

Robert L. Rose
President
Tampa Pipeline Corporation
P.O. Box 261628
Tampa, Florida 33685-1628

Re: CPF No. 25607

Dear Mr. Rose:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$4,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT ON TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 200590

In the Matter of)
)
Tampa Bay Pipeline Company)
) CPF No. 25607
Respondent.)
_____)

FINAL ORDER

On April 17-19, 1995, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Tampa, Florida. As a result of the inspection, the Director, Southern Region, OPS, issued to Respondent, by letter dated September 6, 1995, a Notice of Probable Violation, Proposed Civil Penalty and Warning (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed violations of 49 C.F.R. Parts 195 and 199, and proposed assessing civil penalties of \$4,000 for the alleged violation of § 195.416(i), \$3,000 for the alleged violation of § 195.415(c) and \$1,000 for the alleged violation of § 199.7(a). The Notice also warned Respondent to take appropriate corrective action.

Respondent responded to the Notice by letters dated October 3, 1995, December 13, 1995, and April 2, 1996 (Response). In its October Response, Respondent offered information to explain the allegations and proposed compromise of the case. This compromise was rejected. In its December Response, Respondent again proposed compromise, which was again rejected. On March 5, 1996, Respondent requested a telephonic hearing. By facsimile dated February 20, 1998, Respondent withdrew its request for a hearing.

FINDINGS OF VIOLATION

Item 9 of the Notice alleged that Respondent violated 49 C.F.R. § 195.416(i). This provision requires that with respect to each component in its pipeline system that is exposed to the atmosphere, each operator shall clean, coat with material

suitable for the prevention of atmospheric corrosion, and maintain this protection for each component. The Notice alleged that four injection/receiving stations had developed signs of atmospheric corrosion, as seen from light to heavy pitting.

Respondent agreed that some painting was needed. Respondent indicated that it was in the process of painting and would be completed soon. Respondent further stated as an explanation that certain structural work was being done and access to certain areas was restricted. Accordingly, I find that Respondent had violated 49 C.F.R. § 195.416(i).

Item 10 of the Notice alleged that Respondent violated 49 C.F.R. § 195.416(c). This provision requires that each operator shall, at intervals not exceeding 2-1/2 months, but at least six times each calendar year, inspect each of its cathodic protection rectifiers. The Notice alleged that Respondent's records indicated that all three rectifiers in the system were inspected only four times in 1994.

Respondent submitted additional records which indicated it had only missed one inspection for calendar year 1994. This submission reduces the severity of the violation; however, it does not negate the violation. Accordingly, I find that Respondent violated 49 C.F.R. § 195.416(c).

Item 12 of the Notice alleged that Respondent violated 49 C.F.R. § 199.7(a). This provision requires that each operator maintain and follow a written anti-drug plan that conforms to the requirements of part 199 and the DOT procedures, part 40. The Notice alleged that Respondent's anti-drug plan did not clearly identify those portions which are required by Parts 40 and 199.

Respondent did not contest the allegation and subsequently submitted a revised anti-drug plan. Accordingly, I find that Respondent violated 49 C.F.R. § 199.7(a).

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 a civil penalty not to exceed \$25,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations. The Notice proposed a penalty of \$8,000.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

In its April 2, 1996 Response, Respondent stated, with respect to Item 9, that it has completed or is near completion of painting. Respondent further stated that it has started a continuous rotation painting program to ensure all facilities are free of atmospheric corrosion.

Failing to properly maintain a pipeline system that is exposed to the atmosphere could have very serious consequences to the operation of the pipeline and to the surrounding environment. The OPS inspector noted that the atmospheric corrosion was so severe that it contained pitting and large slabs of corrosion product flaking off the pipe. This was not just a matter of needing painting. However, Respondent has shown good faith in its efforts to achieve compliance by acting quickly to address the corrosion and institute a program to prevent further occurrences of atmospheric corrosion. Accordingly, having reviewed the record for Item 9 and considered the assessment criteria, I assess Respondent a civil penalty of \$3,500.

With respect to Items 10 and 12, Respondent acted quickly to address and rectify the issues. Respondent also submitted evidence that lowered the gravity of the violations. Accordingly, having reviewed the record for these items, and considered the assessment criteria, I assess a civil penalty for Item 10 of \$500 and do not assess a civil penalty for Item 12.

Payment of the civil penalty must be made within 20 days of service. Payment can be made by sending a certified check or money order (containing the CPF Number for this case) payable to " U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this **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. After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel** (DCC-1), Research and Special Programs Administration, Room 8405, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590-0001.

Questions concerning wire transfers should be directed to: **Valeria Dungee**, Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125; **(405) 954-4719**.

Failure to pay the \$4,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 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 an United States District Court.

WARNING ITEMS

The Notice did not propose any penalty with respect to Notice Items 1-8 and 11. Therefore, Respondent is warned that if it should not take appropriate corrective action and a violation come to the attention of OPS in a subsequent inspection, enforcement action will be taken.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. If you pay the penalty, the case closes automatically and you waive the right to petition for reconsideration. The filing of the petition automatically stays the payment of any civil penalty assessed. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The terms and conditions of this Final Order are effective upon receipt.

/s/ Richard B. Felder

Richard B. Felder
Associate Administrator for Pipeline Safety

Date Issued: 04/28/98