



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

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

DEC 16 2003

Mr. Jerry Wilhorn
Vice President of Operations
Kinder Morgan Energy Partners, L.P.
500 Dallas Street, Suite 1000
Houston, TX 77002

Re: CPF No. 44501, Santa Fe Pacific Pipeline Partners, L.P.

Dear Mr. Wilhorn:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$20,000, and requires certain corrective action. The penalty payment terms are set forth in the Final Order. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Arizona Corporation Commission

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of)

Kinder Morgan Energy Partners, L.P./)
Santa Fe Southern Pacific Pipeline Partners, L.P.,)

Respondent.)

CPF No. 44501

FINAL ORDER

On November 8-19, 1993, pursuant to 49 U.S.C. § 60117, a representative of the Arizona Corporation Commission, as agent for the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Arizona. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated January 31, 1994, a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 195.260(e) and 195.416(a) and assessing civil penalties of \$26,000 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violation of § 195.260(e).

Respondent responded to the Notice by letter dated March 3, 1994 (Response). Respondent contested the allegations and requested a hearing that was held on June 29, 1994. After this hearing, Respondent provided additional information on July 12, 1994.

FINDINGS OF VIOLATION

Item 1 of the Notice alleged that Respondent violated 49 C.F.R. § 195.260(e) by failing to install a valve on its 20-inch products line on the west side, upstream, of the Gila River in Yuma, Arizona. The pipeline beneath the Gila River was replaced in 1993 following a flood. Construction standards, including those requiring the placement of valves, apply to replaced sections of pipeline under § 195.200.

Respondent presented three reasons that a valve on the west bank was not necessary. In its Response, Respondent argued that the Gila River was normally dry and did not exceed 100 feet from high water mark to high water mark. Valves are only required when the high water marks exceed 100 feet. The Gila River is normally dry, but does contain water in the spring. At the hearing, Respondent abandoned its argument with respect to the high water mark. Respondent's own maps indicate a distance between high water marks of 150 to 200 feet.

Respondent also argued that, in the event of extreme flooding, the west bank would not be accessible. Respondent pointed to its reliance on a consultant during the replacement and noted the unusual conditions due to the floods in 1993. However, there is nothing in the record that indicates that a valve would not be accessible in usual conditions of the Gila River.

Finally, Respondent argued that a valve was unnecessary because of the drainage in the area. The nearest valve to the bank west of the crossing was located 4 miles away at the Yuma Station. Respondent argued that a 20-foot drop in the line from the west bank to Yuma Station meant that closing the valve at the Yuma Station would have the same impact as closing one on the west bank. The record is not sufficiently clear on this point to allow a finding that a valve is not needed.

Section 195.260(e) requires valves to be placed on each side of a water crossing. The purpose of this requirement for valves is to protect the water from oil spills. OPS recognizes the difficulties that may be experienced in construction and the need to allow for variation from such a requirement after analysis of the safety and environmental implications. Thus the regulation expressly provides that an operator may seek a determination from OPS in advance of construction that valves are not justified in a particular case. Respondent did not choose this approach and thus there is no record before the agency that a valve is not needed on the west bank. Some of the information in such a record would be the nature of the water crossing, the profile of the pipeline, the stability of the soil, the amount of spillage which might occur if there were a complete separation of the pipeline in the crossing, the potential damage that could result from a spill, the distance between crossings, the location of the closed block valve on each side of the crossing, the width of the crossing, and alternative protective measures. The limited information presented by Respondent in this enforcement case is insufficient for such a determination.

Finally, even if the information provided during the enforcement case were sufficient for the agency to decide that a valve was not justified, Respondent has a duty to comply with the requirement to install a valve at the time of construction or to seek agency concurrence at that time that one is not justified based on an analysis of the record. This procedure assures that the safety and environmental considerations of the results of a possible spill are fully analyzed before a pipeline is placed under a water crossing.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.260(e) as alleged.

Item 2 of the Notice also alleged that Respondent violated 49 C.F.R. § 195.573(a)¹ by failing to conduct tests in 1993 on its cathodically protected pipelines under the Wilcox Dry Lake to determine the adequacy of protection. Respondent operates 8-inch and 12-inch products pipelines that cross Wilcox Dry Lake in Arizona. It maintains 12 test leads to monitor the adequacy of the cathodic protection on these segments. Although there is a discrepancy in the record as to the actual date of testing in 1992, testing occurred sometime in 1992, and not again until January 13, 1994.

¹ The requirements previously imposed by § 195.416(a) can now be found at § 195.573(a).

Respondent argued that the site was inaccessible for inspection of the test stations and that, in any case, the regulation does not require that every test lead be tested. With respect to the second argument, Respondent claims that the regulation requires only that an adequate level of testing be done to assure protection. It urges that its monitoring of the rectifiers by flyovers during this period met the testing requirements for the regulation. Respondent submitted an opinion by its corrosion consultant that the level of cathodic protection during the period was adequate. As discussed below, this alternative testing does not meet the requirements of the regulation.

The regulation reads, in relevant part, as follows:

[An operator] must . . . [c]onduct tests on the protected pipeline at least once each calendar year . . . to determine whether cathodic protection required by this subpart complies with § 195.571. . . .

49 C.F.R. § 195.573(a). This is a performance standard that allows the operator considerable leeway in how to determine whether cathodic protection is adequate. It relies on an operator's compliance with its own established procedures for success. Once an operator decides on a method, OPS expects the operator to follow through with that method. In this case, Respondent had installed 12 test leads to be used to determine whether cathodic protection was adequate for the pipeline facilities in the Wilcox Dry Lake area. There is no indication in the record that Respondent ever intended to adopt another procedure for testing to determine adequate protection. Indeed, the evidence is to the contrary—Respondent had scheduled monitoring of the test leads in May, 1993, but did not conduct that testing because of the surface conditions. The flyover inspections of the rectifiers claimed by Respondent as an alternative means of testing were conducted in order to comply with another section of the regulations, 49 C.F.R. §195.573(c). Finally, the consultant's opinion about the adequacy of the cathodic protection was not generated in the course of establishing an alternative testing method during 1993, but as a result of this enforcement case.

Respondent also argues that it could not conduct the planned inspections of the test leads because the site was impassable. The Wilcox Dry Lake under which the 12 test leads lay was flooded in early 1993. Once the waters receded, the lake bed turned into impassable sticky clay mud. This condition existed until at least the date of inspection—November 1993. The record is not clear whether the lake bed was accessible prior to the end of 1993. In the absence of evidence to the contrary, Respondent is entitled to an assumption that the lake bed was not accessible prior to the end of 1993. However, this does not excuse Respondent from the requirement to inspect its test leads. Operators with submerged pipeline facilities and pipeline facilities located in swampy areas can and do conduct testing to determine the adequacy of cathodic protection.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.573(a) as alleged.

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 a 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. The Notice, as amended by letter of February 8, 1994, proposed a total civil penalty of \$26,000 for the violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

The Notice proposed a civil penalty of \$20,000 for violation of § 195.260(e), Respondent's failure to install a valve on its 20-inch products line on the west side, upstream, of the Gila River in Yuma, Arizona. Respondent's failure to provide valves to protect water crossings required by the regulation could have left the water crossing vulnerable to oil pollution in the event of a pipeline failure. Respondent has not presented a convincing case that it could not have installed the required valve or other reason why it did not do so or seek OPS' concurrence with its view that a valve was not needed. Given the environmental sensitivity of water crossings, strict adherence to design and construction requirements is necessary. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$20,000 for violation of § 195.260(e).

The Notice proposed a civil penalty of \$ 6,000 for violation of § 195.573(a), Respondent's failure to conduct tests in 1993 on its cathodically protected pipelines under the Wilcox Dry Lake to determine the adequacy of protection. Corrosion protection is an important aspect of the maintenance of a pipeline. However, there are significant mitigating circumstances in this case. While inspection of the pipeline in the impassable Wilcox Dry Lake was possible, it is not likely that Respondent, operating as it does in the arid western and southwestern part of the country, would have considerable experience with these methods. The conditions experienced were certainly not normal for the particular location. Furthermore, Respondent has, by its consultant, made an effort to analyze the actual state of cathodic protection on the line during the period in question. This concern on the part of Respondent for the integrity of the pipeline should not be discouraged. Accordingly, having reviewed the record and considered the assessment criteria, I find that no civil penalty is warranted for violation of § 195.573(a).

Having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$20,000 for the violations.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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. After completing the wire transfer, send a copy of the electronic funds

transfer receipt to the Office of the Chief Counsel (DCC-1), Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001.

Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$20,000 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.

COMPLIANCE ORDER

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. The Notice proposed to require that Respondent install a valve at the Gila River crossing within 60 days to comply with 49 C.F.R. § 195.260(e). If required to do so, Respondent indicated that 6 months would be required.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is hereby ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

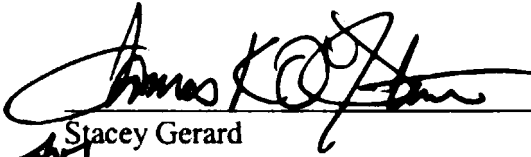
If not already done, install a valve on the west side, upstream, of the Gila River in Yuma, Arizona, or submit a request to OPS for a finding that a valve is not necessary in this location, within 1 month of receipt of this Final Order. The latter shall be accompanied with sufficient documentation for OPS to make a decision on the request.

Provide documentation of installation of the valve, or a copy of the request, to the Regional Director, Southwest Region, Office of Pipeline Safety, Research and Special Programs Administration, 2320 LaBranch Street, Suite 2100, Houston, Texas 77004 within 1 month of receipt of this Final Order.

Upon receiving written request and finding good cause, the Regional Director may grant Respondent an extension of time within which to complete the above described actions.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, shall remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.



Stacey Gerard
Associate Administrator
for Pipeline Safety

DEC 16 2003

Date Issued