



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

MAR 31 2008

1200 New Jersey Ave., S.E.
Washington, DC 20590

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Robert L. Rose
President
Tampa Bay Pipeline Corporation
d/b/a Tampa Bay Pipeline Company
P.O. Box 35236
Sarasota, FL 34242-5236

Re: CPF No. 2-2005-6012

Dear Mr. Rose:

Enclosed is the decision on the petition for reconsideration filed by Tampa Bay Pipeline Company in the above-referenced case. For the reasons specified therein, the petition is denied. Payment of the \$71,500 civil penalty is due within 20 days of service. Your receipt of this decision constitutes service under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

William Hobbs
for

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

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

In the Matter of)	
Tampa Bay Pipeline Corporation,)	
d/b/a Tampa Bay Pipeline Company,)	
Petitioner)	
)	CPF No. 2-2005-6012

DECISION ON PETITION FOR RECONSIDERATION

On December 1, 2006, pursuant to 49 U.S.C. § 60112, the Associate Administrator for Pipeline Safety issued a Final Order in this case finding that Tampa Bay Pipeline Corporation, doing business as Tampa Bay Pipeline Company (Tampa Bay or Petitioner); had committed various violations of the hazardous liquid pipeline safety regulations set forth in 49 C.F.R. Part 195. The Final Order assessed a civil penalty in the amount of \$71,500. By letter dated December 21, 2006, pursuant to 49 C.F.R. § 190.215, Petitioner filed a petition for reconsideration seeking a reduction or elimination of the civil penalty on the grounds that its payment would constitute a financial hardship on the company. Petitioner did not request reconsideration of the findings of violation.

Pursuant to 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, in determining the amount of a civil penalty, I must consider, among other things, an operator’s ability to pay the penalty and any effect it may have on the operator’s ability to continue doing business. An operator requesting reconsideration of a civil penalty on the grounds that it would constitute a financial hardship has the burden of demonstrating the validity of its claim.

The petition filed in this case, however, lacked sufficient evidence of Petitioner’s actual financial condition to enable the Pipeline and Hazardous Materials Safety Administration (PHMSA) to evaluate Petitioner’s claim of financial hardship. Rather than simply denying the petition without further proceedings, as permitted under 49 C.F.R. § 190.215(e), PHMSA requested Petitioner, by letter dated January 26, 2007, to submit its “most recent financial statement” to support its claim. In its response dated February 9, 2007, Petitioner indicated that it did not have separate audited financial information, as the information was contained in a combined statement and the numbers were not broken out. Instead, Petitioner submitted information concerning throughput levels on its pipeline system.

By letter dated February 15, 2008, the Office of Chief Counsel again requested that Petitioner submit accurate and reliable information on the financial condition of Tampa Bay. Specifically,

the letter requested that Tampa Bay provide the most recent *audited* financial statement for Petitioner, or its parent corporation, or other affiliated entity upon which Tampa Bay relies for financing. Petitioner was further advised that a failure to provide such information would be grounds for a denial of its petition. In its response dated March 3, 2008, Petitioner again failed to submit its most recent audited financial statement. Instead, Petitioner provided a one-page table showing the income and expenses of Tampa Bay Pipeline Corporation, as of December 31, 2006. Petitioner indicated the numbers in the table were accurate “to the best of [the company’s] knowledge.”

The Federal Pipeline Safety Laws (49 U.S.C. § 60122, *et seq.*) expressly provide that in determining civil money penalties, PHMSA must consider a pipeline operator’s ability to pay and whether a proposed penalty will affect an operator’s ability to continue doing business. For a petitioner to assert a successful claim of financial hardship, it must provide PHMSA with the means by which the agency can accurately determine the company’s true financial condition. This is why the agency requested Petitioner’s most recent audited financial statement, which should provide a current, comprehensive, and reliable picture of the company’s financial condition, including assets, liabilities, income, expenses, and cash flow. PHMSA has twice given Tampa Bay an opportunity to substantiate its claim of financial hardship but Petitioner has still failed to produce credible evidence. Therefore, the agency has no alternative but to deny the petition for reconsideration.

Accordingly, payment in full of the civil penalty assessed in the Final Order (\$71,500) is now due and 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 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$71,500 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 United States District Court.

This decision on reconsideration is the final administrative action in this proceeding.

William H. Gutz
for

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

MAR 31 2008

Date Issued