

MAR 30 2011

Mr. Mark Cunningham
Vice President – Operations
Holly Energy Partners, L.P.
100 Crescent Court
Suite 1600
Dallas, TX 75201

Re: CPF No. 4-2010-5005

Dear Mr. Cunningham:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$92,500. It further finds that Holly Energy Partners, L.P. has completed the actions specified in the Notice to comply with the pipeline safety regulations. When the civil penalty has been paid, 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, PHMSA

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 1160 0001 0077 5503]

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

)	
In the Matter of)	
)	
Holly Energy Partners, L.P.,)	CPF No. 4-2010-5005
)	
Respondent.)	
)	

FINAL ORDER

Between November 30, 2009 and December 3, 2009, 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 known as the River and Trust pipelines in Big Springs, Abilene, and Wichita Falls, Texas. The River and Trust pipelines system is approximately 273 miles long and transports refined products.¹ These pipeline facilities are owned and operated by Holly Energy Partners, L.P. (Holly Energy or Respondent), which through its subsidiaries, owns or leases approximately 2,500 miles of petroleum product pipelines.²

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated January 20, 2010, 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 Holly Energy had committed various violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$92,500 for the alleged violations, and proposed ordering Respondent to take certain measures to correct two of the alleged violations. The Notice also proposed finding that Respondent had committed certain other probable violations of 49 C.F.R. Part 195 and warning Respondent to take appropriate corrective action or be subject to future enforcement action.

Holly Energy responded to the Notice by letters dated February 22, 2010, March 19, 2010, and April 16, 2010, April 26, 2010, and April 28, 2010 (collectively, Response). Holly Energy initially contested two of the allegations, presented information seeking mitigation of the proposed penalty, and requested a hearing. By letter dated March 19, 2010, Respondent

¹ Pipeline Safety Violation Report (Violation Report), (November 30, 2009 through December 3, 2009), at 1.

² Holly Corporation, <http://www.hollycorp.com> (last visited February 17, 2011). *See also* SEC Form 10-K, Holly Energy Partners, L.P., February 16, 2011, at 5.

withdrew its request for a hearing and thereby authorized the entry of this Final Order without further notice.³

FINDINGS OF VIOLATION

In its Response, Holly Energy did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195 as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.310(a), which states:

§ 195.310 Records.

(a) A record must be made of each pressure test required by this subpart, and the record of the latest test must be retained as long as the facility tested is in use.

The Notice alleged that Respondent violated 49 C.F.R. § 195.310(a) by failing to retain records of the latest pressure tests for three of its eleven pipeline segments. Holly Energy was required to retain these records for as long as the facility tested is in use.

Specifically, the Notice alleged that during the November 30, 2009 inspection at the Big Springs office location, Holly Energy informed the PHMSA inspector that the records of the pressure test for three of eleven pipeline segments were missing. Although Holly Energy took precautionary action by reducing the maximum operating pressure by 20%, it could not produce documentation of the test charts and readings for the following pipeline system segments: Trust X-6 – Big Spring to Hawley, Trust 6/8 – Colorado City to Merkel, and Trust 6/8 – Throckmorton to Archer. Holly Energy must retain these records to demonstrate that these segments have been pressure tested in accordance with Subpart E of Part 195.

In its Response, Holly Energy did not contest this allegation of violation and instead noted its intent to retest these pipeline segments. On April 16, 2010, Holly Energy sent a subsequent response confirming that they had retested these pipeline segments and providing the hydrostatic test report for PHMSA's review. PHMSA has confirmed that the results were satisfactory.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.310(a) by failing to retain records of the latest pressure tests for three of its eleven pipeline segments.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(6) which states:

³ In its Response dated February 22, 2010, Holly Energy initially requested a hearing to address Items 1 and 5 contained in the Notice. By letter dated March 19, 2010, Respondent withdrew its request for a hearing and thereby authorized the entry of this Final Order without further notice.

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a)

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations....

(6) Minimizing the potential for hazards identified under paragraph

(c)(4) of this section and the possibility of recurrence of accidents analyzed under paragraph (c)(5) of this section.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(6) by failing to have procedures to minimize the potential for hazards identified under paragraph (c)(4) and reduce the possibility of the recurrence of accidents analyzed under paragraph (c)(5). Section 195.402(c)(4) requires an operator to determine which pipelines would require an immediate response to prevent hazards to the public if a failure occurred and § 195.402(c)(5) requires an operator to analyze pipeline accidents to determine the cause.

Although Holly Energy reported the 2005 and 2006 accidents under PHMSA Hazardous Liquid Accident Report IDs 20050342 – 5586 and 20060309 – 5584, Respondent was unable to produce documents related to an investigation to determine the cause and minimize the recurrence of these events. Further, Holly Energy was unable to demonstrate that it reviewed its damage prevention program after these two failures which were a result of second-party excavation by the same contractor. Respondent did not contest this allegation of violation but noted that the company was in the process of implementing detailed company procedures for incident investigations.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(6) by failing to have procedures to minimize the potential for facilities hazards and the possibility of recurrence of accidents.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.432(d) which states:

§ 195.432 Inspection of in-service breakout tanks.

(a)

(b) Each operator shall inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according section 4 of API Standard 653. However, if structural conditions prevents access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3)....⁴

⁴ This regulation was amended on August 11, 2010, after the inspection occurred and the Notice was issued. The amendment eliminated the reference to Section 4 of API Standard 653. In addition, when this inspection occurred, API 653, 3rd edition, December 2001, including addendum 1 (2003) was incorporated by reference into the pipeline safety regulations. Effective October 1, 2010, PHMSA replaced this edition with API 653, 3rd edition, December 2001, including addendum 1 (September 2003), addendum 2 (November 2005), addendum 3 (February 2008), and errata (April 2008). The former edition is the version that applies in this case since it was controlling at the time of the inspection.

(d) The intervals of inspection specified by documents referenced in paragraphs (b) and (c) of this section begin on May 3, 1999, or on the operator's last recorded date of the inspection, whichever is earlier.

The Notice alleged that Respondent violated 49 C.F.R. § 194.432(d) by failing to inspect in-service aboveground breakout tanks within the inspection intervals set forth in the API Standard 653 ("the Standard"), incorporated by reference in the pipeline safety regulations. Specifically, API 653, Section 6.4.2.1, requires that operators calculate internal inspection intervals "by corrosion rates measured during previous inspections or anticipated based on experience with tanks in similar service....in no case, however, shall internal inspection intervals exceed 20 years."⁵ However, if the corrosion rates are unknown and similar service experience is not available to estimate the bottom plate minimum thickness, the maximum inspection interval is not to exceed 10 years.⁶

The Notice alleged that Holly Energy could not provide a corrosion rate to establish the inspection interval for Tanks 8 and 9. Yet, it had set the internal inspection intervals at a maximum of 20 years for Tanks 8 and 9, scheduling the next inspection for 2016. Since the corrosion rate was unknown, the 10 year maximum interval for inspections of the tank bottom applies. Internal inspection summary reports provided to Holly Energy from the previous owner indicated that an API 653 internal inspection was performed on Tanks 8 and 9 at the Wichita Falls Terminal in 1996. Therefore, the next inspection should have occurred in 2006.

In its Response dated February 22, 2010, Holly Energy did not contest the allegation. Instead, the company stated that it had emptied Tank 9 and removed it from service during the third quarter of 2009.⁷ In addition, Respondent stated that it removed Tank 8 from service in January 2010 to begin the inspection process and determine the corrosion rate in accordance with Section 4.4.7 of API Standard 653.⁸ These facts are not relevant to the violation since Respondent was required to inspect these tanks in 2006 and failed to do so.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.432(d) by failing to inspect the in-service aboveground breakout tanks at the Wichita Falls Terminal within the inspection intervals set forth in the API Standard 653.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.571, which states:

⁵ AM. PETROLEUM INST, "TANK INSPECTION, REPAIR, ALTERATION, AND RECONSTRUCTION," API STANDARD 653 §6.4.2.1 (December 2001).

⁶ API STANDARD 653 § 6.4.2.2.

⁷ Response dated February 22, 2010, at 2.

⁸ The repairs on Tank 8 were completed on February 17, 2010 and the tank was returned to service on April 15, 2010.

§ 195.571 What criteria must I use to determine the adequacy of cathodic protection?

Cathodic protection required by this subpart must comply with one or more of the applicable criteria and other considerations for cathodic protection contained in paragraphs 6.2 and 6.3 of NACE Standard RP 0169 (incorporated by reference, *see* § 195.3).⁹

The Notice alleged that Respondent violated 49 C.F.R. § 195.571 by failing to demonstrate adequate cathodic protection at multiple locations on its pipeline system. Specifically, Holly Energy was required to maintain adequate cathodic protection on its pipeline system to meet the minimum criteria established by its corrosion control procedures. Paragraph 6.1 of Holly Energy's procedures, *6.0 HEP-O&M-195.563 (Cathodic Protection)*, states, in relevant part, that "[s]ufficient current must flow from soil to pipe to maintain a constant voltage difference at the soil-metal interface of 0.25 volt (approximately -0.85 volt between pipe and copper sulfate electrode in contact with soil) or more."¹⁰ However, the Notice alleged that the PHMSA inspector reviewed pipe to soil readings for the annual survey periods for 2005-2008 for Mile Posts 103.2 to 111.7 of the Trust pipeline and the inspector found twenty-seven readings that did not meet this minimum criteria.¹¹

In its Response, Holly Energy acknowledged that the records provided at the time of the inspection demonstrated that the minimum criteria were not met for the 2005-2008 annual surveys. The company noted that it corrected these conditions for the specified locations prior to the 2009 inspection by installing two additional rectifiers and all readings taken in 2009 were above or at the minimum criteria.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.571 by failing to demonstrate adequate cathodic protection at multiple locations on its pipeline system during the 2005-2008 survey periods.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e), which states, in relevant part:

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

(a)

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by § 195.401(b)....

⁹ When this inspection occurred, NACE Standard RP 0169-2002, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems" was incorporated by reference into the pipeline safety regulations. Effective October 1, 2010, PHMSA replaced this edition with NACE SP0169-2007, Standard Practice, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems", reaffirmed March 15, 2007. The former edition is the version that applies in this case since it was controlling at the time of the inspection.

¹⁰ *O&M Manual, Volume 2 – Section H-195-002 (Reviewed July 2009)*, *6.0 HEP-O&M-195.563 (Cathodic Protection)*, Paragraph 6.1, page 12.

¹¹ Violation Report, at 5-6.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e) by failing to correct deficiencies in corrosion control as required by § 195.401(b). The latter regulation requires operators to correct any condition that could adversely affect the safe operation of its pipeline within a reasonable time.¹² Specifically, the Notice alleged that Holly Energy did not correct the deficiencies in corrosion control identified in Item 6 within a reasonable time. During the inspection, Respondent stated that the appropriate timing for these corrective actions was one year or before the next inspection, however, PHMSA inspectors confirmed that the corrosion control deficiencies persisted beyond one inspection cycle.¹³

Respondent did not contest this allegation of violation. In its Response, Holly Energy acknowledged that the corrosion control deficiencies were not corrected within the timeframes set forth in the company procedures. Respondent recognized and corrected this issue prior to the inspection by completing a test point survey on June 30, 2009.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573 by failing to timely correct deficiencies in corrosion control.

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 \$92,500 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$22,500 for Respondent's violation of 49 C.F.R. § 195.402(c)(6), for by failing to have procedures to minimize the potential for hazards identified under paragraph (c)(4) and reduce the possibility of the recurrence of accidents analyzed under paragraph (c)(5). In its Response dated February 22, 2010, Holly Energy argued that it recognized the deficiency in its process and has recognized that more in-depth procedural steps and a formalized process are required to ensure that documentation is maintained.

While Holly Energy has proposed modifications to its accident investigation and damage prevention programs under the NOA that was issued at the same time as this Notice, and the company's response to the NOA proposes revisions to its procedures, these changes occurred after the 2005 and 2006 accidents and therefore do not cure the violation. Holly Energy's two

¹² See 49 C.F.R. § 195.401(b).

¹³ Notice, at 6.

excavation accidents posed significant risk to public safety and the environment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$22,500 for violation of 49 C.F.R. § 195.402(c)(6).

Item 6: The Notice proposed a civil penalty of \$35,000 for Respondent's violation of 49 C.F.R. § 195.571, for failing to demonstrate adequate cathodic protection at multiple locations on its pipeline system.

In its Response dated February 22, 2010, Holly Energy indicated that it recognized the deficiencies in its cathodic protection procedures and corrected the conditions in 2009, prior to the inspection. Specifically, Holly Energy installed two additional rectifiers on the affected segments which provided adequate cathodic protection.

Although Holly Energy corrected this Item prior to PHMSA's inspection, the violation persisted for four years. Holly Energy's pipe-to-soil readings for the Trust pipeline between Mile Posts 103.2 and 111.7 failed to meet the minimum criteria for the 2005, 2006, 2007, and 2008 annual surveys. Therefore, the corrective actions taken in the year 2009 do not cure the violation. Holly Energy's failure to adequately protect the pipeline from external corrosion by cathodic protection increases the risk of corrosion failures and increases the likelihood of active corrosion occurring. Additionally, Holly Energy's failure to maintain adequate cathodic protection can lead to metal loss and possible through-wall corrosion failures that could have resulted in a release of product into the environment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$35,000 for violation of 49 C.F.R. § 195.571.

Item 7: The Notice proposed a civil penalty of \$35,000 for Respondent's violation of 49 C.F.R. § 195.573(e), by failing to correct deficiencies in corrosion control as required by § 195.401(b).

In its Response, Holly Energy indicated that it recognized the deficiencies in its corrosion control procedures and corrected the conditions prior to the inspection by installing two deep anode systems on the line segment from Throckmorton to Wichita Falls. Holly Energy reported that it energized both units on June 29, 2009 and that it completed a test point survey on June 30, 2009 demonstrating correction of the low potentials. Respondent also indicated that it completed an annual test point survey on November 30, 2009 which demonstrated adequate corrosion control provided under the regulations.

Although Holly Energy corrected these deficiencies prior to PHMSA's inspection, Holly Energy failed to correct the corrosion control deficiencies for four years. The failure to correct deficiencies in corrosion control within a reasonable time can lead to an increased risk of corrosion and a threat to public safety. Additionally, failure to remedy corrosion deficiencies in a timely manner can lead to metal loss and possible through-wall corrosion failures that could result in a release of product to the environment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$35,000 for violation of 49 C.F.R. § 195.573(e).

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 \$92,500 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 district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 5 in the Notice for violations of 49 C.F.R. §§ 195.310(a) and 195.432(d), 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. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 195.310(a) (**Item 1**), Respondent has completed retesting the segments of the pipeline that did not have pressure test records and has submitted documentation to PHMSA demonstrating satisfactory completion of the tests.
2. With respect to the violation of § 195.432(d) (**Item 5**), Respondent has removed Tank 8 from service, performed an API 653 inspection, completed repairs, and performed a hydrotest of the tank. Respondent has also removed Tank 9 from service and has placed the tank out of service indefinitely. Holly Energy must make an inspection of Tank 9 if this Tank is returned to service in the future.

Accordingly, I find that compliance has been achieved with respect to these violations. Therefore, the compliance terms proposed in the Notice are not included in this Order.

WARNING ITEMS

With respect to Items 3 and 4, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these items are considered to be warning items. The warnings were for:

- 49 C.F.R. § 195.402(c)(13) (**Item 3**) — Respondent's alleged failure to demonstrate a periodic procedural review or revision to its damage prevention

procedure 23.1 HEP-O&M-195.442 (*Damage Prevention Program*) following the two second party excavation accidents in 2005 and 2006; and

49 C.F.R. § 195.410(a)(1) (**Item 4**) — Respondent’s alleged failure to ensure pipeline markers were sufficient in number along each buried line so that its location is accurately known.

Holly Energy presented information in its Response showing that it had taken certain actions to address the cited items. Accordingly, having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. § 195.402(c)(13) (Notice Item 3) and 49 C.F.R. § 195.410(a)(1) (Notice Item 4) have occurred and Respondent is hereby advised to correct such conditions. In the event that OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued