

JUNE 12, 2012

Mr. Steve Jacobs
President
Harvest Pipeline Company
1201 Louisiana, Suite 1400
Houston, TX 77002

Re: CPF No. 4-2011-5004

Dear Mr. Jacobs:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$45,100, and specifies actions that need to be taken by Harvest Pipeline Company to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Rod M. Seeley, Director, Southwest Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

)	
In the Matter of)	
)	
Harvest Pipeline Company,)	CPF No. 4-2011-5004
)	
Respondent.)	
)	

FINAL ORDER

From August to October, 2010, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the Southwest Pass 24 Oil Terminal facility of Harvest Pipeline Company (Harvest or Respondent) in Venice, Louisiana, and of its records in Houston, Texas. Southwest Pass 24 Oil Terminal is a pump station with two breakout tanks and interconnected piping located on an island at the mouth of the Mississippi River.

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated February 15, 2011, 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 Harvest had committed various violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$72,400 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Harvest responded to the Notice by letter dated March 15, 2011 (Response). The company provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overfill protection systems.

(a) Except as provided in paragraph (b) of this section, each operator

shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test each pressure limiting device each calendar year. Specifically, the Notice alleged that three pressure limiting devices had not been inspected and tested in 2009, or that, if such inspections were in fact performed, that Respondent violated § 195.404(c)(3) by failing to maintain a record of each inspection and test required by Subpart F of 49 C.F.R. Part 195 for at least 2 years or until the next inspection or test is performed, whichever is longer.¹ Respondent did not contest this allegation of violation, and indicated that it had taken steps to ensure that pressure limiting devices were tested at the required frequency in the future.² Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test each pressure limiting device in calendar year 2009.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.436, which states:

§ 195.436 Security of facilities.

Each operator shall provide protection for each pumping station and breakout tank area and other exposed facility (such as scraper traps) from vandalism and unauthorized entry.

The Notice alleged that Respondent violated 49 C.F.R. § 195.436 by failing to protect the Southwest Pass 24 Oil Terminal Facility from vandalism and unauthorized entry. Evidence in the record included Harvest’s “Breakout Tank In-service Visual Inspection Report,” which listed the facility as not secured.³

In its Response, Harvest made note of the “remote location of the island on which the terminal is located,” and stated that it had believed that the terminal was exempt from PHMSA’s security requirements because it is exempt from US Coast Guard (USCG) security requirements.⁴ Harvest’s facility and operations must comply with all applicable federal regulations. The remote location of the facility and its exemption from certain USCG requirements do not exempt the facility from the Pipeline Safety Regulations.

Harvest stated that its “security-related activities have been reviewed” and stated that it “believes

¹ Notice at 1.

² Response at 2.

³ Violation Report, Exhibit B.

⁴ Response at 2.

the existing and improved components provide the appropriate security for the current environment and conditions provided by the remote location of the facility and island.”⁵ Harvest further stated that additional security measures, such as gates, cameras, fences, lighting, or a 24-hour security guard, would not be cost-effective or provide significant additional security. Harvest’s list of security-related components provided in its Response does not satisfy the requirements of this regulation. Harvest stated that the terminal is manned 24 hours a day, 7 days a week, and that it is patrolled twice daily by Harvest personnel, but provided no evidence of this. Harvest stated that aerial surveillance is conducted twice weekly, but this frequency of patrolling does not protect the facility from vandalism and unauthorized entry. Harvest discussed the patrolling activities of EPL, another company that operates a facility on the same island, and the USCG, and stated that “the USCG contacts EPL with any concerns, who in turn contacts Harvest,” but did not provide any evidence of these monitoring activities or of any formal arrangement with these entities.⁶ Harvest also gave no evidence to support its claim of significant cost.⁷ In short, the improved security measures described in the Response do not provide the facility with adequate protection from vandalism and unauthorized entry.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.436 by failing to protect the Southwest Pass 24 Oil Terminal Facility from vandalism and unauthorized entry.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (a) ...
- (b) Ensure through evaluation that individuals performing covered tasks are qualified....

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified. Specifically, the Notice alleged that Harvest’s records showed that three individuals had performed covered tasks prior to being qualified for those tasks on nine occasions.⁸ Respondent did not contest this allegation of violation, and stated that after the inspection it reviewed operator qualification to ensure that all employees were up-to-date in their operator qualification.⁹ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified.

⁵ *Response* at 2.

⁶ *Response* at 3.

⁷ *Response* at 4-5.

⁸ *Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice)* at 2-3.

⁹ *Response to the Notice (Response)* at 5.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a), which states in relevant part:

§ 195.573 What must I do to monitor external corrosion control?

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with § 195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. However, if tests at those intervals are impractical for separately protected short sections of bare or ineffectively coated pipelines, testing may be done at least once every 3 calendar years, but with intervals not exceeding 39 months....

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a) by failing to conduct tests of the cathodic protection on the pipeline at least once each calendar year. Specifically, the Notice alleged that Harvest failed to test the cathodic protection system on the terminal piping and breakout tanks 103 and 104 for the year 2009, or that, if such inspections were in fact performed, that Respondent violated § 195.589(c) by failing to maintain a record of each test required by Subpart H of 49 C.F.R. Part 195 for as long as the pipeline remained in service.¹⁰ Respondent did not contest this allegation of violation, and stated that it had taken steps to ensure future compliance.¹¹ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(a) by failing to conduct tests of the cathodic protection on the pipeline at least once in calendar year 2009.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.579(a), which states:

§ 195.579 What must I do to mitigate internal corrosion?

(a) *General.* If you transport any hazardous liquid or carbon dioxide that would corrode the pipeline, you must investigate the corrosive effect of the hazardous liquid or carbon dioxide on the pipeline and take adequate steps to mitigate internal corrosion.

The Notice alleged that Respondent violated 49 C.F.R. § 195.579(a) by failing to investigate the corrosive effect of the hazardous liquid on the pipeline. Specifically, the Notice alleged that Harvest could not demonstrate that it had investigated the corrosive effects of the hazardous liquid as required by § 195.579 and its own procedures.¹² In its Response, Harvest stated that it believed it had satisfied the regulatory requirement by relying on the producers of the hazardous liquid to analyze the product, take appropriate steps to address any corrosiveness in their products, and inform Harvest of any such action.¹³ Harvest did not provide any evidence that it

¹⁰ Notice at 3.

¹¹ Response at 5.

¹² Notice at 3.

¹³ Response at 5.

had a formal agreement with the producers of the individual product streams or that it had received reports from them about the corrosiveness of their product. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.579(a) by failing to investigate the corrosive effect of the hazardous liquid on the pipeline.

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 an administrative 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. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$72,400 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$14,100 for Respondent's violation of 49 C.F.R. § 195.428(a), for failing to inspect and test each pressure limiting device each calendar year. In its Response, Harvest requested a reduced penalty and noted several factors to warrant this reduction, including its good history of violations, good faith attempts to comply, and quick corrective actions after being notified of violations. Harvest did take action to make sure all 2010 inspections were in compliance, but corrective actions taken after the violation has been discovered do not warrant a reduction in penalty.¹⁴ Harvest's lack of prior offenses and the fact that this offense did not result in an accident were factored into the proposed penalty.¹⁵ The proper functioning of pressure limiting devices is necessary to prevent a pipeline failure due to overpressure, which could have serious consequences for people and the environment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$14,100 for violation of 49 C.F.R. § 195.428(a).

Item 3: The Notice proposed a civil penalty of \$42,500 for Respondent's violation of 49 C.F.R. § 195.505(b), for failing to ensure through evaluation that individuals performing covered tasks were qualified. In its Response, Harvest requested a reduced penalty and noted several factors to warrant this reduction, including its clean history of violations, good faith attempts to comply, and its quick corrective actions after being notified of violations. Corrective

¹⁴ See, e.g., *In the Matter of MidWestern Gas Transmission Co.*, Final Order, CPF 3-2010-1004, 2011 (August 11, 2011) (available at www.phmsa.dot.gov/pipeline/enforcement).

