

January 24, 2023

VIA ELECTRONIC MAIL TO: matt@tallgrass.com

Matthew Sheehy
President and Chief Executive Officer
Tallgrass Energy, LP
370 Van Gordon Street
Lakewood, Colorado 80228

Re: CPF No. 3-2021-082-NOPV

Dear Mr. Sheehy:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and specifies actions that need to be taken by Tallgrass Pony Express Pipeline, LLC, a subsidiary of Tallgrass Energy, LP, to comply with the pipeline safety regulations. When the terms of the compliance order are completed, as determined by the Director, Central Region, this enforcement action will be closed. Service of this Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt 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 (Final Order)

cc: Mr. Gregory A. Ochs Director, Central Region, Office of Pipeline Safety, PHMSA
Ms. Jennifer Eckels, Manager, Compliance, Tallgrass Energy, jennifer.eckels@tallgrass.com
Ms. Crystal Heter, Chief Operating Officer, Tallgrass Energy, crystal.heter@tallgrass.com
Mr. Brad Armsbury, Compliance Engineer, Tallgrass Energy, brad.armsbury@tallgrass.com

CONFIRMATION OF RECEIPT REQUESTED

	)	
In the Matter of	)	
	)	
Tallgrass Pony Express Pipeline, LLC,	)	CPF No. 3-2021-082-NOPV
a subsidiary of Tallgrass Energy, LP,	)	
	)	
Respondent.	)	
	)	

From November 23 through 24, 2020, 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 inspection of the records and facilities of Pony Express Pipeline, LLC (Respondent) in Lakewood, Colorado.¹ The Pony Express Pipeline is an approximately 900-mile crude oil pipeline spanning several states from Wyoming to Oklahoma, and is owned and operated by Tallgrass Energy, LP (Tallgrass).

FINDING OF VIOLATION

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

¹ The inspection involved the collection of additional records through June 2021.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (a)
- (b) Ensure through evaluation that individuals performing covered tasks are qualified;

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to have and follow a written qualification program that includes provisions to ensure through evaluation that individuals performing covered tasks are qualified. Specifically, Tallgrass' Operator Qualification (OQ) program failed to ensure through evaluation that individuals performing covered tasks are qualified to recognize and react to abnormal operating conditions.

In the Response, Tallgrass contested the alleged violation described in the Notice. Tallgrass argued that PHMSA did not meet its burden of proving a violation and that the Notice and supporting evidence (Violation Report) fail to explain why the level of detail in its OQ program did not satisfy the regulation. Tallgrass stated its OQ program addresses both generic and covered-task-specific abnormal operating conditions and contains sufficient detail to comply with § 195.505 (and is in accordance with preamble discussions in the 1999 final rule codifying that section).² Tallgrass asserted that the responses to abnormal operating conditions contained in its OQ program are also in accordance with relevant PHMSA guidance on this topic, as they provide description of the task-specific abnormal operating conditions that individuals could reasonably be expected to encounter and a description of appropriate responses.³ Tallgrass explained it conducts both on-the-job and computer-based training (CBT) on each covered task. Attached to the Response as examples are screen shots from Respondent's CBT addressing abnormal operating condition responses during various tasks. Tallgrass also asserted that an April 28, 2021 email response to PHMSA acknowledging PHMSA's concern regarding the generic nature of task analysis forms that is referenced in the Notice does not substantiate the alleged violation, but rather reflects Respondent's "polite and solicitous response to PHMSA's concern, with a commitment to continue to improve its OQ program."

Tallgrass also argued that if PHMSA does not withdraw the Notice, the agency should convert the PCO into an NOA. Tallgrass stated an NOA is the more appropriate mechanism for improving Respondent's procedures.

Finally, Tallgrass requested that if the Notice is not withdrawn, PHMSA should revise the timelines in the PCO for requalifying individuals and providing a summary report to the Director. Respondent requested that those respective 90- and 120-day timelines be modified to run from the date of the Director's approval of the revised OQ program, rather than from the date this Final Order is issued.

² Pipeline Safety: Qualification of Pipeline Personnel, 64 Fed. Reg. 46,853, 46,861 (Aug. 27, 1999).

³ PHMSA OQ Frequently Asked Questions, Treatment of Abnormal Operating Conditions; available online at: <https://www.phmsa.dot.gov/pipeline/operator-qualifications/oq-frequently-asked-questions>; PHMSA Operator Qualification Enforcement Guidance at 15 (Aug. 25, 2016); available online at: https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/OQ_Enforcement_Guidance_%288.25.2016%29.pdf.

Having considered the evidence in the record, I find PHMSA has satisfied its evidentiary burden to prove a violation. Specifically, I find that Respondent's OQ program failed to have provisions to ensure through evaluation that individuals performing covered tasks are qualified as alleged in the Notice.⁴ The qualification documents in the record that were used to qualify Respondent's employees are generic in nature and lack sufficiently detailed information as to how individuals perform assigned covered tasks and recognize and react to abnormal operating conditions. For example, in the Tallgrass task analysis form addressing performance of the "Valve Visual Inspection and Partial Operation" task, one of the abnormal operating conditions is described just as "[h]azardous atmospheric conditions" with the required reaction described as "[o]nly continue to work if safe to do so and with appropriate PPE".⁵ The form contains no further explanations governing what constitutes a hazardous atmospheric condition, how to identify the hazard, how to determine whether it is safe to continue work, what constitutes appropriate PPE, or other critical information. A review of all the task analysis forms provided during the inspection reveals many similar examples throughout of abnormal operating conditions and required reactions which do not provide individuals the knowledge or skill to be able to accurately or reliably identify abnormal operating conditions and safely react to them. Nor do the task analysis forms distinguish between employees, contractors, or other personnel and if or how their required reactions to abnormal operating conditions differ.⁶

In the CBT examples attached to the Response, an instruction to "notify appropriate company personnel" in the event of an abnormal operating condition (or an emergency) fails to specify who the appropriate company personnel to notify are, or how an employee, contractor, or other individual would make such a determination (*e.g.*, no mention of any applicable operator procedure or any other response resource to direct an employee's reaction).⁷ The example addressing recognition of "application of improper coating" on page 8 of the Response includes an image without identifying whether the image is an example of coating that is proper or improper. The document does not explain or illustrate how the pictured coating helps an individual determine when coating is considered improper. An individual receiving this training is not provided with the knowledge or skill to be able to appropriately recognize the described abnormal operating condition.

Further, the performance evaluation forms provided by Tallgrass as part of PHMSA's inspection state "[t]he individual will need to be able to discuss recognizing and reacting to Abnormal

⁴ Section 195.505(b) requires each operator to ensure through evaluation that individuals performing covered tasks are qualified. The term "qualified" means that an individual has been evaluated and can perform assigned covered tasks and can recognize and react to abnormal operating conditions. See § 195.503.

⁵ See Tallgrass Task Analysis Form "O&M Form OM100-82_GL" addressing Task No. 0331_GL (Violation Report, Exhibit A, page 74 of 127).

⁶ PHMSA OQ Frequently Asked Questions (*supra* note 2) at FAQ No. 3 ("[t]he operator must ensure that any individuals performing covered tasks, including contractors and other parties, such as other operator personnel providing routine operation and maintenance (O&M) tasks or mutual aid, comply with the requirements of the operator's OQ program. See 49 CFR 192.805(b) and 195.505(b)").

⁷ See, *e.g.*, Response, at 7, 8.

Operating Conditions (AOCs) in accordance with company policies and procedures.”⁸ However, the evaluation forms do not reference Respondent’s specific applicable policies and procedures for a particular abnormal operating condition. The absence of references to the governing policies and procedures prevents an evaluation from assessing whether an individual is qualified under § 195.505.⁹ Tallgrass does not appear to have incorporated its procedures into the qualification evaluation process for the tasks reviewed during the inspection.

Tallgrass’ argument that Respondent’s task analysis forms are compliant with § 195.505(b) because they contain the same level of detail in some examples discussed in the preamble to the 1999 rule that codified Subpart G of Part 195 is unpersuasive. The 1999 preamble addressing the definitions in Part 195 provides a few examples of abnormal operating conditions that an operator may be required to qualify individuals to recognize and react to. The examples given are not purported to provide the actual substance of the procedures governing required reactions to an abnormal operating condition or the level of specificity that is unique to an individual operator’s covered tasks performed at its facilities.

Tallgrass requested that the Notice be converted to an NOA. PHMSA may issue an NOA pursuant to § 190.206 when an operator’s procedures are inadequate to assure safe operation. An NOA will specify the alleged inadequacies and the proposed revisions of the plans or procedures. In this case, however, the appropriate compliance actions implicated by the Notice go beyond mere correction to a procedure. Rather, Respondent must requalify and communicate procedural changes to individuals who perform covered tasks and must also summarize compliance actions in a report to the Director. Additionally, PHMSA’s decisions on appropriate enforcement actions are discretionary and involve the unique considerations involved in each case.¹⁰ In reviewing the specific compliance considerations involved here, I find the Notice is the proper enforcement action and therefore decline Respondent’s request.

Finally, having considered Respondent’s request to revise the timelines in the PCO, I agree the requested revisions are appropriate to provide Respondent sufficient time to requalify individuals and provide a summary report to the Director. Therefore, I am modifying the timeframe to complete the last two PCO actions described in the Notice. Respondent must requalify individuals and provide a summary report of actions taken to the Director within 90- and 120-days, respectively, after the date the Director approves Respondent’s revised OQ program.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through qualification that individuals performing covered tasks are qualified.

⁸ See, e.g., Performance Assessment 86797: EWN-PE-Inspect or Test Cathodic Protection Bonds (0061) (Violation Report, Exhibit A, page 24 of 127).

⁹ *Id.*, at FAQ No. 15.

¹⁰ See PHMSA Pipeline Safety Enforcement Procedures, Section 3 (Sept. 15, 2020); available online at: <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2020-09/Section%203%20Selection%20of%20Administrative%20Enforcement%20Actions%20%20289%2015%202020%29.pdf>.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 195.505(b). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

With respect to the violation of § 195.505(b) (**Item 1**) in the Notice pertaining to qualifying individuals to react to abnormal operating conditions (AOC), Tallgrass shall:

1. Revise its OQ program to address the specific abnormal operating conditions related to its identified covered tasks and submit to the Director for approval within 30 days of receipt of the Final Order;
2. Within 30 days of receiving Director approval of the revised OQ program as required by paragraph 1, implement the revised OQ program and communicate changes that affect the covered tasks to individuals performing those covered tasks (§ 195.505(f));
3. Requalify individuals as required by the revised OQ program within 90 days of receipt of the Director's approval of the revised OQ program; and
4. Provide to the Director, PHMSA Central Region a report summarizing the above actions within 120 days of receipt of the Director's approval of the revised OQ program.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension. Upon completion of the ordered actions, Respondent may request that the Director close the case.

It is requested that Tallgrass maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (see 49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief 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. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a 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 corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this order are effective upon service in accordance with 49 C.F.R. § 190.5.

January 24, 2023

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued