



U.S. Department  
of Transportation

Pipeline and Hazardous Materials  
Safety Administration

1200 New Jersey Ave., SE  
Washington, DC 20590

**JUL 23 2009**

Mr. John T. Duff  
Vice President  
Trans-Union Interstate Pipeline, L.P.  
100 South Ashley Drive, Suite 1400  
Tampa, FL 33602-3602

**Re: CPF No. 4-2005-1017**

Dear Mr. Duff:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$16,000, and specifies actions that need to be taken by Trans-Union to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the Compliance Order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

FOI

Enclosure

cc: Mr. Jerry F. Coffey, General Counsel, Trans-Union Interstate Pipeline, L.P.  
Mr. Rod Seeley, Director, Southwest Region, PHMSA

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5609]**

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

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**In the Matter of**

**Trans-Union  
Interstate Pipeline, L.P.,  
Respondent.**

**CPF No. 4-2005-1017**

**FINAL ORDER**

On April 6-8, 2005, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Trans-Union Interstate Pipeline, L.P.'s (Trans-Union's or Respondent's) operator qualification (OQ) records and procedures for its 42-inch natural gas pipeline running from Bernice, Louisiana, to El Dorado, Arkansas. As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated September 16, 2005, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed various violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$21,000 for two of the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

After requesting and receiving a 30-day extension of time to respond, Respondent responded to the Notice by letter dated November 15, 2005 (Response). Respondent contested two of the allegations and requested an informal hearing. An informal hearing was held via teleconference on June 26, 2007 during which Respondent was represented by counsel. Larry L. White from the Office of Chief Counsel, PHMSA, served as the presiding official. After the hearing, Respondent provided additional documents and information for the record on July 16, 2007.

**FINDINGS OF VIOLATION**

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 192.805, which states in pertinent part:

**§ 192.805 Qualification program.**

Each operator shall have and follow a written qualification program.

Specifically, Item 2 in the Notice alleged that Respondent violated § 192.805 by failing to have a written OQ program in place, from the time it began pipeline operations on December 22, 2002, until October 2004, and by allowing contractor personnel who were not qualified under Trans-Union's OQ plan or an equivalent contractor plan to perform covered tasks on its pipeline between November 2004 and February 2005.

With respect to the allegation that Respondent did not have a written OQ plan in place between December 2002 and October 2004, Respondent acknowledged at the hearing that it did not have a Trans-Union OQ plan in place during this period, but explained that Southern Natural Gas (SNG) operated the pipeline for Trans-Union during this period and that SNG used its parent company's (i.e., El Paso Corporation's) OQ plan. OPS pointed out that written OQ plans must necessarily include training on abnormal operating conditions (AOCs). Because AOCs are specific to a given pipeline, El Paso's general OQ plan was insufficient to meet the intent of the regulation. During the hearing, Respondent was asked if it could provide documentation showing that it had formally adopted the SNG/El Paso OQ plan as its own in December 2002 when it began pipeline operations. After the hearing, Respondent provided a copy of the SNG operating agreement, but failed to include documentation showing that it had formally adopted the SNG/El Paso OQ plan as its own when it began pipeline operations in December 2002. After considering all of the evidence, I find that Respondent did not have a written OQ plan in place between December 2002 and October 2004.

With respect to the allegation that Respondent allowed contractor personnel not qualified under its OQ plan (or an equivalent plan adopted by Trans-Union's contractor) to perform covered tasks on its pipeline between November 2004 and February 2005,<sup>1</sup> Respondent acknowledged at the hearing that there were two individuals performing covered tasks on its pipeline who were not qualified under its OQ plan or the plan of its contractor, Energy Maintenance Services LLC (EMS), which succeeded SNG as the operator in September 2004. Respondent, however, stated that the two individuals were former El Paso employees and contended that their having been qualified under the El Paso OQ plan (as evidenced by the "Veriforce" printouts it provided at the hearing) constituted compliance with its obligations under the regulation. OPS pointed out that the Veriforce documents covering the 2003-2006 period were valid only for El Paso Corporation and that the two individuals were not re-qualified to the Trans-Union program during the relevant period. The Veriforce documents provided by Respondent after the hearing purporting to show qualification for Trans-Union were dated July 10, 2007, and apparently cover the 2006-2009 period.

Respondent introduced a copy of an EMS OQ plan for Trans-Union dated March 1, 2004. Respondent acknowledged, however, that this plan was not actually in effect until March 29, 2005. Respondent explained that the earlier date was meant to show that employees were operating under the original Hanover Measurement Services Company, L.P. (HMS) plan, which reflected the Veriforce arrangement dating from March 2004 before EMS acquired HMS. Respondent, however, failed to provide documentation showing that it had adopted and

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<sup>1</sup> This issue was presented as Items 2B and 2C in the Notice but we combine them for efficiency in our discussion here because they are essentially the same issue.

implemented even the original HMS plan during the relevant period. After considering all of the evidence, I find that Respondent allowed contractor personnel not qualified under its OQ plan (or an equivalent one adopted by Trans-Union's contractor) to perform covered tasks on its pipeline between November 2004 and February 2005. Accordingly, I find that Respondent violated 49 C.F.R. § 192.805 as described in the Notice.

**Item 5:** The Notice alleged that Respondent violated 49 C.F.R. § 192.807, which states in pertinent part:

**§ 192.807 Recordkeeping.**

Each operator shall maintain records that demonstrate compliance with this subpart.

Specifically, the Notice alleged that Respondent incorrectly recorded the effective date of its written OQ program as March 1, 2004, and provided this incorrect information to OPS during its OQ inspection.

In its Response and at the hearing, Respondent acknowledged that the EMS OQ plan dated March 1, 2004, did not match the true effective date of March 29, 2005, but contended that it did not knowingly mislead inspectors. Respondent explained that the earlier date was meant to show that employees were operating under the original HMS plan reflecting the Veriforce arrangement dating from March 2004. After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.807 and failed to maintain compliant records by incorrectly recording the effective date of its written OQ program as March 1, 2004. The issue of whether the incorrect information was knowingly provided to OPS will be discussed in the penalty assessment section below.

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.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of a civil penalty, I 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 good faith of Respondent in attempting to achieve compliance with the pipeline safety regulations; and the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business. 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 \$21,000.

With respect to Item 2, the Notice proposed a civil penalty of \$11,000 for Respondent's violation of § 192.805, for failing to have a written OQ program in place between December 22, 2002, and October 2004 and by allowing contractor personnel not qualified under an OQ plan to perform covered tasks on its pipeline between November 2004 and February 2005. Compliance with the OQ regulations is a key part of pipeline safety. Having a written plan in place by the applicable deadline is the first step in implementing a program to ensure that pipeline employees are properly trained and qualified. The performance of covered tasks by employees not properly qualified can result in circumstances that potentially put the safety of the public at risk. While Respondent engaged contractors to operate its pipeline system, Respondent was obligated to exercise sufficient oversight to ensure that all regulatory requirements, including an OQ program, were satisfied by such contractors. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$11,000 for violating § 192.805.

With respect to Item 5, the Notice proposed a civil penalty of \$10,000 for Respondent's violation of § 192.807, for incorrectly recording the effective date of its written OQ program. OPS further alleged that Respondent knowingly providing this incorrect information to OPS during its OQ inspection. Accurate and complete recordkeeping is an essential part of pipeline operations. Operators and OPS must be able to rely on the accuracy of records, including the effective date of plans and procedures and plan revisions, in order to know which plan or set of procedures was in effect when evaluating the performance of various maintenance and repair tasks. We acknowledge Respondent's explanation that the earlier date was meant to show that employees were operating under the original HMS plan and that the company did not knowingly mislead OPS inspectors. Having found that Respondent did not knowingly mislead OPS, I find that a partial reduction in the civil penalty amount proposed in the Notice is warranted. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for violating § 192.807.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$16,000.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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, OK 73125; (405) 954-8893.

Failure to pay the \$16,000 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 United States District Court.

### **COMPLIANCE ORDER**

The Notice proposed a Compliance Order with respect to Item 2 in the Notice for Respondent's violation of 49 C.F.R. § 192.805. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas 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 Item 2 in the Notice, within 60 days following receipt of this Order, provide the Director with documentation demonstrating that each individual who performs covered tasks on the Trans-Union pipeline system has received initial or subsequent evaluations and is qualified for the covered tasks each individual performs. Qualification must be completed by an acceptable method in accordance with the written OQ plan in effect. Include documentation demonstrating that records of all required evaluations and qualifications are complete and are being maintained.

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 demonstrating good cause for an extension.

Failure to comply with this Compliance Order may result in administrative assessment of civil penalties not to exceed \$100,000 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.

### **WARNING ITEMS**

With respect to Items 1, 3, and 4, the Notice alleged probable violations of Part 192 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 191.17 (Notice Item 1) — Respondent's alleged failure to timely file its 2003 annual report by March 15, 2004;

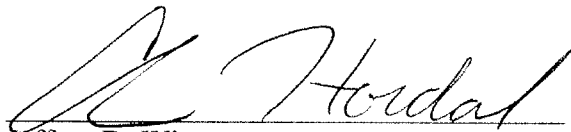
49 C.F.R. § 192.805(b) (Notice Item 3) — Respondent's alleged failure to include provisions in its written OQ program to ensure through evaluation that individuals performing covered tasks are qualified; and

49 C.F.R. § 192.805(g) (Notice Item 4) — Respondent's alleged failure to include provisions in its written OQ program identifying the intervals at which re-evaluations of individual qualifications for covered tasks are needed.

Respondent presented information in its Response showing that it had taken certain actions to address the cited items. Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. § 191.17 (Notice Item 1), 49 C.F.R. § 192.805(b)

(Notice Item 3), and 49 C.F.R. § 192.805(g) (Notice Item 4) have occurred and Respondent is hereby advised to correct such conditions. In the event that OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, the petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of a petition automatically stays the payment of any civil penalty assessed. All other terms of this Final Order, including any required corrective action, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.



Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

7/23/09  
Date Issued