

FEB 8 2012

Mr. Robert Rose
President
The Pipelines of Puerto Rico, Inc.
P.O. Box 35236
Sarasota, FL 34242

Re: CPF No. 2-2011-6007

Dear Mr. Rose:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation, assesses a civil penalty of \$20,000, and specifies actions that need to be taken by The Pipelines of Puerto Rico, Inc., 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, Southern 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,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Wayne T. Lemoi, Director, Southern Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164203198355]

**U.S. 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)	
)	
The Pipelines of Puerto Rico, Inc.,)	CPF No. 2-2011-6007
)	
Respondent.)	
)	

FINAL ORDER

On May16-20, 2011, 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 The Pipelines of Puerto Rico, Inc. (PLPR or Respondent), in Guaynabo, Puerto Rico.¹ PLPR operates a 9.5-mile jet fuel pipeline from the Cataño Pump Station in Guaynabo to the Luis Muñoz Marin International Airport in Carolina, Puerto Rico.

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated August 2, 2011, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that PLPR had violated 49 C.F.R. § 195.452(f) (2) and proposed assessing a civil penalty of \$20,000 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation. The warning items required no further action, but warned the operator to correct the probable violation or face possible enforcement action.

Respondent failed to respond within 30 days of receipt of service of the Notice. Under 49 C.F.R. § 190.209(c), such failure to respond constitutes a waiver of PLPR's right to contest the allegations in the Notice and authorizes the Associate Administrator, without further notice, to find facts as alleged in the Notice and to issue this Final Order under § 190.213. In this case, the Notice was mailed to Respondent by certified mail (USPS Article No. 7007 2680 1340 7334) on August 2, 2011, and was received by Respondent on August 4, 2011, as shown by the return

¹ According to Articles of Merger filed with the Secretary of State of the State of Florida, Tampa Pipeline Limited Partnership merged with Tampa Pipeline Corporation on or around September 30, 2001. Tampa Pipeline Corporation and its related companies operate pipelines providing jet fuel to various airports: St. Louis Pipeline Corporation (St. Louis Pipeline); Illinois Petroleum Supply Corporation (Illinois Petroleum Supply); Illinois Pipeline Corporation (Illinois Pipeline); Idaho Pipeline Corporation (Idaho Pipeline); Tampa Airport Corporation (Tampa Airport Pipeline); San Antonio Pipeline Corporation (San Antonio Pipeline); and Pipelines of Puerto Rico, Inc. (San Juan Pipeline). <http://www.sunbiz.org/corioff.html> (last accessed 1/26/2012)

receipt on file with PHMSA. To date, Respondent has never acknowledged or responded to the Notice. Under such circumstances, I find it reasonable and appropriate to enter this Final Order without further proceedings.²

FINDING OF VIOLATION

The company did not respond to the allegation in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(f) (2), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) ...

(f) *What are the elements of an integrity management program?* An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program:

(1) ...

(2) A baseline assessment plan meeting the requirements of paragraph (c) of this section;

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(f) (2) by failing to include a baseline assessment plan (BAP) in its integrity management program (IMP) that met the requirements of paragraph (c) of § 195.452. Specifically, the Notice alleged that Respondent failed to conduct a valid BAP on its 9.5-mile jet fuel pipeline by the deadline specified in § 195.452(d).

According to the Notice, Respondent presented the OPS inspection team with the company's annual pressure test records, test procedures, time lines, and other data for October 2004, October 2005, November 2006, September 2007, and September 2008, to demonstrate that it had taken various actions to assess the integrity of its pipeline in accordance with § 195.452(c)(i).

Under § 195.452(c), an operator must assess its pipeline by one of several methods specified in the regulation, including pressure tests conducted in accordance with Subpart E of Part 195. The Notice alleged, however, that the pressure tests performed by Respondent failed to satisfy the requirements of Subpart E for several reasons. First, Respondent conducted the pressure tests using jet fuel instead of water, as required by 49 C.F.R. § 195.306. Second, PLPR had no

