



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Ave., S.E.
Washington, DC 20590

DEC 5 2008

Mr. Terry L. Hurlburt
Senior Vice President of Operations
Texas Eastern Products Pipeline Company, LLC
1100 Louisiana Street
Houston, TX 77002

Re: CPF No. 3-2006-5053

Dear Mr. Hurlburt:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$29,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document 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: Ivan A. Huntoon, Director, Central Region

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)

**Texas Eastern Products Pipeline)
Company, LLC,)
f/k/a Texas Eastern Products)
Pipeline Company, L.P.,)**

Respondent.)

CPF No. 3-2006-5053

FINAL ORDER

Between May 8-12, June 27-30, August 7-11, August 28-31 and September 18-21, 2006, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the operating facilities of Texas Eastern Products Pipeline Company, L.P., in Ohio, Illinois, Indiana, and Kentucky, and reviewed the company's records in Watkins Glen, New York, and Seymour, Indiana. Respondent, now known as Texas Eastern Products Pipeline Company, LLC (TEPPCO or Respondent), operates approximately 4,600 miles of hazardous liquid pipelines.¹ As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated December 19, 2006, 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. § 195.412 and assessing a civil penalty of \$29,000 for the alleged violations.

TEPPCO responded to the Notice by letter dated January 25, 2007 (Response). While Respondent did not admit any violation, it offered certain information in response to the allegations and requested that the proposed civil penalty be reduced or eliminated. 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:

¹ At the time the Notice of Probable Violation and Proposed Civil Penalty was issued, Texas Eastern Products Pipeline Company, L.P., owned and operated the referenced facilities. Respondent informed OPS in August 2007 that the name of the operator had changed to Texas Eastern Products Pipeline Company, LLC.

Item 1a: The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a), which states:

§ 195.412 Inspection of rights-of-way and crossings under navigable waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way....

The Notice alleged that the Respondent failed to conduct adequate inspections of its pipeline right-of-way at Milepost (MP) 174.70 (Line A-1 Hopedale to Millersport) in Ohio. Specifically, it alleged that TEPPCO utilized aerial patrols to inspect this portion of its right-of-way but was unable to inspect the surface conditions from the air because the company failed to keep the area clear of trees and underbrush. The fact that the right-of-way was obscured from aerial view has been documented by photographs taken during the inspection.

In its Response, TEPPCO neither admitted nor denied the allegation. Instead, it stated that the company's mowing contractor cleared the vegetation in this area on December 22, 2006. However, Respondent's corrective action occurred approximately seven months after the OPS inspection and therefore cannot serve to cure the violation.

Item 1b: The Notice alleged that Respondent also violated 49 C.F.R. § 195.412(a), as stated above, by failing to conduct adequate inspections of its right-of-way near MP 122.03 (Line P-35), at the Wabash River valve site in Illinois. Specifically, it alleged that TEPPCO utilized aerial patrols to inspect this portion of its right-of-way but was unable to inspect the surface conditions from the air because the company failed to keep the area clear of trees and underbrush. The fact that the right-of-way was obscured from aerial view has been documented by photographs taken during the inspection.

In its Response, TEPPCO neither admitted nor denied the allegation. Instead, Respondent stated that the right-of-way was cleared on October 23, 2006. However, Respondent's corrective action occurred a full month after the inspection. As stated in Item 1a, correcting a deficiency after an inspection occurs cannot serve to cure the violation.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.412(a) by failing to adequately inspect the surface conditions on or adjacent to its pipeline right-of-way at MP 174.70 and MP 122.03.

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.

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: 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 civil penalty of \$29,000 for Respondent's violation of 49 C.F.R. § 195.412(a). The purpose of § 195.412(a) is to ensure that operators regularly inspect the surface conditions of their pipeline rights-of-way in order to detect encroachments and other threats to the integrity of their facilities, especially in high-population and environmentally sensitive areas. Without adequate patrols, third-party damage to a pipeline is also more likely to go undetected.

In its Response, TEPPCO requested that OPS review the penalty assessment and either waive or reduce the amount on account of the company's post-inspection actions to clear the right-of-way. Respondent also pointed out that "only two overgrown sites were detected for probable violation" over 2,500 miles of highly volatile liquid (HVL) pipeline.

I find these arguments unpersuasive for several reasons. First, while it may be true that these two obstructed areas are relatively small in relation to the entire length of TEPPCO's system, it is also true that OPS only inspected approximately 701 miles of TEPPCO's entire 4,600-mile pipeline system as part of this inspection. It is unknown how many other violations of § 195.412(a) may have occurred along the rest of Respondent's system.

Second, while TEPPCO may have acted promptly to correct the violations after the inspection occurred, there is no indication that TEPPCO made a concerted effort to consistently keep these portions of its right-of-way properly cleared and inspected on a regular basis, as required by § 195.412(a). The rights-of-way should have been kept cleared for aerial inspection without the necessity of an inspector's visit.

Third, Respondent's pipeline at MP 122.03 is a dual-service line that transports both propane and petroleum products. The right-of-way in this area lies close to a residential trailer park and the Wabash River. A potential pipeline malfunction here could have serious impacts on public safety, the water supply, and wildlife and fish in the area. Clear visibility of the right-of-way would also enable TEPPCO to respond more quickly and efficiently in the event of an actual release. Finally, I would note that Respondent has had at least one prior violation of 49 C.F.R. § 195.412(a).²

Based upon the foregoing, I find that Respondent has not demonstrated any circumstances

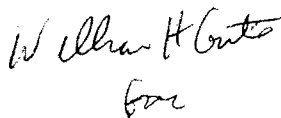
² See CPF # 2-2005-5013.

justifying a reduction or waiver of the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$29,000.

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-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$29,000 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.

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 shall be effective upon receipt.



Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

DEC 5 2008

Date Issued