



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

MAY 01 2018

1200 New Jersey Avenue SE
Washington DC 20590

Mr. Robert L. Rose
President and Managing Member
St. Louis Pipeline Operating, LLC
P.O. Box 35236
Sarasota, FL 34242-0303

Re: CPF No. 3-2017-5006

Dear Mr. Rose:

Enclosed please find the Final Order issued in the above-referenced case. It makes one finding of violation and assesses a civil penalty of \$35,500. 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. Allan Beshore, Director, Central Region, Office of Pipeline Safety, PHMSA

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

¹ SLPO is one of several affiliates of Allied Aviation Services, Inc. See website, available at <http://www.alliedaviation.com/locations/PIPELINE/pipeline.html> (last accessed March 8, 2018).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), which states:

§ 195.432 Inspection of in-service breakout tanks.

(a)

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks according to [American Petroleum Institute (API)] Std 653 (except section 6.4.3, *Alternative Internal Inspection Interval*) (incorporated by reference, *see* § 195.3). However, if structural conditions prevent access to the tank bottom, its integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3). The risk-based internal inspection procedures in API Std 653, section 6.4.3 cannot be used to determine the internal inspection interval.

API Standard 653 provides, in relevant part:

6.4.2 Inspection Intervals

6.4.2.2 When corrosion rates are not known and similar service experience is not available to estimate the bottom plate minimum thickness at the next inspection, the internal inspection interval shall not exceed 10 years.

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect two breakout tanks at the company's Hartford terminal within the 10-year interval specified in § 195.432(b) and API Std 653. Specifically, the Notice alleged that SLPO failed to conduct internal inspections of the two breakout tanks, which were constructed in 2002, by 2012. SLPO did not inspect the tanks until 2015, after PHMSA discovered the violation.

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. § 195.432(b) by failing to inspect two breakout tanks within the 10-year interval specified in § 195.432(b) and API Std 653.

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

² These amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

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; 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 \$35,500 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$35,500 for Respondent's violation of 49 C.F.R. § 195.432(b), for failing to inspect two breakout tanks within the 10-year interval specified in API Std 653. Respondent did not contest the allegation, but sought a reduction of the proposed penalty based upon financial hardship. According to the company's president, SLPO had suffered operating losses from December 2012 through December 2016. The company, however, did not offer or provide certified financial statements or other documentation supporting its claim and upon which PHMSA could accurately determine Respondent's ability to pay. Therefore, PHMSA's Office of Chief Counsel requested additional information regarding SLPO's claim of financial hardship by letter dated December 7, 2017 (RFI), via certified mail. The RFI was delivered to Respondent on December 11, 2017.³

To date, Respondent has failed to respond to the RFI or to provide any evidence of a financial hardship or SLPO's inability to pay the proposed civil penalty or the effect of the proposed penalty on the company's ability to continue in business. For a company to demonstrate financial hardship, it must provide PHMSA with certified financial statements or similar evidence by which the agency may accurately determine the company's ability to pay.⁴

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$35,500** for violation of 49 C.F.R. § 195.432(b).

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.

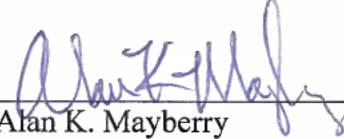
Failure to pay the \$35,500 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not 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

³ U.S. Postal Service certified mail return receipt (on file with PHMSA).

⁴ *In the Matter of Jayhawk Pipeline, LLC*, CPF No. 3-2008-5006, 2010 WL 5761106 (Dec. 16, 2010). See also *In the Matter of Tampa Bay Pipeline Corp.*, CPF No. 2-2005-6012, 2008 WL 902910 (Mar. 31, 2008).

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) 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.



Alan K. Mayberry
Associate Administrator
for Pipeline Safety

MAY 01 2018

Date Issued