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United States Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Attention: R. M. Seeley, Director –Southwest Region
8701 South Gessner, Suite 1110
Houston, Texas 77074

**Re: Chevron Pipe Line Company
Notice of Probable Violation and Proposed Civil Penalty
CPF-4-2008-5020**

Dear Mr. Seeley:

This letter is written in response to your September 10, 2008 Notice of Probable Violation and Proposed Civil Penalty to Chevron Pipe Line Company (CPL) with the reference no. CPF-4-2008-5020 ("Notice"). Thank you for the courtesy of extending the time for the filing of this Response to November 7, 2008.

Pursuant to 49 C.F.R. § 190.209, CPL hereby request a hearing regarding the Notice issued by your office on September 12, 2008. CPL would like the opportunity to provide information that will support our position regarding the proposed violations and civil penalties. CPL would like to discuss the following:

Notice of Probable Violations

PHMSA Finding – Item 1

Chevron's personnel failed to follow procedures (See Tab 2), as stated in Chevron's Core Liquid Pipeline Operating and Maintenance Procedural Manual (O&M Manual), by not monitoring excavation activities to ensure Chevron's pipeline was not damaged during the excavation. The Senior Facility Inspector for CPL stated that he was inside his vehicle filling out forms when the excavator struck Chevron's pipeline.

CPL Response

Concerning the incident that occurred on March 31, 2008 (NRC 866563), CPL will raise the following issues:

- A. Will dispute whether CPL's conduct is the appropriate basis for a fine. Based on the information now known to CPL, this issue presently includes the following facts:

- (i) prior to the excavation CPL had dug down to and exposed the pipeline on both sides of the proposed excavation and clearly and accurately marked the location of the buried pipeline in the area of the excavation so that it was evident exactly where the buried pipeline was situated;
 - (ii) after marking and exposing the pipeline and confirming that the excavator understood the location of the pipeline, the CPL representative went to his vehicle near the excavation site (see Tab 6);
 - (iii) the incident occurred shortly after the CPL representative returned to his vehicle; and,
 - (iv) the incident was caused by a mistake or error by the excavator who failed to properly operate the machinery and struck the pipeline that had been marked and exposed.
- B. Whether CPL's company representative being on-site but in his truck at the time of the incident is a "fail[ure] to follow procedures" outlined in CPL's Core Liquid Pipeline Operating and Maintenance Procedural Manual ("O&M Manual"). Based on the information now known to CPL, this issue presently includes the following facts:
- (i) presence of a CPL representative is discretionary and not mandatory;
 - (ii) the O&M Manual speaks about a representative being "present" but, contrary to the suggestion in the Notice, does not require that the representative actively "monitor" every moment of the excavation activity; and
 - (iii) the facts described in Paragraph 1A above.

PHMSA Finding – Item 2

Chevron's personnel failed to follow procedures (See Tab 2), as stated in Chevron's Core Liquid Pipeline Operating and Maintenance Procedural Manual (O&M Manual), by not locating and marking the pipeline after a one call ticket was made. The locator for Chevron stated that he cleared the one call ticket after determining Chevron's pipeline was not in the area of the trenching and did not require locating markers. However, the one-call ticket accurately located the trenching in the proximity of CPL's pipeline. CPL, therefore, was required to have located and marked their pipeline in response to the one call ticket.

CPL Response

Concerning the April 7, 2008 incident (NRC 867291), if it is the basis for any portion of the civil penalty imposed,¹ CPL intends to raise the following issues:

