

June 27, 2019

Mr. Bill Thomas
President and Chief Executive Officer
Hawthorn Oil Transportation (North Dakota), Inc.
1111 Bagby Sky Lobby 2
Houston, Texas 77002

Re: CPF No. 3-2018-6002

Dear Mr. Thomas:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a reduced civil penalty of \$60,600. 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 effective upon the date of mailing, as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Allan C. Beshore, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Michael D. Mitchell, Ogletree, Deakins, Nash, Smoak & Stewart, PC, One Allen
Center, 500 Dallas Street, Suite 500, Houston, Texas 77002
Mr. Nicholas Groves, Vice President, Safety and Environmental, Hawthorn Oil
Transportation (North Dakota), Inc.

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)	
)	
Hawthorn Oil Transportation)	
(North Dakota), Inc.,)	CPF No. 3-2018-6002
Respondent.)	

FINAL ORDER

From April 4 through 6, 2017, 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 facilities and records of Hawthorn Oil Transportation (North Dakota), Inc. (Hawthorn or Respondent), including its Stanley to Railyard pipeline in Stanley, North Dakota.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated May 3, 2018, a Notice of Probable Violation and Proposed Civil Penalty (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 Hawthorn had violated 49 C.F.R. §§ 194.7(b), 195.61(b), 195.403(b), and 195.440(c) and proposed assessing a civil penalty of \$74,100 for the alleged violations. The warning items required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

Hawthorn responded to the Notice by letter dated October 3, 2018 (Response). The company contested several of the allegations of violation and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Hawthorn did not contest the allegations in the Notice that it violated 49 C.F.R. Parts 194 and 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 194.7(b), which states:

§ 194.7 Operating restrictions and interim operating authorization.

(a)...

(b) An operator must operate its onshore pipeline facilities in accordance with the applicable response plan.

The Notice alleged that Respondent violated 49 C.F.R. § 194.7(b) by failing to operate its onshore pipeline in accordance with its response plan. Specifically, the Notice alleged that Hawthorn's response plan required that it conduct announced and unannounced drills and referenced the National Preparedness for Response Exercise Program (PREP) guidelines for additional details.¹ Under the PREP guidelines incorporated into its plan, the Notice alleged, Respondent was required to complete 22 drills for the period from 2010 to 2013. At the time of the inspection, however, Respondent could not provide records to demonstrate that any of the required PREP drills were conducted.

In its response, Hawthorn provided documents showing that it conducted three drills between 2010 and 2013, but did not provide documentation for the remaining 19 drills. This lessens the numbers of drills that were not conducted from 22 to 19.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 194.7(b) by failing to operate its onshore pipeline in accordance with its response plan.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.61(b), which states:

§ 195.61 National Pipeline Mapping System.

(a) Each operator of a hazardous liquid pipeline facility must provide the following geospatial data to PHMSA for that facility...

(b) This information must be submitted each year, on or before June 15, representing assets as of December 31 of the previous year. If no changes have occurred since the previous year's submission, the operator must refer to the information provided in the NPMS Operator Standards manual available at www.npms.phmsa.dot.gov or contact the PHMSA Geographic Information Systems Manager at (202) 366-4595.

The Notice alleged that Respondent violated 49 C.F.R. § 195.61(b) by failing to submit geospatial data of its hazardous liquid pipeline facilities to PHMSA each year, on or before June 15, representing assets as of December 31 of the previous year. Specifically, the Notice alleged that Hawthorn failed to submit data to the National Pipeline Mapping System in 2013 and 2015. Hawthorn was unable to provide documentation demonstrating that annual submittals had occurred and PHMSA records indicated the required pipeline mapping information was not submitted by Respondent for 2013 or 2015.

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. § 195.61(b) by failing to submit geospatial data of its hazardous liquid pipeline facilities to PHMSA each year, on or before June

¹ Section 194.107(c)(1)(ix) requires an operator to have a drill program in its response plan and states that an operator may satisfy this requirement by following the PREP guidelines.

15, representing assets as of December 31 of the previous year.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.403(b)(1), which:

§ 195.403 Emergency response training.

(a)...

(b) At the intervals not exceeding 15 months, but at least once each calendar year, each operator shall:

(1) Review with personnel their performance in meeting the objectives of the emergency response training program set forth in paragraph (a) of this section...

The Notice alleged that Respondent violated 49 C.F.R. § 195.403(b)(1) by failing to review with personnel their performance in meeting the objectives of the emergency response training program at intervals not exceeding 15 months, but at least once each calendar year. Specifically, the Notice alleged that Hawthorn could not provide evidence demonstrating the reviews occurred at the required intervals during calendar years 2014, 2015, and 2016.

In its response, Respondent submitted additional sign-in sheets showing that training had been conducted during 2014, 2015, and 2016. While it is evident from the sign-in sheets that training sessions had occurred, the sign-in sheets themselves do not constitute evidence that Hawthorn reviewed with its personnel their performance in meeting the objectives of the emergency response training. Section 195.403(b)(1) requires more than conducting emergency response training; it requires the operator to engage with its personnel in reviewing their performance.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.403(b)(1) by failing to review with personnel their performance in meeting the objectives of the emergency response training program at intervals not exceeding 15 months, but at least once each calendar year.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c), 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* § 195.3)...

(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 compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c) by failing to follow the general program recommendations and supplemental requirements of API RP 1162, section 8.3,

in its public education program.² Specifically, the Notice alleged that Hawthorn did not conduct annual audits or reviews in 2013 and 2014 to demonstrate whether its public awareness program has been developed and implemented according to the guidelines of API RP 1162.

In its response, Respondent provided records showing that it reviewed and updated its public awareness program in 2013 and 2014. The records included revision logs from 2013 and 2014, a 2013 effectiveness review, and a 2015 multi-year assessment covering years 2011-2014. I find these records show that Hawthorn reviewed the public awareness program annually and updated its program as required by the regulation.

Accordingly, after considering all of the evidence, I hereby order that Item 5 be withdrawn.

These findings of violation will be considered prior offenses 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.³ 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; 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 \$74,100 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$23,000 for Respondent's violation of 49 C.F.R. § 194.7(b) by failing to operate its onshore pipeline in accordance with its response plan. Hawthorn provided records showing that, rather than the 22 instances of violation cited in the Violation Report, there were only 19 instances of violation. Other than demonstrating compliance with regard to three instances, Hawthorn did not present any evidence or argument justifying further reduction in the proposed penalty under the assessment criteria. Based upon the foregoing, therefore, I assess Respondent a reduced civil penalty of \$22,600 for violation of 49 C.F.R. § 194.7(b).

Item 2: The Notice proposed a civil penalty of \$18,900 for Respondent's violation of 49 C.F.R. § 195.61(b) by failing to submit geospatial data of its hazardous liquid pipeline facilities to

² Section 8.3 of API RP 1162 states that operators should complete an annual audit or review of whether the program has been developed and implemented according to the guidelines in the RP.

³ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223; Revisions to Civil Penalty Amounts, 83 Fed. Reg. 60732, 60744 (Nov. 27, 2018).

PHMSA each year, on or before June 15, representing assets as of December 31 of the previous year. Hawthorn did not contest the allegation that it failed to submit the geospatial data in 2013 and 2015, but requested that the penalty be reduced based on compliance in 2014, 2016, 2017, and 2018. Compliance in other years does not excuse Hawthorn's failure to meet its regulatory responsibilities in 2013 and 2015. In addition, I find the proposed penalty amount already reflects that pipeline safety was minimally affected. I therefore find no justification to reduce the penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$18,900 for violation of 49 C.F.R. § 195.61(b).

Item 4: The Notice proposed a civil penalty of \$19,100 for Respondent's violation of 49 C.F.R. § 195.403(b)(1) by failing to review with personnel their performance in meeting the objectives of the emergency response training program at intervals not exceeding 15 months, but at least once each calendar year. Hawthorn requested the proposed civil penalty be withdrawn or reduced because it had conducted emergency response trainings. However, I have found that although training sessions were conducted, no review with personnel regarding their performance occurred. I therefore find no justification for a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$19,100 for violation of 49 C.F.R. § 195.403(b)(1).

Item 5: The Notice proposed a civil penalty of \$13,100 for Respondent's violation of 49 C.F.R. § 195.440(c) by failing to follow the general program recommendations and supplemental requirements of API RP 1162. I have withdrawn this Item; therefore, the associated proposed penalty is also withdrawn.

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 **\$60,600**.

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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$60,600 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.

WARNING ITEMS

With respect to Items 3 and 6, the Notice alleged probable violations of Part 195, but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.262(d) **(Item 3)** — Respondent’s alleged failure to have pumping equipment installed on property under its control and at least 50 feet from the boundary of the pump station; and

49 C.F.R. § 195.507 **(Item 6)** — Respondent’s alleged failure to include documentation supporting selected qualification methods in 2014 and 2015.

Hawthorn presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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, no later than 20 days after receipt of service of the Final Order by Respondent. Any petition submitted must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. 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.

June 27, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued