



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

1200 New Jersey Avenue, SE
Washington, D.C. 20590

MAR 14 2013

Dr. Grant E. Sims
Chief Executive Officer
Genesis Energy, LP
Genesis Pipeline USA, LP
919 Milam, Suite 2100
Houston, Texas 77002-5417

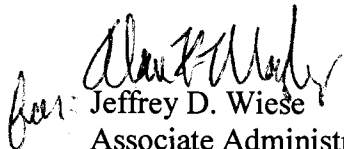
Re: CPF No. 2-2012-5012

Dear Dr. Sims:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, specifies actions that need to be taken by Genesis Pipeline USA, LP, to comply with the pipeline safety regulations, and assesses a civil penalty of \$31,000. This is to acknowledge receipt of payment of the full penalty amount, by wire transfer, dated October 4, 2012. When the terms of the Compliance Order have been completed, as determined by the Director, Southern Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,


for: Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Wayne Lemoi, Director, Southern Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

serves to close the case with prejudice to Respondent.

FINDINGS OF VIOLATION

In its Response, Genesis did not contest the allegation in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a), which states:

§ 195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* § 195).

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a) by failing to implement a written continuing public education program that followed the guidance provided in Section 8.5 of API RP 1162, Table 8.1. Specifically, the Notice alleged that Genesis did not complete its first PAP effectiveness evaluation by June 20, 2010, in accordance with § 195.440(h) and API RP 1162. PHMSA's audit of Genesis' PAP Effectiveness Report revealed that the report had not been dated and the authorship and origin of the document was not documented.² While the substance of the document related to Genesis, PHMSA found the PAP Effective Report had the cover sheet of *Celeritas*, a former consultant for Genesis.³ Additionally, Genesis' computer records indicated the document had been created on 10/19/2011, more than a year past the June 2010 deadline for a PAP program effectiveness evaluation.⁴

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. § 195.440(a) by failing to complete its first program effectiveness evaluation by the required deadline, in accordance with API RP 1162.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a), which states:

§ 195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* § 195).

² Pipeline Safety Violation Report (Violation Report) (Sept. 5, 2012) (on file with PHMSA), Exhibit A.

³ Violation Report, Exhibit A at Attachment A.

⁴ Violation Report at Exhibit A.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a) by failing to implement a written continuing public education program that followed the guidance provided in API RP 1162, Table 2-1. Specifically, the Notice alleged that Genesis failed to include in its PAP, *Section 5.2.2.2, Public Officials Outreach*, information on emergency preparedness communications with emergency officials and public officials in its 2006, 2008, and 2010 baseline message materials, which had been used to educate the public, appropriate government organizations, and persons engaged in excavation related activities.⁵

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. § 195.440(a) by failing to implement a written continuing public education program that included emergency preparedness communications with emergency officials and public officials in its 2006, 2008, and 2010, baseline message materials.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(b), which states:

§ 195.440 Public awareness.

(a) ...

(b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(b) by failing to develop and implement a continuing public education program that assessed the unique attributes and characteristics of Genesis' pipeline system. Specifically, the Notice alleged that Genesis' baseline message materials did not describe the types of products transported or the unique attributes and characteristics of the products.⁶ The company transports natural gas, crude oil, and carbon dioxide in several pipeline systems. These products have significantly different attributes and characteristics that Genesis allegedly failed to properly address in the PAP baseline messages that it distributed.⁷

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. § 195.440(b) by failing to develop and implement a continuing public education program that assessed the unique attributes and characteristics of the Genesis pipeline system, in accordance with API RP 1162.

⁵ Violation Report at Exhibit A.

⁶ *Id.*

⁷ *Id.*

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.⁸ Under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, in determining the amount of a civil penalty, 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; the Respondent's ability to pay the penalty 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 \$31,000 for the violation cited above.

Item 2: The Notice proposed a civil penalty of \$10,000 for Respondent's violation of 49 C.F.R. § 195.440(a), for failing to complete its first program effectiveness evaluation by the required deadline, in accordance with API RP 1162. Genesis did not contest the proposed penalty for this allegation of violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for violation of 49 C.F.R. § 195.440(a), which has already been paid by Respondent.

Item 3: The Notice proposed a civil penalty of \$10,500 for Respondent's violation of 49 C.F.R. § 195.440(a), for failing to implement a written continuing public education program that included emergency preparedness communications with emergency officials and public officials in its 2006, 2008, and 2010, baseline message materials. Genesis did not contest the proposed penalty for this allegation of violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,500 for violation of 49 C.F.R. § 195.440(a), which has already been paid by Respondent.

Item 6: The Notice proposed a civil penalty of \$10,500 for Respondent's violation of 49 C.F.R. § 195.440(b), for failing to develop and implement a continuing public education program with baseline message materials that described the types of products transported and assessed the unique attributes and characteristics of Genesis' pipeline system. Genesis did not contest the proposed penalty for this allegation of violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,500 for violation of 49 C.F.R. § 195.440(b), which has already been paid by Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 3 and 6 in the Notice for

⁸ Effective January 3, 2012, the maximum administrative civil penalties for violations of the federal pipeline safety regulations were doubled to \$200,000 per violation with a maximum of \$2,000,000 for a related series of violations (The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pub. L. 112-90)). Because the violations in this case occurred prior to the increase, the higher maximums do not apply.

violations of 49 C.F.R. §§ 195.440 (a) and (b), respectively. 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:

1. With respect to the violation of § 195.440(a) (**Item 3**), Respondent must develop and distribute to Emergency Officials and Public Officials a new baseline message that adequately addresses Emergency Preparedness Communications; and
2. With respect to the violation of § 195.440(b) (**Item 6**), Respondent must develop and distribute to all stakeholder audiences a revised baseline message that adequately addresses the unique attributes and characteristics of Genesis' natural gas, crude oil, and carbon dioxide pipelines.
3. Regarding the requirements for Notice Items 3 and 6 above, within 90 days of receipt of this Final Order, Respondent must complete the required actions and submit documentation of completion to the Director, Southern Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration. Please reference CPF# 2-2012-5012 in the title of the supporting documentation.
4. It is requested (not mandated) that Genesis maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total 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.

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.

Failure to comply with this Order may result in the 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, 4, 5, 7, 8, and 9, the Notice alleged probable violations of Part 195 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. § 195.440(a) (**Item 1**) — Respondent's alleged failure to fully implement its continuing public education program. Specifically, Respondent did

not fully complete its 2011 annual program implementation, as required by Section 10.0, of the Genesis PAP;

49 C.F.R. § 195.440(a) **(Item 4)** — Respondent's alleged failure to implement a written continuing public education program that followed the guidance provided in API RP 1162. Specifically, Genesis did not maintain adequate liaison with emergency officials, as information distributed to emergency officials did not include contact information for each local Genesis office;

49 C.F.R. § 195.440(a) **(Item 5)** — Respondent's alleged failure to establish an adequate continuing public education program that provided baseline message materials to all identified excavators in 2007, 2009, and 2011, in accordance with the guidance provided in API RP 1162, Table 2-1;

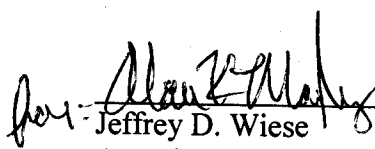
49 C.F.R. § 195.440(c) **(Item 7)** — Respondent's alleged failure to follow the public education program guidelines of API RP 1162, including supplemental requirements and specific program documentation and recordkeeping requirements, and its failure to evaluate its PAP's effectiveness in accordance with company procedures;

49 C.F.R. § 195.440(d)(2), (d)(4) and (d)(5) **(Item 8)** — Respondent's alleged failure to establish a continuing educational program to enable the public, appropriate government organizations, and persons engaged in excavation-related activities to recognize a hazardous liquid or a carbon dioxide pipeline and the steps that should be taken in the event of a release. Specifically, the 2006, 2008, and 2010, baseline message materials used by Genesis were inadequate; and

49 C.F.R. § 195.440(i) **(Item 9)** — Respondent's alleged failure to follow the program recommendations of API RP 1162. Specifically, Genesis failed to demonstrate that it had delivered the 2010 baseline message material for the affected public in accordance with recommendations listed in Table 2.3 of the API RP 1162.

Genesis presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

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


Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

MAR 14 2013
Date Issued