



US Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh Street, S W
Washington, D C 20590

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SEP 16 2002

Mr. Larry Hartness
Vice President of Operations
Ergon Trucking, Inc.
2829 Lakeland Drive
Mirror Lake Plaza, Bldg. B
Jackson, MS 39208

RE: CPF No. 3-2001-5012

Dear Mr. Hartness:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$2,400. The penalty payment and terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

cc: Ivan Huntoon, Director, OPS Central Region

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
WASHINGTON, DC 20590**

In the Matter of)	
Ergon Trucking Inc.,)	CPF No. 3-2001-5012
Respondent)	
)	

FINAL ORDER

On October 23-27, 2000, pursuant to 49 U.S.C. § 60117, representatives of the Central Region and Eastern Region, Office of Pipeline Safety (OPS) conducted an onsite safety inspection of Respondent's records in Magnolia, Ohio and facilities from the Magnolia, Ohio pump station to the Ergon Refinery in West Virginia. As a result of this inspection, the Director, Central Region, OPS, issued to Respondent, by letter dated May 24, 2001, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. §190.207, the Notice proposed finding that Respondent had committed a violation of 49 C.F.R. §195.420(b).

In a letter dated June 21, 2001, Respondent submitted a Response to the Notice (Response). Respondent did not contest the allegations of violation but offered an explanation and provided information in mitigation of the proposed civil penalty. Respondent did not request a hearing and therefore, has waived its right to one.

FINDINGS OF VIOLATION

Respondent did not contest alleged violation §195.420(b) in the Notice. Accordingly, I find that Respondent violated 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. §195.420(b) – failing to inspect its six (6) valves within the required 7 ½ month interval, as valve inspections were performed at thirteen (13) month intervals.

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 a civil penalty not to exceed \$25,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations. The Notice proposed a total penalty assessment of \$6,000.

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.

The Notice proposed a civil penalty of \$6,000 for violation of 49 C.F.R. §195.420(b). Respondent explained that it conducts a visual inspection of the valves once a year during the mowing of the pipeline right-of-way, which includes weed eating around all valves on the pipeline. If any problems are visually noted by the mowing company at that time, they are documented and reported immediately to the pipeline manager. Respondent asserts that a visual inspection was conducted and that there were no problems noted by the mowing company.

The Respondent advises that in an effort to ensure that the valve inspection does not exceed the 7 ½ month interval, it is conducting awareness training, reviewing 49 C.F.R. §195.420, and improving and maintaining valve maintenance documentation. Respondent argues that the \$6,000 proposed civil penalty is excessive for a first-time violation at the facility and that it has instituted procedures to ensure compliance.

Ultimately, the Respondent is responsible for the safe operation of its pipeline, not a mowing company. 49 C.F.R. §195.420(b) exist to ensure that the valves will be operational in case of a pipeline failure. Although the Respondent's methods for valve inspection were unconventional, Respondent did have a system in place. Since the exit interview, Respondent has taken steps to institute new procedures to ensure that valve inspections are properly conducted and do not exceed the 7 ½ month interval, which shows its good faith effort to comply.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$2,400. A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue business.

Payment of the civil penalty must be made within 20 days of service. Payment can be made by sending a certified check or money order (containing the CPF Number for this case) payable to " U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this **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.** After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel (DCC-1)**, Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001.

Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$2,400 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 an United States District Court.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. 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 the petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, shall remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$25,000 per violation per day, or in the referral of the case for judicial enforcement.



²⁷ Stacey Gerard
Associate Administrator
for Pipeline Safety

SEP 16 2002

Date