



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

DEC - 1 2006

Mr. Robert L. Rose  
President  
Tampa Bay Pipeline Company  
P.O. Box 35236  
Sarasota, FL 34242

Re: CPF No. 2-2005-6012

Dear Mr. Rose:

Enclosed is the Final Order issued by the Acting Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$71,500. It further finds that you have completed the actions specified in the Notice required to comply with the pipeline safety regulations. When the civil penalty is paid, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds  
Pipeline Compliance Registry  
PHMSA, Office of Pipeline Safety

Enclosure

cc: Ms. Linda Daugherty, Director, Southern Region, OPS;  
Mr. Glenn D. Howell, General Manager, Tampa Bay Pipeline Company

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

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

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In the Matter of )

Tampa Bay Pipeline Company, )

Respondent )  
\_\_\_\_\_ )

CPF No. 2-2005-6012

**FINAL ORDER**

On May 17-18, 2005, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's Operator Qualification (OQ) procedures and records at its Tampa, Florida office. As a result of the inspection, the Director, Southern Region, OPS issued to Respondent, by letter dated September 13, 2005, 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 Respondent had committed violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$71,500 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated October 7, 2005 (Response). Respondent stated that it intended to revise its OQ program in accordance with the Proposed Compliance Order, but requested a hearing regarding the Notice and the Proposed Civil Penalty. The hearing was held on March 25, 2006 in Atlanta, Georgia. After this hearing, Respondent offered additional information on April 25, 2006.

**FINDINGS OF VIOLATION**

**Item 1** in the Notice alleged that Respondent violated 49 C.F.R. § 195.505(a) by:

- A. failing to establish a list identifying its OQ "covered tasks" by the applicable deadline of April 27, 2001;
- B. failing to include all covered tasks in the list once it was established; and
- C. failing to review the covered task list using the four-part test with Part 195 operation and maintenance activities.

Respondent did not contest allegations B or C. With respect to A, the allegation that Respondent failed to establish a list identifying its OQ covered tasks by the applicable deadline, Respondent stated at the hearing that it had written a "redbook framework" for developing an OQ program prior to April 27, 2001, but acknowledged that this document was actually an outline of only a few pages that merely reiterated the OQ regulations in Subpart G of C.F.R. Part 195. Therefore, Respondent was unable to document that it had an OQ program for its pipeline system completed and in place by April 27, 2001 when required. Respondent then stated that it had reason to believe that it had generated a covered task list in December of 2002 and offered a CD that it claimed showed that these tasks were saved on its computer between December 11, 2002 and January 2, 2003. Respondent's claim, however, contradicts a statement made by Respondent's own OQ Plan Administrator to OPS at the time of the inspection that the covered task list was not completed until 2005 after it was received from a sister company. Moreover, these dates are still substantially later than the April 27, 2001 deadline set forth in the relevant regulation. Respondent failed to produce any verifiable contemporaneous documentation or other persuasive evidence to show that it had established a list identifying its OQ covered tasks by April 27, 2001 when required. Accordingly, I find that Respondent violated § 195.505(a) as described in the Notice.

**Item 2** in the Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to have OQ provisions in place to ensure that contractor individuals performing covered tasks on its pipeline were qualified, and failing to include provisions for the use of training to qualify or re-qualify individuals to perform covered tasks. Respondent did not contest this item. Accordingly, I find that Respondent violated § 195.505(b) as more fully described in the Notice.

**Item 3** in the Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to have OQ provisions in place to ensure that individuals performing covered tasks on its pipeline were qualified to recognize and react to abnormal operating conditions (AOCs). At the hearing, Respondent repeated its statement that it had written a "redbook framework" for developing an OQ program prior to the April 27, 2001 deadline. Respondent, however, failed to demonstrate that it had an OQ program addressing the requirements associated with AOCs in place when required. Accordingly, I find that Respondent violated § 195.505(b) as described in the Notice.

**Item 4** in the Notice alleged that Respondent violated 49 C.F.R. § 195.505(c) by failing to have OQ provisions in place to ensure that any covered task performed by an individual who is not qualified is done only if directed and observed by an individual that is qualified. Respondent did not contest this item. Accordingly, I find that Respondent violated § 195.505(c) as more fully described in the Notice.

**Item 5** in the Notice alleged that Respondent violated 49 C.F.R. § 195.505(d) by failing to have OQ provisions in place to evaluate an individual whose performance of a covered task may have contributed to an accident. Respondent did not contest this item. Accordingly, I find that Respondent violated § 195.505(d) as more fully described in the Notice.

**Item 6** in the Notice alleged that Respondent violated 49 C.F.R. § 195.505(e) by failing to have OQ provisions in place to evaluate an individual for the purpose of determining whether the individual is no longer qualified to perform a covered task. Respondent did not contest this item. Accordingly, I find that Respondent violated § 195.505(e) as more fully described in the Notice.

**Item 7** in the Notice alleged that Respondent violated 49 C.F.R. § 195.505(f) by failing to have OQ provisions in place to identify and communicate changes that affect covered tasks to individuals performing those covered tasks. Respondent did not contest this item. Accordingly, I find that Respondent violated § 195.505(f) as more fully described in the Notice.

**Item 8** in the Notice alleged that Respondent violated 49 C.F.R. § 195.505(g) by failing to have OQ provisions in place identifying the re-evaluation intervals for covered tasks. In its post-hearing submittal, Respondent asserted that "The TBPL management had elected to do re-evaluations every five years; therefore, re-evaluation was not required until December, 2007." This response, however, does not demonstrate that re-evaluation intervals had been established when required, much less document any supporting justifications for interval length. Respondent failed to demonstrate that it had an OQ program addressing the re-evaluation intervals in place when required. Accordingly, I find that Respondent violated § 195.505(g) as described in the Notice.

**Item 9** in the Notice alleged that Respondent violated 49 C.F.R. § 195.507 by:

- A. failing to maintain qualification records including the dates of current qualification;
- B. failing to maintain qualification records identifying the covered tasks of each individual;
- C. failing to maintain qualification records including the qualification methods and criteria; and
- D. failing to maintain qualification records for contractor individuals who had performed covered tasks on the pipeline.

Respondent did not contest allegations B or C. With respect to A, the allegation that Respondent failed to maintain qualification records including the dates of current qualification, Respondent acknowledged that these records contained no dates. With respect to D, the allegation that Respondent failed to maintain qualification records for contractor individuals who had performed covered tasks on the pipeline, Respondent acknowledged that at the time, it failed to produce any records that would have demonstrated that contractor individuals had been qualified on tasks they performed on its pipeline prior to performing them. Accordingly, I find that Respondent violated § 195.507 by failing to maintain the specified records during the relevant time period.

**Item 10** in the Notice alleged that Respondent violated 49 C.F.R. § 195.509 by failing to have an OQ program completed and in place by April 27, 2001. Respondent again relied on its argument that it had a "redbook framework" in place by the April 27, 2001 deadline. Once again, however, Respondent conceded that this document was actually an outline of only a few pages that merely reiterated the OQ regulations in Subpart G of C.F.R. Part 195. Respondent failed to produce any verifiable contemporaneous documentation or other persuasive evidence to show

that it had a complete OQ program in place by April 27, 2001 when required.<sup>1</sup> Accordingly, I find that Respondent violated § 195.509 as described in the Notice.

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 \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

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.

With respect to Item 1.A, the Notice proposed a civil penalty of \$5,000 for Respondent's failure to establish a list identifying its OQ covered tasks by the applicable deadline of April 27, 2001 in accordance with § 195.505(a). Having a complete OQ program in place to ensure that individuals performing covered tasks are properly qualified is an important part of pipeline safety. Respondent's pipeline system is located in urban and suburban areas and the consequences of any errors that cause or contribute to a release from the pipeline could be serious. Establishing the covered tasks on a given pipeline system is a key step in developing any OQ program because in order to assess the effectiveness of an operator's process for establishing that an individual is qualified to perform a given task, that task and its criteria must be available to compare against the individual's previous evaluations and qualifications. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for its violation of § 195.505(a).

With respect to Item 3, the Notice proposed a civil penalty of \$5,000 for Respondent's failure to have OQ provisions to ensure that individuals performing covered tasks were qualified to recognize and react to abnormal operating conditions in accordance with § 195.505(b). Having a complete OQ program in place to ensure that individuals performing covered tasks are properly qualified is an important part of pipeline safety. Respondent's pipeline system is located in urban and suburban areas and the consequences of any errors that cause or contribute to a release from the pipeline could be serious. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil

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<sup>1</sup> Respondent failed to make this showing at the time of the inspection and again failed to make this showing during the hearing. Respondent did submit an undated copy of the OQ plan that it ultimately developed with its post-hearing materials, but this plan was not in place during the relevant time period of April 27, 2001.

penalty of \$5,000 for its violation of § 195.505(b).

With respect to Item 8, the Notice proposed a civil penalty of \$4,500 for Respondent's failure to have OQ provisions identifying the re-evaluation intervals for covered tasks in accordance with § 195.505(g). Having a complete OQ program in place to ensure that individuals performing covered tasks are properly qualified is an important part of pipeline safety. Respondent's pipeline system is located in urban and suburban areas and the consequences of any errors that cause or contribute to a release from the pipeline could be serious. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$4,500 for its violation of § 195.505(g).

With respect to Item 9.A, the Notice proposed a civil penalty of \$4,500 for Respondent's failure to maintain qualification records including the dates of current qualification in accordance with § 195.507. Having a complete OQ program in place to ensure that individuals performing covered tasks are properly qualified is an important part of pipeline safety. Violations of recordkeeping requirements are serious because in the absence of complete and reliable records, neither a pipeline operator nor OPS can properly evaluate and oversee the effectiveness of a safety program. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$4,500 for its violation of § 195.507.

With respect to Item 9.D, the Notice proposed a civil penalty of \$2,500 for Respondent's failure to maintain qualification records for contractor individuals who had performed covered tasks on the pipeline in accordance with § 195.507. Having a complete OQ program in place to ensure that individuals performing covered tasks are properly qualified is an important part of pipeline safety. Violations of recordkeeping requirements are serious because in the absence of complete and reliable records, neither a pipeline operator nor OPS can properly evaluate and oversee the effectiveness of a safety program. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$2,500 for its violation of § 195.507.

With respect to Item 10, the Notice proposed a civil penalty of \$50,000 for Respondent's failure to have an OQ program in place by April 27, 2001 in accordance with § 195.509. Having a complete OQ program in place to ensure that individuals performing covered tasks are properly qualified is an important part of pipeline safety. Respondent's pipeline system is located in urban and suburban areas and the consequences of any errors that cause or contribute to a release from the pipeline could be serious. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$50,000 for its violation of § 195.509.

Based on the forgoing, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$71,500. Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business.

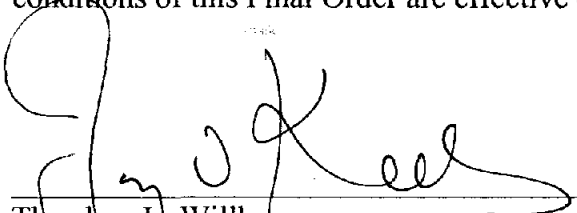
Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$71,500 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 United States District Court.

### COMPLIANCE ORDER

The Notice proposed a Compliance Order specifying actions to be taken by Respondent to correct the violations. 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 established under chapter 601. The Director, Southern Region, OPS, has indicated that Respondent has provided documentation demonstrating that it has now corrected the deficiencies in its OQ program as specified in the Proposed Compliance Order. Accordingly, since compliance has been achieved with respect to these violations, it is unnecessary to include compliance terms in this Order.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, 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 filing of a petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.

*for*  
  
 Theodore L. Willke  
 Acting Associate Administrator  
 for Pipeline Safety

DEC - 1 2006

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 Date Issued