



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

901 Locust Street, Suite 462
Kansas City, MO 64106-2641

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

October 21, 2011

Mr. Robert Carlton
Vice President & Chief Compliance Officer
Southern Star Central Gas Pipeline
4700 Highway 56
Owensboro, KY 42301

CPF 3-2011-1016

Dear Mr. Carlton:

On July 12, 13 and 14, 2011, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected your Public Awareness Program in Owensboro, KY.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. §192.616 Public Awareness.

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why conditions with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

Southern Star Gas Central Pipeline (Southern Star) did not complete an annual audit for Plan Year 2006 and 2008 as required by API RP 1162. Southern Star assumed that submitting the 2006 Public Awareness Plan (PAP) to PHMSA Clearinghouse for review complied with an annual audit for Year 2006. Southern Star was unable to provide documentation to demonstrate that annual audits were performed for Plan Year 2006 or 2008.

2. §192.616 Public Awareness.

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why conditions with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

Southern Star failed to follow their PAP procedure for program administration. Southern Star failed to use their established and defined team to ensure the development, implementation, and ongoing oversight of the public awareness program was done in accordance with their established procedures. The 2010 Annual Audit was completed by a single individual.

Also, Southern Star did not provide documentation that the annual audit recommendations were implemented or show there was a process in place to track the implementation of the audit recommendations.

3. § 192.616 Public Awareness.

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why conditions with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

Southern Star did not complete the baseline effectiveness evaluation within the time period of regulatory guidelines established in API RP 1162. Documentation provided indicates the evaluation was completed on October 18, 2010, four months beyond the

required four year interval for evaluation. Southern Star provided no documentation or justification for why the effectiveness evaluation was not completed within the prescribed interval.

4. **§192.616 Public Awareness.**

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why conditions with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

Southern Star failed to adequately measure whether stakeholder audiences understood the content of messages and retained key information from the messages. Southern Star relied primarily on returned survey cards for assessing how well the message content was understood. Southern Star field personnel passed out calendars to the affected public during face-to-face meetings but did not ask questions designed to assess their understanding of the message content. The percentage of responses from stakeholder audiences was low (0.24%).

5. **§192.616 Public Awareness.**

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why conditions with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

The Southern Star PAP contains a table of Supplemental Activities but no documentation was provided for the implementation of these activities or how these activities would be used for effectiveness evaluation. Also, no documentation was provided for follow-up activities with emergency response and public officials who did not attend training/informational meetings.

6. **§192.616 Public Awareness.**

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why conditions with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

Southern Star did not complete the annual audits in a timely manner so that recommendations could be included in the following year's plan for implementation.

Southern Star has performed annual audits for PAP Years 2007, 2009 and 2010 in September 2008, November 2010 and April 2011, respectively.

7. **§192.616 Public Awareness.**

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why conditions with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

The Southern Star PAP listed six Objectives but the data collection efforts, data analysis and effectiveness evaluation processes do not measure bottom-line results to achieve the six Objectives listed in the PAP.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$25,300 as follows:

| <u>Item number</u> | <u>PENALTY</u> |
|--------------------|----------------|
| 1 | \$12,800 |
| 3 | \$12,500 |

Warning Items

With respect to items 5 and 6, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Be advised that failure to do so may result in Southern Star being subject to additional enforcement action.

Proposed Compliance Order

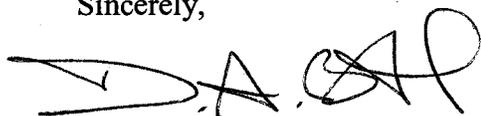
With respect to items 2, 3, 4 and 7, pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Southern Star Central gas Pipeline. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 3-2011-1016** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

A handwritten signature in black ink, appearing to read 'D.A. Barrett', with a large, stylized flourish at the end.

David Barrett
Director, Central Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Southern Star Central Gas Pipeline (Southern Star) a Compliance Order incorporating the following remedial requirements to ensure the compliance of Southern Star with the pipeline safety regulations:

1. In regard to Item Number 2 of the Notice pertaining to failure to follow the Public Awareness Plan (PAP) procedure for program administration by failing to use your established and defined Public Awareness Team for oversight of the public awareness program, Southern Star shall complete the following:
 - Ensure that an internal group performs the annual audits of the PAP following the internal assessment method.
 - Submit a written plan to Central Region by December 31, 2011 with details of how recommendation from annual audits will be implemented and completed,
 - Implement and complete all recommendation from annual audits conducted for Plan Years 2006 – 2010 no later than August 31, 2012 and submit supporting documentation to Central Region.

2. In regard to Item Number 3 of the Notice pertaining to failure to complete the baseline effectiveness evaluation by the required deadline of June 20, 2010, Southern Star shall complete the following:
 - Submit a written document to Central Region by December 31, 2011 with details of how recommendations from Effectiveness Evaluations will be implemented and closed.
 - Implement and complete all recommendations from the 2010 Effectiveness Evaluation no later than August 31, 2012 and submit supporting documentation to Central Region.

3. In regard to Item Number 4 of the Notice pertaining to failure to adequately measure whether stakeholder audiences understand the content of messages and retained key information in the messages. Southern Star shall complete the following:
 - Follow the recommendations of API 1162, specifically addressing “survey target stakeholder audiences” and develop a survey plan and forms for surveying target audiences no later than December 31, 2011.
 - Implement the survey for measuring understandability no later than February 29, 2012.

4. In regard to Item Number 7 of the Notice pertaining to lack of measuring bottom-line results to achieve the Plan Objectives, Southern Star shall complete the following:
 - After the amendment of the PAP procedure for Effective Evaluations, as required in Item 4 of CPF 3-2011-1017M, has been completed, measure the bottom-line results to determine if the six Objectives of the PAP have been achieved.
 - Submit documentation of the bottom-line results in relation to the Objectives no later than September 30, 2012.

5. Unless specifically noted, documentation of completion shall be sent to the Regional Director, Central Region within 30 days of the completion date.
6. It is requested (not mandated) that Southern Star maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to David Barrett, Director, Central Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these 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.

-Response Options for Pipeline Operators in Compliance Proceedings

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

a. When the Notice contains a proposed CIVIL PENALTY* --

1. If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to issue an order making findings of violation and upon confirmation that the payment has been received PHMSA will close the case with prejudice to the respondent. Payment terms are outlined below;
2. If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order assessing a penalty amount up to the amount proposed in the Notice. Refer to 49 C.F.R. § 190.225 for assessment considerations, which include the respondent's ability to pay and the effect on the respondent's ability to stay in business, upon which civil penalties are based;
3. If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination or mitigation of the proposed civil penalty; or
4. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

b. When the Notice contains a proposed COMPLIANCE ORDER* --

1. If you are not contesting the compliance order, notify the Regional Director that you intend to take the steps in the proposed compliance order;
2. If you are not contesting the compliance order but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and issue a compliance order;
3. If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part; or
4. Request a hearing as described below to contest the allegations and/or proposed compliance order items.

c. When the Notice contains a WARNING ITEM --

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. Procedures for Responding to a NOTICE OF AMENDMENT*--

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. If you are not contesting the Notice, notify the Regional Director of your plans to address the inadequacies identified in the Notice;
- b. If you are not contesting the Notice but wish to submit written explanations, information, or other materials you believe warrant modification of the Notice of Amendment in whole or in part, or you seek clarification of the terms of the

Notice of Amendment, you may submit such materials. This authorizes PHMSA to make findings and issue an Order Directing Amendment;

- c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or
- d. Request a hearing as described below to contest the allegations in the Notice.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

III. **Procedure for Requesting a Hearing**

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

IV. **Extensions of Time**

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

V. **Freedom of Information Act**

Any material provided to PHMSA by the respondent, and materials prepared by PHMSA including the Notice and any order issued in this case, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If you believe the information you are providing is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption

provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to http://www.sba.gov/ombudsman/dsp_faq.html.

VII. **Payment Instructions**

Civil Penalty Payments of Less Than \$10,000

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration
Mike Monroney Aeronautical Center
Financial Operations Division (AMZ-341) P.O. Box 269039
Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

Civil Penalty Payments of \$10,000 or more

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

| | |
|---|--|
| (1) <u>RECEIVER ABA NO.</u> 021030004 | (2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank) |
| (3) <u>SENDING BANK ABA NO.</u> (Provided by sending bank) | (4) <u>SENDING BANK REF NO.</u> (Provided by sending bank) |
| (5) <u>AMOUNT</u> | (6) <u>SENDING BANK NAME</u> (Provided by sending bank) |
| (7) <u>RECEIVER NAME</u> TREAS NYC | (8) <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank) |
| (9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> BNF = /ALC-69-14-0001 | (10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number |

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

Block #7 - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/ALC-69-14-0001". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - "AC-payment for PHMSA Case # / To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

NOTE: A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

February 2009