- A. CPL disputes the finding in the Notice that the subject One-Call ticket "accurately located the trenching in the proximity of [CPL's] pipeline." Based on the information now known to CPL, this issue presently includes the following facts:
- (i) the ticket stated (see Tab 3): "From Hobbs N on Denver City Hwy to Stiles Rd. W approx 6 mi to K&B Dairy on S Side of Rd = Spot 25 ft-wide along marked path along marked area from Stiles Rd. along W fence approx 3000ft to 4000ft"—which description was inaccurate as:
 - (a) the K&B Dairy property is not marked along Stiles Road at any point up to the point the work occurred so there is no means of identifying it;
 - (b) there was no "marked path along marked area"; and,
 - (c) Pinson Road is 6 miles West on Stiles road and the work site is about .52 miles further west of Pinson Road;
 - (ii) the One-Call ticket describes a trench to be dug along the west fence when, in fact, it was dug from the northwest portion of the property at a 45 degree angle from the fence in a southeasterly direction to a center pivot—a trench that did not, encounter the CPL pipeline;
 - (iii) the One-Call ticket did not describe the second portion of the excavation (from the center pivot location and then in a southwesterly direction—at a 90 degree angle to the first trench) which actually struck the CPL pipeline at a point approximately 200 yards from the west fence; and,
 - (iv) the relevant portions of the O&M Manual provide for marking CPL pipelines in "close proximity" to the proposed excavation, not "in the proximity of" the excavation as stated in the Notice. Additionally, as described in Paragraph 2B below, the excavator gave CPL verbal instructions that were contrary to the location described in the One-Call ticket.
- B. The incident was the fault of the excavator, Craig Electric. Based on the information now known to CPL, this issue presently includes the following facts (see Tab 3 & 4):
- (i) as noted above, it was impossible for CPL to accurately identify the work site based on the One Call ticket;
 - (ii) after a visual inspection of the site and in accordance with the O&M Manual, the CPL employee who responded to the One Call ticket on-site sought clarification of the location of the excavation by making a phone call to Craig Electric;

¹ The Notice describes two incidents. In describing the penalty, the Notice states that the penalty is imposed for "Item Number 1" which is the incident that occurred on March 31, 2008 (NRC 866563).

- (iii) the Craig Electric representative told CPL's employee that the One-Call ticket inaccurately described the excavation as occurring south of Stiles Road (where it actually occurred) but instead would occur north of Stiles Road;
 - (iv) the CPL employee observed some recent excavation north of Stiles Road as described by Craig Electric;
 - (v) there is no CPL pipeline in close proximity to that location north of Stiles Road;
 - (vi) Duke ConocoPhillips ("DCP") also received a One-Call ticket for the same Craig Electric project and its responding employee received similar verbal corrections from Craig Electric that the excavation would occur north of Stiles Road. (Enclosed is Affidavit from DCP employee - See Tab 5);
 - (vii) accordingly, the DCP personnel did not mark any pipeline as a result (the same decision that CPL reached independently);
 - (viii) a DCP pipeline runs across the subject property parallel to and a few feet south of the CPL pipeline (as the second excavation ditch proceeded in a southwesterly direction from the center pivot, the DCP pipeline was not struck only because Craig Electric reached the CPL pipeline first); and,
 - (ix) the One-Call ticket did not accurately describe the project as it suggests a single excavation when in fact two excavations took place with the second excavation resulting in the accident.
- C. CPL disputes the finding in the Notice that its "personnel failed to follow procedures, as stated in CPL's [O&M Manual], by not locating and marking the pipeline after the one call ticket was made" and contends that its personnel acted properly under the circumstances. Based on the information now known to CPL, this issue presently includes the following facts:
- (i) all of the facts described in Paragraphs 2A and 2B above; and
 - (ii) CPL's O&M Manual in Section 5.3.3 provides that CPL personnel shall contact the excavator to "verify" and "confirm" the details of the proposed excavation. A copy of Section 5 of the O&M Manual is enclosed.

CPL may present additional facts that, in the future, it may discover or determine to be relevant to the issues described in Paragraphs 1A-2C above.

Assessment Considerations

The following considerations are applicable in determining the amount of civil penalty, if any, in these instances:

1. The nature, circumstances and gravity of the violation as described above.
2. The degree of CPL's culpability as is described above.
3. CPL's good faith in attempting to achieve compliance as described above.

These considerations are applicable to both whether any penalty is appropriate and, if some penalty is appropriate, the amount of the penalty.

Statement Regarding Representation of Counsel

CPL counsel will be present at the hearing.

Request for Materials in Case File

CPL requests all material in the Department of Transportation's case file(s) regarding the incidents that occurred on March 31, 2008 (NRC 866563) and on April 7, 2008 (NRC 867291).

If you have any questions or would like more information, please contact Gary M. Saenz at (713) 432-3332.

Sincerely,



Dolores Barnhill

Enclosure: Binder w/ Supporting Documentation