

December 2, 2019

Mr. Tulafono Simone Young, Ms. Evelyn Young, and Mr. Julian Mier
Principals and/or Owners
Bohrenworks, LLC
1435 W. Vermijo Avenue
Colorado Springs, Colorado 80904

Re: CPF No. 5-2019-0018E

Dear Mr. Young, Ms. Young, and Mr. Mier:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$209,002. 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. Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA
Mr. Tulafono Young and Ms. Evelyn Young, 10004 Seawolf Drive, Colorado Springs,
Colorado 80925
Ms. Evelyn Young, 1182 Highway 94, Colorado Springs, Colorado 80925

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

Bohrenworks, LLC,

Respondent.

CPF No. 5-2019-0018E

FINAL ORDER

From November 16, 2018, through April 9, 2019, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), investigated circumstances surrounding the November 16, 2018 damage to a natural gas pipeline located near 13962 East Linvale Place, Aurora, Colorado, where Bohrenworks, LLC (Bohrenworks or Respondent), hit Xcel Energy, Inc.'s unmarked 1¼-inch pipeline with a directional boring machine while it was engaged in excavation activities for the installation of telecom/fiber cable. Bohrenworks is a Denver-based drilling services company specializing in horizontal directional drilling for a variety of industries and clients around the state of Colorado.¹

As a result of the investigation, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated September 18, 2019, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Bohrenworks had violated 49 C.F.R. § 196.103 and proposed assessing a civil penalty of \$209,002 for the alleged violation. Respondent failed to respond within 30 days of receipt of service of the Notice.

Under 49 C.F.R. § 190.208(d), such failure to respond constitutes a waiver of Bohrenworks' right to contest the allegations in the Notice and authorizes the Associate Administrator, without further notice, to find facts as alleged in the Notice and to issue this Final Order under § 190.213. In this case, the Notice was mailed to Respondent by certified mail (USPS Tracking No. 70150640000217290419) on September 19, 2019, and was received by Respondent on September 21, 2019, as shown by the return receipt on file with PHMSA. To date, Respondent has not acknowledged or responded to the Notice. Under such circumstances, I find it reasonable and appropriate to enter this Final Order without further proceedings.

¹ Bohrenworks, LLC website, *available at* <https://www.linkedin.com/company/bohrenworks> (last accessed November 1, 2019).

BACKGROUND

On November 16, 2018, Xcel Energy notified the National Response Center of a third-party strike on its natural gas pipeline in Aurora, Colorado. At approximately 4:30pm MST, Bohrenworks hit Xcel Energy's unmarked 1¼-inch pipeline with a directional boring machine while it was engaged in excavation activities for the installation of telecom/fiber cable. The strike resulted in an explosion, when natural gas migrated into a dwelling which subsequently exploded. One person was killed and two individuals were injured as a result of the accident. Approximately 30 people were evacuated, and gas service was shut off to approximately 10 homes due to this incident.

FINDING OF VIOLATION

Bohrenworks did not respond to the Notice and has therefore waived its right to contest the alleged violation. The Notice alleged that Bohrenworks violated 49 C.F.R. Part 196.103, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 196.103(a), which states:

§ 196.103 What must an excavator do to protect underground pipelines from excavation-related damage?

Prior to and during excavation activity, the excavator must:

(a) Use an available one-call system before excavating to notify operators of underground pipeline facilities of the timing and location of the intended excavation...

The Notice alleged that Respondent violated 49 C.F.R. § 196.103(a) by failing, prior to its excavation activity, to use the available one-call system, Colorado 811 (CO 811 One-Call Center) to notify operators of underground pipeline facilities of the timing and location of its intended excavation/horizontally boring activity. As a result, Xcel Energy was not aware of the planned excavation activities and did not mark its line. Consequently, Bohrenworks was unaware of the underground pipeline facility near the excavation site, and hit the 1¼-inch Xcel Energy pipeline, causing an explosion resulting in injuries and one fatality. After the incident, the Colorado Public Utilities Commission reviewed one-call tickets opened in the month prior to the incident near the incident location, and confirmed that no one-call tickets were opened by Bohrenworks.

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. § 196.103(a) by failing, prior to its excavation activity, to use the available one-call system, Colorado 811 (CO 811 One-Call Center) to notify operators of underground pipeline facilities of the timing and location of its intended excavation/horizontally boring activity.

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 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.² 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 \$209,002 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$209,002 for Respondent's violation of 49 C.F.R. § 196.103(a), for failing, prior to its excavation activity, to use the available one-call system, Colorado 811 (CO 811 One-Call Center) to notify operators of underground pipeline facilities of the timing and location of its intended excavation/horizontally boring activity. Bohrenworks neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. The violation was the causal factor for the release, which resulted in the death of one person and injury to several others. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$209,002** for violation of 49 C.F.R. § 196.103.

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 \$209,002 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.

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)

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

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.

December 2, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued