



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

JAN 11 2006

RECEIVED JAN 10 2006

Mr. John W. Moore
Vice President, Pipelines and Terminals
Tesoro High Plains Pipeline Company
1225 17th Street, Suite 1800
Denver, CO 80202

Re: CPF No. 3-2005-5006

Dear Mr. Moore:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$15,000. 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.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Mr. Ivan Huntoon
Director, Central Region, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)

**Tesoro High Plains
Pipeline Company,**)

Respondent.)

CPF No. 3-2005-5006

FINAL ORDER

On July 19-23 and August 23-27, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an on-site pipeline safety inspection of Respondent's facilities and records in North Dakota. As a result of the inspection, the Director, Central Region, PHMSA, issued to Respondent, by letter dated January 20, 2005, 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 had committed violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$15,000 for the alleged violations.

Respondent responded to the Notice by letter dated February 17, 2005 (Response). Respondent contested the allegations, offered information to explain the allegations, provided information concerning the corrective actions it has taken, and requested that the proposed civil penalty be reduced or eliminated.

FINDINGS OF VIOLATION

Item 2 in the Notice alleged that Respondent violated 49 C.F.R. § 195.440 by failing to demonstrate that a continuing public education program to enable those who could be affected by its pipeline to recognize and report pipeline emergencies was ongoing during calendar years 2002 and 2003. Section 195.440 requires pipeline operators to address their public education programs to the public, government organizations, and fire, police, or other appropriate local officials. In its response, Respondent explained that it was the "relatively" new owner of the system, which it acquired in late 2001, but acknowledged that it failed to conduct any mailings to the public until 2004. Respondent also failed to demonstrate that its program was presented to any government organizations or public officials during the relevant time period. Accordingly, I find that Respondent violated § 195.440 by failing to demonstrate that a continuing public

education program to enable those who could be affected by its pipeline to recognize and report pipeline emergencies was ongoing during the relevant time period.

Item 3(a) in the Notice alleged that Respondent violated 49 C.F.R. § 195.442(c)(1) by failing to demonstrate that during calendar years 2002 and 2003 it maintained an up-to-date list identifying all persons who normally engage in excavation activities along its pipeline for the purpose of providing regular notification to such persons of its damage prevention program. In its response, Respondent explained that it had initiated actions to identify excavators in connection with the development of its overall public education program in late 2003, but acknowledged that it was not in place until 2004. Accordingly, I find that Respondent violated § 195.442(c)(1) by failing to demonstrate that during the relevant time period it maintained an up-to-date list identifying all persons who normally engage in excavation activities along its pipeline.

Item 3(b) in the Notice alleged that Respondent violated 49 C.F.R. § 195.442(c)(2) by failing to demonstrate that it provided notification of its damage prevention program to the public in the vicinity of its pipeline or to persons who engage in excavation activities along its pipeline during calendar years 2002 and 2003. Section 195.442(c)(2) requires such notice to be provided to such persons as often as needed to make them aware of the damage prevention program. In its response, Respondent acknowledged that it did not implement a damage prevention notification program until 2004. Accordingly, I find that Respondent violated § 195.442(c)(2) by failing to demonstrate that during the relevant time period it provided notification of its damage prevention program to the public in the vicinity of its pipeline or to persons who engage in excavation activities along its pipeline.

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 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.

With respect to Item 2, the Notice proposed a civil penalty of \$5,000 for Respondent's failure to demonstrate that a continuing public education program to enable those who could be affected by its pipeline to recognize and report pipeline emergencies was ongoing during the relevant time period. Developing and implementing an effective public education program is an important part of operating a pipeline safely. Stakeholders need to know how to recognize pipeline location

markers and what kinds of precautions they should take, what kinds of properties the commodity being transported has, and how to recognize and respond to a pipeline emergency. In its response to this item, Respondent contends that the change in ownership to some extent justified the delay. In our view, however, it is actually more important after a change in ownership that public education contacts are made in a timely manner. In the event of a pipeline emergency, the public and government officials must be able to reach the correct current operator of the system immediately and not waste time attempting to contact the former operator while harm to the public, property, or the environment may be occurring. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, I assess Respondent a civil penalty of \$5,000 for violating 49 C.F.R. § 195.440.

With respect to Item 3(a), the Notice proposed a civil penalty of \$5,000 for Respondent's failure to demonstrate that during the relevant time period it maintained an up-to-date list identifying all persons who normally engage in excavation activities along its pipeline. Preventing damage to pipelines caused by excavation activity is an important part of operating a pipeline safely. Maintaining the list of excavators in a current and up-to-date manner is an important part of determining whether a pipeline operator is effectively communicating with excavators. In response to this item, Respondent again contends that the change in ownership to some extent justified the delay. As with public education programs, however, it is actually more important after a change in ownership that excavator contacts are made in a timely manner. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, I assess Respondent a civil penalty of \$5,000 for violating 49 C.F.R. § 195.442(c)(1).

With respect to Item 3(b), the Notice proposed a civil penalty of \$5,000 for Respondent's failure to demonstrate that during the relevant time period it provided notification of its damage prevention program to the public in the vicinity of its pipeline or to persons who engage in excavation activities along its pipeline. Excavators obviously need to be made aware of the existence of pipelines in their area and how to utilize one-call damage prevention programs. Moreover, excavators need to know who the current operator is and how to contact them if the pipeline is damaged at any time during excavation activities. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, I assess Respondent a civil penalty of \$5,000 for violating 49 C.F.R. § 195.442(c)(2).

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$15,000.

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-120), Federal Aviation Administration, Mike

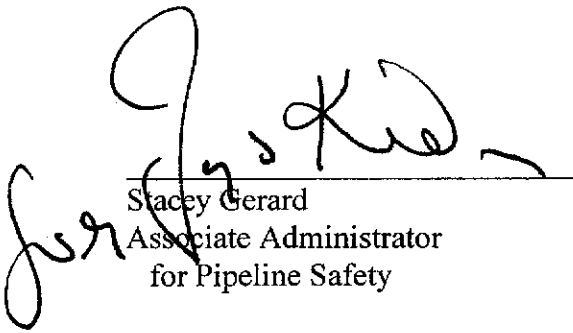
Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$15,000 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.

WARNING ITEMS

The Notice did not propose a civil penalty or compliance order for Notice Items 1 or 4. Therefore, these are considered to be warning items. The warnings were for Respondent's failure to demonstrate that an annual review of its procedures for operations, maintenance and emergencies was conducted during calendar year 2003 in accordance with § 195.402(a), and failure to maintain records of atmospheric corrosion evaluations in accordance with § 195.589(c). Respondent presented information its response showing that it has initiated actions to address these items. Respondent is warned that if these items are not fully addressed, enforcement action will be taken if a subsequent inspection reveals a violation.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should respondent elect to do so, 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 a 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 are effective on receipt.



Stacey Gerard
Associate Administrator
for Pipeline Safety

JAN 11 2006

Date Issued