

July 27, 2020

**VIA ELECTRONIC MAIL TO: [swassell@southernco.com](mailto:swassell@southernco.com)**

Mr. Stephen L. Wassell, P.E.  
Vice President – Storage & Peaking Operations  
Golden Triangle Storage, Inc.  
10 Peachtree Place, NE  
Atlanta, Georgia 30309

**Re: CPF No. 4-2019-1012**

Dear Mr. Wassell:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$19,000, and specifies actions that need to be taken 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, Southwest Region, this enforcement action will be closed. Service of the Final Order by electronic mail is effective upon the date of transmission 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: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA  
Ms. Kimberly S. Greene, Chairman and Chief Executive Officer, Southern Company  
Gas, [kgreene@southernco.com](mailto:kgreene@southernco.com)

**CONFIRMATION OF 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>Golden Triangle Storage, Inc.,</b>	)	<b>CPF No. 4-2019-1012</b>	
<b>a subsidiary of Southern Company Gas,</b>	)		
	)		
<b>Respondent.</b>	)		
	)		

**FINAL ORDER**

From January 7 through June 22, 2019, 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 facilities and records of Golden Triangle Storage, Inc. (GTS or Respondent) in Orange, Texas. GTS, a wholly-owned subsidiary of Southern Company Gas, is a natural gas storage facility in the Spindletop salt dome in Jefferson and Orange Counties in Texas. GTS consists of salt dome storage caverns with approximately 13 Bcf of working gas capacity, 600 MMcf/day withdrawal capacity, and 300 MMcf/day injection capacity.<sup>1</sup>

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated December 9, 2019, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that GTS had committed two violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$19,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

GTS responded to the Notice by letter dated January 7, 2020 (Response). The company contested one of the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be eliminated.

Respondent did not request a hearing and therefore has waived its right to one.

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<sup>1</sup> Pivotal Energy Development website, *Golden Triangle Storage Operations*, available at: <http://pivotalenergydev.com/commercial-operations/golden-triangle-storage> (last accessed July 8, 2020).

## FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 192.614(a), which states:

**§ 192.614 Damage prevention program.**

(a) Except as provided in paragraphs (d) and (e) of this section, each operator of a buried pipeline must carry out, in accordance with this section a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term "excavation activities" includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earth moving operations.

The Notice alleged that Respondent violated 49 C.F.R. § 192.614(a) by failing to follow three separate provisions of its Damage Prevention Plan (DPP). Specifically, the Notice alleged that GTS failed to follow sections 3.3.1(D), 3.15.5(6), and 3.2.2(c) and (e) of its DPP for third-party excavation activities intended to commence on November 26, 2018, pursuant to locate ticket numbers 1882417960 and 1882418774, which were received by GTS on November 20, 2018. Section 3.3.1(D) of the DPP required GTS to mark its pipeline within two working days (48 hours) after receiving a pipeline locate ticket. GTS received two locate tickets on November 20, 2018, but did not mark its pipeline until November 27, 2018, in violation of its DPP. Section 3.15.5(6) and 3.2.2(c) required GTS to provide a positive response to the requested locate tickets through notification to the local One Call Center or the party requesting the marking of the pipelines in the area of the planned excavation activity prior to the work being performed. Finally, section 3.2.2(e) required GTS to maintain appropriate records if a notice of a pipeline location is requested and completed.

With respect to the alleged violation of § 192.614(a), Respondent stated that it was “not contesting the allegation, however the Company does feel that it is important to ensure the record is correct on the details of what is required by Texas Law.” GTS clarified that the markings were not required to be complete no later than November 22, 2018, which is 48 hours after the tickets were received because November 22, 2018 was Thanksgiving Day, and, under Texas law, the 48-hour period after receiving a locate ticket during which a pipeline must be marked excludes weekends and legal holidays. Respondent stated the markings were not required to be made until Monday November 26, 2018, but stipulated in the Response, the markings were not completed until November 27, 2018. In addition, GTS clarified that the positive response notification required under the tickets at issue was to notify the excavator or the One Call Center that the pipeline was “clear” because it was not located within the area of planned excavation. Finally, GTS acknowledged that it failed to maintain complete records related to the locate ticket request and completion of the notification.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.614(a) by failing to follow its DPP in response to two locate tickets received on November 20, 2018.

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 192.616(c), which states:

**§ 192.616 Public awareness.**

(a) ....

(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. § 192.616(c) by failing to conduct a program effectiveness evaluation incorporated into its Public Awareness Plan (PAP), as required by the general program recommendations of API RP 1162 (incorporated by reference, *see* § 192.7). Specifically, the Notice alleged that section 2.5 of GTS's PAP required that the effectiveness review found in Section 8 of API RP 1162 be carried out every four years. At the time of the inspection, GTS had conducted an effectiveness review on June 18, 2014, and the subsequent effectiveness review was completed on July 10, 2019. The Notice therefore alleged that GTS conducted the review 13 months beyond the four-year interval prescribed in its written procedures.

In its Response, GTS contested the allegation of violation and stated that it had completed the effectiveness evaluation within four years of the prior effectiveness evaluation. Specifically, GTS stated that it performed the effectiveness evaluation via surveys from January through June of 2018 after public educational material was disseminated over the preceding four years, and it was the analysis of the effectiveness evaluation surveys that did not occur within four years from the June 18, 2014 effectiveness evaluation. GTS cited to section 8.4.2 and Table 8-1 of API RP 1162 to support its position that surveys are an appropriate evaluation technique, and that such surveys are only required once every four years after the initial effectiveness evaluation. GTS contested PHMSA's allegation that API RP 1162 requires a final analysis of the results of an effectiveness survey no later than four years from the date of the prior evaluation. Rather, GTS argues that API RP 1162 requires only the effectiveness evaluation, in this case the surveys, to be completed within four years of the prior evaluation.

GTS is correct that Section 8 of API RP 1162 specifically states that surveys are permissible methods to perform an evaluation of the effectiveness of a Public Awareness Program. GTS is also correct that Table 8-1 of API RP 1162 specifically states that such evaluations, conducted via surveys, are required to be performed not more than four years apart. The Notice alleged that an effectiveness evaluation under API RP 1162 necessarily includes a complete and final analysis of the findings of the survey(s) performed, and that GTS failed to complete the analysis of the survey results not more than four years from the prior effectiveness evaluation.

The issue to resolve in this case is whether API RP 1162, by its terms only, requires a final analysis of an effectiveness evaluation conducted via a survey every four years, or if only the survey but not an analysis of the results is required every four years. I find that it requires the

former. Section 2.7 - Program Development Guide, Step 11 – Perform Program Evaluation, of API RP 1162 specifically requires operators to complete four discrete tasks in order to evaluate the effectiveness of a public awareness program. Those tasks are as follows: (1) establish an evaluation process; (2) determine input data sources (via survey, etc.); (3) assess results and applicability of the data from the evaluation; and (4) document the results of the evaluation. Section 2.7, Step 11 then directs the reader to Section 8 – Measuring Program Effectiveness. Section 8, in turn, provides that the operator must assess whether the program is reaching the right audience, whether the program is understood, whether people are acting accordingly, and whether third-party damage is less frequent as a result of the program. A mere sampling and collecting of data without analyzing the data does not fulfill all the requirements of the program performance evaluation under API RP 1162, and thus the regulation at issue. In sum, I find that if an operator elects to use a survey(s) to evaluate the effectiveness of its public awareness program, the operator must complete the evaluation, which requires a documented analysis of the results of the survey(s), not later than four years from the prior effectiveness evaluation. Respondent failed to analyze the effectiveness evaluation surveys as part of its program effectiveness review within four years from the last effectiveness evaluation.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.616(c) by failing to conduct a program effectiveness evaluation not later than four years from the prior evaluation.

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.<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; 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 \$19,000 for the violation in Item 2 cited above.

**Item 2:** The Notice proposed a civil penalty of \$19,000 for Respondent's alleged violation of 49 C.F.R. § 192.616(c), for failing to conduct a program effectiveness evaluation incorporated into its Public Awareness Plan (PAP), as required by the general program recommendations of API RP 1162. In its Response, GTS contested the allegation of violation and requested that the proposed civil penalty be eliminated. As detailed above, I find GTS in violation of the regulation

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<sup>2</sup> These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

at issue in Item 2 and reject the request to eliminate the proposed civil penalty associated with this Item. GTS did not contest PHMSA's selection of the assessment criteria used to calculate the proposed civil penalty, and I find that the assessment criteria were properly applied in this case. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$19,000** for failing to conduct a program effectiveness evaluation as required by API RP 1162.

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 \$19,000 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 Item 1 in the Notice for violations of 49 C.F.R. § 192.614(a). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas 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:

1. With respect to the violation of § 192.616(a) (**Item 1**), Respondent must retrain its personnel on the records maintenance requirement as contained in section 3.2.2 of the written Damage Prevention Plan within 90 days of the issuance of the Final Order and provide copies of the training records to the Southwest Region.

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.

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), 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.

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, 2<sup>nd</sup> 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 this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

July 27, 2020

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued