

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

OVERNIGHT EXPRESS DELIVERY

September 5, 2023

Mr. Zachary Young
Vice President of Ergon Trucking
Ergon Terminaling, Inc.
P.O. Box 1639
Jackson, MS 39215

CPF 1-2023-050-NOPV

Dear Mr. Young:

From May 16, 2022 to May 20, 2022, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.) conducted an on-site inspection of Ergon Terminaling, Inc.'s (Ergon) procedures and records for control room management of its control room in Magnolia, Ohio.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. **§ 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 SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this section...**

Ergon failed to follow its written control room management procedures. Specifically, Ergon failed to follow its *Control Room Management Plan*, November 2014 (CRM Plan), Section 7.8 regarding monitoring the content and volume of general activity being directed to and required of each controller at least once each calendar year, but at intervals not exceeding 15 months that will assure

controllers have sufficient time to analyze and react to incoming alarms. Section 195.446(e)(5)¹ requires that Ergon “[m]onitor the content and volume of general activity being directed to and required of each controller at least once each calendar year, but at intervals not exceeding 15 months . . .”

Ergon’s CRM Plan, Section 7.8 stated, in part, “ETI monitors the content and volume of general activity being directed to and required of each controller at least once each calendar year (not to exceed 15 months), to assure controllers have sufficient time to analyze and react to incoming alarms.”

During the inspection, Ergon was asked to produce records indicating that they monitored the content and volume of general activity being directed to and required of each controller at least once each calendar year but at intervals not exceeding 15 months, to assure that its controllers have sufficient time to analyze and react to incoming alarms. Ergon produced a study that was undertaken in August 2014. While the CRM Plan and regulations required this task to be completed each calendar year, no records or study were presented for 2019, 2020 and 2021. Section 194.446(j)(1) requires operators to maintain records that demonstrate compliance with the requirements of this section.

In addition, Ergon’s CRM Plan, Section 7.8.2 was not fully consistent with Section 7.8 as it required Ergon to perform this workload analysis “periodically, annually and/or whenever or [sic] significant changes are being made.”

Therefore, Ergon failed to follow its written control room procedures pursuant to compliance with §§ 195.446(a) and 195.446(e)(5) during 2019 to 2021.

2. § 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 SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this section...

Ergon failed to follow its written control room management procedures. Specifically, Ergon failed to follow its *Control Room Management Plan*, November 2014 (CRM Plan), Section 7.7 regarding reviewing its Alarm Management Plan to determine its effectiveness pursuant to § 195.446(e)(4)².

¹ § 195.446 Control Room Management.

(a) ...

(e) Alarm management. Each operator using a SCADA system must have a written alarm management plan to provide for effective controller response to alarms. An operator's plan must include provisions to:

(1) ...

(5) Monitor the content and volume of general activity being directed to and required of each controller at least once each calendar year, but at intervals not exceeding 15 months, that will assure controllers have sufficient time to analyze and react to incoming alarms;

² § 195.446 Control Room Management.

(a) ...

Ergon's CRM Plan, Section 7.7 required, in part, that "ET will review the Alarm Management Plan at least once each calendar year, but at intervals not exceeding 15 months, to determine the effectiveness of the plan." Section 7.7 also stated, "[r]eview of the alarm management plan must be documented in the "Record of Plan Revisions", even if no changes are made."

During the inspection, Ergon was asked to produce documentation indicating that a review of the alarm management plan was conducted during 2019 – 2021. Ergon was unable to provide any records demonstrating that the annual reviews were conducted and documented pursuant to its procedures above.

Therefore, Ergon failed to follow its written procedures regarding conducting annual reviews of its alarm management plan pursuant to §§ 195.446 (a) and 195.446(e)(4).

3. § 195.446 Control Room Management.

(a) ...

(j) *Compliance and deviations.* An operator must maintain for review during inspection:

(1) Records that demonstrate compliance with the requirements of this section; and

Ergon failed to maintain records as required by § 195.446(j)(1) that demonstrate compliance with §§ 195.446(d)(2) and 195.446(d)(3)³. Specifically, Ergon failed to maintain records demonstrating that controllers and supervisors were educated in fatigue mitigation strategies and how off-duty activities contribute to fatigue, and records demonstrating they were trained to recognize the effects of fatigue for years 2020 and 2021.

During the inspection, Ergon was asked to produce records to demonstrate that fatigue education and training was conducted pursuant to §§ 195.446(d)(2) and 195.446(d)(3). Ergon discussed that they did not have training records for 2020, 2021 and prior years. In discussions during the verbal exit briefing, Ergon stated that all employees at the Magnolia Terminal facility are required to qualify as pipeline operators and do receive Fatigue Mitigation Training via the Empower Human Resource Management system and electronic records are available for review. However, the

(e) *Alarm management.* Each operator using a SCADA system must have a written alarm management plan to provide for effective controller response to alarms. An operator's plan must include provisions to:

(1) ...

(4) Review the alarm management plan required by this paragraph at least once each calendar year, but at least intervals not exceeding 15 months, to determine the effectiveness of the plan.

³ § 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) ...

(2) Educate controllers and supervisors in fatigue mitigation strategies and how off-duty activities contribute to fatigue;

(3) Train controllers and supervisors to recognize the effects of fatigue: and

operator was unable to produce records when requested. In communication subsequent to the inspection, Ergon identified that required training was added post-inspection, and that Ergon conducted fatigue mitigation training between May 9, 2022 and June 28, 2022.

Therefore, Ergon failed to maintain records under § 195.446(j)(1) demonstrating that the controllers and supervisors were educated and trained regarding fatigue mitigation as required by §§ 195.446(d)(2) and 195.446(d)(3).

4. § 195.446 Control Room Management.

(a) ...

(j) *Compliance and deviations.* An operator must maintain for review during inspection:

(1) Records that demonstrate compliance with the requirements of this section; and

Ergon failed to maintain records as required by § 195.446(j)(1) that demonstrate compliance with § 195.446(b)(4). Specifically, Ergon failed to maintain documentation of shift-handover notes to the temporary relief or any other controllers as required by § 195.446(b)(4)⁴.

Ergon's *Pipeline Control Room Management Plan*, November 2014, Section 5.1 stated that its controller will document abnormal conditions, if any exist. It also required the conveying of all necessary information if a temporary or impromptu change in controller responsibility occurs.

During the inspection, Ergon discussed how it has day shifts only and there are no regular shift turnover meetings performed. However, Ergon stated that they sometimes conduct shift handovers, but did not retain records documenting the shift handover and information exchanged during the shift change. Therefore, no records were provided documenting hand-over responsibility between controllers.

Therefore, Ergon failed to maintain records of shift handover of responsibility between controllers pursuant to § 195.446(b)(4), as required by § 195.446(j)(1).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$257,664 per violation per day the violation persists, up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022 and before January 6, 2023, the maximum penalty may not exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not exceed \$225,134

⁴ § 195.446 Control Room Management.

(a) ...

(b) *Roles and responsibilities.* Each operator must define the roles and responsibilities of a controller during normal, abnormal and emergency operating conditions. To provide for a controller's prompt and appropriate response to operating conditions, an operator must define each of the following:

(1) ...

(4) A method of recording controller shift-changes and any hand-over of responsibility between controllers; and

per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

Proposed Compliance Order

With respect to Item 1, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Ergon Terminaling, Inc. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Warning Items

With respect to Items 2, 3, and 4, 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. Failure to do so may result in additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be 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).

Following your receipt of this Notice, you have 30 days to respond as described in the enclosed *Response Options*. 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. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. The Region Director may extend the period for responding upon a written request timely submitted demonstrating good cause for an extension.

In your correspondence on this matter, please refer to **CPF 1-2023-050-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Robert Burrough
Director, Eastern Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

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

PROPOSED COMPLIANCE ORDER

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

- A. In regard to Item 1 of the Notice pertaining to monitoring the content and volume of general activity being directed to and required of each controller, Ergon must revise its CRM Plan, Section 7.8.2 to clarify the interval at which it performs its workload analysis and to ensure consistency with Section 7.8 of the procedure and § 195.446(e)(5). Ergon must submit its revised procedures to the Director, Eastern Region, within **180** days of receipt of the Final Order.
- B. It is requested (not mandated) that Ergon Terminaling, Inc. maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Robert Burrough, Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration. 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.