¹⁵ *Pipeline Safety Violation Report CPF 4-2011-5004 (Violation Report)* (on file with PHMSA) at 4, 27.

actions taken after the violation has been discovered, such as Harvest's post-inspection review of operator qualification to ensure that all employees are now up-to-date in their operator qualification, do not warrant a reduction in penalty.

Upon review of the record, I find the proposed penalty is not reflective of the low gravity of the violation, which "had a minimal impact on pipeline integrity or safe operation of the pipeline and did not pose a significant threat to public safety or the environment."¹⁶ I recognize, however, that the multiple instances of violation warrant a higher penalty than a single instance of violation would. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$15,200 for violation of 49 C.F.R. § 195.505(b).

Item 4: The Notice proposed a civil penalty of \$15,800 for Respondent's violation of 49 C.F.R. § 195.573(a), for failing to conduct tests of the cathodic protection on the pipeline at least once each calendar year. In its Response, Harvest requested a reduced penalty and noted several factors to warrant this reduction, including its clean history of violations, good faith attempts to comply, and its quick corrective actions after being notified of violations. Harvest appears to have made a good faith attempt to ensure future compliance by updating its inspection calendar to include all devices at Southwest Pass 24 Oil Terminal, but corrective actions taken after the violation has been discovered do not warrant a reduction in penalty. Harvest's lack of prior offenses and the fact that this offense did not result in an accident were factored into the proposed penalty.¹⁷ Adequate cathodic protection is critical for controlling corrosion on a pipeline and for preventing the pipeline failures that can result from corrosion. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$15,800 for violation of 49 C.F.R. § 195.573(a).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$45,100**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such 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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$45,100 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 district court of the United States.

¹⁶ *Violation Report* at 18.

¹⁷ *Violation Report* at 19, 27.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 2 and 5 in the Notice for violations of 49 C.F.R. §§ 195.436 and 195.579(a) respectively. 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.

With regard to the proposed compliance order associated with **Item 2**, Harvest contended in its Response that it had already reviewed its security activities and determined that “the existing and improved components provide the appropriate security,” considering the remote location of the facility.¹⁸ However, as discussed above, the security measures taken do not adequately demonstrate that the facility is protected from vandalism and unauthorized entry.

With regard to the proposed compliance order associated with **Item 5**, Harvest stated in its Response that it had taken steps to monitor corrosion and was in the process of updating its corrosion control program and procedures.¹⁹ However, Harvest has not provided the results of an investigation of the corrosive effect of the product on its pipelines to the Director.

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. With respect to the violation of § 195.436 (**Item 2**), Respondent must provide the Southwest Pass 24 Oil Terminal with protection from vandalism and entry by unauthorized persons. Respondent must provide its plans, procedures, and records demonstrating that a process has been implemented or that barriers have been installed to the Director within 30 days of receipt of this Final Order.
2. With respect to the violation of § 195.579(a) (**Item 5**), Respondent must investigate the corrosive effect of the hazardous liquid on the pipeline, including on “dead legs,” low-flow lines, and infrequently used pump station lines. Respondent must survey all applicable segments of its pipeline facility and ensure that they are subject to inspection, testing, and monitoring for internal corrosion. Based on this inspection, review, and survey, Respondent must develop a plan for conducting internal corrosion surveys in a manner consistent with § 195.579(a) and must take appropriate steps to mitigate internal corrosion. Respondent must review all relevant procedures and amend them as needed. Respondent must demonstrate to the Director that this has been accomplished within 30 days of receipt of this Final Order.

The Director may grant an extension of time to comply with any of the required items upon a

¹⁸ *Response* at 2.

¹⁹ *Response* at 5-6.

written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

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 sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued