

**FEBRUARY 18, 2014**

Mr. Robert L. Rose  
President  
Tampa Airport Pipeline Corporation  
4120 Higel Avenue  
Sarasota, FL 34242

**Re: CPF No. 2-2013-6010**

Dear Mr. Rose:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$26,800. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

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<b>In the Matter of</b>	)	
	)	
<b>Tampa Airport Pipeline Corporation,</b>	)	<b>CPF No. 2-2013-6010</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

On May 13-17, 2013, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the control room of Tampa Airport Pipeline Corporation (TAPC or Respondent) in Tampa, Florida.

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated September 23, 2013, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that TAPC had violated 49 C.F.R. § 195.446 and proposed assessing a civil penalty of \$26,800 for the alleged violation.

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 TAPC'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. 7012 2210 0001 3743) on September 23, 2013, and was received by Respondent on September 26, 2013, as shown by the return receipt on file with PHMSA. To date, Respondent has not acknowledged or responded to the Notice. Under such circumstances, I find it reasonable and appropriate to enter this Final Order without further proceedings.<sup>1</sup>

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<sup>1</sup> 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>.

## FINDING OF VIOLATION

TAPC did not contest the allegation in the Notice that it violated 49 C.F.R. Part 195, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.446, which states in relevant part:

**§ 195.446 – Control room management.**

(a) *General.* This section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this section. The procedures required by this section must be integrated, as appropriate, with the operator's written procedures required by § 195.402. An operator must develop the procedures no later than August 1, 2011, and must implement the procedures according to the following schedule. The procedures required by paragraphs (b), (c)(5), (d)(2) and (d)(3), (f) and (g) of this section must be implemented no later than October 1, 2011. The procedures required by paragraphs (c)(1) through (4), (d)(1), (d)(4), and (e) must be implemented no later than August 1, 2012. The training procedures required by paragraph (h) must be implemented no later than August 1, 2012, except that any training required by another paragraph of this section must be implemented no later than the deadline for that paragraph.

The Notice alleged that Respondent violated 49 C.F.R. § 195.446 by failing to follow its written control room management (CRM) procedures. Specifically, the Notice alleged that:

- Section 8.8.1 of TAPC's procedures stated that TAPC's *Alarm Management Plan* included identified safety-related alarms, but that TAPC did not have an *Alarm Management Plan* and had not identified which of its alarms were safety-related;
- Section 8.11.5 of TAPC's procedures required TAPC to monitor the content and volume of activity being directed to and required of each controller, but that TAPC had not done so;
- Section 8.11.1 of TAPC's procedures required TAPC's training program to include "[r]esponding to abnormal operating conditions likely to occur simultaneously or in sequence," but that TAPC did not include such training between August 1, 2012, and May 13, 2013; and
- Section 8.5.1 of TAPC's procedures required that TAPC's shift turnover process include the use of the "Operators shift change form" to indicate that acceptable briefing had been provided to the oncoming controller, but that TAPC could not provide the "Operators shift change form" nor any evidence that such a form had ever been used.

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. § 195.446 by failing to follow its written control room management (CRM) procedures.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.<sup>2</sup> 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 \$26,800 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$26,800 for Respondent's violation of 49 C.F.R. § 195.446, for failing to follow its written CRM procedures. TAPC neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. I have considered the nature, circumstances and gravity and TAPC's culpability for the violation. CRM is meant to enhance the performance of operator personnel that control pipeline operations and to ensure that operators will be able to assess and respond to abnormal conditions quickly and appropriately. CRM is also meant to reduce the number and consequences of shortfalls in control room management practices and operator errors when remotely monitoring and controlling pipelines. TAPC had CRM procedures, but failed to follow them in multiple ways for an extended period of time, rendering them ineffective. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$26,800 for violation of 49 C.F.R. § 195.446.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$26,800**.

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 \$26,800 civil penalty will result in accrual of interest at the current annual rate

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<sup>2</sup> The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904, January 3, 2012, increased the civil penalty liability for violating a pipeline safety standard to \$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 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.

Under 49 C.F.R. § 190.215, Respondent has the 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, 2<sup>nd</sup> 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 the 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 but does not stay any other provisions of the Final Order, including any required corrective actions. 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 upon service in accordance with 49 C.F.R. § 190.5.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued