

**SEPTEMBER 29, 2014**

Mr. Robert L. Rose  
President  
Tampa Bay Pipeline Company  
P. O. Box 35236  
Sarasota, Florida 34242

**Re: CPF No. 2-2013-6009**

Dear Mr. Rose:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$55,300. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Wayne T. Lemoi, Director, Southern Region, OPS  
Mr. Robert L. Rose, President, Tampa Bay Pipeline Company, 5802 Hartford Street,  
Tampa, FL 33619

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

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<b>In the Matter of</b>	)	
	)	
<b>Tampa Bay Pipeline Company,</b>	)	<b>CPF No. 2-2013-6009</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

On May 13-17, 2013, 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 on-site pipeline safety inspection of the facilities and records of Tampa Bay Pipeline Company (TBPC or Respondent) in Tampa Bay, Florida. TBPC operates a 101.1-mile anhydrous ammonia intrastate pipeline system that transports product from the Port of Tampa to various industrial users in the Tampa area.<sup>1</sup>

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated September 10, 2013, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that TBPC had committed two violations of 49 C.F.R. § 195.446 and assessing a civil penalty of \$55,300 for the alleged violations.

Respondent failed to respond within 30 days of receipt of service of the Notice. Under 49 C.F.R. § 190.209(c),<sup>2</sup> such failure to respond constitutes a waiver of TBPC's right to contest the allegations in the Notice and authorizes the Associate Administrator, without further notice, to find facts as alleged in the Notice and to issue this Final Order under § 190.213. In this case, the Notice was mailed to Respondent by certified mail (USPS Article No. 7011 2000 0001 0088 3076) on September 10, 2013, and was received by Respondent on September 13, 2013, as shown by the return receipt on file with PHMSA. To date, Respondent has never acknowledged or responded to the Notice. Under such circumstances, I find it reasonable and appropriate to enter this Final Order without further proceedings.<sup>3</sup>

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<sup>1</sup> Pipeline Safety Violation Report (Violation Report), (September 10, 2013) (on file with PHMSA), at 1.

<sup>2</sup> Effective October 25, 2013, this section has been recodified as 49 C.F.R. § 190.208.

<sup>3</sup> For other proceedings against Respondent and its affiliates, *See, e.g., In the Matter of Tampa Pipeline Corporation*, Final Order (CPF No. 2-2008-6002] (April 26, 2010), 2010 WL 6531627, (D.O.T.), August 27, 2010; *In the Matter of Tampa Bay Pipeline Corporation*, Final Order (CPF No. 2-2005-6012 (Dec. 1, 2006), 2008 WL

## FINDINGS OF VIOLATION

TBPC did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.446(a), which states:

**§ 195.446 Control room management.**

(a) *General.* This section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a [Supervisory Control and Data Acquisition (SCADA)] system. Each operator must have and follow written control room management procedures that implement the requirements of this section. The procedures required by this section must be integrated, as appropriate, with the operator's written procedures required by §195.402. An operator must develop the procedures no later than August 1, 2011, and must implement the procedures according to the following schedule. The procedures required by paragraphs (b), (c)(5), (d)(2) and (d)(3), (f) and (g) of this section must be implemented no later than October 1, 2011. The procedures required by paragraphs (c)(1) through (4), (d)(1), (d)(4), and (e) must be implemented no later than August 1, 2012. The training procedures required by paragraph (h) must be implemented no later than August 1, 2012, except that any training required by another paragraph of this section must be implemented no later than the deadline for that paragraph.

The Notice alleged that Respondent violated 49 C.F.R. § 195.446(a) by failing to have and follow written control room management procedures that implement certain requirements of the control room management section. Specifically, the Notice alleged that TBPC failed to follow its own manual of written procedures, which required the company: (1) to identify and document the “safety-related alarms” in its designated-alarm database; (2) to complete a review of its SCADA configuration and alarm management operations at least once each calendar year (for calendar year 2012); (3) to include in its established training program any abnormal operating conditions likely to occur simultaneously or in sequence; (4) to identify, at least once each calendar year, points affecting safety that had been taken “off scan” in the company’s SCADA host, had alarms inhibited, had generated false alarms, or had opened or closed valves for periods of time exceeding that required for associated maintenance or operating activities; and (5) to monitor and document the content and volume of general activity being directed to and required of each controller.

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. § 195.446(a) by failing to have and follow its own manual of written control room management procedures implementing the requirements of this section.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.446(d)(4), which states:

**§ 195.446 Control room management.**

(a) . . .

(d) *Fatigue mitigation.* Each operator must implement the following methods to reduce the risk associated with controller fatigue that could inhibit a controller's ability to carry out the roles and responsibilities the operator has defined:

(1) . . .

(4) Establish a maximum limit on controller hours-of-service, which may provide for an emergency deviation from the maximum limit if necessary for the safe operation of a pipeline facility.

The Notice alleged that Respondent violated 49 C.F.R. § 195.446(d)(4) by failing to implement an established maximum limit on controller hours-of-service (HOS). Specifically, the Notice alleged that TBPC, on 12 occasions, exceeded the company's established HOS limit for two controllers.<sup>4</sup> According to the Notice, from August 26, 2012 - September 7, 2012, Employee #1 allegedly exceeded the 65-hour HOS limit. Furthermore, on September 1, 2012, Employee #1 was not provided with a minimum of 35 off-duty hours. Employee #2 exceeded the HOS limit on four occasions between September 1, 2012, and September 12, 2012, and was not afforded the minimum off-duty time on September 7, 2012.<sup>5</sup>

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. § 195.446(d)(4) by failing to implement an established maximum limit on controller hours-of-service.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.<sup>6</sup> In determining the amount of a civil penalty under 49 U.S.C.

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<sup>4</sup> According to the Notice, TBPC's Operations & Maintenance Procedure Manual, *Section 8.6.1, Work Schedule*, required that controllers' "hours of service for any seven-day period is limited to 65 hours. If in any event 65 hours of service in any seven day period is reached, a minimum of 35 off duty hours will be required prior to returning to work."

<sup>5</sup> Violation Report, at 13.

<sup>6</sup> The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904, effective January 3, 2012, increased the civil penalty liability for violating a pipeline safety standard to \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.

§ 60122 and 49 C.F.R. § 190.225, 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; 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 \$55,300 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$27,000 for Respondent's violation of 49 C.F.R. § 195.446(a), for failing to have follow written control room management procedures that implement the requirements of the control room management section. TBPC neither contested the allegation nor presented any evidence or argument justifying modification of the proposed penalty. The Respondent failed to complete five discreet control room management procedures, any one of which would have provided the basis for a single item of violation and separate penalty. In addition, given that the Respondent failed to take any good-faith measures to achieve compliance and the lengthy duration<sup>7</sup> of the violation, I find the penalty is appropriate. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$27,000 for violation of 49 C.F.R. § 195.446(a).

**Item 2:** The Notice proposed a civil penalty of \$28,300 for Respondent's violation of 49 C.F.R. § 195.446(d)(4), for failing to implement an established maximum limit on controller hours-of-service. TBPC neither contested the allegation nor presented any evidence or argument justifying modification of the proposed penalty. One of the primary purposes of the control room management regulations is to prevent errors and accidents due to worker fatigue. Safety is compromised when workers are too tired to perform their jobs adequately. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$28,300 for violation of 49 C.F.R. § 195.446(d).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$55,300**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such 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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$55,300 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 district

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<sup>7</sup> The duration of the violation was 285 days. Violation Report, at 8.

court of the United States.

Under 49 C.F.R. § 190.215, Respondent has the right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of the Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued