



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

MAR 25 2008

1200 New Jersey Ave., S.E.
Washington, DC 20590

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Ian Bothwell
President
Rio Vista Energy Partners L.P.
2121 Rosecrans Ave Ste. 3355
El Segundo, CA 90245

Re: CPF No. 4-2006-5030

Dear Mr. Bothwell:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$60,000. It further finds that you have completed the actions specified in the Notice required to comply with the pipeline safety regulations. 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. Fred Dennis
Director, Regulatory Compliance
Transmontaigne Incorporated
1670 Broadway, Suite 3100
Denver, CO 80202

Item 1: The Notice alleged that Respondent violated 49 C.F.R. §§ 195.402(c)(3), 195.559, 195.571, and 195.573(c), which state:

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

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities

(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 . . .

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of . . . subpart H [§§ 195.551–195.589] of this part

§ 195.559 – What coating material may I use for external corrosion control?

Coating material for external corrosion control . . . must—

(a) Be designed to mitigate corrosion of the buried or submerged pipeline;

(b) Have sufficient adhesion to the metal surface to prevent under film migration of moisture;

(c) Be sufficiently ductile to resist cracking;

(d) Have enough strength to resist damage due to handling and soil stress;

(e) Support any supplemental cathodic protection; and

(f) If the coating is an insulating type, have low moisture absorption and provide high electrical resistance.

§ 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).

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

(a)

(c) *Rectifiers and other devices.* You must electrically check for proper performance each . . . rectifier . . . at least six times each calendar year, but with intervals not exceeding 2 1/2 months

The Notice alleged that Respondent failed to have a written manual that included procedures for operating and maintaining its pipeline system in accordance with the following requirements of subpart H: §§ 195.559, 195.571, and 195.573(c). Specifically, Respondent failed to include in its manual: procedures for using coating to control external corrosion, in accordance with § 195.559 (Item 1A); procedures for determining the adequacy of cathodic protection, in accordance with § 195.571 (Item 1B); and procedures for monitoring and inspecting each cathodic protection rectifier at designated intervals, in accordance with § 195.573(c) (Item 1C).

Respondent did not contest these allegations of violation. Accordingly, I find Respondent violated § 195.402(c)(3) by failing to have written procedures for operating and maintaining its pipeline system in accordance with the following requirements of subpart H: §§ 195.559, 195.571, and 195.573(c).

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a), which states:

§ 195.412 – Inspection of rights-of-way and crossings under navigable waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way

The Notice alleged that Respondent failed to inspect surface conditions on or adjacent to each pipeline right-of-way at intervals not exceeding 3 weeks, but at least 26 times each calendar year. Respondent's records showed that it conducted a right-of-way patrol on September 22, 2004, but did not conduct another one until August 10, 2005. Respondent missed approximately 15 patrol intervals. In its Response, Respondent stated that it believed most of the patrols during the period were performed but acknowledged that it did not have documentation to substantiate this belief. Accordingly, I find Respondent violated § 195.412(a) by failing to inspect surface conditions on or adjacent to each pipeline right-of-way at the required intervals between September 22, 2004 and August 10, 2005.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(c), as quoted above, by failing to electrically check the performance of each rectifier at least six times each calendar year, with intervals not exceeding 2 1/2 months. Respondent's records show that it performed rectifier inspections on August 27, 2004, but did not perform another one until August 10, 2005. Respondent missed approximately 4 inspection intervals. In its Response, Respondent stated that it believed most of the inspections during the period were performed but acknowledged that it did not have documentation to substantiate this belief. Accordingly, I find Respondent violated § 195.573(c) by failing to electrically check the performance of each rectifier at the required intervals between August 27, 2004 and August 10, 2005.

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. The Notice proposed a total civil penalty of \$60,000 for the violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation; degree of Respondent's culpability; history of Respondent's prior offenses; Respondent's ability to pay the penalty; good faith by Respondent in attempting to achieve compliance; the effect on Respondent's ability to continue in business; and such other matters as justice may require.

In its Response, Respondent requested that the civil penalty be reduced for two reasons. First, it requested that the civil penalty be reduced because the company would have difficulty paying the entire amount. Respondent explained that its current level of business operations was only 40 percent of historic levels and that Respondent's earnings were projected to be negative for the foreseeable future; however, Respondent did not submit any financial documentation, such as an audited financial statement, to substantiate its claim of financial hardship. Furthermore, in its Response, Respondent noted that a pending sale of some of its pipeline assets to Transmontaigne, Inc. "would allow [Respondent] to pay off the entire fine." By letter received on February 21, 2007, Respondent notified OPS that the sale to Transmontaigne, Inc. was completed in August 2006. For these reasons, I do not find Respondent has shown an inability to pay the proposed civil penalty.

Respondent also requested that the civil penalty be reduced due to "extenuating circumstances surrounding the difficulties [Respondent] encountered in the hiring of a qualified Compliance Employee." Respondent did not explain in its Response the details of those circumstances and why they might justify reducing the civil penalty. By letter received February 21, 2007, Respondent renewed its request for a reduction in the civil penalty "due to some extenuating circumstances leading to the infractions and our recognized good performance since then." Again, Respondent did not explain what the "circumstances" were or why they would justify a penalty reduction. Therefore, I find that Respondent has failed to provide sufficient evidence to support a reduction of the proposed penalty. Furthermore, I find that Respondent's performance since the time of the inspection does not justify a reduction in the proposed penalty since Respondent always has a continuing obligation to comply with the pipeline safety regulations and to correct any issues of noncompliance.

The Notice proposed a civil penalty of \$24,000 for the violation of 49 C.F.R. § 195.412(a) (Item 3). Respondent violated § 195.412(a) by failing to inspect surface conditions on or adjacent to each pipeline right-of-way at the required intervals. The patrolling of rights-of-way is essential to help identify potential problems associated with third-party activities along the pipeline. Patrolling is also crucial for leak detection. Right-of-way patrols are required every three weeks; however, Respondent failed to patrol its rights-of-way for 46 straight weeks, thereby increasing the potential for harm to the public and the environment from third-party damage or an undetected pipeline leak.

The Notice proposed a civil penalty of \$36,000 for the violation of 49 C.F.R. § 195.573(c) (Item 4). Respondent violated § 195.573(c) by failing to verify the proper performance of cathodic protection rectifiers at the required intervals. Checking the proper performance of cathodic protection rectifiers is a key aspect of ensuring that pipelines are protected from corrosion. In order for a pipeline system's corrosion control program to be effective, the cathodic protection rectifiers must be monitored at regular intervals. A nonfunctioning rectifier may result in inadequate cathodic protection, which is known to lead to external corrosion on steel pipelines. Left unabated, external corrosion can cause a pipeline failure. Therefore, it is critical for operators to regularly verify the proper operation of rectifiers. Rectifier inspections are required every 2 1/2 months; however, Respondent failed to inspect its rectifiers for almost one full year, thereby increasing the risk of inadequate cathodic protection and pipeline failure.

Respondent has not submitted any information that warrants a reduction in the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I hereby assess Respondent a total civil penalty of **\$60,000**.

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 directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$60,000 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 United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1(A), 1(B), and 1(C) for violations of 49 C.F.R. §§ 195.402(c)(3), 195.559, 195.571, and 195.573(c). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquid by pipeline or who owns or operates a hazardous liquid pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director, Southwest Region, OPS, has indicated that Respondent has taken the following actions specified in the proposed compliance order:

Respondent submitted documentation verifying that it had developed and implemented acceptable procedures for using coating material for external corrosion control.

Respondent submitted documentation verifying that it had developed and implemented acceptable procedures for determining the adequacy of cathodic protection using applicable criteria.

Respondent submitted documentation verifying that it had developed and implemented acceptable procedures for inspecting and monitoring rectifiers.

Respondent incorporated the above-referenced procedures into its written manual of procedures for operations and maintenance.

Accordingly, since compliance has been achieved with respect to these violations, the compliance terms are not included in this Final Order.

WARNING ITEM

Item 2: The Notice alleged a probable violation of 49 C.F.R. § 195.404(c)(3) but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. Section 195.404(c)(3) states:

§ 195.404 – Maps and records.

(a)

(c) Each operator shall maintain the following records for the periods specified . . .

(3) A record of each inspection and test required by this subpart [§§ 195.400–195.444] shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

The Notice alleged that Respondent failed to retain records of mainline valve inspections for the period between August 2003 through February 2004. Mainline valve inspections are required to be performed pursuant to § 195.420; therefore, records of those inspections must be maintained pursuant to § 195.404(c)(3). Records of mainline valve inspections were observed by OPS in April 2004, but Respondent no longer had those records during the March 2006 OPS inspection. Respondent acknowledged during the inspection that it had not retained some of the records in question. Pursuant to 49 C.F.R. § 190.205, I find that a probable violation of § 195.404(c)(3) occurred. Respondent is hereby advised to ensure compliance with respect to this item. In the event OPS finds a violation of this item in a subsequent inspection, Respondent may be subject to further enforcement action.

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 received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. However, 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.

William H. Gorte
for

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

MAR 25 2008

Date Issued