² The Pipelines of Puerto Rico, Inc., is a sister company of several other pipelines owned or controlled by Mr. Robert Rose. *E.g.*, *In the Matter of Tampa Pipeline Corporation*, Final Order (CPF No. 2-2008-6002] (April 26, 2010), 2010 WL 6531627, (D.O.T.), August 27, 2010; *See also*, *In the Matter of Tampa Bay Pipeline Corporation*, Final Order (CPF No. 2-2005-6012 (Dec. 1, 2006), 2008 WL 902910 (D.O.T.), March 31, 2008. PHMSA final orders are generally accessible on the agency's website, *available at* <http://primis.phmsa.dot.gov/comm/reports/enforce/Actions>.

evidence to show that the pressure tests did not result in any leaks.³ Third, Subpart E requires that pressure tests equal or exceed 125% of the *maximum* operating pressure (MOP) of the pipeline, not 125% of the *regular* operating pressure. Respondent's minimum test pressure was at least 125% above the "regular operating pressure of the pipeline," which was well below the MOP. Therefore, PLPR failed to complete a valid IMP baseline assessment of its pipeline in accordance with 49 C.F.R. Part 195. Accordingly, based upon a review of the evidence in the record, I find that Respondent violated 49 C.F.R. § 195.452(f)(2) by failing to include a compliant BAP in its IMP.

This finding 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 \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. 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; the Respondent's ability to pay the penalty 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 \$20,000 for the violation cited above.

Item 3: The Notice proposed a civil penalty of \$20,000 for Respondent's violation of 49 C.F.R. § 195.452(f)(2), for failing to include a BAP in its IMP that met the requirements of paragraph (c) of § 195.452. As noted above, PLPR failed to respond to the Notice. The proposed penalty is based, in part, on the higher risks posed by a potential failure of this line to HCAs. Failure to identify when a pipeline is subject to the integrity management regulations presents a risk to the safety of the public and environment in the most critical geographical areas because the operator may not adhere to more stringent standards imposed on pipelines that could affect HCAs.

Furthermore, operators were required under § 195.452(a)(2) to complete BAPs for Category 2 pipelines not later than February 17, 2009. More than two years after this date when OPS conducted its inspection, PLPR still had not completed this basic task. In terms of culpability, Respondent's senior management knew or should have known of its responsibility to meet the various requirements of its own IMP.⁴ Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$20,000 for violation of 49 C.F.R. § 195.452(f)(2).

³ The test records show a significant pressure decline in several of the tests. The contractor attributed all of these pressure declines to changes in temperature, but without any engineering analysis or other proof to show that none of the pressure declines were due to leaks.

⁴ *In the Matter of Idaho Pipeline Corporation*, CPF No. 5-2008-5036 (April 27, 2009), the company was found to have violated 49 C.F.R. § 195.452(f) by failing to have a written IMP that addressed the minimum requirements in 49 C.F.R. § 195.452(f). 2009 WL 1211367, (D.O.T.), April 27, 2009. Idaho Pipeline Corporation is another sister company of The Pipelines of Puerto Rico, Inc.

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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P. O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$20,000 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 3 in the Notice for violation of 49 C.F.R. § 195.452(f)(2). 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. 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. Respondent must take the following actions:

1. With respect to the violation of § 195.452(f)(2) (**Item 3**), Respondent must, within 60 days of receipt of this Order, develop a plan to complete a valid IMP baseline assessment of its jet fuel pipeline from the Cataño Pumping Station to the Luis Muñoz Marin International Airport in Carolina, Puerto Rico, and submit the plan to the Director for approval.
2. Respondent must complete the IMP baseline assessment in accordance with the approved plan within 120 days of receipt of this Order, as required by 49 C.F.R. § 195.452.
3. It is requested that PLPR maintain documentation of the safety-improvement costs associated with fulfilling the terms of this Compliance Order and submit the total to the Director. It is requested that 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.

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 \$100,000 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.

WARNING ITEMS

With respect to Items 1 and 2, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.404 (a)(3) **(Item 1)** — Respondent’s alleged failure to maintain current and accurate records of the MOP of its pipeline. PLPR showed the MOP as being 904 psig in one record, 1,104 psig in another, and 627 psig in a letter to OPS, Southern Region, dated September 8, 2010; and

49 C.F.R. § 195.410 (a)(2)(i) **(Item 2)** — Respondent’s alleged failure to properly identify the product being transported in its pipeline as “Petroleum,” on the company’s line markers. Specifically, the pipeline transported jet fuel but the word “gasoline” was printed on the pipeline markers.

If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued