

March 7, 2018

Mr. Kenneth W. Grubb
Chief Operating Officer
Tennessee Gas Pipeline Company, LLC
1001 Louisiana Street
Houston, TX 77002

Re: CPF No. 1-2016-1003

Dear Mr. Grubb:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$11,500, and specifies actions that need to be taken by Tennessee Gas Pipeline Company, LLC 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, Eastern 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,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Director, Eastern Region, Office of Pipeline Safety, PHMSA
Ms. Jessica Toll, Assistant General Counsel, Kinder Morgan, Inc.

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)	
)	
)	
Tennessee Gas Pipeline Company, LLC,)	CPF No. 1-2016-1003
a subsidiary of Kinder Morgan, Inc.,)	
)	
Respondent.)	
)	

FINAL ORDER

On July 20-24 2015, 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 Tennessee Gas Pipeline Company, LLC (TGP or Respondent) in Houston, Texas. TGP, a subsidiary of Kinder Morgan, Inc., operates an 11,900-mile, natural gas pipeline system that runs from the Texas and Louisiana coast through Arkansas, Mississippi, Alabama, Tennessee, Kentucky, Ohio, and Pennsylvania and delivers natural gas to West Virginia, New Jersey, New York, and New England.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated February 10, 2016, 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 TGP had violated 49 C.F.R. § 192.921, and proposed assessing a civil penalty of \$11,500 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

TGP responded to the Notice by letter dated March 3, 2016 (Response). TGP contested the allegation of violation and requested a hearing. A hearing was subsequently held on November 14, 2016, at the OPS Eastern Region’s office in West Trenton, New Jersey, with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel. After the hearing, Respondent provided a post-hearing statement for the record, by letter dated December 19, 2016 (Closing).

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192.921, as follows:

¹¹ See https://www.kindermorgan.com/pages/business/gas_pipelines/east/TGP/default.aspx (last accessed 1/18/18).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.921, which states:

§ 192.921 How is the baseline assessment to be conducted?

Time period. An operator must prioritize all the covered segments for assessment in accordance with § 192.917(c) and paragraph (b) of this section. An operator must assess at least 50% of the covered segments beginning with the highest risk segments, by December 17, 2007. An operator must complete the baseline assessment of all covered segments by December 17, 2012.

The Notice alleged that Respondent violated 49 C.F.R. § 192.921 by failing to perform a baseline assessment of all its “covered segments”² by December 17, 2012. Specifically, the Notice alleged that TGP has a 10-inch interconnect pipe with another operator’s pipeline at 749 Meriden-Waterbury Turnpike, Rt. 322 Southington, Connecticut. There is approximately 10 feet of pipe from the tee at the transmission line up through the 90-degree elbow and isolation valve to the interconnect point. TGP designated the area as a High Consequence Area (HCA) in 2004. During the July 20 - 24, 2015 inspection and in follow-up correspondence, TGP could not provide any documentation or evidence to show that it had performed a baseline assessment or any integrity assessments on the interconnect piping described above. In an email dated, August 11, 2015, TGP stated: “We have not performed an assessment on the below grade portion of the interconnect to date (approximately 4.5 feet of buried pipe). We are scheduling a direct assessment to be performed this year (2015), and I will provide you the date of the assessment once known.”³ However, TGP informed OPS in its Response that it was contesting the allegation of violation.

In its pre-hearing brief and at the hearing, TGP stated that OPS had failed to meet its burden in supporting the allegation of violation. TGP contends that at the time PHMSA’s integrity management rule went into effect, “using the criteria of § 192.903(2), TGP had conservatively identified [a church] building as an “identified site” and thus an HCA.”⁴ However, TGP argues that the interconnect was in fact not located in an HCA because the church in question was not occupied by 20 or more persons on at least five days a week, for 10 weeks in any 12-month period.⁵ TGP presented a letter from the church, dated March 12, 2016, stating that the church “does not have a day care facility and in fact, has never had a day care facility. The church holds Sunday services for its congregation and uses the facility for other meetings as needed throughout the week.” At the hearing, TGP reported that in a follow-up call with the church, a church official stated that the typical meeting size was 5-10 people. Accordingly, TGP contends that there was no violation of law for failure to perform the assessment because the site was not an HCA, and there is no requirement to assess the site.”⁶

² The term “covered segment” is defined in 49 C.F.R. § 192.903 as “a segment of gas transmission pipeline located in a high consequence area,” i.e., locations where the potential consequences of a gas pipeline accident are higher than in other areas. *See* 49 C.F.R. § 192.903.

³ Pipeline Safety Violation Report, 1-2016-1003, at 5.

⁴ Pre-Hearing Brief of Tennessee Gas Pipeline Company, LLC, at 5.

⁵ 49 C.F.R. § 192.903

⁶ *Id.*

TGP presented hypothetical scenarios wherein a company or individual had a mistaken understanding of the law and therefore believed they had violated the law when they had not. For example, a company has not violated the law when the amount of pollution it emits exceeds a limit the company mistakenly believes to be in effect. A driver who makes a right turn she believes to be illegal has not violated the law when no law actually restricts right turns. Likewise, TGP stated that it could not have violated an obligation to perform a baseline assessment for a pipeline segment that is not actually located in an HCA, even if TGP once mistakenly believed the segment was in an HCA because it had made an incorrect assumption about the number of people that utilized the potential “identified site.”

In TGP’s Post Hearing Brief, TGP noted that at the hearing, OPS did not dispute TGP’s contention that the church in question did not meet the criteria for an “identified site” in 49 C.F.R. § 192.903. TGP disputed OPS’s position that TGP’s initial designation of the church as an identified site, whether accurate or not, rendered the church an identified site “as a matter of law.”⁷ TGP reasoned that “[i]f TGP can, by virtue of its mistaken designation in its own records, make this church into an ‘identified site’ regardless of the application of the regulatory definition, then the reverse must also be true. . . because . . . the Operator’s determination is absolute. Such a determination is absurd.”⁸

Finally, TGP argued that the allegation against it is moot because the parties agree that the pipeline segment is not in an HCA and therefore should not be subject to the integrity management regulations. TGP stated that OPS must withdraw the proposed civil penalty and compliance order.

In the Region Recommendation and Post-Hearing Legal Memorandum, OPS points out that TGP had not updated its HCA listings between its 2004 designation of the site as an HCA and the pipeline safety inspection in 2015. OPS further noted out that TGP was required to complete the baseline analysis of the site designated as an HCA by December 12, 2012. OPS argued that once an allegation of violation occurs, operators are not entitled to re-analyze each HCA designation in an attempt to defend itself against the allegation; operators are responsible for accurately identifying and updating HCAs located along their pipeline systems.

Next, OPS states that TGP mistakenly provides arguments that would be relevant to allegations of violation of 49 C.F.R. §§ 192.911 or 192.905, which state the criteria for identifying HCAs. OPS counters that it need not allege a violation of those provisions in order to allege an IMP violation. OPS stated: “If the operator’s IMP documents state that a segment is located within an HCA, the operator is obligated to conduct a baseline assessment . . . An operator cannot disregard this duty for several years, [then] redesignate the area as no longer being an HCA after violation of the duty, and claim to have never been out of compliance.”⁹

Although OPS maintains it has no duty to allege or prove that the church in question met the definition of an “identified site,” OPS notes that TGP provided no details to support its

⁷ Post-Hearing Brief of Tennessee Gas Pipeline Company, LLC, at 3.

⁸ *Id.*

⁹ Post-Hearing Legal Memorandum, Addendum to Eastern Region Post-Hearing Recommendation, at 4-5.

contention that the church was not an “identified site” in 2004, except to say that the church had never had a day care facility. Otherwise, the letter from the church only described church activities in 2016.

Finally, OPS takes issue with TGP’s claim that if an operator’s determination of an HCA “is absolute,” then the reverse must also be true, namely, that TGP cannot be held liable for failing to identify a site as an HCA.¹⁰ OPS reiterates that the legal requirements for designating “identified sites” and the legal requirements for performing a baseline assessment on those sites are distinct.

As stated above, 49 C.F.R. § 192.921 requires operators to perform a baseline assessment of all covered segments by December 17, 2012. In considering whether TGP performed a baseline assessment of all covered segments, as alleged by OPS, I am persuaded by OPS’ argument that the legal requirements for 49 C.F.R. §§ 192.911 and 192.903 are distinct from the legal requirements for 49 C.F.R. § 192.921. TGP designated the church as an identified site. It could have changed that designation, if appropriate, any time between 2004 and December 2012, but it did not. OPS need not prove that each relevant HCA correctly corresponds to a properly designated identified site each time it makes an allegation of an IMP violation.

Finally, I disagree with TGP’s characterization of its alleged erroneous designation of the church as an HCA as a “mistake of law,” and thus akin to the scenarios described above. TGP has not identified language within § 192.921 that it misinterpreted or was unaware of; it had no mistaken understanding about the legal standard. It is possible that TGP did not gather sufficient information about the church and the church’s use during its evaluation process in 2004. If anything, this would be a preventable “mistake of fact.” Nonetheless, TGP stated that it “*conservatively*” designated the church building as an “identified site” and thus an HCA.”¹¹ (emphasis added). TGP cannot disown its decision to “conservatively” identify a church as an “identified site” once a violation has been alleged.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 192.921 by failing to perform a baseline assessment of the interconnect in Southington, Connecticut segments by December 17, 2012.

This findings of violation will be considered a prior offense 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.¹² In determining the amount of a civil penalty under 49 U.S.C.

¹⁰ Post-Hearing Brief of Tennessee Gas Pipeline Company, LLC, at 3.

¹¹ *Id.*, at 5.

§ 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; 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. The Notice proposed a total civil penalty of \$11,500 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$11,500 for Respondent's violation of 49 C.F.R. § 192.921, for failing to perform a baseline assessment of all covered segments by December 17, 2012. TGP did not present any argument or provide any basis for reduction of the proposed civil penalty, per 49 C.F.R. § 190.225, in the event that PHMSA rejected its arguments related to site identification in 49 C.F.R. §§ 192.903 and 192.911. Therefore, I see no evidence or argument that justifies the reduction of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$11,500 for violation of 49 C.F.R. § 192.921.

In summary, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of **\$11,500**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such 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 \$11,500 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 Item 1 for violation of 49 C.F.R. § 192.921. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas 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:

¹² The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904, January 3, 2012, increased the civil penalty liability for violating a pipeline safety standard to \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.

With respect to the violation of § 192.921 (**Item 1**), Respondent must:

1. Conduct a review of all TGP's piping within 100 miles of Southington, Connecticut, to determine if any other sections of HCA pipe are lacking a baseline assessment. This analysis must be complete within 90 days receipt of the Final Order.
2. If any HCA pipe lacking a baseline assessment is identified in #1 above, then TGP must perform a baseline assessment, along with any needed remediation, within 240 days receipt of the Final Order.
3. TGP shall submit documentation of the review, results, and any remediation performed in Compliance Order Items 1 and 2 above, the PHMSA Eastern Region Director, within 365 days receipt of the Final Order.
4. It is requested (not mandated) that TGP maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order, and submit the total to PHMSA Eastern Region. 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 costs associated with replacements, additions, and other changes to pipeline infrastructure.

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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 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. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: 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. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they 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. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

March 7, 2018

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued