



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

JUL 22 2011

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

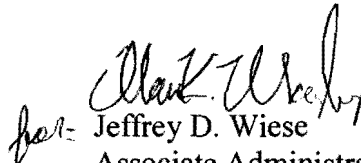
CPF# 3-2009-5018

Dear Mr. Sands:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$78,800. 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: Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety
Mr. Dave Barrett, Director, Central Region, PHMSA
Mr. Curtis L. Craig, Vice President & General Counsel, Explorer Pipeline
Mr. T.J. "Tom" Jensen, Vice President of Operations, Explorer Pipeline
Mr. Larry White, Counsel, PHMSA

CERTIFIED MAIL - RETURN RECEIPT REQUESTED|7005 1160 0001 0075 9701|

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

In the Matter of)	
)	
Explorer Pipeline Company,)	CPF No. 3-2009-5018
)	
Respondent.)	
)	

FINAL ORDER

From May 19-23, June 2-6, 2008, and June 9-12, 2008, 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 Explorer Pipeline Company's (Respondent or Explorer) records and facilities in Missouri, Illinois, and Indiana. Explorer Pipeline transports gasoline, fuel oil and jet fuel to 70 population centers in 16 states.¹

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated October 21, 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 Respondent committed violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$78,800 for the alleged violations.

Respondent responded to the Notice by letter dated November 19, 2009 and February 5, 2010 (Response). The company contested the allegations, offered additional information regarding mitigation of the proposed penalty, and requested a hearing. A hearing was subsequently held on February 18, 2010, in Kansas City, Missouri with an attorney from the Office of Chief Counsel, PHMSA, presiding. After the hearing, Respondent provided a post-hearing statement for the record, by letter dated March 17, 2010 (Closing).

FINDINGS 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. §195.573(a) (1), which states:

¹ <http://www.expl.com/Company.aspx> (last visited 5/7/2011).

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

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with §195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. . . .

The Notice alleged that Respondent failed to conduct tests on cathodically protected pipeline segments to monitor external corrosion control at least once each calendar year, but with intervals not exceeding 15 months. PHMSA asserted that a review of Explorer's cathodic protection survey records² showed tests were not conducted to monitor external corrosion control within the required intervals on the St. Louis Meter Station to J.D. Streett West Line for 4 years (2004, 2005, 2006, and 2007) for test station 5+45 and 6 years (2002, 2003, 2004, 2005, 2006, and 2007) for test stations 9+53. The agency also asserted that Explorer's records showed that tests were not conducted to monitor external corrosion control on the St. Louis Meter Station to JD Streett East Line for 3 years (2004, 2005, and 2006) for test station 5+45.

In its Response, Explorer did not dispute that it failed to perform the required testing to monitor external corrosion control but contended that this regulation did not apply because the two pipeline segments are exempt from 49 C.F.R. Part 195. First, it argued that the two pipeline segments³ satisfy the 49 C.F.R. §195.1(b)(4)⁴ low-stress exception from Part 195. Second, it disputed PHMSA's interpretation that the entire pipeline must be a low stress line for the exception to apply. Third, the company contended that PHMSA's interpretation is not consistent with annual reporting requirements and the pipeline industry's interpretation of the exception.

As for Explorer's first argument that the two pipeline segments satisfy the low-stress exception in 49 C.F.R. §195.1(b)(4), the company argued that the two pipeline segments are each 1,362 feet long, less than one-mile long, and the maximum operating pressure (MOP) of the "St. Louis Meter Station to JD Streett" segments is 275 psig which is less than 20 percent of the specified minimum yield strength (SMYS) of the pipeline.⁵ Respondent explained that its 14-inch pipeline originates at Explorer's Wood River, Illinois Tank Farm and terminates at Explorer's St. Louis, Missouri Meter Station. Respondent described the station as equipped with a receiver and a control valve that isolates the meter station's in-plant piping from the 14-inch pipeline.

² Violation Report, Exhibit A: E-mail with Explorer's cathodic protection records from Kevin Brown, dated July 18, 2008.

³ The two 14-inch diameter pipeline segments are each 1,362 feet long and are identified by Explorer as the "St. Louis Meter Station to JD Streett" delivery lines, Response dated November 19, 2009.

⁴ 49 C.F.R. §195.1(b)(4) Excepted. This part does not apply to any of the following:
 ... (4) A low-stress pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than one mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation.

⁵ 20% SMYS is 371 psig as calculated by Explorer. Respondent submitted a chart to support its contention that these line segments satisfy all the criteria of §195.1(b)(4) and are excepted from regulation by PHMSA. Explorer responses dated November 19, 2009 and February 5, 2010.

Respondent further explained that the two pipeline segments are separate, low-stress, delivery lines that serve a truck facility at the J.D. Streett Products Terminal. Respondent proffered that in the absence of any established regulatory definition of a beginning and end of a pipeline, it established a definition: The 14-inch pipeline facility from the Wood River Tank Farm to the St. Louis Meter Station can operate independently of the St. Louis Meter Station to the J.D. Streett Products Terminal.

In response to Respondent's argument, PHMSA asserted that a pipeline is "low stress" if it is operated in its entirety at less than 20 percent SMYS.⁶ PHMSA further asserted that the two line segments are simply a continuation of a greater than 20 percent SMYS pipeline owned and operated by Explorer that is regulated by PHMSA. The agency explained that the greater than 20 percent SMYS portion of Explorer's 14-inch diameter pipeline system begins at Wood River Tank Farm (regulated breakout tankage) in Illinois, traverses south along the East side of the Mississippi River, crosses the Mississippi River to where the St. Louis Meter Station is located in Missouri; then using pressure control equipment at the St. Louis Meter Station (a metering facility and part of the pipeline system per §195.2) the operating pressure is reduced to a MOP of 275 psig for ultimate delivery of product to the JD Streett terminal facility.

PHMSA submitted an agency interpretation⁷ dated August 24, 1992 (1992 interpretation), which addressed similar facts and the regulatory status of two pipelines operating at less than 20 percent SMYS that were delivery lines. The 1992 interpretation described one of the pipelines as, "...a 12-inch delivery line that operates at less than 20% SMYS, transports gasoline from an Olympic pipeline, which runs between Washington State and Portland, to a Unocal facility in Portland." The 1992 interpretation concluded that "[n]either pipeline you asked about is a unique system. Each one is merely a part of a larger system, serving either to introduce products into the system or take products from it. Therefore, each pipeline is subject to Part 195." PHMSA maintained that the same is true in the instant case. Explorer's two delivery lines are merely a part of a larger system. The agency added that while PHMSA has not defined the beginning and end of pipelines, Respondent's attempt to create a new definition is misplaced.

As for Respondent's argument that the two pipeline segments satisfy the low-stress exception in 49 C.F.R. §195.1(b)(4) as being less than one-mile long, serving a terminal facility, and not crossing a waterway used for commercial navigation, the segments must first satisfy the elements of the low-stress pipeline definition i.e., that it is a hazardous liquid *pipeline* that is operated in its *entirety* at a stress level of 20 percent or less of the SMYS of the line pipe. I find that Explorer's 14-inch pipeline system includes the two pipeline segments at issue in the Notice; and those two pipeline segments are less than one-mile long and serve a truck facility. I also find that Respondent's 14-inch regulated pipeline system carries product from Explorer's Wood River, Illinois Tank Farm, across the Mississippi River, and through the St. Louis Meter Station to the JD Streett Terminal where the company reduces the operating pressure to less than 20 percent SMYS for ultimate delivery of product to the two pipeline segments in question in order to serve a truck facility. I also find that each of the pipeline segments are a part of a larger

⁶ "Low-stress pipeline" is defined as "a hazardous liquid pipeline that is operated in its entirety at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe, 49 C.F.R. §195.2.

⁷ PHMSA Violation Report Exhibit E.

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.

Second, the company disputed PHMSA's reading of the agency's 1992 interpretation that for the exception to apply the entire pipeline system has to operate at less than 20 percent SMYS.⁸ Explorer advised that its understanding of the agency's reading of the interpretation is for the exception to apply, "a stand-alone pipeline operator would need to operate its low-stress interstate pipeline for less than one-mile and not cross navigable waters."⁹ The company also cited a PHMSA Memorandum dated March 2, 1995,¹⁰ which states in relevant part, "Although Part 195 does not define the beginning and end of pipelines, it does place the burden of compliance with the regulation on persons who own or operate pipelines."

PHMSA maintained that the context of the interpretation in the memorandum was a question regarding a previous version of Part 195 that applied to low stress pipelines. Part 195 has since been amended (Amdt. 195-53, effective August 11, 1994).¹¹ Prior to the amendment, with a limited exception, many low stress pipelines were not subject to regulation.¹² During the hearing, PHMSA noted that Explorer focused on a single sentence within the memorandum and reasoned that while PHMSA may not have defined the beginning and end of a pipeline, "placing the burden of compliance on persons who operate..." does not assign the operator as the final arbiter of what the rules mean. PHMSA asserted that the company's definition for the beginning and end of a pipeline is misplaced. PHMSA maintained that it regulates the safety of transportation by pipeline from the point of gathering to the point of delivery including breakout tanks. The exemptions to this broad authority are well defined and narrow. PHMSA further maintained that exemptions cannot be over-interpreted in a manner that would undermine PHMSA's broad authority to regulate pipeline safety.

⁸ Explorer referenced, "Unregulated Low-Stress Hazardous Liquid Pipelines," by Mike Israni & John Gale dated August 5, 2009.

⁹ Response dated March 17, 2010 at page 1.

¹⁰ Closing.

¹¹ Prior to 1992 the agency's hazardous liquid pipeline safety regulations did not apply to pipelines operating at a stress level of 20 percent or less of SMYS (hereafter "low-stress pipelines") (see 49 CFR 195.1(b)(3)). DOT excluded such pipelines from Part 195 when it first issued the regulations (34 FR 15473; October 4, 1969). However, serious accidents occurred on low-stress pipelines, which led to a determination that the blanket exclusion was no longer in the interest of public safety. Section 206 of the Pipeline Safety Act of 1992 (PSA) (Pub. L. 102-508; October 24, 1992), amended Sec. 203(b) of the Hazardous Liquid Pipeline Safety Act of 1979 (HLP SA) (49 App. U.S.C. 2002(b)) to provide that "[i]n exercising any discretion under this Act, the Secretary shall not provide an exception to regulation under this Act for any pipeline facility solely on the basis of the fact that such pipeline facility operates at low internal stress".

¹² See preamble for Amdt. 195-53.

As for Respondent's dispute of PHMSA's reading of the 1992 interpretation, I find that the low stress definition criteria are clear and that the March 2, 1995 memorandum submitted by Explorer to support its argument is obsolete. I also find that the definition and methodology used by Explorer were narrowly tailored to exclusively compare the delivery line segments to the exceptions in Section 195.1(b)(4), considering the length and SYMS of the two pipeline segments without factoring their continuation of its entire 14-inch pipeline system.

Third, the company argued that PHMSA's reading of the interpretation is not consistent with the intent of the legislature, risk measurement, or the annual reporting requirements and industry interpretation of the exception."¹³ Explorer contended that PHMSA's annual report (and associated instructions) does not provide definitions or instructions that contradict Explorer's understanding of the §195.1(b)(4) exception. Respondent also contended that its understanding of the low-stress exception is common among other operators and provided a table from API listing anonymous operators with the number of miles that are excepted per §195.1(b)(4).¹⁴ Respondent added that the 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, Respondent has handled these line segments as low-stress.¹⁵

As for industry interpretation of the exception and the annual report, PHMSA asserted that the data submitted by Explorer provided no description of the pipelines and that the pipelines may or may not be continuations of regulated pipelines. PHMSA also contended that its annual reporting forms are not interpretations of the regulations and the instructions are simply provided to assist operators in filling out the form properly. As for Explorer reporting the two pipeline segments to PHMSA as separate line segments in the NPMS, the agency advised that the NPMS is a pipeline data repository and the manner in which operators subdivide their systems for submission to NPMS is immaterial to determining whether pipe is regulated or not.

Considering the arguments and evidence, I find 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 find that instructions to complete forms are guidance, not binding regulation. I find 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 find 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.

¹³ Response dated March 17, 2010 at page 2.

¹⁴ Closing at 3.

¹⁵ The company suggested that the reason for the Part 195 exception is that the particular type of pipeline operation does not present a significant risk for regulatory oversight based on a 2008 Federal Register Notice. Federal Register Vol. 73, No. 107, pg. 31640. (6/3/08).

After considering all of the evidence and legal arguments presented, I find that the two pipeline segments were not excepted from 49 C.F.R. Part 195, as low stress pipelines excepted under §195.1(b)(4). I also find that each of the pipeline segments are a part of a larger system, serving either to introduce products into the system or take products from it. Low-stress pipeline means a hazardous liquid *pipeline* that is operated in its *entirety* at a stress level of 20 percent or less of the SMYS of the line pipe, 49 C.F.R. §195.2. I find that at least some parts of Respondent's 14-inch pipeline system operated at a stress level in excess of 20 percent SMYS and therefore, the two delivery pipeline segments are not a "low stress pipeline" as defined in 49 C.F.R. §195.2.

I also find that Explorer did not contest the allegations that it failed to perform the required testing and take corrective actions related to the corrosion control requirements. After considering all the evidence, I find Respondent violated 49 C.F.R. §195.573(a)(1) by failing to conduct tests to monitor external corrosion control at least once each calendar year, but with intervals not exceeding 15 months at the following locations: St. Louis Meter Station to J.D. Streett West Line for 4 years (2004, 2005, 2006, and 2007) for test station 5+45 and 6 years (2002, 2003, 2004, 2005, 2006 and 2007) for test stations 9+53; and on the St. Louis Meter Station to JD Streett East Line 3 years (2004, 2005, and 2006) at test station 5+45.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. §195.573(e), which states:

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

. . . (e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by §195.401(b). However, if the deficiency involves a pipeline in an integrity management program under §195.452, you must correct the deficiency as required by §195.452(h).

The Notice alleged that Respondent did not correct identified deficiencies during Explorer's annual monitoring of external corrosion control. PHMSA maintained that Explorer's records¹⁶ indicated that Respondent did not take corrective action for deficient cathodic protection readings that did not meet acceptance criteria, as indicated below:

The St. Louis Meter Station to J.D. Streett West Line for test stations 5+45 and 10+12:

- Test Station 5+45 had "0" readings, which indicates no readings were taken for 4 years (2004, 2005, 2006, and 2007). In addition, at test station 5+45, there were readings below the NACE acceptance criteria of -0.850 volts for 2 years (2002 and 2003). The records show that the West Line at test station 5+45 was deficient for 5 consecutive years after the deficiencies were identified.
- Test Station 10+12 had readings below the NACE acceptance criteria of -0.850 volts for 6 years (2002, 2003, 2004, 2005, 2006, and 2007).

¹⁶ Violation Report, Exhibit A: E-mail with Explorer's cathodic protection records from Kevin Brown, dated July 18, 2008; Exhibit B: E-mail from Kevin Brown, dated January 8, 2009; Exhibit C: E-mail from Kevin Brown, dated March 9, 2009; Exhibit D: E-mail from Kevin Brown, dated April 1, 2009.

The St Louis Meter Station to J.D. Streett East Line for test stations 5+45, 9+53, and 10+12:

- Test Station 5+45 had “0” readings which indicate no readings were taken for 3 years (2004, 2005, and 2006). In addition, at test station 5+45, there were readings below the NACE acceptance criteria of -0.850 volts for 3 years (2002, 2003 and 2007). The records show that the East Line at test station 5+45 was deficient for 5 consecutive years after the deficiencies were identified.
- Test Station 9+53 and 10+12 on the East Line had readings below the NACE acceptance criteria of -0.850 volts for 6 years (2002, 2003, 2004, 2005, 2006, and 2007).

In its Response and during the hearing, the company proffered that the regulation did not apply because the two pipeline segments at issue are excepted from Part 195 and satisfy the low-stress exception in 49 C.F.R. §195.1(b)(4).

I found in Item 1 of this Order that PHMSA regulates the two line segments in question and that the line segments were not excepted from Part 195. Accordingly, after considering all of the evidence, I find that Respondent failed to take corrective action for deficient cathodic protection readings on its St. Louis Meter Station to JD Streett pipeline segments during Explorer’s annual monitoring of external corrosion control. I find Respondent violated 49 C.F.R. §195.573(a)(1) by failing to correct identified corrosion control deficiencies.

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 a 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 a 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 total civil penalty of \$78,800 for the violations cited above.

The Notice in **Item 1** proposed a civil penalty of \$39,400 for Respondent’s violation of 49 C.F.R. §195.573(a)(1), for failing to perform cathodic protection tests to monitor external

corrosion control on its St. Louis Meter Station to J.D. Streett pipeline segments at least once each calendar year, with intervals not exceeding 15 months. Explorer requested mitigation of the proposed civil penalty based on its \$115,000 remediation efforts to correct deficiencies that included hydrostatic testing of the pipeline segments and replacement of the J.D. Streett insulating kits.¹⁷ The gravity of a violation is one of the factors that PHMSA considers in assessing civil penalties. I find that Respondent's remediation efforts occurred after the PHMSA inspection and after issuance of the Notice and are not a demonstration of good faith in attempting to achieve compliance. I find that the remedial actions were necessary to bring the subject line segments into compliance and were steps that any reasonable and prudent operator might take to ensure the integrity of the pipeline. Respondent has not shown any circumstance that would justify reduction of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$39,400, for violation of §195.573(a)(1).

The Notice in **Item 2** proposed a civil penalty of \$39,400 for Respondent's violation of §195.573(e), for failing to correct identified deficiencies discovered as a result of corrosion control surveys. An operator must provide protection for pipeline segments through measures to prevent and mitigate a pipeline failure and the consequences of a failure. This regulation provides safety precautions that minimize the risk of accident or injury to human life, the environment and property. Explorer requested mitigation of the proposed civil penalty based on its \$115,000 remediation efforts to correct deficiencies. While I acknowledge actions taken by the company, I find that most of these efforts were regulatory requirements, taken after the Notice was issued. Respondent has not shown any circumstance that would justify reduction of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$39,400, for violation of 49 C.F.R. §195.573(e).

In terms of the nature, circumstances and gravity of the offenses, the risk of corrosion on the pipeline significantly increases without proper cathodic protection systems. Respondent is fully culpable for its failure to correct identified corrosion control deficiencies. Preventive maintenance is critical to the safety of the public, environment and property. The two pipeline segments run parallel and are approximately 25 feet from the Mississippi River. If a release occurs the refined products could flow into the Mississippi River, impacting river navigation and the water supply of St. Louis, Missouri. Respondent provided no certified documentation to demonstrate that the proposed penalty would affect its ability to continue in business. The penalties associated with the violations are proportionate to the danger posed by the violation.

A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$78,800.

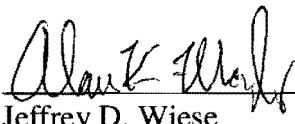
Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be

¹⁷ Closing at 3.

directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

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.

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 sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590. 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) and meet all other requirements of 49 C.F.R. § 190.215. The filing of the petition automatically stays the payment of any civil penalty assessed. 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.

for 
Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

JUL 22 2011
Date Issued