004, the United States Coast Guard performed a Port Security Assessment of Tampa Bay Pipeline. The Assessment was performed by LTJG Ken Morton, Pete Gassan, Lt. Bessie Howard, and Randy Rhodes. Mr. G. Howell was present for the survey and reviewed the written report. G. Howell Aff. at ¶ 10. The report contains sensitive security information but is being attached hereto as Ex. C because PHMSA is a part of the Department of Transportation.
- On September 29, 2006, representatives of TBPL, HCFR, and HCSO responded to reports of local residents smelling ammonia. Mr. Helms worked with HCFR and HCSO to determine that the smell was not caused by TBPL. Helms Aff. at ¶ 11.

These interactions serve to minimize TBPL's culpability because they show that TBPL was collaborating with federal, state, and local officials to prepare for emergencies, should they arise.

In addition to the interactions detailed above, there are other factors which evidence good faith efforts by TBPL to achieve compliance with federal, state, and local

rules and regulations. The following facts and details about the leak event and actions taken by TBPL both prior to and since the event provide material reasons for PHMSA to eliminate or reduce the sizable, burdensome civil penalty of \$310,000 proposed by PHMSA.

First, representatives of Hillsborough County and the State of Florida are well aware of the handling characteristics of anhydrous ammonia and have taken steps to plan and prepare for a catastrophic leak event. Notably, in June 1995, the Tampa Bay Local Emergency Planning Committee prepared an extensive report entitled *Innovative High Risk/High Priority Anhydrous Ammonia Study: Tampa Bay*. A copy of the Study is attached hereto as Ex. D.

Representatives of TBPL were interviewed as a part of the study and provided a map of the TBPL pipeline for inclusion in the report. See Study, pp. 205-206. The report is over 200 pages long and was the result of collaboration by many entities including local companies that work with anhydrous ammonia, first responders, fire departments, and police departments. Based on this extensive study, Hillsborough County first responders have a wealth of knowledge about anhydrous ammonia, the location of the TBPL pipeline, and how to respond to leak events.

Second, TBPL and HCFR have a history of successfully containing an anhydrous ammonia leak without injury to the public and with minimal (or no) environmental damage. In 2003, HCFR responded to a leak at a TBPL pipeline located near the Fish Hawk subdivision caused by a criminal trespasser. During that emergency response, HCFR and TBPL worked together to contain a release of 60 tons of anhydrous ammonia using the same procedures that were employed in the 2007 leak (i.e. secure and contain the area, spray the anhydrous ammonia with water, and repair the pipeline). HCFR and TBPL became acquainted with each other's capabilities and the emergency equipment each possessed. In fact, HCFR watched TBPL successfully place a stopple in the pipeline. After the Fish Hawk incident, HCFR and TBPL had some follow-up communications analyzing the emergency response procedure.

Third, since the Fish Hawk event, TBPL has continued to develop liaisons with the HCSO. During 2003 and 2005, TBPL provided a map of its pipeline system to HCSO and met with Mr. Hopkins to go over the maps. See Hearing Ex. No. 15; Helms Aff. at ¶ 10.

TBPL has also developed a relationship with various members of HCSO and the Polk County Sheriff's Office who provided off-duty security services prior to the November, 2007 criminal trespass. As a part of their service, these off-duty officers were taught about TBPL's pipeline and gained knowledge of how the pipeline worked.

Fourth, TBPL has made good faith efforts to comply with all PHMSA rules and regulations involving responding to emergencies. To ensure compliance, TBPL hired Southern Cathodic to assist in the creation of its emergency response plan, to map the pipeline system, and to develop an Operator Qualification Plan. Between June, 2005 and June, 2008, TBPL paid **\$1,370,333.21** to Southern Cathodic for its assistance. See

Hearing Ex. No. 7. The invoices submitted by Southern Cathodic unfortunately do not contain detailed descriptions of the services they provided.

However, it is evident from the following invoices, as supported by the testimony of the members of Tampa Pipeline, that Southern Cathodic played a major role in developing and implementing the Operator Qualification Plan, the Public Awareness Plan, and the procedures to be used in the case of an emergency:

- Southern Cathodic billed \$2,145.00 for work on the Public Awareness Plan/Program during July 2005. See Southern Cathodic Invoice No. 6851. Copies of the invoices are attached hereto as Ex. E.
- Southern Cathodic billed \$38,661.32 for various work including Public Awareness Plan/Program and GIS Database/Mapping during August 2005. See Southern Cathodic Invoice Nos. 6883 and 6884.
- Southern Cathodic billed \$46,881.45 for various work including GIS Database/Mapping during September 2005. See Southern Cathodic Invoice Nos. 6915 and 6918.
- Southern Cathodic billed \$25,825.78 for various work including GIS Database/Mapping and the Operator Qualification Plan during October 2005. See Southern Cathodic Invoice Nos. 6946 and 6944.
- Southern Cathodic billed \$12,310.00 for work including the Operator Qualification Plan Revision during November 2005. See Southern Cathodic Invoice No. 6963.
- Southern Cathodic billed \$9,640.00 for work including the Operator Qualification Manual Revision during January 2006. See Southern Cathodic Invoice No. 7011.
- Southern Cathodic billed \$8,187.50 for work on the Operator Qualification Plan during February 2006. See Southern Cathodic Invoice No. 7039.
- Southern Cathodic billed \$13,542.50 for work including the Operator Qualification Plan during March 2006. See Southern Cathodic Invoice No. 7065.
- Southern Cathodic billed \$7,600.00 for work including the Operator Qualification Plan during April 2006. See Southern Cathodic Invoice No. 7077.
- Southern Cathodic billed \$420.00 for work on a corrosion audit during April 2006. See Southern Cathodic Invoice No. 7082.

- Southern Cathodic billed \$15,407.60 for work including Operator Qualification during May 2006. See Southern Cathodic Invoice Nos. 7105 and 7114.
- Southern Cathodic billed \$6,524.24 for work including the Operator Qualification Plan during June 2006. See Southern Cathodic Invoice No. 7139.
- Southern Cathodic billed \$49,568.89 for work including a mock Operator Qualification audit during June 2007. See Southern Cathodic Invoice No. 7453.

Fifth, the facts show that TBPL promptly responded to the November, 2007 leak, had representatives on scene for the duration of the leak event, and worked with HCFR to contain the leak. Immediately after learning of the leak, TBPL implemented the emergency procedures outlined in its O&M Manual. Mr. Cowans, the operator on duty, received the first call at 5:40 p.m. See Hearing Ex. No. 18. He then immediately began shutting down the entire pipeline system and notified Mr. G. Howell and Mr. William ("Rick") Taylor of the event. The pipelines were fully shut down by 5:50 p.m.

At the same time, various TBPL employees began making their way to the scene of the criminal trespass. Mr. Taylor and Mr. Martin Goode separately approached the scene from the south side of the bridge. On their way, they closed the Isolation Valve No. 57. Mr. Helms and Mr. Floyd Howell separately approached the scene from the north side and closed Isolation Valve Nos. 53 and 54. Within approximately one (1) hour of receiving notice of the leak, TBPL had closed the Isolation Valves on either side of the leak and had successfully isolated the leak area. A map detailing the locations of the valves is attached hereto as Ex. F. The leak area was further isolated by Check Valve Nos. 55 and 56. These Check Valves immediately restricted flow within the pipeline.

After isolating the leak area, Mr. Taylor and/or Mr. Goode remained on the south side of the bridge and Mr. Helms and/or Mr. F. Howell remained on the north side of the bridge for the duration of the incident. Mr. G. Howell remained at TBPL's headquarters to help organize the repair of the pipeline and was available to consult with HCFR or HCSO at any time. Contractors who do work for TBPL were also on scene to assist if needed.

On November 13, 2007, the day following the criminal trespass, Mr. G. Howell spoke with representatives of HCFR and explained to them that there was 4.9 tons of anhydrous ammonia between the Check Valves on either side of the leak and 21 tons between Isolation Valve Nos. 54 and 57. TBPL was unable to determine the time it would take to blow down the pressure in the pipe because they were not allowed to access the site of the leak because it was a crime scene. Therefore, they did not know the size or shape of the hole, and they needed to verify that the Check Valves had successfully closed. All of this information was necessary for TBPL to make a

reasonable estimate of the amount of anhydrous ammonia located between the Check and Isolation Valves.

The Incident Command Center was established on the north side of the bridge. Mr. Helms was in communication with HCFR and HCSO, and participated in the decision to place a stopple and then let the pipeline blow down before repairing the pipeline. TBPL representatives were certified in placing stopples, and HCFR was fully aware of TBPL's ability to place a stopple because of their involvement in the Fish Hawk leak.¹ Based upon the joint decision made by TBPL in conjunction with officials in the Incident Command Center, TBPL proceeded with the stopple and flew in a senior technician from Texas to verify the alignment for the final drilling of the stopple because of the great media interest in the leak. Copies of certificates issued to TBPL representatives are attached hereto as Ex. G. TBPL used its own equipment and parts to place the stopple.

Any suggestion that HCFR could have repaired the pipeline or placed the stopple itself is totally without basis, and would have been dangerous to both the HCFR, other parties at the location and the general public. The TBPL representatives who placed the stopple have years of experience and have been trained and qualified pursuant to the federal regulations to operate a pipeline. Any attempts by HCFR or HCSO to repair the pipeline and/or place a stopple would be extremely dangerous to the public and all those responding to the emergency. There is no need for HCFR to learn how to place a stopple or to carry pipeline equipment on their trucks because TBPL is available to repair its own pipelines and can supply all of the needed equipment. In this case, both HCFR and TBPL responded appropriately to the leak (i.e. HCFR cordoned off the area and sprayed water cannons at the anhydrous ammonia plume and TBPL closed the Check and Isolation Values, placed a stopple, and later repaired the pipeline).

The pressure in the pipeline was completely blown down by the morning of November 14, 2007. Following the requisite criminal investigation, TBPL immediately replaced the damaged portion of the pipe.

Sixth, TBPL is a victim of the November, 2007 criminal trespass. This leak was the result of a criminal act by a juvenile who was prosecuted in Florida courts. See Hearing Ex. 1. Since the event, TBPL has paid \$168,212.69 to various local agencies and contractors for their assistance in responding to the leak and to residents who were displaced from their homes. See Hearing Ex. No. 8, 8A, and 27.

Seventh, since the November, 2007 incident, TBPL has made extensive efforts to remedy any deficiencies in its emergency response procedures and to ensure that it is ready to respond to any leak events that should occur in the future. The following activities that were discussed at the informal hearing illustrate TBPL's good faith efforts

¹ Notably, both Mr. Bill Bailey and Mr. Ron Rogers of HCFR were involved in the Fish Hawk incident at the November, 2007 incident.

to collaborate with HCFR and HCSO and to comply with all PHMSA rules and regulations.

- TBPL provided data about its anhydrous ammonia pipeline to the Hillsborough County GIS Department. This information was used to create an electronic pipeline map that can be used by Hillsborough County Emergency Operations Center. A copy of the map is attached hereto as Ex. H.
- TBPL participated in Hazmat training with a company that specializes in high-pressure releases from May 18, 2009 through May 20, 2009. G. Howell Aff. at ¶ 12.
- TBPL is working to schedule a joint training exercise with representatives of HCFR. See Hearing Ex. No. 36.
- TBPL has revised its O&M Manual to bring it into compliance with 49 CFR §§ 195.402(c)(12), 195.402(e)(2, 3, 7, and 8), and 195.403. These changes were approved by Mr. Rea. See Hearing Ex. Nos. 5 and 28-32.
- TBPL has revised § 6.3.1B of its O&M Manual to provide the method for determining the concentration of anhydrous ammonia in the atmosphere and the limits of the dispersion of the vapor cloud in the immediate vicinity of the release using both ALOHA software and portable ammonia leak detection devices. See Hearing Ex. No. 5, pp. 54-55.
- TBPL is working with an outside consultant to develop a computer program that will be capable of estimating the duration of a leak event.
- Prior to the leak event (and continuing to the present), TBPL had over \$1,000,000.00 in highly specialized equipment that could be used in the event of an emergency. See Hearing Ex. 6. Pictures of some of this equipment are attached hereto as Ex. I. TBPL representatives are specially trained in the use of this equipment. See Hearing Ex. No. 6. Since the leak event, TBPL has provided HCFR with a list of equipment that is immediately available to be used if an emergency occurs.

While TBPL could have had better coordination with HCFR prior to the November, 2007 leak, the response should be considered a success since there were no injuries to the public and there was little (if any) damage to the environment.

TBPL has exhibited good faith in attempting to comply with all PHMSA rules and regulations and to establish an appropriate liaison with the HCFR. TBPL has already paid \$168,212.69 to various local agencies and contractors for their assistance in responding to the leak and to residents who were displaced from their homes. That is in addition to the larger amounts that TBPL has paid to Southern Cathodic Protection for compliance costs. Therefore, TBPL respectfully requests that PHMSA eliminate or,

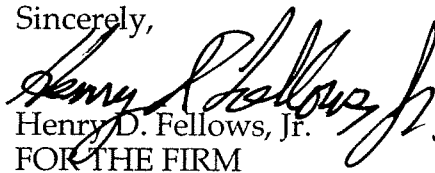
Mr. Jeffrey D. Wiese
June 11, 2010
Page 8 of 8

at a minimum, significantly reduce the proposed \$310,000 fine relating to the emergency response.

We have also attached to this limited Petition a letter from Mr. Robert Rose, the owner and president of TPC, addressed to you. We believe that the letter shows the good faith intentions of the owner of TPC to accept responsibility for its violations and to provide PHMSA with specific assurances that TPC and TBPL pledge to do everything reasonably possible not to violate PHMSA regulations in the future.

Thank you very much for your consideration of our Petition and the enclosed attachments.

Sincerely,



Henry D. Fellows, Jr.
FOR THE FIRM

cc. Mr. Robert Rose
Renita Bivins, Esq.
Ms. Linda Daugherty
Benjamin Fred, Esq.
Eugenia W. Iredale, Esq.