

**NOTICE OF PROBABLE VIOLATION  
PROPOSED CIVIL PENALTY  
and  
PROPOSED COMPLIANCE ORDER**

**OVERNIGHT EXPRESS DELIVERY**

January 18, 2018

Joel Pastorek, President  
Ergon Terminaling, Inc.  
2829 Lakeland Drive  
Jackson, MS 39215

**CPF 1-2018-5006**

Dear Mr. Pastorek:

From September 14, 2015 to September 18, 2015, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code inspected the Ergon Terminaling, Inc. (Ergon) pipeline facility in Magnolia, Ohio.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violation(s) are:

- 1. §195.402(c)(3) Procedural manual for operations, maintenance, 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:**
    - (3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart...**

Ergon's firefighting equipment procedure failed to include guidance on operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart. Specifically, Ergon's Magnolia Pipeline Operations Manual, Ergon Terminaling Inc., dated

January 2015, Section 3.13– Firefighting Equipment does not provide guidance 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 as per §195.430.

The procedure lacks detail such as, but not limited to:

1. Applicable local, state and federal regulations
2. Equipment marking and labelling requirements
3. Required inspection intervals
4. Inspection and maintenance documentation requirements
5. Individuals responsible for conducting the inspection
6. Remedial issue followed-up and documentation

## 2. §195.404(c)(3) Maps and Records

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

**(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.**

Ergon failed to maintain a record of each inspection and test required by this subpart. Specifically, Ergon failed to maintain records of the review of its manual of written procedures for conducting normal operations and maintenance (O&M) activities at intervals not exceeding 15 months, but at least once each calendar year in accordance with §195.402(a).

During the inspection, the PHMSA inspector requested records related to annual reviews of Ergon Trucking Inc.'s O&M manual. Ergon provided annual review records for calendar year 2015 for the following manuals:

1. Operations and Maintenance Manual
2. Control Room Management
3. Integrity Management
4. Pipeline Response Plan

Ergon did not have records indicating an annual review was conducted of its O&M manual for 2013 or 2014. The PHMSA inspector asked for relevant records and Ergon stated, “We do not have any record documenting the annual reviews, other than the most recent year 2015.” Ergon also stated, “The O&M manual has been reviewed prior to 2015, but was not documented.” Ergon failed to maintain records of an annual review of its written procedures during the years of 2013 and 2014.

## 3. §195.404(a)(3) Maps and Records

**(a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information; ...**

**(3) The maximum operating pressure of each pipeline.**

Ergon failed to maintain detailed records to demonstrate that the maximum operating pressure (MOP) of its jurisdictional pipeline segments were determined in accordance with §195.406(a). Specifically, Ergon had two records with conflicting information of the MOP of the Magnolia Pipeline.

During the inspection, the PHMSA inspector reviewed the following:

1. Ergon's Certification of Pipeline Pressure Test, dated 9-20-71
2. MOP of Magnolia Pipeline record, based on Hydrostatic Test Performed in 2005.
3. Magnolia Pipeline Operations Manual Ergon Terminaling, Inc., dated January 2015

The hydrostatic test record from 2005 indicates that the MOP for the pipeline is 1,219 psig and the Pipeline Operations Manual indicates that the MOP for the pipeline is 1,423 psig. The PHMSA inspector asked Ergon to verify the correct MOP for the system. Ergon responded via email that:

1. "The Magnolia Pipeline was hydrostatically tested in 2005. Based on the results of this hydro test, the MOP for the pipeline is 1,219 psig. We will amend Section 3.1 of the O&M plan to reflect this MOP and include language that this MOP is based on the hydrostatic test.
2. "The MOP listed in Section 3.1 of the O&M Plan is based on the calculation found at 49 CFR 195.106. It is not based on the original pressure test."

In addition, Section 3.1 of the O&M plan states that "the weakest component in the system is the pipe" and in an email dated 10/26/2016, 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 that the pipe is the weakest component.

Therefore, Ergon failed to maintain detailed records to demonstrate that the maximum operating pressure (MOP) of its jurisdictional pipeline segments were determined in accordance with §195.406(a).

#### **4. § 195.404(c)(3) Maps and Records**

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

**(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.**

...

Ergon failed to maintain a record of each inspection and test required by this subpart for at least 2 years or until the next inspection or test is performed, whichever is longer. Specifically, Ergon did not maintain records to demonstrate that there is adequate firefighting equipment at each pump station and breakout tank area that is in proper operating condition at all times in accordance with §195.430(a).

During the inspection, the PHMSA inspector reviewed Ergon's procedures and records related to inspection of firefighting equipment at the Ergon Magnolia, Ohio facility from 2013 to 2015.

1. In an email dated October 6, 2015, the PHMSA inspector asked Ergon “In review of O&M Section 3.13 Firefighting Equipment, what frequency does Ergon use to inspect its firefighting equipment at the facility?” Ergon responded in an email dated 10/13/2015, that “Firefighting equipment is inspected monthly using an external third party contractor. . .”
2. Ergon provided records that did not include sufficient information to demonstrate that the firefighting equipment was in proper operating condition at all times. For example, the work orders did not include items such as:
  - a. Scope of the inspection
  - b. The firefighting equipment number, device, or tag
  - c. Names of people who conducted the inspection and test
  - d. Documentation of any repairs required

Therefore, Ergon failed to maintain records of each firefighting equipment inspection and/or test, to ensure that it is in proper operating condition.

#### **5. § 195.428(a) Overpressure safety devices and overfill protection system**

**(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.**

Ergon failed 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, from 2013-2015, Ergon failed in 9 instances to conduct an inspection and test of pressure relief valves.

During the inspection, the PHMSA inspector reviewed Ergon’s Overpressure Safety Devices procedure and requested records related to inspection and testing of overpressure safety devices. Ergon stated, “We do not do an inspection or test of any pressure relief devices.” In a follow-up email dated October 13, 2015, the PHMSA inspector requested “a list of all pressure limiting devices, relief valves, pressure regulators, or other item of pressure control equipment at Ergon Magnolia, OH terminal.” In an email dated October 16, 2015, Ergon responded that:

“The Magnolia Pipeline has relief valves at the following locations:

1. Metering skid line behind the main valve
2. Pig trap (Magnolia, OH. end)
3. Discharge line from pumps 1 and 2 before the metering skid
4. Main inbound line that feeds mainline pumps

5. Both discharge lines from pumps 1 and 2
6. Booster pump line before the pump
7. Booster pump line after the pump
8. Tank transfer line before the valve
9. Pig trap (Newell, WV. end)”

Ergon failed to conduct inspections or tests on any of the 9 relief valves identified above.

**6. § 195.573(a) 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 Sec. 195.571:**

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

Ergon failed to conduct cathodic protection tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. Specifically, Ergon failed to conduct cathodic protection testing on their 8-inch NPS crude oil pipeline in 2013 and 2014. The records show that Ergon failed to take 146 structure pipe-to-soil readings from 2013 – 2014.

During the inspection, the PHMSA inspector requested cathodic protection records for 2013 through 2015. Ergon provided records titled “Cathodic Protection System Survey Field Data” dated June, 2015, that included cathodic protection test results for their “8-inch crude oil pipeline.” The PHMSA inspector asked for cathodic protection surveys for 2013 and 2014, however, Ergon had no records of the cathodic protection readings from the tests.

1. Ergon stated, “Due to their contractor going out of business, and it becoming too late in the 2014 year, Ergon did not conduct cathodic protection surveys in 2014.”
2. Ergon provided an invoice dated October 18, 2013 “for services rendered to review cathodic protection requirements for the pipeline located near Magnolia, Ohio.”
  - a. Ergon stated “This is the only record available, related to the 2013 cathodic protection surveys” and “We never received a report from the vendor for 2013.”
  - b. The invoice provided for 2013 did not include any details to show that the required cathodic protection tests had been conducted, such as the dates of the testing, the pipeline location/descriptions and areas tested, the pipeline potentials, and who conducted the tests.

Therefore, Ergon failed to conduct cathodic protection testing on the pipeline in 2013 and 2014.

**7. § 195.575(c) Which facilities must I electrically isolate and what inspections, tests, and safeguards are required**

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

Ergon failed to inspect and electrically test each electrical isolation to assure the isolation is adequate. Specifically, Ergon failed to conduct cathodic protection testing on their 8-inch NPS

crude oil pipeline in 2013 and 2014. The records show that Ergon failed to take 102 casing pipe-to-soil readings from 2013 – 2014.

During the inspection, the PHMSA inspector requested cathodic protection records for 2013 through 2015. Ergon provided records titled “Cathodic Protection System Survey Field Data” dated June, 2015, that included cathodic protection test results for their “8-inch crude oil pipeline.” The PHMSA inspector asked for cathodic protection surveys for 2013 and 2014.

1. Ergon stated, “Due to their contractor going out of business, and it becoming too late in the 2014 year, Ergon did not conduct cathodic protection surveys in 2014.”
2. Ergon provided an invoice dated October 18, 2013 “for services rendered to review cathodic protection requirements for the pipeline located near Magnolia, Ohio.”
  - a. Ergon stated “This is the only record available, related to the 2013 cathodic protection surveys” and “We never received a report from the vendor for 2013.”
  - b. The invoice provided for 2013 did not include any details to show that the required cathodic protection tests had been conducted, such as the dates of the testing, the pipeline location/descriptions and areas tested, the pipeline potentials, and who conducted the tests.

Therefore, Ergon failed to inspect and electrically test each electrical isolation to assure the isolation is adequate during the timeframe of 2013 and 2014.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$209,002 per violation per day the violation persists, up to a maximum of \$2,090,022 for a related series of violations. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$134,200 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$11,500
2	\$13,000
4	\$14,400
5	\$27,700
6	\$34,500
7	\$33,100

Proposed Compliance Order

With respect to item 1, item 3 and item 5, pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Ergon Terminals, Inc. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. All material submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

Please submit all correspondence in this matter to Robert Burrough, Director, PHMSA Eastern Region, 820 Bear Tavern Road, Suite 103, West Trenton, New Jersey 08628. Please refer to **CPF 1-2018-5006** on each document you submit, and whenever possible provide a signed PDF copy in electronic format. Smaller files may be emailed to [robert.burrough@dot.gov](mailto:robert.burrough@dot.gov). Larger files should be sent on a CD accompanied by the original paper copy to the Eastern Region Office.

Additionally, if you choose to respond to this (or any other case), please ensure that any response letter pertains solely to one CPF case number.

Sincerely,

Robert Burrough  
Director, Eastern Region  
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Compliance Proceedings*

**PROPOSED COMPLIANCE ORDER**

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Ergon Terminals, Inc. (Ergon) a Compliance Order incorporating the following remedial requirements to ensure the compliance of Ergon with the pipeline safety regulations:

1. In regard to Item 1 of the Notice pertaining to Ergon's failure to provide guidance 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 as per §195.430:
  - a. Ergon must develop procedures for maintaining adequate firefighting equipment in accordance with §195.430 and then implement the procedures at the Ergon Magnolia, Ohio facility.
  - b. Ergon must have completed records, including but not limited to, verifying that all the firefighting equipment located at the Ergon Magnolia, Ohio facility is in proper operating condition within 60 days of receipt of the Final Order.
2. In regard to Item 3 of the Notice pertaining to Ergon's failure to maintain detailed records to demonstrate that the maximum operating pressure (MOP) of its jurisdictional pipeline segments were determined in accordance with §195.406(a):
  - a. Ergon must provide records demonstrating that the MOP of all jurisdictional pipeline segments at the Ergon Magnolia, Ohio facility meet the requirements of §195.406(a).
  - b. Ergon must provide records within 60 days of the Final Order.
3. In regard to Item 5 of the Notice pertaining to Ergon's failure to conduct an inspection and test of (9) pressure relief valves, as per §195.428(a):
  - a. Ergon must inspect and test all overpressure safety devices at the Ergon Magnolia, Ohio facility, per §195.428(a) and Ergon's procedures.
  - b. Ergon must provide records within 60 days of the Final Order.
4. Ergon Terminals, Inc. must complete the requirements as outlined above. All documentation demonstrating compliance with each of the items outlined in this proposed compliance order must be submitted to the Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration, Suite 103, Bear Tavern Road, West Trenton, NJ for review.
5. It is requested (not mandated) that Ergon maintains documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Robert Burrough, Acting Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration. 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.