



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

1200 New Jersey Avenue, SE
Washington, D.C. 20590

JUN 17 2013

Mr. Alejandro Granado
Chairman, President, and CEO
CITGO Petroleum Corporation
1293 Eldridge Parkway
Houston, TX 77077-1670

Re: CPF No. 2-2012-6011

Dear Mr. Granado:

Enclosed please find the Decision issued by PHMSA on the Petition for Reconsideration filed by CITGO Petroleum Corporation in the above-referenced case. For the reasons set forth in the Decision, the petition is denied. Payment of the civil penalty of \$13,700 is due within 20 days of service. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southern Region, Office of Pipeline Safety, PHMSA, this enforcement action will be closed.

Service of this decision by certified mail is deemed effective upon 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
cc: Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Jim Sanders, General Manager Terminal Facilities & Pipeline, CITGO
Mr. Gustavo Velasquez, Vice President Supply and Marketing, CITGO
Mr. Bruce Adams, Southeast Regional Terminal Facilities Manager, CITGO
Mr. Wayne T. Lemoi, Director, Southern Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

request additional information, data, and comment as deemed appropriate. The filing of a petition stays the payment of any civil penalty assessed, but does not stay any required corrective action.

On February 12, 2013, CITGO submitted a Petition for Reconsideration (Petition) of the Final Order, contesting the finding of violation of Item 1 of the Final Order and requesting a review of the associated civil penalty and compliance order. CITGO did not contest the findings of violation or associated civil penalties for Items 2 and 3 of the Final Order. CITGO paid the civil penalties for Items 2 and 3 on January 22, 2013.

Discussion

In its Petition, CITGO contested the finding of violation in the Final Order related to Item 1, and requested that the associated civil penalty and compliance order be rescinded.² As discussed below, I affirm the decision, penalty, and compliance order in the Final Order associated with Item 1.

The Final Order found that CITGO had violated 49 C.F.R. § 195.505(h) by failing to provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities. Specifically, the Final Order found that CITGO records showed that a particular employee was qualified to perform its operator qualification (OQ) *Covered Task 17 – Provide Temporary Marking of Buried Pipeline Prior to Excavation*, but that this employee was not trained to complete the steps of *Sub-task 17.1 (Locate Line)* which involved the use of line locating equipment.

In its Petition, CITGO noted that § 195.505

“does not mandate any specific set of procedures that a pipeline operator... is required either to develop from a qualifications perspective or to implement by way of a training program. Instead, the regulation gives pipeline operators the latitude necessary to both qualify and train their employees in a manner that is appropriate under the unique circumstances of each facility to ensure that the pipeline is safely operated and maintained.”³

CITGO stated that it believed that the finding in Item 1 of the Final Order was due to a misunderstanding of the training materials that PHMSA reviewed during the inspection. To review the CITGO OQ program, the PHMSA inspector used a document entitled “Consortium on Operator Qualifications Covered Task Procedures” (COOQ). The COOQ included the use of line locating equipment as step 5 of Sub-Task 17.1. CITGO stated that the COOQ is an industry-related “best practice” guide that delineates steps that are typically recommended for locating and marking buried pipelines, but that it does not delineate the requirements for CITGO’s line locators. CITGO stated that its “internal process” does not require that persons locating buried pipelines use this equipment.⁴

² Petition at 1.

³ *Id.* at 2.

⁴ *Id.*

In its Petition, CITGO argued that the use of line locating equipment was not a required part of its covered *Sub-task 17.1 (Locate Line)*. CITGO stated that there are three industry-accepted methods of locating a pipeline: using maps or other documentation, using electronic locating equipment, or using a metal probe bar.⁵ According to CITGO, their records showed that this employee was qualified in Subtask 17.1, but his evaluation form for this subtask showed that two steps of this task (“Check locating equipment operation” and “Determine the line location and depth”) were “not applicable.”⁶ CITGO argued that the employee in question was qualified to perform the “Locate Line” sub-task using the two methods that did not involve the use of line locating equipment, and that therefore CITGO’s records showing that he was operator qualified for this task were accurate.

The Petition further argued that a CITGO manager conducted an informal survey of seven other pipeline operators in the area, and that four of them responded that they believed “that it was permissible to have a ‘not applicable’ evaluation if the step for which that evaluation was associated was not essential to safely carrying out the task or sub-task.”⁷

CITGO did not provide any evidence of its internal process, an alternative document governing its OQ program, or different criteria for OQ covered tasks. CITGO’s “Operator Qualification Evaluation Form,” and the COOQ document on which the CITGO form appears to be based, listed “Check line locating equipment” as a step for the OQ covered sub-task 17.1, “Locate Line.” The documents did not specify that use of electronic line locating equipment was optional or non-essential. Other CITGO records showed that this particular employee had indeed been evaluated for Covered Task 17, specifically including sub-task 17.1, and was deemed qualified to perform it, and there was no indication on these records that the use of line location equipment was optional.⁸ Further, although other pipeline operators may believe it is permissible to have a “not applicable” evaluation of a subtask, CITGO’s procedures did not specify that with respect to Sub-task 17.1.

The Petition noted that “the COOQ is only one of the manuals and guidelines CITGO uses in developing procedures that are to be followed by its personnel in their activities on and around the pipeline.”⁹ CITGO described its use of the Common Ground Alliance’s (CGA) Best Practices document in the development of the company’s Operations Manual, and noted that the CGA document delineates best practices for line locators, but that “there is no reference to the mandatory use of electronic line locating equipment for this task.” CITGO may follow CGA Best Practices but its COOQ document did not specify that the use of electronic line locating equipment was optional.

CITGO noted that, though this employee had not been trained to use line locating equipment, he was “nonetheless trained and competent to locate and mark the lines in accordance with

⁵ *Id.* at 2-3.

⁶ Violation Report, Exhibit A.

⁷ Petition at 3.

⁸ Violation Report, Exhibit A.

⁹ Petition at 4.

CITGO's best practice procedures."¹⁰ CITGO argues that the employee's work performance demonstrates that he was "fully qualified for this task," and noted that he had responded to multiple requests from third parties to locate this particular line running between CITGO's terminal at Port Everglades and the Fort Lauderdale Airport, and that the line had never been damaged following his line location.

Compliance with the company's best practice procedures does not equate to compliance with the written OQ program. The issue at hand is not whether there are other acceptable and effective methods for locating a pipeline. The issue is whether CITGO's OQ program required an individual qualified in this task to be able to use line locating equipment. COOQ Covered Task 17, *Subtask 17.1 (Locate Line)*, includes steps involving the use of line locating equipment. Therefore, to be fully qualified in this subtask, an individual must be qualified to complete these steps. CITGO's records showed that the employee in question was qualified in Subtask 17.1, but he was not trained to perform all of the steps of this subtask as written in the OQ program. The fact that he had successfully located this particular pipeline on multiple occasions does not mean he was "fully qualified" in each of the steps of the CITGO OQ covered task of "Locate Line."

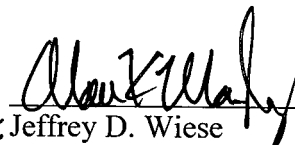
For these reasons, CITGO's petition on this Item is denied. CITGO did not offer any other arguments for a reduction of the civil penalty or a change to the compliance order. Therefore, the compliance order and the assessed civil penalty of \$13,700 stand.

Conclusion

Based on a review of the record and for the reasons stated above, the Petition is denied. Payment in full of the civil penalty of **\$13,700** is now due and must be made within 20 days of service. Failure to pay the \$13,700 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.

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. 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.

This decision is the final administrative action in this proceeding.

for: 
 Jeffrey D. Wiese
 Associate Administrator
 for Pipeline Safety

JUN 17 2013
 Date Issued

¹⁰ *Id.* at 5.