

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

September 5, 2012

Mr. Jeff Gifford
Vice President, HSSE
Genesis Pipeline USA, LP
919 Milam Street, Suite 2100
Houston, TX 77002

CPF 2-2012-5012

Dear Mr. Gifford:

On July 10-11, 2012, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, inspected the Genesis Pipeline USA, L.P. (Genesis) written Public Awareness Program (PAP) at Genesis' office in Houston, TX.

As a result of the inspection, it appears that Genesis has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are as follows:

1. §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 §195.3).

While Genesis did develop a written Public Awareness Program (PAP), it did not fully implement the program as written.

Section 10.0 of the Genesis PAP (2010 version) stated, "*An assessment of program implementation shall be performed annually [emphasis added] by the Public Awareness Administrator...*" However, Genesis did not complete the above required annual program implementation assessment in calendar year 2011.

2. **§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 §195.3).

Genesis did not perform an adequate program effectiveness evaluation of its PAP in accordance with API RP 1162.

PHMSA promulgated new Public Awareness regulations in May 2005 that required hazardous liquid pipeline operators in existence on June 20, 2005, to have completed their written PAPs not later than June 20, 2006 (see §195.440(h)). The PAPs must follow the guidance provided in API RP 1162, which required pipeline operators to complete an evaluation of the effectiveness of their PAP program implementation at a frequency of “*No more than four years apart*” (see API RP 1162, Section 8 & Table 8.1). Since Genesis existed on June 20, 2005, it had until June 20, 2006, to have its PAP written and had to complete its first program effectiveness evaluation not later than June 20, 2010.

At the PHMSA inspection, Genesis presented a document titled “*Public Awareness Program Effectiveness Report.*” The document was not dated and the authorship and origin of the document were not annotated. That is, while the document was written from the perspective of a Genesis employee, it had a Celeritas cover sheet, making the authorship and origin of the document unclear. Celeritas was Genesis’ PAP consultant. Additionally, Genesis’ computer file records indicated the above described document was created on 10/19/2011, which was more than a year past the June 2010 deadline for PAP program effectiveness evaluations.

Additionally, the data presented in the document was questionable and could not be substantiated by the Genesis personnel who participated in the inspection. For example, the document states, “*According to our vendor consultant, Celeritas’ nationwide survey data, 55% of the Genesis’ affected public recalled seeing or hearing information regarding oil or gas pipeline safety within the last 12 months. The national average is 53%.*” The brochures Genesis mailed to the affected public in 2006, 2008, and 2010 contained a mail back questionnaire with four questions:

- “*Prior to this notice, were you aware that our pipeline was on or near your property?*”
- “*During the time that you have owned this property, have we been good neighbors?*”
- “*Has the location or operation of our pipeline caused you any problems or concerns?*”
- “*Except in the case of an emergency, were you notified prior to our crew entering or working on your property?*”

Since none of the above questions asked if the recipient recalled seeing or hearing information regarding oil or gas pipeline safety within the last 12 months and because the mail back questionnaire was the only source of data from the affected public, the Genesis personnel who participated in the inspection could not substantiate this data. Moreover, none of the data from these four questions was contained in the document.

Lastly, the “*Public Awareness Program Effectiveness Report*” document did not contain any conclusions or recommendations though it did contain a section titled “*OPPORTUNITIES FOR IMPROVEMENT.*” This section contained a number of items with an implementation schedule ranging from the 1st Quarter 2009, well before this document was written, to the 1st Quarter 2012. It is not clear if this section was intended to list completed program improvements or recommended changes. None of the items listed in this section can be found as accomplishments or as recommended program improvements in the annual program implementation assessments that were done for the years 2006, 2007, 2008, 2009 and 2010. It is unclear what the items listed under “*OPPORTUNITIES FOR IMPROVEMENT*” represent or how they were established.

3. §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* §195.3).

Genesis’ PAP did not address Emergency Preparedness Communications with Emergency Officials and Public Officials as required by API RP 1162, Table 2-1 and Section 4.4.

Genesis used baseline message brochures in 2006, 2008, and 2010 to educate the public, appropriate government organizations, and persons engaged in excavation related activities about its pipeline systems. However, the baseline message brochures did not contain any information on Emergency Preparedness Communications with Emergency Officials or Public Officials.

4. §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* §195.3).

Genesis did not maintain adequate liaison with Emergency Officials because it did not provide any contact information for Genesis’ local offices to the Emergency Officials as required by API RP 1162 , Section 4.4.2.

Genesis hired a contractor to conduct annual liaison meetings with Emergency Officials, Public Officials, and Excavators in calendar years 2006 through 2011. Genesis provided its contractor with a document to distribute at the meetings. While the document provided a 24-hour emergency phone number and headquarters contact information, it did not provide any contact information for Genesis’ local offices as required by API RP 1162 , Section 4.4.2. It should also be noted that no Genesis personnel participated in the meetings.

5. §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 §195.3).

Genesis did not provide baseline message material to all identified Excavators in 2007, 2009, and 2011 in accordance API RP 1162, Table 2-1, which requires the baseline message to be delivered to Excavators annually.

Genesis mailed baseline message brochures to all stakeholder audiences in 2006, 2008, and 2010. Genesis also hired a contractor to conduct annual liaison meetings with Emergency Officials, Public Officials, and Excavators in calendar years 2006 through 2011. After the meetings, Genesis sent follow-up baseline message material to Emergency Officials and Public Officials who were invited to the liaison meetings but did not attend. However, Genesis did not mail this follow-up baseline message material to Excavators who did not attend the liaison meetings. That is, Genesis did not provide baseline message material to all identified Excavators in 2007, 2009, and 2011 in accordance API RP 1162, Table 2-1.

6. §195.440 Public awareness.

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

Genesis did not assess the unique attributes and characteristics of its pipeline systems in developing and implementing its written PAP.

Genesis transports natural gas, crude oil, and carbon dioxide in several pipeline systems. These products have significantly different attributes and characteristics, which Genesis did not properly assess so as to properly prepare and distribute PAP baseline messages that adequately covered the unique attributes and characteristics of the products transported by its pipelines.

For example, the Genesis baseline message brochure used in 2006 did not describe the type of products Genesis transported in its pipeline systems. However, the brochure contained a small photograph of a pipeline marker with the words “*WARNING PETROLEUM PIPELINE.*” While the pipeline marker depicted in the brochure may be appropriate for a crude oil pipeline, this pipeline marker could be misleading to someone living or working near a natural gas pipeline or a carbon dioxide pipeline. Moreover, natural gas pipeline markers must contain the words “*Gas (or name of gas transported) Pipeline*” in accordance with §192.707(d)(1).

The Genesis baseline message brochure used in 2008 stated, “*Genesis Energy pipelines carry crude oil, liquid carbon dioxide or natural gas.*” This brochure, however, did not explain the unique attributes or characteristics of the three products transported by Genesis nor did it provide any information on which pipeline systems transported which product. The brochure also contained a photograph of a pipeline marker with the words

“*WARNING PETROLEUM PIPELINE,*” which could be misleading to someone living or working near a natural gas pipeline or a carbon dioxide pipeline. Moreover, natural gas pipeline markers must contain the words “*Gas (or name of gas transported) Pipeline*” in accordance with §192.707(d)(1).

The Genesis baseline message brochure used in 2010 stated, “*Genesis Energy pipelines carry crude oil, liquid carbon dioxide or natural gas*” and contained a brief description of the properties of these three products. However, the brochure did explain that the recipient is living or working near a Genesis pipeline. Moreover, while the brochure listed the counties where Genesis operates pipelines, it did not indicate what type of product is transported in each county.

7. §195.440 Public awareness.

... (c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

Genesis did not follow the supplemental requirements of API RP 1162 or provide justification in its PAP program or procedural manual as to why compliance with all or certain provisions of the recommended practice was not practicable and not necessary for safety on the Genesis pipeline systems.

Section 9.0, ENHANCEMENTS AND SUPPLEMENTAL ACTIVITIES in Genesis’ PAP (2010 and earlier versions) required Genesis’ Public Awareness Committee to evaluate the need for supplemental enhancements. Section 9.0 contained a table titled “*Figure 9.1 Implementing Supplemental Activities,*” which Genesis required to be completed annually for each line segment. The information in the completed tables was to be used in to determine the need for supplemental program enhancements.

Genesis completed an annual summary report of its PAP for the years 2006 through 2010. Each report indicated, “*It was decided that no supplemental program enhancements are warranted.*” Yet, the reports contained no documentation to support these conclusions and no documentation to show that the table in Figure 9.1 was ever completed or that the Public Awareness Committee ever met.

8. §195.440 Public awareness.

... (d) The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:

... (2) Possible hazards associated with unintended releases from a hazardous liquid or carbon dioxide pipeline facility;

... (4) Steps that should be taken for public safety in the event of a hazardous liquid or carbon dioxide pipeline release; and

(5) Procedures to report such an event.

The Genesis PAP did not include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on the possible hazards associated with unintended releases from a hazardous liquid or carbon dioxide pipeline facility; on the steps that should be taken for public safety in the event of a hazardous liquid or carbon dioxide pipeline release; or, on the procedures to report such an event.

Genesis used baseline message brochures in 2006, 2008, and 2010 to educate the public, appropriate government organizations, and persons engaged in excavation related activities about its pipeline systems. However, the baseline message brochures used in 2006 and 2008 did not address the possible hazards associated with an unintended release of product. Also, the baseline message brochures used in 2006, 2008, and 2010 did not address the steps to be taken in the event of a release of product or the procedures to report such an event.

9. §195.440 Public awareness.

... (i) The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies.

Genesis did not have any documentation to show that the 2010 baseline message material for the Affected Public was delivered in accordance with API RP 1162 , Table 2-1.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that Genesis be preliminarily assessed a civil penalty of \$31,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
2	\$10,000
3	\$10,500
6	\$10,500

Warning Items

With respect to items 1, 4, 5, 7, 8, and 9 we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Be advised that failure to do so may result in Genesis Pipeline USA, LP being subject to additional enforcement action.

Proposed Compliance Order

With respect to items 3 and 6 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Genesis Pipeline USA, LP. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 2-2012-5012** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Wayne T. Lemoi
Director, Office of Pipeline Safety
PHMSA Southern Region

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Genesis Pipeline USA, LP a Compliance Order incorporating the following remedial requirements to ensure the compliance of Genesis Pipeline USA, LP with the pipeline safety regulations:

1. In regard to Item Number 3 of the Notice pertaining to the failure of Genesis to address Emergency Preparedness Communications in its baseline message brochure distributed to Emergency Officials and Public Officials, Genesis must develop and distribute to Emergency Officials and Public Officials new baseline message material that adequately addresses Emergency Preparedness Communications.
2. In regard to Item Number 6 of the Notice pertaining to the failure of Genesis to address the unique characteristics and attributes of its pipeline systems in its Public Awareness Program and baseline message brochures, Genesis must develop and distribute to all stakeholder audiences new baseline message material that adequately addresses the unique attributes and characteristics of its natural gas pipelines, crude oil pipelines and carbon dioxide pipelines.
3. Genesis must provide written documentation to the Director, PHMSA Southern Region, within 90 days following your receipt of the Final Order that Compliance Order that Items 1 and 3 have been completed.
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 to the Director, Office of Pipeline Safety, PHMSA Southern Region. 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.