



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

NOV 25 2003


Dan F. Smith
President & CEO
Equistar Chemicals, LP
P.O. Box 3646
Houston, TX 77253-3646

Re: CPF No. 3-2002-5012

Dear Mr. Smith:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation, assesses a civil penalty of \$5,000, and requires that you amend your integrity management program procedures. When the civil penalty is paid and the amendment of procedures completed, as determined by the Director, Central Region, this enforcement action will be closed. The penalty payment terms are set forth in the Final Order. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

for 

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of)
)
Equistar Chemicals, LP)
)
Respondent.)
_____)

CPF No. 3-2002-5012

FINAL ORDER

On March 27-28, 2002, pursuant to 49 U.S.C. § 60117, representatives of the Office of Pipeline Safety (OPS), conducted a segment identification and completeness inspection of Respondent's Integrity Management Program (IMP) in Alvin, Texas. As a result of the inspection, the Director, Central Region, OPS, issued to Respondent, by letter dated June 3, 2002, a Notice of Probable Violation, Proposed Civil Penalty, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 195.452(b)(2) and proposed assessing a civil penalty of \$5,000 for the alleged violation. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its IMP procedures for identifying pipeline segments that could affect high consequence areas (HCAs).

Respondent responded to the Notice by letter dated June 24, 2002 (Response). Respondent contested the allegation, offered information to explain the allegation, and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing, and therefore has waived its right to one.

FINDING OF VIOLATION

Item 1 in the Notice alleged that Respondent had violated 49 C.F.R. § 195.452(b)(2) by failing to identify all pipeline segments that could affect a high consequence area (HCA) by December 31, 2001. At the time of the December 31, 2001 deadline, Respondent had identified "could affect" segments using its internal system maps and local knowledge of HCAs. Although National Pipeline Mapping System (NPMS) data and multiple external sources were available to identify and verify HCA data for Louisiana and Texas—the states in which Respondent's line operates—Respondent did not employ any of these sources to identify "could affect" segments.

As of December 31, 2001, Respondent had identified approximately 725 miles of "could affect" segments. Subsequent to December 31, 2001, Respondent began identifying "could affect" segments using contractor-prepared system overlay maps that were based on NPMS data and U.S. Geological Survey quadrant maps. Utilizing the new system overlay maps based on external data sources subsequent to the deadline yielded a significant increase in "could affect" segments identified. At the time of inspection, approximately three months after the deadline, Respondent had identified 858 miles of "could affect" segments. OPS inspectors determined that the 15 percent difference between miles identified before the deadline and at the time of inspection was due primarily to Respondent's failure to account for drinking water areas and at least one populated area.

In its Response, Respondent argued that "no significant omission warranting punitive measures was made." Respondent attribute the 15 percent increase in "could affect" segment mileage identified to error or omission and program refinement. Respondent noted that § 195.452 requirements are "evergreen" and procedures developed thereunder are "always subject to continual improvement processes."

While integrity management is a constantly evolving process, the "could affect" segment identification process was a necessary element upon which all future integrity management processes were to be based, thus requiring an absolute deadline. Respondent chose to rely up internal data, and did not consult available outside data sources, such as NPMS data, as suggested by Appendix C to Part 195. As a result, drinking water areas and at least one populated area were unaccounted for in Respondent's segment identification process as of the December 31, 2001 deadline. These areas are explicitly defined as HCAs in Part 195 and Respondent was fully apprised of its responsibility for identifying segments of pipeline that could affect them by December 31, 2001.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.452(b)(2) by failing to identify all pipeline segments that could affect a high consequence area (HCA) by December 31, 2001.

This finding of violation will be considered a prior offense 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.

The Notice proposed a total civil penalty of \$5,000 for violation of 49 C.F.R. § 195.452(b)(2).

The integrity management rules are intended to address risks in areas where the consequences of a pipeline release are the greatest. These areas include populated areas and the most environmentally sensitive areas. The first step in the integrity management process is the identification of these critical areas. Respondent's failure to identify "could affect" segments by the December 31, 2001 deadline is primarily attributable to Respondent's failure to consult readily available outside data sources. NPMS and other outside data for the states in which Respondent's pipeline operates was available before the December 31, 2001 deadline for Respondent to identify the segments it missed. Respondent did not make a good faith effort to comply with the segment identification requirements of § 195.452(b)(2). The proposed penalty will not affect Respondent's ability to continue in business.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$5,000.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this payment to 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 25770, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$5,000 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.

AMENDMENT OF PROCEDURES

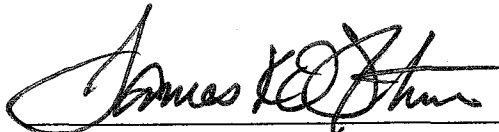
The Notice alleged inadequacies in Respondent's integrity management program and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. §§ 195.452(b)(2) and 195.452(b)(6)(ii). Respondent did not contest the proposed Notice of Amendment and proposed a plan of action to revise its procedures. Accordingly, I find that Respondent's procedures were inadequate to ensure safe operation of its pipeline system. Pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.237, Respondent is ordered to make the following revisions to its procedures. Respondent must -

1. Provide fully-detailed process documentation for identifying segments that could affect HCAs (beyond a rudimentary list of data sources).

2. Provide adequate technical justification for using the selected buffer zone and account for transport mechanisms for identifying segments that could affect high consequence areas.
3. Consider in its technical justification that non-commercial navigable waterways, such as streams, may act as transport paths for releases of highly volatile liquids to a high consequence area.
4. Consider the properties of highly volatile liquids (HVL) and carbon dioxide, the impact of weather conditions, topography, and the impacts these factors could have on human and animal life around the pipeline system.
5. Submit the amended procedures to the Regional Director, Central Region, OPS within 30 days following receipt of this Final Order.
6. The Regional Director may extend the period for complying with the required items if the Respondent requests an extension and adequately justifies the reasons for the extension.

Failure to comply with this Amendment may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

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 issues. 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 are effective on receipt.



Stacey Gerard
Associate Administrator
for Pipeline Safety

NOV 25 2003

Date Issued