

May 31, 2019

Mr. Emmitte Haddox
President & Chief Executive Officer
Ergon, Inc.
P. O. Box 1639
Jackson, Mississippi 39215

Re: CPF No. 1-2018-5006

Dear Mr. Haddox:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Ergon Terminaling, Inc. It makes findings of violation, assesses a reduced civil penalty of \$108,500, and specifies actions that need to be taken by Ergon 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 effective upon the date of mailing, 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. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Mr. Joel Pastorek, President, Ergon Terminaling, Inc., 2829 Lakeland Drive, Jackson,
MS 39215
Mr. Steve Clark, CHMM, CPEA, Regional Compliance, Ergon Terminaling, 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)

Ergon Terminaling, Inc.,)
a subsidiary of Ergon, Inc.,)

Respondent.)

CPF No. 1-2018-5006

FINAL ORDER

From September 14 through September 18, 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 Ergon Terminaling, Inc. (Ergon or Respondent) in Magnolia, Ohio. Ergon, a subsidiary of Ergon, Inc., owns and leases pipeline and gathering systems to transport, store, and distribute crude oil and finished products.¹ Ergon's single pipeline transports crude oil approximately 38 miles throughout the states of Ohio and West Virginia.²

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated January 18, 2018, 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 Ergon had committed seven violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$134,200 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

After requesting and receiving three extensions of time to respond, as well as meeting informally with the Director, Ergon responded to the Notice by letter dated July 5, 2018 (Response). The company did not contest the allegations of violation but provided information concerning the violations and corrective actions it had taken and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

¹ Ergon, Inc., website, available at <https://ergon.com/transportation-terminaling> (lasted accessed April 22, 2019).

² Pipeline Safety Violation Report (Violation Report), (Jan. 18, 2018) (on file with PHMSA), at 1.

FINDINGS OF VIOLATION

In its Response, Ergon 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. § 195.402(c)(3), 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)

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(3) by failing to prepare and follow for each pipeline system a manual of written procedures that includes procedures for operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of Subpart F and Subpart H of Part 195. Specifically, the Notice alleged that Ergon's "Magnolia Pipeline Operations Manual," dated January 2015 (O&M Manual), *Section 3.13 - Firefighting Equipment*, does not provide procedures on how to maintain adequate firefighting equipment at each pump station and breakout-tank area to ensure that it is in proper operating condition at all times, in accordance with § 195.430.³

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. § 195.402(c)(3) by failing to prepare and follow for each pipeline system a manual of written procedures that includes procedures for operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of Subpart F and Subpart H of Part 195.

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

§ 195.404 Maps and records.

(a)

(c) Each operator shall maintain the following records for the periods specified:

(1)

³ Section 195.430 requires each operator to maintain adequate firefighting equipment at each pump station and breakout-tank area. Among other things, the equipment must be in proper operating condition at all times.

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(c)(3) by failing to maintain a record of each inspection and test required by Subpart F of Part 195 for at least two years or until the next inspection or test is performed, whichever is longer. Specifically, the Notice alleged that Ergon failed to maintain records of the review and inspection of its O&M Manual at intervals not exceeding 15 months, but at least once each calendar year, in accordance with § 195.402(a).⁴ During the inspection, Ergon did not have records indicating it had completed an annual review of its O&M Manual for 2013 or 2014.

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. § 195.404(c)(3) by failing to maintain a record of each inspection and test required by Subpart F of Part 195 for at least 2 years or until the next inspection or test is performed, whichever is longer.

Item 3: 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 49 C.F.R. § 195.404(a)(3) by failing to maintain current maps and records of its pipeline systems that include the maximum operating pressure (MOP) of each pipeline. Specifically, the Notice alleged that Ergon had two records with conflicting information regarding the MOP of the Magnolia Pipeline as determined in accordance with § 195.406.⁵ The 2005 hydrostatic test record indicates the MOP for the pipeline is 1,219 psig, but the O&M Manual indicates the MOP for the pipeline is 1,423 psig. Additionally, Section 3.1 of Ergon's O&M Manual states: "the weakest component in the system is the pipe," and in an email dated October 26, 2016, Ergon stated that "other components were not considered in this calculation as the weakest component in the system is the pipe." Ergon's records do not include any information on other system components, such as flanges and valves, to substantiate the company's conclusion that the pipe is the weakest component.

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. § 195.404(a)(3) by failing to maintain current maps and records of its pipeline systems that include the maximum operating pressure of each pipeline.

⁴ Section 195.402(a) requires an operator to review its manual "at intervals not exceeding 15 months, but at least once each calendar year" and to make "appropriate changes . . . as necessary" to ensure the manual is effective.

⁵ Section 195.406 requires an operator to establish the maximum operating pressure for each pipeline using certain methods.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(c)(3), as quoted above, by failing to maintain a record of each inspection and test required by Subpart F of Part 195 for at least two years or until the next inspection or test is performed, whichever is longer. Specifically, the Notice alleged that Ergon did not maintain records of inspections conducted to demonstrate there is adequate firefighting equipment at each pump station and breakout-tank area and the equipment is in proper operating condition at all times, in accordance with § 195.430. During PHMSA's review of Ergon's procedures and records relating to inspection of firefighting equipment at the Magnolia, Ohio facility from 2013 to 2015, PHMSA discovered records that did not include sufficient information to demonstrate that the firefighting equipment was in proper operating condition at all times. This included work orders that failed to include such information as the scope of the inspection, the firefighting equipment number, device, or tag, the names of the individuals conducting the inspection and test, and documentation of any repairs required.

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. § 195.404(c)(3) by failing to maintain a record of each inspection and test required by Subpart F of Part 195 for at least two years or until the next inspection or test is performed, whichever is longer.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overfill protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test each pressure-limiting device, relief valve, pressure regulator, or other item of pressure-control equipment, at intervals not exceeding 15 months but at least once each calendar year, to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used. Specifically, the Notice alleged that from 2013 to 2015, Ergon failed to conduct nine inspections and tests of pressure-relief valves. During the PHMSA inspection, Ergon provided the agency with a list of nine relief valves on the Magnolia Pipeline and admitted to not inspecting or testing them.

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. § 195.428(a) by failing to inspect and test each pressure-limiting device, relief valve, pressure regulator, or other item of pressure-

control equipment, at intervals not exceeding 15 months but at least once each calendar year, to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1), which states, in relevant part:

§ 195.573 What must I do to monitor external corrosion control?

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with § 195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1) by failing to conduct tests on a protected pipeline at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection on its pipeline and required by Subpart H of Part 195 complies with § 195.571. Specifically, the Notice alleged that Ergon failed to conduct 73 structure pipe-to-soil readings each year from 2013 to 2014, for a total of 146 missed readings. During the inspection, Ergon could not produce records of the cathodic-protection readings from the tests for 2013 and 2014.

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. § 195.573(a)(1) by failing to conduct tests on a protected pipeline at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection on its pipeline and required by Subpart H of Part 195 complies with § 195.571.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.575(c), which states:

§ 195.575 Which facilities must I electrically isolate and what inspections, tests, and safeguards are required?

(a)

(c) You must inspect and electrically test each electrical isolation to assure the isolation is adequate.

The Notice alleged that Respondent violated 49 C.F.R. § 195.575(c) by failing to inspect and electrically test each electrical isolation to assure the isolation is adequate. Specifically, the Notice alleged that Ergon failed to take 51 casing pipe-to-soil readings each year from 2013 to 2014, for a total of 102 missed readings on its 8-inch NPS crude oil pipeline.

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. § 195.575(c) by failing to inspect and electrically test each electrical isolation to assure the isolation is adequate.

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.⁶ 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; 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 \$134,200 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. § 195.402(c)(3), for failing to prepare and follow for each pipeline system a manual of written procedures that includes procedures for operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of Subpart F and Subpart H of Part 195. As discussed in the June 6, 2018 meeting with PHMSA, and as submitted with Ergon's Response, Ergon has updated its O&M Manual, *Section 3.13 - Firefighting Equipment*. Ergon argued that the culpability component of the proposed penalty for this item should be reduced because *Section 3.13* of its procedures applies to a single fire extinguisher associated with its pipeline. I find that a civil penalty reduction for this item is not warranted because the reasons why Ergon failed to achieve compliance were not unforeseeable or wholly outside its control. Further, I find no basis to reduce the penalty based on gravity because the penalty amount already reflects that the violation minimally affected pipeline safety. Lastly, I find that a civil penalty reduction is not warranted based on the "good faith" component because the actions Respondent took to comply with the requirement occurred after PHMSA learned of the violation. Based upon the foregoing, I assess Respondent a civil penalty of \$11,500 for violation of 49 C.F.R. § 195.402(c)(3).

Item 2: The Notice proposed a civil penalty of \$13,000 for Respondent's violation of 49 C.F.R. § 195.404(c)(3), for failing to maintain a record of each inspection and test required by Subpart F of Part 195 for at least two years or until the next inspection or test is performed, whichever is longer. In its Response, Ergon noted it uses an online task-tracking system to monitor and track compliance tasks, and submitted a report from the system. This report shows facility plans were reviewed in November 2013 and November 2014. I find that a civil penalty reduction for this item is not warranted because Respondent did not provide the missing O&M Manual annual review records for 2013 or 2014. The inspection records submitted are not related to conducting the O&M Manual annual review. Therefore, Respondent has provided no justification for

⁶ These amounts are adjusted annually for inflation. See, 49 C.F.R. § 190.223; Revisions to Civil Penalty Amounts, 83 Fed. Reg. 60732, 60744 (Nov. 27, 2018).

reducing or eliminating the penalty. Based upon the foregoing, I assess Respondent a civil penalty of \$13,000 for violation of 49 C.F.R. § 195.404(c)(3).

Item 4: The Notice proposed a civil penalty of \$14,400 for Respondent's violation of 49 C.F.R. § 195.404(c)(3), for failing to maintain a record of each inspection and test required by Subpart F of Part 195 to demonstrate that the operator's firefighting equipment is adequate and in proper working condition in accordance with § 195.430. During its informal meeting with PHMSA, Ergon noted that § 195.430(a) does not include a specified frequency for the inspection of firefighting equipment and, therefore, the number of instances of violation should be reduced. Respondent also produced information showing that the monthly inspections of firefighting equipment did occur, but those records did not include sufficient information to show the equipment was in proper operating condition at all times. For example, the records did not include the names of people who conducted the inspections and equipment numbers. However, because the documentation provided to PHMSA showed that some inspections were performed, I find that a civil penalty reduction is warranted based on the number of instances relating to the nature of the violation. Based upon the foregoing, I assess Respondent a reduced civil penalty of \$12,900 for violation of 49 C.F.R. § 195.404(c)(3).

Item 5: The Notice proposed a civil penalty of \$27,700 for Respondent's violation of 49 C.F.R. § 195.428(a), for failing to inspect and test nine relief valves, at intervals not exceeding 15 months but at least once each calendar year, to determine that each valve is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used. In its Response, Ergon submitted a revised Piping and Instrumentation Diagram (P&ID), showing there are only two jurisdictional pressure-relief devices on the pipeline, as opposed to the nine devices originally identified. Respondent also submitted documentation showing its pressure-relief devices were operating properly during actual pressure-relief events. Based on this information, I find that a civil penalty reduction is warranted based on a lower number of instances of violation. I also find that the gravity component of the penalty should be reduced because pipeline safety was minimally affected. Based upon the foregoing, I assess Respondent a reduced civil penalty of \$19,300 for violation of 49 C.F.R. § 195.428(a).

Item 6: The Notice proposed a civil penalty of \$34,500 for Respondent's violation of 49 C.F.R. § 195.573(a)(1), for failing to conduct 73 structure pipe-to-soil readings each year from 2013 to 2014, for a total of 146 missed readings, to determine whether cathodic protection required by Subpart H of Part 195 complies with § 195.571. In its Response, Ergon provided additional 2013 survey data and argued that a reduction in the gravity component of the civil penalty is warranted because the 2013 cathodic-protection survey submitted showed that some components were checked properly, even though it was not a complete survey due to construction. Based on this information, I find that a civil penalty reduction is warranted because the number of instances of violation is reduced from 73 to 39 missed test station readings for 2013.⁷ Additionally, I find that the gravity component of the penalty criteria should be reduced based on pipeline safety being minimally affected because Respondent demonstrated that adequate

⁷ Respondent did not submit any documentation regarding the 73 cathodic protection surveys for 2014.

cathodic protection was applied in 2012 and 2015. Ergon also demonstrated adequate cathodic protection was applied in 2013 to at least a portion of its pipeline system. Based upon the foregoing, I assess Respondent a reduced civil penalty of \$25,900 for violation of 49 C.F.R. § 195.573(a)(1).

Item 7: The Notice proposed a civil penalty of \$33,100 for Respondent's violation of 49 C.F.R. § 195.575(c), for failing to inspect and electrically test 51 locations of electrical isolation each year from 2013 to 2014, for a total of 102 missed readings, to ensure that the isolation is adequate. In its Response, Ergon provided additional 2013 data and argued that a penalty reduction is warranted because the 2013 cathodic-protection survey showed that some components were checked properly, even though it was not a complete survey due to ongoing construction. Based on this information, I find that a penalty reduction is warranted because the number of instances of violation is reduced from 51 to 27 missed casing-to-soil readings for 2013.⁸ Additionally, I find that the gravity component of the civil penalty should be reduced based on pipeline safety being minimally affected because Respondent demonstrated adequate isolation in 2012 and 2015. Ergon also demonstrated adequate isolation in 2013 for at least part of its pipeline system. Based upon the foregoing, I assess Respondent a reduced civil penalty of \$25,900 for violation of 49 C.F.R. § 195.575(c).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total reduced civil penalty of **\$108,500**.

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 \$108,500 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 Items 1, 3, and 5 in the Notice for violations of 49 C.F.R. §§ 195.402(c)(3), 195.404(a)(3), and 195.428(a), 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

⁸ Respondent did not submit any documentation regarding the 51 casing-to-soil reads for 2014.

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:

1. With respect to the violation of § 195.402(c)(3) (**Item 1**), Respondent must develop procedures for maintaining adequate firefighting equipment in accordance with § 195.430 and implement the procedures at Ergon's Magnolia, Ohio facility. Respondent must have completed records, including, but not limited to, records verifying that all firefighting equipment at the Magnolia, Ohio facility is in proper operating condition.
2. With respect to the violation of § 195.404(a)(3) (**Item 3**), Respondent must provide records demonstrating that the MOP of all jurisdictional pipeline segments at the Magnolia, Ohio facility meet the requirements of § 195.406(a).
3. With respect to the violation of § 195.428(a) (**Item 5**), Respondent must inspect and test all overpressure safety devices at the Magnolia, Ohio facility, per § 195.428(a) and Ergon's procedures.
4. Submit to the Director, Eastern Region, OPS, within 60 days following receipt of the Final Order, written documentation to satisfy Compliance Order Items 1 through 3 above.

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.

It is requested (not mandated) 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 (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, no later than 20 days after receipt of service of this 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.

May 31, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued