



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

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

SEP - 1 2006

Mr. Mark S. Rauch
President
Pipeline & Terminal Management Corp.
P.O. Box 270415
Houston, TX 77277-0415

Re: CPF No. 2-2005-6027

Dear Mr. Rauch:

Enclosed is the decision on the petition for reconsideration filed in the above-referenced case. For the reasons discussed therein, the Associate Administrator for Pipeline Safety has denied your petition and therefore, payment of the \$4,000 civil penalty is due immediately. Your receipt of the decision constitutes service under 49 C.F.R. § 190.5.

Sincerely,

A handwritten signature in black ink, appearing to read 'James Reynolds', with a long horizontal flourish extending to the right.

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

In the Matter of)	
)	
)	
Pipeline & Terminal Management Corp. /)	CPF No. 2-2005-6027
Key West Pipeline Company,)	
)	
Petitioner)	
)	

DECISION ON PETITION FOR RECONSIDERATION

On April 13, 2006, pursuant to 49 U.S.C. § 60112, the Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), issued a Final Order in this case finding Petitioner violated the pipeline safety regulations and assessed a civil penalty in the amount of \$4,000.

On April 28, 2006, Petitioner filed a petition for reconsideration pursuant to 49 C.F.R. § 190.215. Petitioner sought reconsideration of the finding in the Final Order that it violated 49 C.F.R. § 195.509(b) by failing to complete qualifications for two individuals who were performing a covered task. Petitioner’s primary argument for reconsideration is that the evidence submitted in response to the Notice of Probable Violation and during the hearing shows that Petitioner did, in fact, complete the qualifications pursuant to § 195.509(b).

The evidence in the record submitted by Petitioner includes oral testimony, an affidavit, and a letter from General Physics Corporation. During the hearing on January 17, 2006, Petitioner’s President testified that he personally qualified the two individuals in accordance with § 195.509(b). Petitioner then submitted an affidavit dated January 19, 2006, signed by the President restating his testimony. The final piece of evidence was a letter dated October 21, 2005, from the organization that had developed Petitioner’s operator qualification plan, stating that Work History Qualification forms for the covered task “did not print out of the database with the other covered tasks.”¹

At no point during the enforcement proceeding did Petitioner produce records of any evaluations that took place to qualify the individuals pursuant to § 195.509(b). The oral testimony and affidavit were insufficient documentation of the evaluations, and the letter concerning the printing error does not excuse Petitioner’s failure to have records of the evaluations.

¹ Petition for Partial Reconsideration, April 28, 2002, Exhibit A.

Petitioner argued, however, that a failure to have records does not constitute a violation of § 195.509(b).² To the contrary, Petitioner is obligated by the pipeline safety laws and operator qualification regulations to keep documentation of qualifications. The operator qualification regulations require Petitioner to qualify individuals using an evaluation process that is “documented by the operator” to determine individuals’ abilities to perform covered tasks.³ Section 195.507 also requires Petitioner to maintain records that demonstrate compliance with § 195.509. Moreover, the Federal pipeline safety statute at 49 U.S.C. § 60117(b) requires Petitioner to keep records that are necessary for PHMSA to verify compliance with each pipeline safety regulation applicable to Petitioner’s pipeline system.

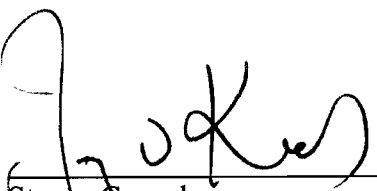
Petitioner has not presented information that warrants modifying the Final Order issued in this case. Accordingly, the relief sought in the petition for reconsideration is **denied**.

Payment of the \$4,000 civil penalty must be made within 20 days of service of this Decision on Petition for Reconsideration. 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 \$4,000 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.

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


 Stacy Gerard
 Associate Administrator
 for Pipeline Safety

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Date Issued

² Petition, p 2.

³ 49 C.F.R. § 195.503.