



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

JUN 23 2003

Mr. David Ysebaert
President
Phillips 66 Transportation Company
390 Adams Building
Bartlesville, OK 74004

Re: CPF No.1-2002-5007

Dear Mr. Ysebaert:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws one allegation of violation, makes a finding of violation, and assesses a civil penalty of \$35,000. The Final Order also requires certain corrective action and revision of your integrity management procedures. 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

In the Matter of)
)
Phillips 66)
Transportation Company,)
)
Respondent.)

CPF No. 1-2002-5007

FINAL ORDER

On February 13-14, 2002, pursuant to 49 U.S.C. § 60117, representatives of the Eastern and Central Regions, Office of Pipeline Safety (OPS) inspected Phillips 66 Transportation Company's (Respondent's) integrity management program at Respondent's facility in Bartlesville, Oklahoma. As a result of the inspection, the Director, Eastern Region, OPS, issued to Respondent, by letter dated July 3, 2002, a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed two violations of 49 C.F.R. § 195.452(b), proposed assessing a civil penalty of \$50,000 for one of the alleged violations, and proposed that Respondent take certain measures to correct the alleged violations. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent its integrity management program segment identification procedures.

Respondent responded to the Notice by letter dated August 9, 2002 (Response). Respondent contested certain aspects of the Notice, offered information explaining its position, and described the extent to which it intended to take corrective measures. Respondent did not request a hearing, consequently Respondent waived its right to one.

FINDING OF VIOLATION

Item 1 in the Notice alleged that Respondent had violated 49 C.F.R. § 195.452(b) by failing to identify all of its pipeline segments that could affect a high consequence area (HCA) by December 31, 2001. Specifically, OPS alleged that Respondent omitted certain highly volatile liquid (HVL) pipeline segments located in or near drinking water and ecological unusually sensitive areas (USAs) from its segment identification process and failed to provide adequate technical justifications for excluding such HVL pipeline segments.

Under Section 195.452, a hazardous liquid pipeline segment in a HCA is presumed to affect that HCA unless the operator demonstrates otherwise by conducting a risk assessment. This presumption applies to all hazardous liquid pipeline segments, including HVL segments. Under Section 195.450, the definition of a HCA includes unusually sensitive areas (USAs). Under Section 195.6, the definition of a USA includes drinking water and ecological resource areas. Therefore, Respondent must have either identified its HVL pipelines in or near drinking water and ecological USAs as “could affect” segments or provided a reliable engineering assessment demonstrating otherwise by December 31, 2001.

In its response, Respondent acknowledged that it did not designate its HVL pipeline segments that intersected with drinking water and ecological USAs as “could affect” segments prior to the December 31, 2001 deadline. Although Respondent asserts that it had reason to believe that these segments could not affect the relevant HCAs, it did not provide a technical assessment demonstrating that omitting these HVL segments would not diminish protection of the public and the environment. Moreover, in its response, Respondent notified OPS that after the inspection, it had re-evaluated “the criteria for HVLs in USAs” and acknowledged that as a result, it had identified additional pipeline segments that could affect HCAs after the December 31, 2001 deadline had passed. Respondent did not sufficiently rebut the allegation of violation. Accordingly, I find that Respondent violated 49 C.F.R. § 195.452(b) by failing to identify all of its pipeline segments that could affect a high consequence area by December 31, 2001.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

WITHDRAWAL OF ALLEGATION

Item 2 of the Notice alleged that Respondent had violated 49 C.F.R. § 195.452(b) by failing to include the TOSCO 12-inch crude oil pipeline located in northwest Kern County, California. In its response, Respondent submitted information demonstrating that the allegation was based on the erroneous use of an outdated map. Based on this information, I am withdrawing this allegation of violation.

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.

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 \$50,000 for violation of 49 C.F.R. § 195.452(b), failing to identify all pipeline segments that could affect a HCA by December 31, 2001. The integrity management program regulations require hazardous liquid pipeline operators to develop a written integrity management program that identifies, assesses, and manages the risks on each pipeline segment that could affect a HCA in the event of a discharge. A full and accurate identification of all pipeline segments that could affect HCAs was a crucial first step before an operator could implement further integrity management program requirements, such as the baseline assessment and remediation of the identified segments.

After receiving the Notice, Respondent demonstrated good faith in attempting to come into compliance. In its response letter, Respondent acknowledged that it failed to identify its pipeline segments that could affect the referenced drinking water and ecological HCAs prior to the deadline. Notably, Respondent initiated timely corrective action and has now identified additional pipeline segments that could affect HCAs. Respondent has also expressed its intent to bring its integrity management segment identification procedures into compliance in accordance with the Notice. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$35,000 for the violation.

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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$35,000 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

The Notice proposed a compliance order with respect to the violation of Section 195.452(b). 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. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. Evaluate all 1,302 miles of the HVL pipeline system in accordance with the requirements of Part 195 and identify all pipeline segments that could affect HCAs, including HVL segments in or near HCAs composed of drinking water and ecological USAs;

2. For any segment of the HVL system in or near a HCA that is not identified as a “could affect” segment as a result of completing Item 1, provide a reliable engineering study illustrating why a worst case discharge scenario involving the segment would not affect the HCA it is in;
3. For any HVL segment where an engineering study performed pursuant to Item 2 fails to demonstrate that the segment could not affect the HCA it is in, as determined by the Director, Eastern Region, OPS, designate the segment as a “could affect” segment in the master list.
4. Within 90 days following receipt of this Final Order, submit documentation demonstrating completion of the required items to the Director, Eastern Region, Office of Pipeline Safety, 400 7TH Street, SW, Room 7128, Washington, DC 20590.

AMENDMENT OF PROCEDURES

The Notice alleged inadequacies in Respondent's integrity management program procedures and proposed to require amendment of Respondent's segment identification procedures to comply with the requirements of 49 C.F.R. § 195.452. In its response, Respondent indicated that it had revised certain elements of its segment identification procedures. Although these revisions were summarized in the response letter, the revised procedures themselves were not appended. Therefore, there is insufficient information to determine whether the revisions address all of the inadequacies described in the Notice.

Accordingly, I find that Respondent's procedures are inadequate to assure the safe operation of its pipeline system. Pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.237, Respondent is ordered to make the following amendments to its integrity management program segment identification procedures:

1. Amend the procedures to include a field validation and quality assurance review of the results of the segment identification process to ensure that all pipeline segments that could affect a HCA have been identified;
2. Amend the procedures to include a periodic review of HCA boundaries drawing on information from field personnel, control center data, census data, and other resources for the purpose of identifying areas newly falling within the HCA definition;
3. Amend the procedures to include an accepted, technically sound land flow analysis using site-specific spill modeling that incorporates factors such as topological and hydraulic gradients that could stretch the spill pool footprint, or alternatively, provide adequate technical justifications demonstrating that the overland flow assumptions being used for determining buffer zone size are consistent with conservative or worst case discharge scenarios;

4. Amend the procedures to account for presence of longer range transport paths such as streams and waterways, and air dispersion in the case of highly volatile liquid pipelines, that can transport releases of commodity or fire-fighting contaminants to HCAs;
5. Within 30 days following receipt of this Final Order, submit the amended procedures and all technical justifications demonstrating compliance with this Order to the Director, Eastern Region, Office of Pipeline Safety, 400 7TH Street, SW, Room 7128, Washington, DC 20590.


Failure to comply with any provision of 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. However, if the civil penalty is paid, Respondent waives the right to petition for reconsideration. The filing of a petition for reconsideration automatically stays the payment of any civil penalty assessed. 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). All other terms of the Order, including any required corrective actions, remain in full effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective on receipt.



Stacey Gerard

 Associate Administrator
for Pipeline Safety

JUN 23 2003

Date Issued