

OCTOBER 23, 2013

Mr. C. Milton May, Jr.
Chief Operating Officer
Treetop Midstream Services, LLC
602 Crescent Place
Suite 100
Ridgeland, MS 39157

Re: CPF No. 2-2013-6003

Dear Mr. May:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$20,000. 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 T. Lemoi, Director, Southern Region, OPS
Mr. W. David Ross, Counsel, 602 Crescent Place, Suite 100, Ridgeland, MS 39157

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

Treetop Midstream Services, LLC,

Respondent.

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CPF No. 2-2013-6003

FINAL ORDER

On October 17-18, 2012, 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 records of Treetop Midstream Services, LLC (Treetop or Respondent) in Ridgeland, Mississippi. Treetop operates two pipelines in Mississippi, the Raleigh pipeline, a six-inch carbon dioxide pipeline located in Smith County, and the Baxterville crude oil pipeline, a six-inch pipeline located in Marion County, MS.¹

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated April 16, 2013, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Treetop violated various subsections of 49 C.F.R. § 195.440 and proposed assessing a civil penalty of \$20,000 for the alleged violations.

Treetop responded to the Notice by email on May 9, 2013, and requested an extension, which the Director granted. The Director specified that the extension expired on June 10, 2013, and Treetop responded by email on June 10, 2013 (Response). The company did not contest the allegations of violation or the proposed civil penalty. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Treetop, by counsel, did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

¹ Treetop is affiliated with Tellus Operating Group, LLC (TOG), a company composed of affiliated companies that manage oil and gas assets in Mississippi and Louisiana. TOG website, *available at* <http://test.tellusoperating.com/aboutus.php> (last accessed September 18, 2013).

Item 1: 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 Treetop failed to provide baseline message material to the affected public in 2007 or 2008, as required by API RP 1162, Table 2-1. The RP requires operators to disseminate baseline message material to the affected public every two years. Treetop also could not produce any documentation that it distributed baseline message materials along the Baxterville oil pipeline prior to 2009. Respondent's personnel confirmed that they were unaware of any attempts prior to 2009 to comply with the RP along the Baxterville pipeline.

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 develop and implement a written continuing public education program that follows the guidance provided in API RP 1162.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a):

§ 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 Treetop failed to provide baseline message material to emergency responders or excavators in 2008, as required by API RP 1162, Table 2-1. The RP requires operators to distribute the baseline message to emergency responders and excavators every year.

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 develop and implement a written continuing public education program that follows the guidance provided in API RP 1162.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(b), which states:

§ 195.440 Public awareness.

(a)

(b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(b) by failing to follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of its pipeline and facilities. Specifically, the Notice alleged that Treetop, from 2009-2011, disseminated baseline message brochures that improperly characterized the attributes and characteristics of its pipeline systems. In 2009, Treetop mailed a brochure to the affected public describing the characteristics of a high pressure gas line, and not the crude oil pipeline that runs through Baxterville. In addition, the Respondent attached an operator profile sheet to its baseline message brochures for both the Baxterville and Raleigh pipelines that referred to the DOT Emergency Responder Guidebook for a description of carbon dioxide. This source material would not be familiar to the affected public and this constituency would not be expected to access the Guidebook in order to understand the baseline message brochure.

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(b) by failing to follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of its pipeline and facilities.

Item 4: 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, according to PHMSA's interviews with Treetop's personnel, Respondent failed to conduct annual program audits or reviews of its public awareness program from 2007-2009. According to API RP 1162, Section 8.3, pipeline operators must conduct annual program audits or reviews. Treetop did not possess any documentation that these audits or reviews were conducted.

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 develop and implement a written continuing public

education program that follows the guidance provided in API RP 1162.

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 Treetop failed to perform a program effectiveness evaluation of its public awareness program. According to API RP 1162, Section 8 and Table 8.1, pipeline operators must evaluate the effectiveness of their public awareness program at four-year intervals. Treetop assumed operation of the Baxterville pipeline in November 2006 and therefore was required to complete its first evaluation by November 2010. At the time of the inspection, Treetop personnel indicated that it did not conduct a program evaluation until 2012.

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 develop and implement a written continuing public education program that follows the guidance provided in API RP 1162.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(e), which states:

§ 195.440 Public awareness.

(a)

(e) The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(e) by failing to include in its public awareness program activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations. Specifically, the Notice alleged that Treetop failed to provide information that would allow these stakeholders to locate its pipeline facilities. In the baseline message brochures distributed prior to 2012, Treetop stated generally that pipeline markers indicate the location of pipelines, but included no specific information on the location of its facilities. Furthermore, Treetop's 2009 brochure on the Baxterville pipeline contained photographs of a high pressure gas pipeline marker, which would not aid in the identification of a crude oil pipeline. Finally, Treetop added an operator profile sheet containing a small map that did not accurately identify the location of its facility.

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(e) by failing to include in its public awareness program activities to advise affected municipalities, school districts, businesses, and residents of its pipeline locations.

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 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 \$20,000 for the violations cited above.

Item 3: The Notice proposed a civil penalty of \$10,000 for Respondent's violation of 49 C.F.R. § 195.440(b), for failing to follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of its system in its written public awareness program. Treetop neither contested the allegation nor presented any evidence or argument justifying an elimination of the proposed penalty. By failing to properly educate the affected public of the distinctive characteristics and attributes of the products transported, Respondent failed in its regulatory responsibility to educate the public on how to recognize and appropriately react to a pipeline accident. The entire goal of a public awareness program is to train the public on the particularities of an operator's system, in the hopes that the effects of a potential release can be minimized. Respondent clearly failed to comply with this regulatory obligation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for violation of 49 C.F.R. § 195.440(b).

Item 5: The Notice proposed a civil penalty of \$10,000 for Respondent's violation of 49 C.F.R. § 195.440(a), for failing to develop and implement a written public education program including an evaluation of the program's effectiveness at four-year intervals. This evaluation is required so that operators can evaluate and adjust their program according to its effectiveness in educating various stakeholders about their systems. By failing to conduct the required evaluation, Treetop clearly neglected this responsibility to the potential detriment of the affected public. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for violation of 49 C.F.R. § 195.440(a).

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 **\$20,000**.

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 \$20,000 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.

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