



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

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

FEB 28 2013

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

Re: CPF No. 2-2012-6020

Dear Mr. Rose:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$8,700, 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,

for: Jeffrey D. Wiese
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

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

In the Matter of)
)
)

The Pipelines of Puerto Rico, Inc.,)

CPF No. 2-2012-6020

Respondent.)
_____)

FINAL ORDER

On June 11-12, 2012, 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 written Public Awareness Plan (PAP) of The Pipelines of Puerto Rico, Inc. (PLPR or Respondent), in San Juan, 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 October 17, 2012, 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. § 195.440(a) and proposed assessing a civil penalty of \$8,700 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct an alleged violation of § 195.440 (g). The warning item 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 0001 1340 6788) on October 17, 2012, and was received by Respondent on October 20, 2012, as shown by

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)

the return receipt on file with PHMSA.

To date, Respondent has never acknowledged nor responded to the Notice. Under such circumstances, I find it reasonable and appropriate to enter this Final Order without further proceedings.²

FINDINGS OF VIOLATION

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

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a), which states:

§ 195.440 – Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* §195.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a) by failing to implement a written continuing public education program that followed the guidance provided in Section 8.4 and Table 8-1 of API RP 1162. Specifically, the Notice alleged that PLPR had not assessed the effectiveness of its PAP every four years, in accordance with its written program and API RP 1162. To demonstrate completion of its effectiveness review, during the inspection, Respondent provided PHMSA with a document entitled *Conformation of PLPR Management Joint Public Awareness Program review and Support*.³ PHMSA found the document to be a memo, which states, in relevant part:

“Conformation of PLPR Management Joint Public Awareness Program review and Support

On 5/13/2010 a joint [Luis Rodriguez and myself] review of PLPR Public Awareness Program. PLPR's Public Awareness Plan, Public Awareness Method of Communication and Notification letters discussed.

Concur with plans to proceed with providing appropriate stakeholder audiences communications with hand delivery of printed materials and

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>.

³ Pipeline Safety Violation Report (Violation Report) (Oct. 23, 2012) (on file with PHMSA), Exhibit A.

face-to-face personal contact being primary message delivery method. Continuation of local procedure for providing pens and magnets during face-to-face contact is encouraged where appropriate. Public notification calls concerning ROW activity and zero (0) third party damage result of zero (0) attest to positive program bottom line results...”

After a thorough review of the document, PHMSA found no evidence, information, or data that PLPR had assessed the effectiveness of its public awareness program every four years in accordance with API RP 1162.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.440(a) by failing to assess the effectiveness of its public awareness program every four years, in accordance with its written Public Awareness Program and Section 8.4 and Table 8-1 of API RP 1162.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(g), which states:

§ 195.440 – Public awareness.

(a)

(g) The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator’s area.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(g) by failing to conduct its PAP in other languages commonly understood by a significant number and concentration of the population in the operator’s area. PHMSA found that Respondent had written and distributed its PAP message material entirely in Spanish.⁴ Specifically, the Notice alleged that PLPR had not conducted its public awareness program in English, a language commonly understood by a significant number and concentration of the non-Spanish speaking population in the operator’s area, as required by 49 C.F.R. § 195.440(g).

Respondent did not contest this allegation of violation. Puerto Rico is a territory of the United States. English, along with Spanish, is an official language in Puerto Rico. As of 2012, English remains an official language in the Commonwealth of Puerto Rico.⁵ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.440(g) by failing to conduct its PAP in English, a language commonly understood by a significant concentration of the non-Spanish speaking population in the operator’s area.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

⁴ Violation Report, Exhibit A.

⁵ <https://www.cia.gov/library/publications/the-world-factbook/geos/rq.html>

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 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; 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 \$8,700 for the violation of Section 195.440(a).

Item 2: The Notice proposed a civil penalty of \$8,700 for Respondent's violation of 49 C.F.R. § 195.440(a), for failing to assess the effectiveness of its public awareness program every four years, as required by its written Public Awareness Program and API RP 1162, Section 8.4. As noted above, PLPR failed to respond to the Notice. With respect to the nature and gravity of this violation, the failure to adequately notify and educate all of the public along or near the pipeline right-of-way to recognize a hazardous liquid pipeline emergency could have catastrophic results in the event of a release. The proposed penalty is based, in part, on the higher risks posed by a potential failure of this line to HCAs. In terms of culpability, Respondent's senior management knew or should have known of its responsibility to meet the various requirements of its written Public Awareness Program and API RP 1162. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$8,700 for violation of 49 C.F.R. § 195.440(a).

Payment of the civil penalty must be made within 20 days of service of this Final Order. Payment may be made by sending a certified check or money order (containing the CPF Number for this case), made payable to "U.S. Department of Transportation," to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-341), P.O. Box 269039, Oklahoma City, Oklahoma 73125. Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit 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 \$8,700 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 2 and 3 in the Notice for violation of 49 C.F.R. § 195.440(a) and (g). 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 § 195.440(a) (**Item 2**), Respondent must, within 30 days of receipt of this Order, conduct a PAP Effectiveness Evaluation. In addition, Respondent must-
 - a. PLPR must submit written documentation to the Director, Southern Region, to verify that an effectiveness evaluation has been completed, within 45 days of receipt of this Order.
2. With respect to the violation of § 195.440(g) (**Item 3**), Respondent must, within 60 days of receipt of this Order, prepare and distribute new PAP message material that includes the English language. In addition, Respondent must-
 - a. PLPR must submit written documentation to the Director, Southern Region, to verify that the company has prepared and distributed the new message material in English, within 75 days of receipt of this Order.
3. It is requested, but not required, that PLPR maintain documentation of the safety-improvement costs associated with fulfilling the terms of this Compliance Order and submit the total to Wayne T. Lemoi, Director, Southern Region. 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 \$200,000 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 ITEM

With respect to Item 1, the Notice alleged a probable violation of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 195.440 (a) **(Item 1)** — Respondent's alleged failure to complete its 2009 annual program implementation audit, to determine whether the company had developed and implemented its PAP in accordance with API RP 1162, Section 8.3, Measuring Program Implementation.

If OPS finds a violation of this item 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.

for: [Signature]

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

FEB 28 2013

Date Issued