

July 7, 2022

VIA ELECTRONIC MAIL TO: matt.sheehy@tallgrassenergylp.com

Mr. Matthew Sheehy
President and Chief Executive Officer
Tallgrass Energy, LP
4200 W. 115th Street, Suite 350
Leawood, Kansas 66211

Re: CPF No. 3-2021-089-NOPV

Dear Mr. Sheehy:

Enclosed please find the Final Order issued in the above-referenced case to Tallgrass Pony Express Pipeline, LP, a subsidiary of Tallgrass Energy, LP. It makes findings of violation, assesses a reduced civil penalty of \$26,200, and specifies actions that need to be taken 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, Central Region, this enforcement action will be closed. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Gregory A. Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Ms. Crystal Heter, Chief Operating Officer, Tallgrass Energy, LP,
crystal.heter@tallgrassenergylp.com

Ms. Jennifer Eckels, Manager - Compliance, Tallgrass Energy, LP,
jennifer.eckels@tallgrassenergylp.com

CONFIRMATION OF RECEIPT REQUESTED

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

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In the Matter of)	
)	
Tallgrass Pony Express Pipeline, LLC,)	CPF No. 3-2021-089-NOPV
 a subsidiary of Tallgrass Energy, LP,)	
)	
Respondent.)	
)	

FINAL ORDER

From May 10 through August 13, 2021, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted a pipeline safety inspection of the facilities and records of Tallgrass Pony Express Pipeline, LLC, a subsidiary of Tallgrass Energy, LP,¹ (Tallgrass or Respondent) in Colorado, Wyoming, and Kansas. Tallgrass owns and operates the Pony Express System, which is 607.24 miles of pipeline that transports crude oil through various states, including Colorado, Kansas, Nebraska, and Wyoming. The system has tanks located at Buckingham, Pawnee, Sterling, and Grasslands, all within Colorado.²

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated November 30, 2021, 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 Tallgrass had violated 49 C.F.R. §§ 195.264(b)(1)(i) and (b)(1)(ii) and proposed assessing a civil penalty of \$59,400 for the alleged violation of § 195.264(b)(1)(i). The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Tallgrass Energy, LP, on its behalf of Tallgrass, responded to the Notice by letter dated December 30, 2021 (Response). The company did not contest the allegations of violation but and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

¹ Tallgrass Energy, LP Annual Report 2019, Exhibit 21.1, *available at* https://s1.q4cdn.com/607019075/files/doc_financials/2019/ar/Annual-Report-2019.pdf (last accessed June 2, 2022).

² Pipeline Safety Violation Report, at 1.

FINDINGS OF VIOLATION

In its Response, Respondent did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.264(b)(1)(i), which states in relevant part:

§ 195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.

(a)

(b) After October 2, 2000, compliance with paragraph (a) of this section requires the following for the aboveground breakout tanks specified:

(1) For tanks built to API Spec 12F, API Std 620, and others (such as API Std 650 (or its predecessor Standard 12C)), the installation of impoundment must be in accordance with the following sections of NFPA-30 (incorporated by reference, see § 195.3);

(i) Impoundment around a breakout tank must be installed in accordance with section 22.11.2; and

The Notice alleged that Respondent violated 49 C.F.R. § 195.264(b)(1)(i) by failing to satisfy the requirements of section 22.11.2 of NFPA-30 (2012 edition) regarding impoundment around the breakout tanks. Specifically, the Notice alleged that Tallgrass failed to subdivide the tanks at Pawnee, Grasslands, and Buckingham, which were all built to API Std 620 after October 2, 2000, and failed to have drainage channels or intermediate dikes installed as required by section 22.11.2.6 of NFPA-30 (2012 edition). Section 22.11.2.6 requires that “[e]ach diked area containing two or more tanks shall be subdivided, preferably by drainage channels or at least by intermediate dikes, in order to prevent minor spills from a tank from endangering adjacent tanks within the diked areas.”

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.264(b)(1)(i) by failing to satisfy the requirements of section 22.11.2 of NFPA-30 (2012 edition) regarding impoundment around the breakout tanks.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.264(b)(1)(ii), which states in relevant part:

§ 195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.

(a)

(b) After October 2, 2000, compliance with paragraph (a) of this section requires the following for the aboveground breakout tanks specified:

(1) For tanks built to API Spec 12F, API Std 620, and others (such as API Std 650 (or its predecessor Standard 12C)), the installation of impoundment must be in accordance with the following sections of NFPA-30 (incorporated by reference, see § 195.3);

- (i)
- (ii) Impoundment by drainage to a remote impounding area must be installed in accordance with section 22.11.1.

The Notice alleged that Respondent violated 49 C.F.R. § 195.264(b)(1)(ii) by failing to satisfy the requirements of section 22.11.1 of NFPA-30 (2012 edition) regarding drainage routes. Specifically, the Notice alleged that Tallgrass' tanks 5151, 5152, 5251, 5252, 5253, 5254, and 5255, which were all built to API Std 650 after October 2, 2000, and the as-built containment at Tallgrass' Sterling facility did not have an adequate drainage route toward the remote impounding area as required by sections 22.11.1 and 22.11.1.1 of NFPA-30 (2012 edition). Section 22.11.1 requires that "[w]here control of spills is provided by drainage to remote impounding area so that spilled liquid does not collect around tanks, the requirements of 22.11.1.1 through 22.11.1.4 shall apply." Section 22.11.1.1 further states that "[t]he drainage route shall have a slope of not less than 1 percent away from the tank for at least 50 ft (15 m) toward the impounding area."

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.264(b)(1)(ii) by failing to satisfy the requirements of section 22.11.1 of NFPA-30 (2012 edition) regarding drainage routes.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.³

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; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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. The Notice proposed a total civil penalty of \$59,400 for the Item 1.

Item 1: The Notice proposed a civil penalty of \$59,400 for Respondent's violation of 49 C.F.R. § 195.264(b)(1)(ii) for failing to satisfy the requirements of section 22.11.1 of NFPA-30 (2012 edition) regarding drainage routes. In its Response, Tallgrass requested a reduction in penalty under the gravity factor. Tallgrass claimed that the proposed civil penalty incorrectly considered the tanks at the Grasslands and Buckingham facilities as being located in, or could affect, a high

³ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

consequence area (HCA). In support of its claim, Tallgrass provided its most recent Pony Express Pipeline facility HCA listings, in which neither the Grasslands nor Buckingham facility was listed or identified as being located in, or could affect, an HCA. Tallgrass also noted that PHMSA did not provide any evidence to support the assertion that these tanks were located within a HCA or could affect a HCA. As such, Tallgrass requested that PHMSA reduce the civil penalty under the gravity factor to “pipeline safety being minimally affected” by Respondent’s violation of § 195.264(b)(1)(ii).⁴ OPS Central Region evaluated Tallgrass’ Response and supported such a change under the gravity factor.⁵ I agree it is appropriate. Accordingly, based upon the foregoing, I assess Respondent a reduced civil penalty of \$26,200 for the violation of 49 C.F.R. § 195.264(b)(1)(ii).

In summary, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of **\$26,200**.

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. Payment may be made by sending a certified check or money order (containing the CPF Number for this case), made payable to “U.S. Department of Transportation,” to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMK-325), 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit payment to 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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$26,200 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 district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 2 in the Notice for violations of 49 C.F.R. §§ 195.264(b)(1)(i) and (b)(1)(ii), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. 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:

⁴ Response, at 2.

⁵ Region Recommendation, dated, February 28, 2022, at 1-2.

1. With respect to the violation of § 195.264(b)(1)(i) (**Item 1**), Respondent must:
 - a. Subdivide, either by drainage channels or at least by intermediate dikes at the Pawnee, Grasslands, and Buckingham facilities, in accordance with NFPA-30 (2012 edition), within 12 months of receipt of the Final Order.
 - b. Submit to the Director, Central Region, evidence of remediated locations to demonstrate compliance with NFPA-30 (2012 edition) and 195.264(b)(1)(i).

2. With respect to the violation of § 195.264(b)(1)(ii) (**Item 2**), Respondent must:
 - a. Provide adequate drainage routes and slope to a remote impounding area so that spilled liquid does not collect around tanks at the Sterling Facility, in accordance with NFPA-30 (2012 edition), within 12 months of receipt of the Final Order.
 - b. Submit to the Director, Central Region, evidence of remediated locations to demonstrate compliance with NFPA-30 (2012 edition) and 195.264(b)(1)(ii).

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

July 7, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued