

JAN 25 2012

Mr. Rod E. Sands
President and Chief Executive Officer
Explorer Pipeline Company
Autumn Oaks Building, Suite 300
6846 South Canton Avenue
Tulsa, OK 74136

CPF No. 3-2009-5018

Dear Mr. Sands:

Enclosed is the decision on the Petition for Reconsideration filed by Explorer Pipeline Company, in the above-referenced case. For the reasons specified in the decision, the Petition is denied and the Final Order is affirmed without modification. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of this decision constitutes service 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, OPS
Mr. Dave Barrett, Director, Central Region, OPS
Mr. Curtis L. Craig, Vice President & General Counsel, Explorer Pipeline
Mr. T.J. "Tom" Jensen, Vice President of Operations, Explorer Pipeline

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED[71791000164203107005]

**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)	
)	
Explorer Pipeline Company,)	CPF No. 3-2009-5018
)	
Respondent.)	
)	

DECISION ON PETITION FOR RECONSIDERATION

On July 22, 2011, pursuant to chapter 601, title 49, of the United States Code, the Associate Administrator for Pipeline Safety (Associate Administrator), Pipeline and Hazardous Materials Safety Administration (PHMSA), issued a Final Order (Order) in this case against Explorer Pipeline Company (Explorer or Petitioner), finding that Petitioner had committed two violations of the Pipeline Safety Regulations, codified at 49 C.F.R. Part 195, and assessed a civil penalty in the amount of \$78,800 for both external corrosion control violations.

On August 16, 2011, Explorer submitted a Petition for Reconsideration (Petition) of the Final Order. In its Petition, Explorer explained that it has completed the corrective cathodic protection actions associated with its pipeline and is willing to pay the \$78,800 civil penalty. However, Petitioner requested reconsideration of the Final Order and additional time to obtain industry input on the exception indentified as 49 C.F.R. 195.1(b)(4). Petitioner also repeated its arguments that the line segments at issue are not subject to Part 195, arguments made in its Responses to the Notice of Probable Violation.¹

Because the evidence of record supports the findings in question, I am denying this Petition and affirming the Final Order without modification.

Standard of Review

A respondent is afforded the right to petition the Associate Administrator for reconsideration of a final order. However, that right is not an appeal or an opportunity to seek a de novo review of the record. It is a venue for presenting the Associate Administrator with information that was not previously available or requesting that any errors in the final order be corrected. Requests for consideration of additional facts or arguments must be supported by a statement of reasons as to why those facts or arguments were not presented prior to the issuance of the final order. Repetitious information or arguments will not be considered.

¹ *In the Matter of Explorer Pipeline Company*, Final Order, dated July 22, 2011, CPF No. 3-2009-5018, Responses dated November 19, 2009, February 5, 2010 and March 17, 2010.

Analysis

In its Petition, Explorer did not submit any new arguments or information but reiterated the arguments made in its previous Responses. Explorer continued to argue against PHMSA's reading of the agency's 1992 interpretation that for the low-stress exception to apply, the entire pipeline system has to operate at less than 20 percent SMYS. Explorer also recited a PHMSA Memorandum dated March 2, 1995 in support of its argument that Part 195 does not define the beginning and end of a pipeline but it does place the burden of compliance on the operator based on the characteristics of the operator's individual installation.

In the Final Order, I found that the low stress definition criteria are clear. I also found that the definition and methodology used by Explorer with respect to the delivery line segments were narrowly tailored to the exceptions in Section 195.1(b)(4). Petitioner's methodology considered the length and SMYS of the two pipeline segments but failed to factor in the continuation of its entire 14-inch pipeline system. I further found that each of the pipeline segments is a part of a larger system, serving either to introduce products into the system or take products from it. If part of the line is operated above 20 percent SMYS, then the line does not satisfy the requirement that the pipeline be operated in its *entirety* at a stress level of 20 percent or less of the SMYS.

Explorer's explanation of industry understanding is not relevant to the configuration and characteristics of the subject pipeline or the enforcement of pipeline safety regulations. Such a characterization suggests a one size fits all application of the regulations when each pipeline system is not the same. Inadequate review and understanding of the regulations by an operator can have significant compliance ramifications. With respect to Explorer's contention that its 14-inch pipeline and the two pipeline segments in question are represented as separate line segments in its National Pipeline Mapping System (NPMS) and that historically, Petitioner has handled these line segments as low-stress, in the Final Order, I found that there is a distinction between compliance with the NPMS and annual reporting requirements and whether a pipeline is in fact a low stress pipeline. The information from annual reports is used to more effectively compile national statistics on system inventory, analyze accidents, identify safety problems and potential solutions, and target inspections. I also found that instructions to complete forms are guidance, not binding regulation. I found that the annual report instructions provide guidance on how to respond to the questions on the form. As for Explorer's position that the line segments had been reported to PHMSA separately in the NPMS, I found that the NPMS is a pipeline data repository and the manner in which operators subdivide their systems for submission to NPMS is irrelevant to determining whether PHMSA regulates a pipeline.

Conclusion

Based on a review of the record and the information provided in the Petition, I hereby deny the Petition and affirm the Final Order without modification, for the reasons set forth above.

Payment of the \$78,800 civil penalty assessed in the Final Order is now due and must be made within 20 days of service of this Decision. The payment instructions were set forth in detail in

the Final Order. Failure to pay the \$78,800 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.

This Decision on Reconsideration is the final administrative action in this proceeding.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued