

Mr. John R. Fitzgerald  
President  
Levinson Partners Corporation  
410 17th Street  
Suite 1150  
Denver, CO 80202

Re: CPF No. 45202

Dear Mr. Fitzgerald:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$5,000. 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,

Gwendolyn M. Hill  
Pipeline Compliance Registry  
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED



DEPARTMENT of TRANSPORTATION  
RESEARCH and SPECIAL PROGRAMS ADMINISTRATION  
OFFICE of PIPELINE SAFETY  
WASHINGTON, DC 20590

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In the Matter of )  
)  
Levinson Partners Corporation, ) CPF No. 45202  
)  
Respondent. )  
)  
\_\_\_\_\_)

FINAL ORDER

On October 7, 1994, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Houston, Texas. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated April 6, 1995, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 192.225(b), 192.243 and 199.7(a) and proposed assessing civil penalties of \$1,000, \$1,000 and \$3,000 respectively for the alleged violations.

Respondent responded to the Notice by letter dated April 24, 1995 (Response). Respondent offered information to explain the allegations and requested mitigation of the proposed civil penalty. Respondent has not requested a hearing and therefore, has waived its right to one.

FINDINGS OF VIOLATION

Retention of Welding Procedure

Item 1 in the Notice alleged that Respondent had violated 49 C.F.R. § 192.225(b), which requires that a pipeline operator retain a copy of each welding procedure, including the results of qualifying tests, used on its pipeline. The Notice alleged

that Respondent did not retain the required welding procedure and, on the day of the inspection, was unaware of the location of the required records.

In its Response, Respondent requested mitigation based on its corrective actions. Respondent stated that because it did not construct the pipeline, it did not have the records on the day of the inspection. According to Respondent, it immediately requested the records from the previous pipeline operator, but previous operator was no longer in business. Respondent eventually received the records from the contractor who had built the pipeline. Respondent requested that OPS reconsider the alleged violation because Respondent took corrective action and was able to locate the welding procedure.

The regulation states: "Each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used." (See 49 C.F.R. § 192.225(b), emphasis added). The record demonstrates that Respondent failed to retain the required welding procedure. Although Respondent took corrective action, the regulation required Respondent to acquire these records at the time it began operating the pipeline. Accordingly, I find that Respondent violated 49 C.F.R. § 192.225(b).

#### Retention of Nondestructive Testing Records

Item 2 in the Notice alleged that Respondent had violated 49 C.F.R. § 192.243(b),(c) and (f), which requires that a pipeline operator retain a written procedure for nondestructive testing and an interpretation of that procedure. In addition, 49 C.F.R. § 192.243(f) requires that when nondestructive testing is required, the operator must retain, for the life of the pipeline, a record showing by milepost, engineering station, or by geographic feature, the number of girth welds made, the number nondestructively tested, the number rejected, and the disposition of the rejects. The Notice alleged that Respondent did not retain the required written procedures and, on the day of the inspection, was unaware of the location of the required records.

Respondent cited the same circumstances as it did for the first alleged violation. Again, the record demonstrates that Respondent failed to retain the required nondestructive testing procedures and records. Although Respondent took corrective action, the regulation required Respondent to acquire these records at the time it began operating the pipeline.

Accordingly, I find that Respondent violated 49 C.F.R. § 192.243(b),(c) and (f).

#### Written Anti-Drug Plan

Item 3 in the Notice alleged that Respondent had violated 49 C.F.R. § 199.7(a), which requires that a pipeline operator maintain and follow a written anti-drug plan. The Notice alleged that Respondent did not have a written anti-drug plan when it began operation of the pipeline.

Section 199.7(a) states: "Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part [Part 199] and the DOT procedures." Part 199 requires that a pipeline operator test its employees for the presence of prohibited drugs and provide an employee assistance program. The term employee "means a person who performs on a pipeline or LNG facility an operating maintenance, or emergency-response function ... The person maybe employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor." (See 49 C.F.R. § 192.3).

According to the record, Respondent began operating its pipeline on or about February 10, 1993, and Respondent's anti-drug plan became effective on July 1, 1994. During the inspection, Respondent indicated that because all operating, maintenance and emergency response functions are performed by contractors, it was unsure if it needed an anti-drug plan. In its Response, Respondent requested that OPS reconsider the alleged violation because Respondent did not have any employees in "safety related positions".

Although Respondent's employees were not performing operating, maintenance and emergency response functions on its pipeline, Respondent had a contractor perform these functions. Under 49 C.F.R. § 199.21, the pipeline operator remains responsible for ensuring that the requirements of Part 199 are complied with. Thus, although Respondent took corrective action, the regulation required Respondent to have a written anti-drug plan at the time it began operation of the pipeline. Accordingly, I find that Respondent violated 49 C.F.R. § 199.7(a).

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 \$25,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations. The Notice proposed a total penalty of \$5,000.

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 violations, 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.

In assessing the nature and gravity of the violations, I considered that a pipeline's integrity is dependent on the quality of the welds. Thus, the pipeline safety regulations require the pipeline operator to qualify its welding procedure. After qualifying its procedure, the operator must retain the procedure and ensure all of its welding activities comply with the procedure. OPS reviews this quality assurance record and the nondestructive testing records to gauge the quality of operator's welds and the operator's quality assurance program. Compliance with this safety standard enhances the likelihood that there will be high quality welds throughout the pipeline and decreases the likelihood of a weld failure.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000.

**Payment of the civil penalty must be made within 20 days of service.** Payment can 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-320), P.O. Box 25770, 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.** 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, S.W., Washington, D.C. 20590-0001.

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**Questions** concerning wire transfers should be directed to:  
**Valeria Dungee**, Federal Aviation Administration, Mike Monroney  
Aeronautical Center, Financial Operations Division (AMZ-320),  
P.O. Box 25770, Oklahoma City, OK 73125; **(405) 954-4719**.

Failure to pay the \$5,000 civil penalty will result in accrual  
of interest at the current annual rate in accordance with 31  
U.S.C. § 3717, 4 C.F.R. § 102.13 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 an United States  
District Court.

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.

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Richard B. Felder  
Associate Administrator  
for Pipeline Safety

Date: 07/31/1997