U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

DEC 3 1 2012

Mr. Stephen Beasley
President
ANR Pipeline Company
717 Texas Street
Houston, TX 77002

**Re: CPF No. 3-2011-1011**

Dear Mr. Beasley:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes one finding of violation, and assesses a civil penalty of $33,100. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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,

Linda Daugherty
for Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. David Barrett, Director, Central Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Vern Meier, Vice President, Field Operations, TransCanada Corporation, 450-1 Street, SW, Calgary, Alberta, Canada, T2P 5H1
Mr. Ken Crowl, Manager, U.S. Pipeline Compliance, TransCanada Corporation, 450-1 Street, SW, Calgary, Alberta, Canada, T2P 5H1
Mr. Daniel Cerkoney, U.S. Compliance, ANR Pipeline Company, 717 Texas Street, Houston, TX, 77002

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

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| **In the Matter of** | ) | |
| **ANR Pipeline Company,** | ) | **CPF No. 3-2011-1011** |
| **Respondent.** | ) | |

## FINAL ORDER

On July 26-30, August 9-13, and September 20-23, 2010, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of ANR Pipeline Company (ANR or Respondent), a subsidiary of TransCanada Corporation, at its gas integrity management facility in Calgary, Alberta, Canada. ANR delivers natural gas primarily to customers in the Midwest through 10,600 miles of pipeline.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated July 27, 2011, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that ANR had violated 49 C.F.R. § 191.23 and proposed assessing a civil penalty of $53,700 for the alleged violations.

ANR responded to the Notice by letter dated August 24, 2011 (Response), requesting an informal conference to respond to the allegations. ANR and OPS personnel met in Kansas City on January 31, 2012, to allow ANR to provide more information about its position. Following the informal conference, ANR provided a letter dated February 14, 2012 (Closing), detailing its position. The company did not contest the allegations of violation for Item 1 but provided an explanation of its actions and requested that the proposed civil penalty be reduced. With respect to Item 2, Respondent did not contest the underlying facts but argued that the facts as alleged in the Notice did not constitute a violation. Respondent did not request a formal hearing and therefore has waived its right to one.

## FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 191, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 191.23(a)(1), which states in relevant part:

> **§ 191.23 Reporting safety-related conditions.**
> (a) Except as provided in paragraph (b) of this section, each operator shall report in accordance with §191.25 the existence of any of the following safety-related conditions involving facilities in service:
> (1) In the case of a pipeline (other than an LNG facility) that operates at a hoop stress of 20 percent or more of its specified minimum yield strength, general corrosion that has reduced the wall thickness to less than that required for the maximum allowable operating pressure, and localized corrosion pitting to a degree where leakage might result.

The Notice alleged that Respondent violated 49 C.F.R. § 191.23(a)(1) by failing to report to PHMSA as required in accordance with the reporting requirements of § 191.25 the existence of localized corrosion pitting of a degree where leakage might have resulted. Specifically, the Notice alleged that on June 12, 2008, ANR completed an in-line inspection (ILI) of its 24 inch diameter 0-100 Line from New Windsor, IL to Sandwich, IL. The Notice further alleged that Respondent received the preliminary report from the inspection on June 23, 2008, and discovered the 82 percent deep external corrosion anomaly on June 25, 2008. The Notice concluded that this anomaly was indicative of corrosion pitting to a degree where leakage might result, citing 49 C.F.R. 192.933(d) (referencing ASME/ANSI B31G and AGA Pipeline Research Committee Project PR-3-805), and that the reporting requirement was not excepted under §191.23(b)(3) because the anomaly was located within the right-of-way of an active road. The Notice finally alleged that Respondent excavated and repaired the anomaly, which was ultimately measured to be 90 percent deep, on August 11, 2008, but that Respondent never sent a safety-related condition report to PHMSA.

In its Closing, ANR did not contest the finding of violation as alleged in the Notice. Accordingly, after considering all of the evidence I find that Respondent violated 49 C.F.R. § 191.23(a)(1) by failing to report as a safety-related condition the existence of localized corrosion pitting of a degree where leakage might have resulted.

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

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 191.23(a)(8), which states in relevant part:

> **§ 191.23 Reporting safety-related conditions.**
> (a) Except as provided in paragraph (b) of this section, each operator shall report in accordance with §191.25 the existence of any of the

> following safety-related conditions involving facilities in service:
>
> (1) . . . .
>
> (8) Any safety-related condition that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a 20 percent or more reduction in operating pressure or shutdown of operation of a pipeline or an LNG facility that contains or processes gas or LNG.

The Notice alleged that Respondent violated 49 C.F.R. § 191.23(a)(8) by failing to report a safety-related condition that could have led to an imminent hazard and caused a 20 percent or more reduction in operating pressure. Specifically, the Notice alleged that ANR completed an ILI of its 42 inches diameter 2-100 Line from MP 874.8 to MP 931.7 on May 24, 2007, receiving the vendor's report on July 23, 2007, and that ANR discovered a deformation indication which required remediation within one year pursuant to 49 C.F.R. § 192.933(d)(2) on August 6, 2007. The Notice alleged that ANR did not repair the deformation within the one-year time limit, but that ANR did not reduce the operating pressure until September 19, 2008. The Notice alleged that since the deformation was located within 220 yards of a building intended for human occupancy, ANR's failure to submit a report to PHMSA regarding the pressure reduction violated § 191.23(a)(8). The Notice finally alleged that ANR excavated and remediated the deformation on October 9, 2008.

In its Closing, ANR did not contest the factual allegations contained in the Notice, but argued that it had no duty to report because it did not "discover" the safety-related condition until it was excavated on October 9, 2008. ANR cited 49 C.F.R. § 191.23(b)(4), which states that an operator is not required to file a report for a safety-related condition if it is corrected by repair or replacement before the deadline for filing the safety-related condition report.[1] ANR asserted that it discovered and repaired the defect on the same day, October 9, 2008, obviating the need to file a safety-related condition report. ANR's argument rests on PHMSA's previous statement that a safety-related condition is "discovered" when:

> an operator's representative has adequate information from which to conclude the probable existence of a reportable condition. An operator would have adequate information for each anomaly that is physically examined. Absent physical examination, discovery may occur after the data are calibrated if the "adequate information" test is met. However, the adequacy of the information that pig data provide about anomalous conditions is contingent on a concurrent indication from a number of factors from which an operator could conclude the probable existence of a reportable condition. Among these are the sophistication of the pig being used, the reliability of the data, the accuracy of data interpretation, and any other factors known by the operator relative to the condition of the pipeline.[2]

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[1] The deadline is five working days after the day a representative of the operator first determines that the condition exists, but not later than ten working days after the day a representative of the operator discovers the condition. 49 C.F.R. § 191.25(a).

[2] Transportation of Gas and Hazardous Liquids by Pipeline; Reporting Safety-Related Conditions; Discovery of Conditions by Smart Pigs; Enforcement Rules, Final Rule, 54 Fed. Reg. 32342, 32343 (Aug. 7, 1989).

ANR asserted that its ILI data alone was not sufficient to determine if the detected deformation qualified as a safety-related condition. ANR argued that only excavation provided adequate information from which it could conclude the probable existence of a reportable condition.

PHMSA bears the burden of proof as to all elements of the proposed violation, which includes proving the date of "discovery" of a safety-related condition. ILI data alone can support a finding of a probable safety-related condition, but only with concurrent information such as "the sophistication of the pig being used, the reliability of the data, the accuracy of data interpretation, and any other factors known by the operator relative to the condition of the pipeline."[3] The evidence in the Violation Report includes only ANR's Final Response Memo addressing the remediation of the dent deformation, but the original data and analysis are not included.[4] Based on the state of technology in 2007, ANR's argument that the ILI did not provide enough data to determine the probable existence of a reportable condition without excavation is plausible, and the Violation Report contains no evidence which would rebut ANR's argument. Therefore, the evidence is insufficient to allow me to conclude that ANR could have determined the probable existence of a safety-related condition without excavating the pipeline.

Accordingly, after considering all of the evidence and the legal issues presented, I find that the evidence is insufficient to prove that ANR knew of the probable existence of a safety-related condition based on the ILI data alone. It is important to note that this Final Order does not conclude that the ILI data was or was not sufficient to determine the probable existence of a safety-related condition. Rather, the evidence in the record is insufficient to make such a determination, and PHMSA therefore cannot meet its burden of proving ANR's knowledge of the probable existence of a safety-related condition based on the ILI survey. Based upon the foregoing, I hereby order that this allegation of violation be withdrawn.

## 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 $53,700 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of $33,100 for Respondent's violation of 49 C.F.R. § 191.23(a)(1) for failing to report as a safety-related condition the existence of localized

[3] *Id.*

[4] Pipeline Safety Violation Report (Violation Report), (July 27, 2011) (on file with PHMSA), at Exhibit A.

corrosion pitting of a degree where leakage might have resulted. ANR did not contest the finding of violation, but requested a penalty reduction in consideration of the steps it took following discovery of the anomaly on June 25, 2008. ANR conducted leakage surveys between June 25, 2008 and August 11, 2008, when the anomaly was repaired, to ensure that the pipe was not already leaking. At the time of its response, ANR stated that it was still attempting to locate documentation of these leak surveys, but PHMSA has not received this documentation. Even if ANR had provided proof of its leakage surveys, this action, while prudent, did not address the need to report the safety-related condition to PHMSA. The reporting requirement exists to alert PHMSA to safety-related conditions as they arise. Monitoring the condition prior to repair does not obviate an operator's responsibility to notify PHMSA about the existence of a safety-related condition.

Congress enacted the reporting requirement to ensure government oversight of safety-related conditions that could result in future accidents.[5] ANR's failure to report the existence of the safety-related condition frustrated the essential purpose of the regulation. The ILI indicated significant corrosion of 82 percent, which ultimately underestimated the actual corrosion amount of 90 percent. The immediate steps ANR took to address this corrosion underscores its significance. Because this safety-related condition fits squarely within the conditions that are required to be reported promptly, I find that the nature, circumstances, and gravity of the violation support the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $33,100 for violation of 49 C.F.R. § 191.23(a)(1).

**Item 2:** The Notice proposed a civil penalty of $20,600 for Respondent's violation of 49 C.F.R. § 191.23(a)(8), for failing to report to PHMSA a defect that led to a 20 percent reduction in operating pressure as a safety-related condition. As stated above, I have withdrawn this Item and therefore also withdraw the associated civil penalty of $20,600.

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 **$33,100**.

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.

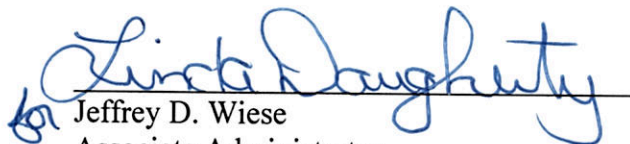
Failure to pay the $33,100 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not 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

[5] Reporting Unsafe Conditions on Gas and Hazardous Liquid Pipelines and Liquefied Natural Gas Facilities, Final Rule, 53 Fed. Reg. 24942, 24943 (July 1, 1988).

court of the United States.

Under 49 C.F.R. § 190.215, Respondent has the 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 the 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 but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of 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 upon service in accordance with 49 C.F.R. § 190.5.



for Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

DEC 3 1 2012
Date Issued