

FEB 22 2012

Mr. Larry F. Clynch
Chairman
TPM, Incorporated
P.O. Box 486
Alpharetta, Georgia 30009-0486

Re: CPF No. 2-2010-6007

Dear Mr. Clynch:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$74,600. 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 deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Wayne Lemoi, Director, Southern Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety, OPS
Ms. Joy Terral, Terminal Manager, TPM, Incorporated, 2455 North Second Street, Memphis, TN 38127

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164203235296]

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of

TPM, Incorporated,

Respondent.

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CPF No. 2-2010-6007

FINAL ORDER

On October 19-21, 2010, 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 TPM, Incorporated (TPM or Respondent), at the Lucy Woodstock Marine Terminal in Memphis, Tennessee. TPM is an independent consulting firm that provides a full range of operations and management services for liquid pipeline and terminal facilities.¹ TPM operates a 9.1-mile anhydrous ammonia pipeline and pumping station at the Lucy Woodstock Marine Terminal on behalf of the pipeline's owner, E.I. Du Pont de Nemours and Company.

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated December 22, 2010, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that TPM had committed various violations of 49 C.F.R Part 195 and proposed assessing a civil penalty of \$74,600 for the alleged violations.

TPM responded to the Notice by letter dated January 11, 2011 (Response). The company contested one of the allegations of violation, provided an explanation of its actions, and requested that the proposed civil penalty be eliminated. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a)(2)(i), which states:

¹ TPM, Inc., <http://www.tpm-clynch.com> (last visited 2/6/12); Port of Memphis, <http://www.portofmemphis.com> (last visited 1/23/12).

§ 195.410 Line markers.

(a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:

(1) . . .

(2) The marker must state at least the following on a background of sharply contrasting color:

(i) The word “Warning,” “Caution,” or “Danger” followed by the words “Petroleum (or the name of the hazardous liquid transported) Pipeline,” or “Carbon Dioxide Pipeline,” all of which, except for markers in heavily developed urban areas, must be in letters at least 1 inch (25 millimeters) high with an approximate stroke of ¼ inch (6.4 millimeters)....

The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a)(2)(i) by failing to place and maintain line markers over its buried pipeline that properly named the hazardous liquid being transported. Specifically, the Notice alleged that TPM’s line markers falsely used the word “Petroleum” to identify the product being transported, when, in fact, the product was anhydrous ammonia, a hazardous liquid that is neither petroleum nor a petroleum product.² PHMSA submitted photos of the line markers in question as part of the Violation Report.³

In its Response, the company did not contest the allegation of violation. TPM acknowledged that it was fully aware that the purpose of the regulation was to identify a pipeline’s location and to provide guidance for first responders, but that it had been concerned about identifying the product in the line “due to continued drug related production in this area.”⁴ TPM argued that the proposed penalty should be waived, for the reasons discussed more fully in the “Assessment of Penalty” section below.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.410(a)(2)(i) by failing to place and maintain line markers over its buried pipeline that properly named the hazardous liquid being transported.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.420(c), which states:

§ 195.420 Valve maintenance.

(a)

(c) Each operator shall provide protection for each valve from unauthorized operation and from vandalism.

The Notice alleged that Respondent violated 49 C.F.R. § 195.420(c) by failing to provide protection for each block valve on its pipeline from unauthorized operation and vandalism. Specifically, the Notice alleged that Respondent failed to secure the valve chain on block valve

² For definitions of the terms “petroleum” and “petroleum products,” see 49 C.F.R. § 195.2.

³ Pipeline Safety Violation Report (January 3, 2011) (Violation Report), Attachment A.

⁴ Response at 1.

#1 and the gate lock on block valve #4, leaving them unprotected from operation by unauthorized parties and from vandalism. PHMSA alleged that the chain and gate lock had only been positioned to appear locked but that, when tested, were actually unlocked.

In its Response, TPM admitted that “during the field inspection two locks were found to be unsecured.”⁵ Respondent acknowledged that the valve chain on block valve #1 and the gate lock at block valve #4 both appeared to be locked but the mechanical catches did not fully engage. TPM argued, however, that the penalty should be waived because of its past performance history and for other reasons, as discussed more fully below.

The regulation requires that an operator provide “protection for each valve from unauthorized operation and from vandalism” *at all times*. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.420(c) by failing to provide protection for each block valve from unauthorized operation and from vandalism.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.583, which states:

§ 195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months.
Offshore	At least once each calendar year, but with intervals not exceeding 15 months.

(b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(c) If you find atmospheric corrosion during an inspection, you must provide protection against the corrosion as required by § 195.581.

The Notice alleged that Respondent violated 49 C.F.R. § 195.583 by failing to inspect each pipeline or portion of pipeline exposed to the atmosphere for evidence of atmospheric corrosion. Specifically, the Notice alleged that TPM had been unable to provide adequate documentation to demonstrate that full atmospheric corrosion control inspections had been completed on all of its

⁵ Response at 2.

above-ground valves. PHMSA further asserted that when documentation was eventually provided, it lacked sufficient detail to show that Respondent had properly inspected the condition of the pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, and at pipe supports, as required by the regulation.⁶

TPM argued that it had in fact performed atmospheric corrosion checks along the system, as required by 49 C.F.R. § 195.583. The company contended that its block valve sites and meter skids had been painted in 2010 and current records had been maintained on its semi-annual mainline valve and station reports. The company stated, in response to PHMSA's request for a detailed report, that it had also developed a new form to be used to document future inspections.

Respondent's evidence concerning its efforts to improve the company's inspection forms after the PHMSA inspection are not relevant to a determination of whether or not Respondent was in compliance at the time of the inspection. The company failed to present adequate documentation of completed atmospheric corrosion control inspections on all above-ground valves. The form used by TPM to document valve inspections had a space to indicate if atmospheric corrosion had been found, but did not show whether full atmospheric corrosion surveys had actually been performed.⁷ The form provided only a general mention of atmospheric corrosion, with no indication as to whether "particular attention" was given to the vulnerable areas enumerated in § 195.583(b).

PHMSA's regulations require that an operator inspect each pipeline for evidence of atmospheric corrosion, and to pay particular attention to certain areas of the pipe that are particularly susceptible to atmospheric corrosion. Upon consideration of all of the evidence, I find that the company failed to demonstrate that it had completed atmospheric corrosion control inspections on all above-ground valves and that it paid particular attention to those areas most susceptible to atmospheric corrosion. In the absence of evidence on Respondent's forms showing that these areas received specific attention, PHMSA is unable to verify whether complete atmospheric corrosion surveys were actually performed. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.583 by failing to perform atmospheric corrosion inspections of on all portions of its pipeline system exposed to the atmosphere.

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 \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. In determining the amount of a civil penalty under

⁶ Violation Report, Attachment C, *Semi-Annual Mainline Block Valve Report*, at 1.

⁷ Respondent's *Semi-Annual Block Valve Report*, dated April 14, 2010, showed a list of "Code of Valve Conditions," with various conditions that an inspector might find in the course of valve inspections. On this form was Condition No. 6, which stated, "Atmospheric condition- Is there corrosion or does it need painting?" For all of the valves on Respondent's Line #1 Ammonia that were inspected, no response was provided to this question. *Id.*

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; the Respondent's ability to pay the penalty and 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 \$74,600 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$35,000 for Respondent's violation of 49 C.F.R. § 195.410, for failing to place and maintain line markers over its buried pipeline that properly named the hazardous liquid being transported. Respondent did not contest the allegation but requested a waiver of the proposed penalty based upon its past DOT operational performance and the amount of funds it was spending for security improvements to its anhydrous ammonia pipeline system. TPM advised that it was in the process of completing installation of a \$100,000 security system at block valve # 5 to provide 24/7 surveillance of the site. TPM also contended it had received guidance from other government agencies to replace the phrase "*anhydrous ammonia*" on its line markers with alternative language that did not reveal the contents of the product being transported.

I am unconvinced by Respondent's arguments. TPM was fully aware of this agency's explicit requirement that all operators identify the nature of the product being transported in their lines. In fact, in June 2006,⁸ Respondent petitioned PHMSA for a special permit to replace the words "*anhydrous ammonia*" on its pipeline markers with the words "*chemical pipeline*." On March 20, 2008, PHMSA denied the permit, fully explaining its reasons. TPM chose not to appeal that final agency action; but appears to have simply ignored both the requirements of §195.410 and the agency's denial of the special permit application and proceeded to put misleading information on its line markers.

The potential risk of harm to first responders who could be misled by the false signage in this case is substantial. Emergency personnel responding to a petroleum release are not likely to wear the same protective gear required for an anhydrous ammonia release. While it may be understandable that the company did not want potential criminals and vandals to know that it was transporting anhydrous ammonia, the solution the company chose was not only inappropriate but dangerous, given the volatile and hazardous nature of the product being transported. Rather than violate pipeline safety regulations, Respondent could have considered installing other measures such as motion detector lights, motion detector alarms, security patrols, and/or video surveillance. Respondent has not presented any information to justify its failure to comply with the regulation. The nature, circumstances, and gravity of Respondent's violation support the proposed civil penalty.

⁸ TPM Waiver Request (June 12, 2006), Docket # PHMSA-2007-28019, available at <http://www.regulations.gov/#!searchResults;a=PHMSA;dk=N;cp=C;sd=true;rpp=10;po=0;dkid=PHMSA-2007-28019>.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$35,000 for violation of 49 C.F.R. § 195.410(a)(2)(i).

Item 2: The Notice proposed a civil penalty of \$25,900, for Respondent's violation of 49 C.F.R. § 195.420(c), for failing to provide protection for each block valve from unauthorized operation and vandalism. As noted above, I found that Respondent had failed to secure the valve chain on block valve #1 and the gate lock on block valve #4, leaving them unprotected from operation by unauthorized parties and vandalism. Respondent argued that the penalty should be waived, based on its past operational experience with regard to maintenance and pipeline integrity.⁹ The company acknowledged that two locks were unsecured during the field inspection, but suggested that its redundant locks and security measures prevented unauthorized operation and vandalism and therefore should serve as mitigation for the proposed penalty.¹⁰

Respondent's arguments miss the purpose and intent of the regulation, Section 195.420(c) states that each operator must provide protection for each valve from unauthorized operation and vandalism. The proper maintenance and security of valves are critical to the safe operation and reliability of any hazardous liquid pipeline system. Although it appears that the deficiencies in Respondent's protection of its block valves, to date, have not led to any actual incidents involving unauthorized operation of its pipeline or significant vandalism, the company is obliged to take effective measures to address such threats to its system. For example, the unsecured block valve #4 fence gate allowed access to the valve site through an unlocked fence gate and could foster vandalism of the valve.

While the duration of this violation is unknown, the PHMSA inspector discovered the disengaged and unsecured locks himself while performing a field inspection, with the operator present. The gravity of the violation is high due to a combination of several factors, including the increased risk of vandalism through the unlocked gate, the significant threat to the safe operation of the pipeline, and the possible harm that could result from a release of anhydrous ammonia in a High Consequence Area (HCA) near the Mississippi River in Memphis.¹¹

With regard to culpability, TPM was apparently cognizant of the regulatory requirement and took some steps to address the issue but did not achieve compliance. Respondent had locks in place to prevent unauthorized operation of the valve but they were unsecured. The company positioned the block valve #1 chain as well as the gate #4 lock to appear secured when they were not fully engaged, suggesting that TPM was well aware of the regulatory requirement under § 195.420(c). Although Respondent referenced a concern for drug-related security issues along the pipeline, the company still failed to protect the valves. Respondent's post-violation compliance efforts do not warrant a reduction in the civil penalty.

⁹ Response at 2.

¹⁰ TPM contended that multiple valve locks, hardened chain and locked valve boxes were in place to prevent unauthorized operation and vandalism of the site and that the valve station was "within a Homeland Security regulated and patrolled site." *Id.*

¹¹ A "High Consequence Area" is an area defined as either a Class 3 location or a Class 4 location under 49 C.F.R. § 192.5; any area in a Class 1 or Class 2 location where the potential impact radius is greater than 660 feet (200 meters) and the area within a potential impact circle contains 20 or more buildings intended for human occupancy; or as further defined in 49 C.F.R. § 192. 903. See Violation Report at 1.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$25,900 for violation of 49 C.F.R. § 192.420(c).

Item 3: The Notice proposed a civil penalty of \$13,700 for Respondent's violation of 49 C.F.R. § 195.583, for failing to provide complete records showing that it had performed atmospheric corrosion inspection on all portions of its pipeline system exposed to the atmosphere. As noted above, I found that TPM failed to demonstrate it had conducted proper atmospheric corrosion control inspections on all above-ground valves and had performed complete corrosion surveys. Respondent argued that the penalty should be waived based on its past operational history.

I disagree. Operators are charged with the responsibility to maintain lawful and safe operation of their systems at all times. In assessing penalties, PHMSA considers an operator's good-faith efforts to achieve compliance prior to discovery of a violation, but in this case any such evidence is lacking. The duration of the violation here is unknown but the records provided to the inspector included years 2007 through 2010. If anything, these records suggest that the company failed to conduct proper inspections for years. The gravity of the violation is further heightened due to the pipeline being located in an HCA. Maintaining a rigorous atmospheric corrosion inspection program ensures reasonable promptness in the detection of all surface conditions that could affect the safe operation of the pipeline.

TPM is fully culpable, insofar as it made only a minimal attempt to comply with the regulation and to implement the requirement for comprehensive atmospheric corrosion inspections at the company's facilities. Respondent has presented no information that would warrant elimination or a reduction in the amount of the civil penalty proposed. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$13,700 for violation of 49 C.F.R. § 195.583.

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 **\$74,600**.

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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$74,600 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.

Under 49 C.F.R. § 190.215, Respondent has the right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: 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. PHMSA will accept petitions received no later than 20 days after receipt of service of the Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued