



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

SEP - 1 2013

Mr. Larry Hartness
Vice President - Operations
Ergon Inc.
2829 Lakeland Drive, Ste 2000
Jackson, MS 39232-7611

RE: CPF No. 3-2005-5031

Dear Mr. Hartness:

Enclosed is the Final Order issued by the Acting Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violations, assesses a civil penalty of \$10,000, and specifies actions you must take to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the Compliance Order are completed, as determined by the Director, Central Region, OPS, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Ivan A. Huntoon
Director, Central Region, OPS (PHP-300)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

In the Matter of

Ergon, Inc.,

Respondent

CPF No. 3-2005-5031

FINAL ORDER

During the week of November 8, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities in Ohio and West Virginia and reviewed Respondent's records at its Magnolia, Ohio office. As a result of the inspection, the Director, Central Region, OPS, issued to Respondent, by letter dated August 31, 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 violations of 49 C.F.R. Part 195, and proposed assessing a civil penalty of \$10,000 for one of the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct several of the alleged violations.

Respondent responded to the Notice by letter dated October 5, 2005, as supplemented by letter dated November 11, 2005 (Response). Respondent did not contest the allegations, but provided information describing the corrective measures it was taking. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Respondent did not contest the alleged violations in the Notice. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. § 195.302 (Notice Item 2) – failing to pressure test all sections of its pipeline in accordance with Subpart E of 49 C.F.R. Part 195;

49 C.F.R. § 195.402(c)(12) (Notice Item 3) – failing to establish and maintain liaison with fire, police, 911 services, and other appropriate state and local government offices that may be involved in responding to a pipeline emergency;

49 C.F.R. §§ 195.408(b)(1) (Notice Item 4) – failing to have a communication system to provide for the transmission of information permitting the detection of abnormal operating conditions on its pipeline in accordance with § 195.402(c)(9); and

49 C.F.R. § 195.509 (Notice Item 5) – failing to have an operator qualification (OQ) program meeting the requirements of Subpart G of 49 C.F.R. Part 195 in place by the applicable regulatory deadline.

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 a 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 the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

With respect to Notice Item 5, the Notice proposed a civil penalty of \$10,000 for Respondent's failure to have an OQ program in place by the applicable regulatory deadline. A pipeline operator is obligated to ensure that the workers and contractors it employs to operate and maintain its pipelines are qualified to perform all covered tasks. Failure to establish and follow an OQ plan as required by the applicable regulations could potentially put the public and the environment at risk. 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 \$10,000 for violating 49 C.F.R. § 195.509.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-300), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this 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 (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$10,000 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

With respect to Items 2, 3, and 4, the Notice proposed a Compliance Order. 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.

With respect to Items 2 and 3, Respondent provided information demonstrating that it has corrected the violations. Specifically, the Regional Director has indicated that Respondent has completed pressure testing of all sections of its pipeline in accordance with Subpart E and has established liaison with fire, police, 911 services, and other appropriate state and local government offices that may be involved in responding to a pipeline emergency. Since compliance has been achieved with respect to these two items, it is unnecessary to include compliance terms for them in this Order.

With respect to Item 4 in the Notice, Respondent has not yet demonstrated that compliance has been achieved. Accordingly, 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:

1. Not later than September 1, 2006, have a system in place and activated to detect abnormal operating conditions regarding crude oil deliveries to the refinery and transmit this data to an attended location;
2. In the interim, provide for additional monitoring for abnormal operating conditions before start-up and during crude oil deliveries to the refinery; and
3. Provide documentation showing that the system is operational to the Director, Central Region, OPS by the above specified date.¹

The Regional Director may grant an extension of time to comply upon a written request demonstrating good cause for an extension.

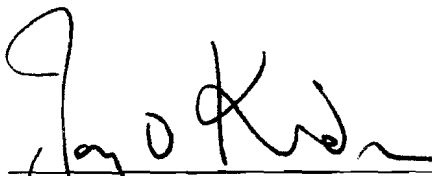
¹ The Proposed Compliance Order in the Notice required the system for detecting abnormal operating conditions to be operational by December 31, 2005. In its November 11, 2005 letter, Respondent requested an extension of this deadline and provided information justifying the request. The Director, Central Region, granted an extension until September 1, 2006

Failure to comply with this Compliance Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

WARNING ITEM

The Notice did not propose a civil penalty or corrective action for Item 1 in the Notice— Respondent's failure to qualify a welder for three pipe cutout replacement projects conducted in July of 2001 in accordance with 49 C.F.R. § 195.222. Therefore, this is considered to be a warning item. Respondent provided information in its response indicating that it has initiated actions addressing this item. Respondent is warned that if it does not take appropriate action to fully correct this item, enforcement action will be taken if a subsequent inspection reveals a violation.

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 the order, including any required corrective action, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective on receipt.



Theodore L. Willke
Acting Associate Administrator
for Pipeline Safety

SEP - 1 2006

Date Issued