



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

AUG 09 2019

Mr. Robert Rose
President
Idaho Pipeline Corporation
P.O. Box 15653
Boise, Idaho 83715

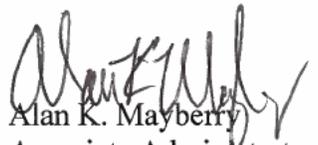
Re: CPF No. 5-2018-6015

Dear Mr. Rose:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$49,000, and specifies actions that need to be taken by Idaho Pipeline Corporation 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, Western Region, this enforcement action will be closed. 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. Dustin Hubbard, Director, Western Office, Office of Pipeline Safety, PHMSA

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)
)

Idaho Pipeline Corporation,)

Respondent.)
_____)

CPF No. 5-2018-6015

FINAL ORDER

During September 5 through 8, 2017, and September 18 through 21, 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 Idaho Pipeline Corporation's Boise Aviation Fuel Pipeline (IDPC or Respondent) in Boise, Idaho.¹ The IDPC's Boise Aviation Fuel Pipeline (BAFP) is an 8- and 4-inch pipeline system totaling 2.69 miles.² The BAFP was built in 1987 and was designed to receive, store, and transfer jet fuel to the Idaho Air National Guard.³

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated July 19, 2018, 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 IDPC had committed two violations of 49 C.F.R. Part 194 and three violations of 49 C.F.R. Part 195, and proposed assessing a civil penalty of \$49,000 for one of the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

IDPC responded to the Notice by letter dated August 17, 2018 (Response). The company contested one allegation, offered additional information in response to the Notice, and requested that the proposed civil penalty be eliminated or reduced. Respondent did not request a hearing and therefore has waived its right to one.

¹ Idaho Pipeline Corporation is a sister company of several other pipeline companies owned or controlled by Mr. Robert L. Rose. E.g., *In the Matter of St. Louise Pipeline Operating, LLC*, CPF 3-2017-5006, 2018 WL 3703699, at 4 (May 1, 2018); *In the Matter of Tampa Bay Pipeline Company* CPF 2-2013-6009, 2014 WL 6877083, at 5 (September 29, 2014); *In the Matter of the Pipelines of Puerto Rico, Inc.*, CPF 2-2012-6020, at Footnotes 1 and 2, (February 28, 2013). PHMSA final orders are accessible on the agency's website, available at <http://primis.phmsa.dot.gov/comm/reports/enforce/Actions>.

² PHMSA Violation Report, on file with PHMSA.

³ *Id.*, at Exhibit A, page 72 of 91.

FINDINGS OF VIOLATION

The Notice alleged that Respondent 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 follow the National Preparedness for Response Exercise Program (PREP) guidelines as required by its own oil spill response plan. Specifically, the Notice alleged that IDPC failed to satisfy the general response plan requirement of inclusion of a drill program that followed PREP guidelines. The Notice alleged, for example, that IDPC failed to perform an Incident Management Team exercise and also failed to perform an Equipment Deployment drill under sections 5.2 and 5.3 of PREP, respectively, within the required triennial cycle.

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. § 194.7(b) by failing to follow the PREP guidelines as required by its oil spill response plan.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 194.107(c)(1)(viii), which states:

§ 194.107 General response plan requirements.

- (a)
- (c) Each response plan must include:
 - (1) A core plan consisting of-
 - (i)
 - (viii) Equipment testing...

The Notice alleged that Respondent violated 49 C.F.R. § 194.107(c)(1)(viii) by failing to test its emergency response equipment. Specifically, the Notice alleged that IDPC had response equipment at its terminal but was unable to provide any documentation demonstrating that it had performed testing on this emergency response equipment.

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. § 194.107(c)(1)(viii) by failing to test its emergency response equipment.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(3), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

- (a)

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1)

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(3) by failing to prepare and follow a written procedure for operating, maintaining and repairing the pipeline in accordance with Part 195 Subpart F-Operation and Maintenance (O&M). Specifically, the Notice alleged that IDPC's O&M manual failed to have a written procedure for establishing the maximum operating pressure (MOP) for its 8- and 4-inch pipelines in accordance with § 195.406.

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. § 195.402(c)(3) by failing to have and follow a written procedure for establishing the MOP for its 8- and 4-inch pipelines in accordance with § 195.406.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(3), which states:

§ 195.404 Maps and records.

(a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information:

(1)

(3) The maximum operating pressure of each pipeline.

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(3) by failing to maintain current records of its pipeline system that include the MOP. Specifically, the Notice alleged that IDPC could not produce any records or calculations that were used to establish the MOP of its 8- and 4-inch pipelines.

In its Response, IDPC argued that on November 11, 2009, its contractor performed an eight-hour pressure test on both the 8- and 4-inch pipelines and established an MOP of 292 psig in accordance with § 195.304. At that time, IDPC stated that it opted to establish an MOP of 275 psig. IDPC stated further that its contractor performed another pressure test of its 8- and 4-inch pipelines on April 30, 2014, which established an MOP of 289 psig. IDPC argued that instead of adopting the higher MOP of 289 psig in 2014, it chose to retain the established MOP of 275 psig. IDPC also argued that all of the test records were available at the time of the inspection.

Section 195.404(a)(3) requires each operator to maintain records of its pipeline system that include the MOP of each pipeline. The MOP of each pipeline, pursuant to § 195.406, may not exceed any of the following pressures: (1) internal design pressure of the pipe; (2) design pressure of any component of the pipeline; and (3) eighty percent of the test pressure, among other specifications.

While IDPC contends that its eight-hour pressure tests in 2009 and 2014, and the pressure test

records, constitute records sufficient to demonstrate the MOP in accordance with § 195.404(a)(3), pressure test records are only a portion of the records Respondent is required to maintain to establish the MOP. Respondent failed to provide other records or calculations necessary to establish or substantiate the MOP of its 8- and 4-inch pipelines. For example, Respondent did not provide records regarding the design pressure of the pipe or any components of the pipeline. Records that are needed to determine or substantiate the MOP may include, but are not limited to, pipe manufacturer specification records, pipe mill records, pipe yield strength, seam type, wall thickness, and pipe diameter thickness.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(a)(3) by failing to maintain current records of its pipeline system, particularly, records or calculations that validate the MOP of its 8- and 4-inch pipelines.

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

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a) by failing to develop and implement a written continuing public education program that follows the guidance provided in API RP 1162. Specifically, the Notice alleged that IDPC had established a continuing public awareness program but had failed to follow several sections of API RP 1162.

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. § 195.440(a) by failing to properly develop and implement a written continuing public education program that follows the guidance provided in API RP 1162.

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.⁴ 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

⁴ 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).

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 \$49,000 for one of the violations cited above.

Item 4: The Notice proposed a civil penalty of \$49,000 for Respondent's violation of 49 C.F.R. § 195.404(a)(3), for failing to maintain current records of its pipeline system, specifically records or calculations that validate the MOP of its 8- and 4-inch pipelines. In its Response, IDPC contested the violation but argued, in the alternative, that the proposed penalty should be reduced due to financial hardship. According to the company, its supplier terminated its Connection and Operations agreement with IDPC, resulting in the loss of its resupply capability and any associated revenues since May 13, 2017.⁵ IDPC provided no records to support its assertion, but asked to "reserve the right to provide further information if needed."

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider any effect that the penalty may have on Respondent's ability to continue doing business. However, respondents "must provide PHMSA with the means by which the agency can accurately determine the company's true financial condition."⁶ PHMSA has previously instructed operators, including IDPC's President, that asserting a claim of financial hardship requires that the company submit "accurate and reliable information on the financial condition" of the company.⁷ Thus, Respondent had notice that failure to provide such documentation in the Response would be grounds for denial of such a claim.⁸ Since Respondent has again asserted a financial hardship argument without providing any supporting documentation, I find no basis for reducing or eliminating the proposed penalty on grounds of financial hardship. Respondent's request to "reserve the right" to provide further information prior to issuance of this order is denied pursuant to § 190.208, which required Respondent to submit all responsive material no later than 30 days after its receipt of the Notice.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$49,000** for violation of 49 C.F.R. § 195.404(a)(3).

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.

⁵ Response, at 2.

⁶ *In the Matter of Tampa Bay Pipeline Corp.*, Decision on Reconsideration, CPF No. 2-2005-6012, 2008 WL 902910, at 2 (Mar. 31, 2008). *See also*, *In the Matter of Tampa Pipeline Corporation*, CPF 2-2008-6002, 2010 WL 2228556, at 19 (April 26, 2010). The Notices and Final Orders in both of these matters were addressed to Robert Rose, the president of both IDPC and the Tampa Pipeline Corporation.

⁷ *Id.*

⁸ *Id.*

Failure to pay the \$49,000 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 Items 1-5 in the Notice for violations of 49 C.F.R. §§ 194.7(b), 194.107(c)(1)(viii), 195.402(c)(3), 195.404(a)(3) and 195.440(a), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids 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 § 194.7(b), **(Item 1)**, Respondent must perform an Incident Management Team (tabletop exercise) and field equipment deployment exercise, and provide the records to the Director to verify that the drills have been performed within 60 days of receipt of the Final Order.
2. With respect to the violation of § 194.107(c)(1)(viii), **(Item 2)**, Respondent must properly test emergency response equipment stored at the Boise Terminal and provide the testing results to the Director to verify that testing occurred within 60 days of the Final Order.
3. With respect to the violation of § 195.402(c)(3), **(Item 3)**, Respondent must develop a written procedure to establish the MOP for its pipeline system, and provide the procedure to the Director for review and approval within 60 days of receipt of the Final Order.
4. With respect to the violation of § 195.404(a)(3), **(Item 4)**, Respondent must provide records to the Director to verify how it previously established the MOP of its pipeline system. If the process by which the MOP was established is unknown, it must re-establish the MOP of the pipelines (both the 8- and 4-inch lines) in accordance with Part 195, and provide the records to the Director within 60 days of receipts of the Final Order.
5. With respect to the violation of § 195.440(a), **(Item 5)**, Respondent must develop and implement a written Public Awareness Program that follows API RP 1162, including addressing all the identified deficiencies set forth in Item 5 of the Notice, and provide the written program to the Director within 60 days of receipt of the Final Order.

The Director may grant an extension of time to comply with any of the required items upon a

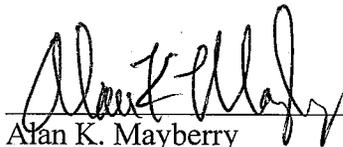
written request timely submitted by the Respondent and demonstrating good cause for an extension.

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, 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 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 filing of a petition automatically stays the payment of any civil penalty assessed. The other 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.



Alan K. Mayberry
Associate Administrator
for Pipeline Safety

AUG 09 2019

Date Issued