



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

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

SEP - 6 2006

Richard A. Olson
Vice President, Transportation Operations
Magellan Midstream Partners, L.P.
One Williams Center
P.O. Box 22186
Tulsa, OK 74121

RE: CPF No. 4-2005-5016

Dear Mr. Olson:

Enclosed is the Final Order issued by the Acting Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$183,500 and specifies actions to be taken to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. 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

cc: Mr. Paul E. Pratt, Counsel for Magellan Midstream Partners, L.P.
Mr. Rod Seeley, Director, Southwest Region, OPS

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of)	
Magellan Midstream Partners, L.P.,)	CPF No. No. 4-2005-5016
Respondent.)	

FINAL ORDER

On April 28-29, 2004, pursuant to 49 U.S.C. § 60117, a team of representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Southwest Region, and the Minnesota Office of Pipeline Safety conducted an on-site pipeline safety inspection of Respondent's Operator Qualification records and procedures in Tulsa, Oklahoma. As a result of the inspection, the Director, Southwest Region, issued to Respondent, by letter dated April 18, 2005, a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §195.505(b) and proposed assessing a total civil penalty of \$183,500 for the alleged violation. The Notice also proposed that Respondent take certain measures to correct the alleged violation.

Respondent responded to the Notice by letter dated May 19, 2005 (Response). Respondent contested part A of the allegation, offered information to explain the allegation and requested that the proposed civil penalty be eliminated. Respondent also requested a hearing.

The hearing was held in Houston, Texas via teleconference on September 21, 2005. Respondent was granted permission to submit a post-hearing Response. In support of its position, Respondent submitted a Post-Hearing Brief dated October 28, 2005. On December 29, 2005, Respondent submitted records of all employees that had been re-evaluated pursuant to the proposed compliance order.

FINDINGS OF VIOLATION

Uncontested

Respondent did not contest the alleged violation of 49 C.F.R. §195 in **Item 1B** of the Notice. Accordingly, I find that Respondent violated 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. §192.505(b) – failure to ensure through evaluations that individuals performing covered tasks are qualified.

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

Item 1A of the Notice alleged that Respondent violated 49 C.F.R. §195.505(b), when Respondent did not provide records to demonstrate that three hundred and fifteen (315) of its employees, transferred from Williams to Respondent, were qualified to perform the covered task under Respondent's operator qualification (OQ) program. The records contained no evidence that Respondent validated Williams' evaluations or that Respondent reviewed corresponding records to ensure that each of the employees in question successfully performed each covered task referred to as "qualified" to perform. The records were void of any documentation that the employees in question had performed each covered task on a regular basis prior to the effective date of the rule. The records were also void of any documentation that the tasks were performed without error and that the performance of any covered task did not result in an accident. Therefore, the OPS inspection team determined that the evaluation method actually used by Respondent was an un-documented misuse of the work performance history evaluation method, which amounted to "grandfathering" employees.

In response to Item 1A, Respondent advised that it requested and received a documented work performance history review worksheet for each Williams employee transferred to Respondent. Respondent further advised that the Williams organization that was operating the assets the hour before the transition to Respondent was the same organization (supervisors and employees) that were operating the organization an hour after the transition. Respondent stated that Williams performed a DOT-Operator Qualification Work History Performance Review Field Worksheet on its applicable employees. Respondent further stated that Williams transferred the Qualification Worksheets associated with each applicable employee to Respondent. In support of its position, Respondent submitted records that consisted of a six page document entitled "Work History Performance Review Field Worksheet" and a sample "Qualification Worksheet."

Respondent contended that work history performance review (WHR) is specifically recognized as an acceptable evaluation methodology for transitional qualifications. Transitional qualification under the Final Rule¹ is defined as "qualification completed by October 28, 2002, of individuals who have been performing a covered task on a regular basis prior to the effective date of the rule." Respondent further argued that the Final Rule specifically states, "Prior to the three year compliance date operators may use work performance history review as the sole method for evaluation when qualifying individuals."

OPS argued that, during the compliance inspection, Respondent failed to provide records to demonstrate that three hundred and fifteen (315) of its employees, transferred from Williams to Respondent were properly qualified to perform the covered task or that they were properly qualified to perform the covered task under the Respondent's OQ program. The issue is whether Respondent provided adequate OQ records to demonstrated compliance with 49 C.F.R. §195.505(b) and that it validated the evaluations.

¹Final Rule, Pipeline Safety: Qualification of Pipeline Personnel, 64 FR 46853, August 27, 1999.

Based upon the “undocumented” evaluation or lack of validation, OPS determined that no effort had been made by Respondent to ensure that the employees in question had performed each covered task on a regular basis prior to the rule’s effective date, that the tasks were performed without error, and that the performance of any covered task did not result in an accident. OPS further argued that Respondent did not provide any additional information to support the evaluation or qualification of the employees. OPS concluded, based upon the lack of records and documentation, that the employees were “grandfathered,” with their Williams qualifications and no validation of their evaluations.

Respondent contended that it was in compliance with 49 C.F.R. §195.505(b) and did have documentation that employees who were transitionally qualified to perform specific covered tasks had 1) performed those tasks on a regular basis prior to the effective date of the rule, 2) performed the tasks without error. Respondent further contended that the inspection team did not ask Respondent to provide this documentation during the April 2004 PHMSA audit.

Even considering Respondent’s argument in a light most favorable to Respondent, it is Respondent is required to demonstrate compliance with an applicable regulation during a PHMSA inspection. The violation report clearly indicates that the PHMSA inspection team inquired about compliance with 49 C.F.R. §195.505(b) and were provided the “Williams Appendix C -Work History Performance Review” form and the “Magellan OJT Checklist - Performance Requirements” by one employee of the Respondent and was witnessed by another. Respondent acknowledged that an inspector discussed its deficiencies during the exit interview. Therefore, Respondent was well aware of the lack of sufficient documentation and the requirement to provide relevant OQ records to demonstrate compliance before the conclusion of the inspection. Respondent had ample opportunity, prior to the inspection, during the inspection, and during the exit interview, to provide any and all records to demonstrate compliance.

Furthermore, an operator is required to maintain records in accordance with the requirements of 49 CFR 195, subpart G, for all individuals performing covered tasks. Operators are required to maintain records regarding covered task, individual performing, evaluation method(s), continuing performance evaluation, reevaluation interval, and reevaluation records. An inspector is not required to specifically request a particular form or document, as the inspector would have no knowledge of every form that an operator may use for its OQ Program. It is the operator that must provide proof of compliance. Respondent has an affirmative duty to achieve and maintain compliance. Therefore, during a pipeline safety inspection operators must provide the documentation and records, as required by federal pipeline safety laws and regulations, to demonstrate compliance.

Ultimately, the Respondent is responsible for compliance with the pipeline safety regulations, which includes sound record keeping. During the inspection, in response to the Notice, and at the hearing, Respondent failed to present adequate evidence to demonstrate that an acceptable method, transitional or otherwise, was used to qualify the employees in question to perform the covered task under Respondent’s OQ program. No records were provided by Respondent to validate the evaluations or to show that Respondent reviewed corresponding records to ensure that each of the employees in question successfully performed each covered task, “qualified” to perform. The records were not provided during the inspection nor during the post inspection exit interview.

On one hand, Respondent argued that there was a seamless transition of ownership interest from Williams to Magellan and all relevant records were transferred for applicable employees. If they were one and the same, then all of Respondent's OQ records and supporting documentation should have been readily available and provided during the inspection. The records and documentation of the qualification method used by Respondent should have been provided during the inspection to adequately show that an acceptable method was used for qualification and that employees were properly qualified to perform the covered task. Respondent has not provided any explanation or justification why the records and documentation were not provided during the inspection or exit interview to demonstrate compliance.

Without the required records and history, it is difficult for an operator to demonstrate that employees are properly qualified to perform specific covered tasks, that they performed these tasks on a regular basis prior to the effective date of the rule and that they performed the tasks without error. Accordingly, I find that Respondent violated 49 C.F.R. §195.505(b), as Respondent failed to provide adequate records or data that carefully and thoroughly document and support the evaluation and qualification of the employees to perform specific covered tasks under Respondent's OQ program.

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 total civil penalty of \$ 183,500 for violations of 49 C.F.R. Part 195.

The proposed civil penalty for **Item 1A & B** is \$183,500 for violation of 49 C.F.R. §195.505(b), as Respondent failed to provide records to demonstrate that three hundred and fifteen (315) of its employees were properly qualified to perform the covered task under Respondent's operator qualification (OQ) program. Respondent also failed to ensure through evaluations that individuals performing covered tasks are qualified. Respondent countered that, given its response in the Post-Hearing Brief, to assess a civil penalty is without merit and unsubstantiated. Respondent also argued that after learning of the concerns expressed by the inspection team at the exit interview, it immediately commenced and diligently pursued acts to address those concerns. The concerns were addressed by the submission of a written action plan within approximately two (2) months of the inspection. Respondent also incorporated the results of the written action plan into its 2005 OQ Plan. Respondent also contended that the proposed civil penalty is greater than penalties assessed against other companies for violation of 49 C.F.R. §195.505.

First, the assessment of civil penalties takes into account all of the factors identified in 49 C.F.R. §190.225 and the application of those factors are fact specific to the individual case in question. Therefore, Respondent is not privy to all of the various circumstances that may exist in a particular case, so any attempt to make a comparison based upon violation of a particular regulation and the amount of the penalty will produce an inaccurate and flawed result.

Second, a determination was made in the “Findings” section of this Order that Respondent violated 49 C.F.R. §195.505(b), as Respondent failed to provide adequate records or data that carefully and thoroughly document and support the evaluation or qualification of the employees to perform specific covered tasks under Respondent’s OQ program referenced in **Item 1A** of the Notice. Although Respondent argued that the assessment of the proposed civil penalty is without merit and unsubstantiated, Respondent has not provided any additional evidence to show that it demonstrated compliance with 49 C.F.R. §195.505(b) during the inspection or during the exit interview when the inspection team alerted the Respondent to deficiencies. The regulatory conditions for the conduct of inspections to determine compliance and gives OPS the general authority to inspect pipelines and related records for compliance with applicable regulations is set forth in 49 C.F.R. §190.203. Respondent is under an affirmative duty to achieve and maintain compliance. Respondent failed to meet its duty. Respondent failed to justify mitigation or elimination of the civil penalty.

As for **Item 1B**, Respondent failed to ensure through evaluations that individuals performing covered tasks are qualified. Respondent had begun the re-evaluation of employees, however, in many instances the evaluations were invalid. The inspection revealed evidence of “group” performance evaluations, rather than individual evaluations and evaluations were given to a group for “discussion” of the performance of a task. There was also evidence of two individuals re-evaluating and qualifying each other, as well as evidence that some individuals performing evaluations were not qualified to perform the covered task, were not subject matter experts and were not provided a standard “script” with which to conduct the evaluation. The Work History Performance Review Field Worksheet (WHPR) submitted by Respondent records contained an individual’s name, employee ID number, an evaluator’s name, a date and a table of covered tasks and columns to list records and knowledge. However, no additional documentation was provided to show corresponding records were reviewed to ensure the employees’ successful performance of each covered task referred to as “qualified” to perform.

Respondent did not contest the allegation of violation but offered an explanation. On December 29, 2005, Respondent submitted additional records. These records indicated that each individual whose qualifications were performed by WPHR have been re-evaluated or no longer perform covered tasks. Again, the Respondent is responsible for compliance with the pipeline safety regulations, which includes sound record keeping. Without adequate records it is difficult for to verify compliance with the Operator Qualification requirements. The primary objective of the Federal pipeline safety standards is safe operation of pipeline systems. Failure to conduct a proper operator qualification evaluation, the operator risks that a task essential in the day to day operation of the pipeline be incorrectly performed on its facility and thereby increases the risk of harm to the public and the environment.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$183,500 for violation of 49 C.F.R. §195.505(b).

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-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$183,500 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.

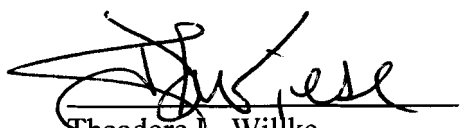
COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. §195.505(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. The Regional Director has indicated that Respondent has taken the following actions specified in the proposed compliance order:

Respondent submitted records to show that each individual, whose qualifications were performed by work performance history review, have been reevaluated or no longer performs covered tasks.

Accordingly, since compliance has been achieved with respect to this violation, the compliance terms are not included in this Order.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a 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. However if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.


Theodore L. Willke
Acting Associate Administrator
for Pipeline Safety

SEP - 6 2006

Date Issued