

JUL 22 2011

Mr. Dennis Smith
President
ConocoPhillips Pipeline Company
600 North Dairy Ashford
P.O. Box 2197
Houston, Texas 77252-2197

Re: CPF No. 5-2009-5015

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$30,000. 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,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety
Mr. Chris Hoidal, Director, Western Region, PHMSA
Mr. Todd Tullio, Manager, Regulatory Compliance, ConocoPhillips Pipeline Company
Mr. Van P. Williams, Esq., Senior Counsel, ConocoPhillips

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 1160 0001 0075 9602]

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

In the Matter of)	
)	
ConocoPhillips Pipeline Company,)	CPF No. 5-2009-5015
)	
Respondent.)	
)	

FINAL ORDER

On October 31, 2008, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), met with ConocoPhillips Pipeline Company (CPPL or Respondent) to discuss repairs on its Denver-Chase Pipeline System. CPPL is a wholly-owned subsidiary of ConocoPhillips. CPPL operates more than 11,000 miles of pipelines and more than 60 storage terminals in the United States.¹

After this meeting, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated March 17, 2009, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that CPPL had committed a violation of 49 C.F.R. § 195.452(h)(3) and proposed assessing a civil penalty of \$30,000 for the alleged violation.

CPPL responded to the Notice by letters dated April 16, 2009 and July 17, 2009 (collectively, Response). Respondent contested the allegations and requested a hearing which was subsequently held on July 29, 2009 in Washington, D.C., with an attorney from the Office of Chief Counsel, PHMSA, presiding. CPPL was represented by counsel at the hearing. CPPL elected not to submit a post-hearing brief.

FINDING 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. § 195.452(h)(3), which states in relevant part:

¹ <http://www.conocophillipspipeline.com/EN/Pages/index.aspx> (last accessed April 21, 2011).

§ 195.452 Pipeline integrity management in high consequence areas.

(h) *What actions must an operator take to address integrity issues?*

(3) *Schedule for evaluation and remediation.* An operator must complete remediation of a condition according to a schedule prioritizing the conditions for evaluation and remediation. If an operator cannot meet the schedule for any condition, the operator must explain the reasons why it cannot meet the schedule and how the changed schedule will not jeopardize public safety or environmental protection.

OPS alleged in the Notice that Respondent violated 49 C.F.R. § 195.452(h)(3) by failing to remediate a condition on the Denver-Chase pipeline system according to a prioritized schedule meeting certain deadlines specified in the regulations and failing to explain the reasons why it could not meet this schedule. Specifically, ConocoPhillips was required under § 195.452(h)(3) to explain how its modified schedule for the repairs on the Denver-Chase line would not jeopardize public safety or environmental protection.

Specifically, the Notice alleged that ConocoPhillips had received the MFL Caliper Combo tool assessment report on November 27, 2007 for the Denver-Chase line which revealed seven anomalies, some of which met the criteria for immediate action. Although the operator initially planned a temporary pressure deration of 80% of the maximum operating pressure (MOP), Respondent modified this plan and instead reduced the pressure to less than 20% SMYS while the anomalies were repaired. At the October 31, 2008 meeting, CPPL divulged that a notification had not been submitted to the PHMSA Integrity Management Database in November 2007 informing OPS of the modified schedule for repairs on the line. OPS argued that pursuant to § 195.452(h)(3), ConocoPhillips should have notified OPS of the reasons why it could not meet the original repair deadlines and more importantly explain how the modified schedule would not jeopardize public or environmental safety.² At the hearing, Respondent acknowledged that the explanation was never filed but stated that a clerical error was the reason why it was never sent to OPS.

ConocoPhillips had an obligation under the pipeline safety regulations to submit a notice to PHMSA explaining the reasons why the repair schedule was modified and how this change would not jeopardize the safety of the environment and the public. I have reviewed the evidence presented in this case and find that ConocoPhillips failed to comply with this regulation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(h)(3) by failing to explain the reasons why it could not meet the schedule for remediating the repair on the Denver-Chase line and how the modified schedule would not jeopardize the safety of the public or the environment.

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

² The process for filing IMP notifications with PHMSA is summarized in 49 C.F.R. § 195.452(m).

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 \$30,000 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$30,000 for Respondent's violation of 49 C.F.R. § 195.452(h)(3), for failing to provide OPS with an explanation of why it could not meet the schedule for remediation of an immediate repair condition on the Denver-Chase pipeline. At the hearing, Respondent argued that the civil penalty should be reduced since the failure to notify was not intentional, the line was a low pressure line and therefore low risk, and the company took conservative measures by decreasing the pressure to less than 20% of SMYS. ConocoPhillips also argued that the safety of the public and the environment were never in jeopardy due to the pressure decrease to less than 20% SMYS. In addition, Respondent noted that it enhanced its IMP program to prevent future omissions by creating a formal communication log to track complex derations and status of notifications.

The civil penalty is supported, in particular, by the gravity of the violation. The Denver-Chase pipeline is located in a high consequence area and one of the anomalies was in a designated wetland area. Although OPS did not argue that the failure to submit the notification was intentional, OPS viewed the omission as a significant risk to public safety. It prohibited OPS from evaluating Respondent's remedial measures at the time of implementation and limited further discussion if additional safety considerations were required. This pressure deration occurred in a high consequence area and therefore it is particularly important that OPS have the opportunity to elevate alternative safety measures while the anomalies are undergoing repairs. OPS was not informed of the schedule modification until a year after the pressure reduction was instituted. OPS should have been included in the collaborative process to develop an alternative measure.

In its Response and at the hearing, ConocoPhillips argued that the pressure reduction ensured that the modified schedule did not compromise the safety of the public or the environment and therefore a civil penalty reduction is appropriate. The fact that this modified schedule did not impact the safety of the public or the environment does not cure the violation. Respondent was required to explain *how* the modified schedule would not create a safety issue and failed to do so. In addition, Respondent is culpable since it was aware of the required notification process and yet failed to use it. Having reviewed the civil penalty factors, including but not limited to the nature, circumstances and gravity of the violation and the operator's culpability, I find that the proposed civil penalty amount is appropriate. Accordingly, having reviewed the record and

considered the assessment criteria, I assess Respondent a civil penalty of \$30,000 for violating 49 C.F.R. § 195.452(h)(3).

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 \$30,000 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 district 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued