



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

December 8, 2021

VIA ELECTRONIC MAIL TO: thomas.nimbley@pbfenergy.com

Mr. Thomas Nimbley
Chairman and Chief Executive Officer
PBF Logistics LP
1 Sylvan Way, 2nd Floor
Parsippany, New Jersey 07054

Re: CPF No. 1-2021-002-NOPV

Dear Mr. Nimbley:

Enclosed please find the Decision on Petition for Reconsideration (Decision) issued in the above-referenced case. For the reasons explained therein, the Decision denies your petition. The penalty payment terms remain unchanged from those set forth in the Final Order issued September 2, 2021. This Decision constitutes the final administrative action in this proceeding. Service of this Decision by e-mail is effective upon the date of transmission as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

ALAN KRAMER
MAYBERRY

Digitally signed by ALAN
KRAMER MAYBERRY
Date: 2021.12.07
13:45:20 -05'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Mr. Thomas J. McLane, Director, Regulatory Compliance, PBF Logistics LP,
thomas.mclane@pbfenergy.com
Mr. Jim Fedena, Senior Vice President - Logistics, PBF Energy Inc.,
jim.fedena@pbfenergy.com

CONFIRMATION OF 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)	
)	
Paulsboro Natural Gas Pipeline Company LLC,)	CPF No. 1-2021-002-NOPV
a subsidiary of PBF Logistics LP,)	
)	
Respondent.)	
)	

DECISION ON PETITION FOR RECONSIDERATION

From February 27, 2020, through October 2, 2020, 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 Paulsboro Natural Gas Pipeline Company LLC (PNGPC or Petitioner), a subsidiary of PBF Logistics LP, in Gloucester, New Jersey and Delaware, Pennsylvania.¹ PNGPC’s natural gas pipeline takes delivery from Enbridge Natural Gas Company (Enbridge) in Pennsylvania near the Philadelphia International Airport to provide natural gas to the Paulsboro Refinery in New Jersey.² As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Petitioner, by letter dated February 5, 2021, a Notice of Probable Violation and Proposed Civil Penalty (Notice).³ The Notice also included a warning pursuant to 49 C.F.R. § 190.205.⁴ In accordance with 49 C.F.R. § 190.207, the Notice proposed finding PNGPC violated 49 C.F.R. § 192.625(f) and proposed assessing a civil penalty of \$46,000 for the alleged violation. The warning item required no further action but warned Respondent to correct the probable violation or face possible future enforcement action.

PNGPC responded to the Notice by letter dated March 5, 2021 (Response).⁵ Petitioner did not contest the underlying allegation of violation described in Item 1 of the Notice, rather, Petitioner provided an explanation relevant to the proposed civil penalty and requested PHMSA withdraw it. PNGPC waived its right to a hearing by not requesting one.

¹ *Paulsboro Natural Gas Pipeline Co. LLC*, Final Order, CPF No. 1-2021-002 (Final Order) (September 2, 2021) (on file with PHMSA), at 1; *see also* PHMSA Safety Violation Report (Violation Report), (February 5, 2021) (on file with PHMSA), at 1-2.

² Response to Notice of Probable Violation submitted by Thomas J. McLane, Director, Regulatory Compliance for Paulsboro Natural Gas Pipeline Co. LLC, to Robert Burrough, Director, Eastern Region for PHMSA, dated March 5, 2021 (Response), at 1.

³ Notice of Probable Violation and Proposed Civil Penalty (Notice), CPF. No. 1-2021-002-NOPV (February 5, 2021).

⁴ *Id.*

⁵ Response, at 1-2.

On September 2, 2021, pursuant to 49 U.S.C. §§ 60118 and 60122 and 49 C.F.R. §190.213, the Associate Administrator for Pipeline Safety (Associate Administrator) issued a Final Order, finding that Petitioner violated 49 C.F.R. § 192.625(f).⁶ The Final Order found that PNGPC violated §192.625(f) by failing to conduct periodic sampling of the gas in its pipeline using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. Pursuant to the authority of 49 U.S.C. § 60122 and 49 C.F.R. §190.221, the Final Order assessed a civil penalty of \$46,000.⁷

On September 22, 2021, Petitioner filed a petition for reconsideration (Petition) pursuant to 49 C.F.R. § 190.243.⁸ PNGPC argued that the civil penalty assessment considerations in the Final Order did not appropriately reflect certain information. It reiterated its request for PHMSA to withdraw the civil penalty.

First, regarding good faith, PNGPC contended it attempted to comply with the intention of § 192.625 by getting confirmation from Enbridge that it odorized its natural gas.⁹ Petitioner stated that because federal mandates required Enbridge to inject odorant, PNGPC did not incorporate a written procedure for periodically sampling the gas in its Operations, Maintenance & Emergency (OM&E) manual. Second, regarding culpability, Petitioner contended that it felt it addressed the intent of § 192.625 by having Enbridge confirm that it properly odorized the gas prior to PNGPC transporting it through its pipeline. PNGPC noted that when PHMSA clarified the intent of § 192.625 it promptly revised its OM&E manual to include a procedure for capturing the information required by the regulation. Third, regarding the gravity of violation, Petitioner contended that, regardless of the pipeline's location within a high consequence area (HCA), it took appropriate action to assure the gas stream was properly odorized. Finally, regarding safety impact, PNGPC contended that receiving written notice from Enbridge that it odorized the gas was equivalent to taking odorant samples once a year with a device that detects odorant. Petitioner further contended that either method satisfies the intent of § 192.625, therefore, it did not unduly jeopardize the safety of the community and the environment. PNGPC also provided additional facts regarding its pipeline safety system.

Having considered the full record and the arguments presented in the Petition, I am denying the Petition and affirming the Final Order and Assessment of Penalty without modification.

STANDARD OF REVIEW

Under 49 C.F.R. § 190.243, a respondent may petition the Associate Administrator for reconsideration of a final order that has been issued pursuant to §190.213. Reconsideration is not an appeal or a completely new review of the record.¹⁰ A respondent may ask for correction of an error or, in limited circumstances, may present previously unavailable information. If a

⁶ Final Order, at 1-2.

⁷ *Id.* at 2-4.

⁸ Petition for Reconsideration to Final Order submitted by Thomas J. McLane, Director, Regulatory Compliance for Paulsboro Natural Gas Pipeline Co. LLC, to Alan Kramer Mayberry, Associate Administrator for Pipeline Safety, PHMSA, dated September 22, 2021 (Petition).

⁹ *Id.* at 1.

¹⁰ 49 C.F.R. § 190.243(a)-(d).

respondent requests consideration of additional facts or arguments, the respondent must submit the reasons they were not presented prior to the issuance of the Final Order. The Associate Administrator may grant or deny, in whole or in part, a petition for reconsideration without further proceedings.

ANALYSIS

Petitioner did not contest the underlying allegation of violation for Item 1 of the Notice in its Response, and did not raise any issues of error in its Petition. As such, the finding of violation as described in the Final Order is not at issue. The only issue for review is the imposition of the civil penalty for Item 1 of the Notice, however, a brief summary of the facts and the law supporting the finding of violation is relevant to my determination on the Petition. Having found Petitioner to be in violation of § 192.625(f), I must now consider whether the Final Order correctly determined the civil penalty.

Item 1 in the Final Order found that PNGPC violated § 192.625(f) by failing to conduct periodic sampling of the gas in its pipeline using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. The section states:

§ 192.625 Odorization of gas.

(a)....

(f) To assure the proper concentration of odorant in accordance with this section, each operator must conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. Operators of master meter systems may comply with this requirement by –

(1) Receiving written verification from their gas source that the gas has the proper concentration of odorant; and

(2) Conducting periodic “sniff” tests at the extremities of the system to confirm that the gas contains odorant.

As quoted above, § 192.625(f) requires operators to conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. PNGPC contended it attempted to comply with the intention of § 192.625 by getting confirmation from Enbridge, its natural gas supplier, that it odorized its gas.¹¹

This interpretation is inconsistent with the plain language of the regulation.¹² The plain language of the regulation reveals nothing indicating that such confirmation satisfies the requirements of § 192.625(f). Section § 192.625 is clear that the operator of the pipeline facility is responsible

¹¹ Petition, at 1.

¹² See *Statewide Bonding, Inc. v. U.S. Dep’t of Homeland Sec.*, 980 F.3d 109, 116 (D.C. Cir. 2020) (“Where [] an agency’s regulation is unambiguous, the court must give effect to the regulation’s plain meaning.”); see also *Gen. Elec. Co. v. U.S. E.P.A.*, 53 F.3d 1324, 1329 (D.C. Cir. 1995), as corrected (June 19, 1995) (“[W]e must ask whether the regulated party received, or should have received, notice of the agency’s interpretation in the most obvious way of all: by reading the regulations.”).

for assuring adequate concentration of the odorant within its pipeline and for periodically verifying that the concentration is adequate through the specific means allowed by § 192.625(f).

Moreover, receipt of written documentation from Enbridge that it odorized its gas would only render Petitioner in compliance with § 192.625(f) if PNGPC were a master meter operator, and even then, only if Petitioner performed periodic “sniff” tests at the extremities of the system. PNGPC is not a master meter operator. Even if Petitioner were a master meter operator, it did not carry out the required “sniff” tests at the extremities of the system.

For these reasons, I do not find Petitioner’s interpretation of the regulation persuasive. Petitioner did not seek review of the finding of violation, as such, the finding of violation for Item 1 of the Notice, as described in the Final Order, is affirmed.

ASSESSMENT OF PENALTY

The Final Order assessed a civil penalty of \$46,000. In assessing the civil penalty for this item, I applied the statutory civil penalty assessment factors including the nature, circumstances, gravity, and culpability of this violation.¹³

In its Petition, PNGPC provided additional information regarding the following points: good faith, culpability, gravity of violation, and safety impact.¹⁴

As discussed above, Petitioner’s interpretation of § 192.625(f) is not persuasive. Therefore, my assessment of the good faith and culpability criteria remains unchanged. PNGPC did not have reasonable justification for non-compliance. While Petitioner took measures to correct the violation of § 192.625(f), those actions were taken after PHMSA identified the violation. No credit will be given for good faith or culpability.

Regarding the gravity of the violation and the safety impact, Petitioner contended that, regardless of the pipeline’s location within an HCA, it took appropriate action to assure the gas stream was properly odorized.¹⁵ It also contended that its actions did not unduly jeopardize the safety of the community and the environment.¹⁶

I find these contentions unpersuasive. As discussed above, PNGPC’s interpretation that it took appropriate action to assure the gas stream was properly odorized is contrary to the plain language of § 192.625(f). The violation occurred within an HCA.¹⁷ The failure affected all 2.5 miles of Paulsboro pipeline system, which includes 0.5 miles of high consequence pipeline. As discussed in the Final Order, the importance of verifying that gas is properly odorized is critical for public safety to ensure a leak can be detected by persons with a normal sense of smell.¹⁸

¹³ 49 U.S.C. § 60122(b).

¹⁴ Petition, at 1.

¹⁵ Petition, at 1-2.

¹⁶ *Id.*

¹⁷ Violation Report, at 9.

¹⁸ Final Order, at 4.

I have also reviewed the additional information PNGPC provided regarding its pipeline safety system.¹⁹ Petitioner did not provide any explanation for not including this new information prior to issuance of the Final Order.²⁰ The information does not address the nature, circumstances, gravity, and culpability of the specific violation, that is, PNGPC's failure to conduct periodic sampling of the gas in its pipeline using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. Therefore, I find it does not support a change to the assessed civil penalty.

Based on the forgoing, I affirm the civil penalty for violation of § 192.625(f).

RELIEF DENIED

Based on the information provided in the Petition, a review of the record, and for the reasons stated above, I affirm the Final Order and the Assessment of Penalty without modification.

Payment of the civil penalty must be made within 20 days of service of this Decision. 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 \$46,000 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.

This Decision is the final administrative action in this proceeding.

ALAN KRAMER
MAYBERRY

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KRAMER MAYBERRY
Date: 2021.12.07
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Alan K. Mayberry
Associate Administrator
for Pipeline Safety

December 8, 2021

Date Issued

¹⁹ Petition, at 2.

²⁰ 49 C.F.R. §190.243(b).