

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED CIVIL PENALTY**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 16, 2013

Mr. Richard H. Mills, Jr.
Manager
Treetop Midstream Services, LLC
602 Crescent Place, Suite 100
Ridgeland, MS 39157

CPF 2-2013-6003

Dear Mr. Mills:

On October 17-18, 2012, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS) Southern Region, pursuant to Chapter 601 of 49 United States Code, inspected the Treetop Midstream Services, LLC (Treetop) written Public Awareness Program (PAP) at your Ridgeland, MS office.

As a result of the inspection, it appears that Treetop has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are as follows:

1. §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).

Treetop did not provide baseline message material to the *Affected Public* in 2007 or 2008 in accordance *API RP 1162, Table 2-1*, which requires the baseline message to be delivered to the *Affected Public* every 2 years.

Treetop did not have any documentation to demonstrate that baseline message materials were distributed to the *Affected Public* along the Baxterville Oil Pipeline prior to 2009. Moreover, when queried by the PHMSA inspector about the baseline message material, Treetop personnel confirmed that they had no knowledge of baseline message material being distributed to the *Affected Public* along the Baxterville Oil Pipeline prior to 2009.

2. §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).

Treetop did not provide baseline message material to *Emergency Responders* and *Excavators* in 2008 in accordance *API RP 1162, Table 2-1*, which requires the baseline message to be delivered to the *Emergency Responders* and *Excavators* annually.

Treetop does not have any documentation to demonstrate that baseline message materials were distributed to *Emergency Responders* or *Excavators* in 2008. Moreover, when queried by the PHMSA inspector about the baseline message material, Treetop personnel confirmed that they had no knowledge of baseline message material being distributed to *Emergency Responders* or *Excavators* in 2008.

3. §195.440 Public awareness.

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

Treetop did not assess the unique attributes and characteristics of its pipeline systems in developing and implementing its written PAP.

While Treetop transports carbon dioxide (CO₂) in its Raleigh CO₂ Pipeline and crude oil in its Baxterville Oil Pipeline the baseline message brochures distributed from 2009 to 2011 did not provide any information on the attributes and characteristics of CO₂ or crude oil. In fact, in some cases the brochures mislead the audiences by specifically addressing pipelines that transport natural gas rather than CO₂ or crude oil. As an example, the brochure mailed to the *Affected Public* audience in 2009 for the Baxterville Oil Pipeline contained a photograph on its cover of a pipeline warning sign that says “CAUTION HIGH PRESSURE GAS LINE.” Under the heading of “How to Recognize a Suspected Leak,” the brochure stated “Natural gas is naturally odorless so a distinctive gaseous odor is added.” CO₂ and crude oil have significantly different characteristics than natural gas. The baseline message materials needed to clearly describe the characteristics and hazards associated with CO₂ and crude oil and how to recognize and react to a release of product a CO₂ or crude oil pipeline.

In 2012 an operator profile sheet was added to the baseline message brochures for the Baxterville Oil Pipeline and the Raleigh CO₂ Pipeline that provided specific information on the characteristics of the two products transported. The operator profile sheet for the Raleigh CO₂ Pipeline referenced the DOT Emergency Responder Guidebook for information on CO₂. Referencing the DOT Emergency Responder Guidebook is acceptable for Emergency Responders who would be expected to be familiar with this guidebook, but it is not acceptable for other stakeholders who would not be expected to be familiar the book. If the operator profile sheets were to be used for all stakeholders

audiences they should have been written in a manner that would have been understandable by the average person who is not trained in emergency response operations.

4. §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).

Treetop did not conduct annual program audits or reviews of its PAP for 2007, 2008 and 2009 as required by *API RP 1162, Section 8.3*.

Treetop did not have any documentation to demonstrate that annual program audits or reviews of its PAP were conducted for 2007, 2008 and 2009. Moreover, when queried by the PHMSA inspector about the annual audits or reviews, treetop personnel confirmed that they had no knowledge of any annual audits or reviews being done prior to 2010.

5. §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).

Treetop did not perform a program effectiveness evaluation of its PAP in accordance with API RP 1162.

PHMSA promulgated new Public Awareness regulations in May 2005 that required hazardous liquid pipeline operators to develop a written PAP that follows the guidance provided in API RP 1162. This guidance required pipeline operators to complete an evaluation of the effectiveness of their PAP program implementation at a frequency of “*No more than four years apart*” (see API RP 1162, Section 8 & Table 8.1). Since Treetop began operating the Baxterville Oil Pipeline in November 2006, it had until November 2010 to complete its first program effectiveness evaluation.

At the PHMSA inspection, Treetop personnel indicated that they had reviewed survey data provided by their contractor Celeritas for calendar years 2009, 2010 and 2011 just prior to the inspection and that no type of evaluation to assess program effectiveness had been done prior to that.

6. §195.440 Public awareness.

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

Treetop did not provide adequate information on the location of its pipelines for municipalities, school districts, businesses and residents located adjacent to its pipeline rights-of way.

The baseline message brochures Treetop distributed prior to 2012 did not adequately address the location of Treetop's pipelines. The brochures indicated that pipeline markers

can be used to identify the location of pipelines but the brochures did not provide specific information on the location of pipelines operated by Treetop. The 2009 brochure sent to the *Affected Public* for the Baxterville Oil Pipeline contained photographs of pipeline markers for *high pressure gas lines*, which could create confusion in identifying the location of the *crude oil pipeline*. In 2012 an operator profile sheet was added to the baseline message brochure distribution for the Raleigh CO₂ Pipeline and the Baxterville Oil Pipeline. These profile sheets contained a small system map for each pipeline. Because the Raleigh CO₂ Pipeline is only 1,800 feet long it appeared on the map as a small dot. It was not evident that this dot represented the location of the pipeline.

Proposed Civil Penalty

Under 49 United States Code, §60122, Treetop Midstream Services, LLC is subject to a civil penalty not to exceed \$200,000 for each violation per day the violation persists up to a maximum of \$2,000,000 for any related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed \$100,000 per violation per day, with a maximum penalty not to exceed \$1,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation and has recommended that you be preliminarily assessed a civil penalty of \$20,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
3	\$10,000
5	\$10,000

Warning Items

With respect to items 1, 2, 4, and 6 we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement actions or penalty assessment proceedings at this time. We advise you to promptly correct these items. Be advised that failure to do so may result in Treetop Midstream Services, LLC being subject to additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 2-2013-6003** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Wayne T. Lemoi
Director, Office of Pipeline Safety
PHMSA Southern Region

Enclosure: *Response Options for Pipeline Operators in Compliance Proceedings*