



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

SEP - 1 2005

Mr. Craig Massey
President
Evan Energy Company, LC
4 North Fourth Street, Suite 100
Richmond, VA 23219

Re: CPF Nos. 1-2003-0002, 1-2002-0003, 1-2002-0002M

Dear Mr. Massey:

Enclosed is a Final Order issued by the Associate Administrator for Pipeline Safety. The Order finds Evan Energy violated the terms of two previously-issued Final Orders (CPF Nos. 1-2002-0003 and 1-2002-0002M). The Order also amends the terms of a Compliance Order and finds that Evan Energy has partially addressed some of the inadequacies in its procedures. When the terms of the Order are completed, as determined by the Director, Eastern Region, OPS, this enforcement action will be closed. 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

Enclosures

cc: Mr. Brint Camp
Chief Operating Officer
Evan Energy Company, LC

Mr. Massoud Tahamtani
Director, Division of Utility and Railroad Safety
Virginia State Corporation Commission

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

In the Matter of)
)

Evan Energy Company, L.C.,)
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Respondents)
)

CPF Nos. 1-2003-0002, 1-2002-0003,
1-2002-0002-M

FINAL ORDER

On or about December 10, 2003, a representative of the Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), conducted an investigation to determine Respondent's compliance with two Final Orders issued to Respondent in October and December, 2002 (CPF Nos. 1-2002-0003 and 1-2002-0002M, respectively).¹ As a result of the investigation, the Director, Eastern Region, OPS, issued to Respondent, by letter dated December 10, 2003, a Notice of Probable Violation and Proposed Civil Penalty (CPF No. 1-2003-0002). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding Respondent had violated the two above-referenced Final Orders and proposed assessing a civil penalty of \$10,000 for the alleged violations.

Respondent responded to the Notice by letter dated January 2, 2004. Respondent initially contested one of the allegations and requested a hearing. The hearing was held on March 23, 2004 in Washington, DC. After the hearing, Respondent provided additional information by letter dated April 19, 2004. In its post-hearing letter, Respondent acknowledged the validity of the facts alleged in the Notice, requested the proposed penalty be eliminated, and requested amendment to one of the Orders. By email dated April 21, 2004, Respondent submitted procedural amendments to the Director, Eastern Region, OPS.

FINDINGS OF VIOLATION

Item A in the Notice alleged Respondent violated the terms of a Final Order issued to Respondent on October 30, 2002 (CPF No. 1-2002-0003). By the terms of that Order, Respondent was required to clean and either coat or jacket each aboveground segment of Respondent's ten-mile Red Onion Pipeline. Respondent did not contest the allegation that it failed to clean and coat the pipeline as required in that Order.

¹ The Norman Y. Mineta Research and Special Programs Improvement Act, Pub. L. No. 108-426, 118 Stat. 2423 (2004), created the Pipeline and Hazardous Materials Safety Administration (PHMSA) and transferred the authority of RSPA exercised under chapter 601 of title 49, United States Code, to the Administrator of PHMSA. See also 70 Fed. Reg. 8299, 8301-8302 (2005) (delegating authority to the Administrator of PHMSA).

Instead, Respondent **contested the** underlying finding of violation in the previously-issued Order. Since Respondent did not file a **petition for reconsideration in accordance** with § 190.215 within 20 days of service of that Order, Respondent **has** waived its right to request reconsideration of that Order. Accordingly, the Order will not be reconsidered. Respondent also contested the authority of OPS to regulate the Red Onion Pipeline. At the hearing, OPS presented evidence showing the pipeline is subject to OPS regulatory authority. In its post-hearing submission, Respondent agreed to recognize the Red Onion Pipeline as a transmission line subject to OPS **regulation**.

Accordingly, I find Respondent violated the terms of the Final Order (CPF No. 1-2002-0003) by **failing to clean and coat the pipeline as ordered.**

Item B in the Notice alleged Respondent violated the terms of another Final Order issued to Respondent on December 3, 2002 (CPF No. 1-2002-0002M). By the terms of that Order, Respondent was required to amend its procedures and submit documentation of compliance within 90 days. In its Response and at the hearing, Respondent did not contest the allegation that it failed to amend its procedures as required by that Order. Accordingly, I find Respondent violated the terms of the Final Order (CPF No. 1-2002-0002M) by failing to amend its procedures within 90 days.

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 \$10,000 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.

The pipeline safety standards **located** at 49 C.F.R. **Part** 192 **ensure** a level of safety for the protection of the public, property and the environment. Actions specified in orders issued by OPS are designed to bring an operator's pipeline system and applicable procedures into compliance with these safety standards. Respondent's failure to comply with the terms of two orders presented a threat to safety by allowing **a noncompliant condition to remain on** Respondent's pipeline.

In its Response and at the hearing, Respondent requested elimination of the civil penalty due to Respondent's limited financial resources. At the hearing, Respondent submitted evidence of its annual gross and net income. In its post-hearing response, Respondent again provided yearly revenue figures and requested OPS consider Respondent as a "small business" defined by the U.S. Small Business Administration. Based on the financial information provided by Respondent, I find assessment of a civil penalty would have an adverse effect on Respondent's ability to continue in business.

Accordingly, having reviewed the record and considered the assessment criteria, I do not assess a civil penalty for the violations.

ITEM A. COMPLIANCE ORDER

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under Chapter 601. Pursuant to 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, OPS issued to Respondent, on October 30, 2002, a Compliance Order (CPF No. 1-2002-0003) requiring Respondent to take specific action to ensure compliance with the pipeline safety regulations.

In its post-hearing letter dated April 19, 2004, Respondent requested OPS amend the terms of the Compliance Order to allow Respondent to implement a less costly alternative to the originally-ordered compliance terms. After reviewing the proposal submitted by Respondent and the recommendation of the Director, Eastern Region, OPS, I find amendment to the compliance terms of the Order is appropriate. The amended terms will ensure the safety of the pipeline system and avoid undue financial hardship to Respondent. Accordingly, I hereby amend the Order (CPF No. 1-2002-0003) as follows:

The following items replace the originally-ordered terms of the Compliance Order CPF No. 1-2002-0003:

1. Crib and electrically insulate from contact with the soil each aboveground segment of Respondent's pipeline at a rate of no less than fifteen percent (15%) of the aboveground segments per year to be completed by September 30, 2011. Cribbing shall involve raising the aboveground pipe and resting it on 6-inch pipe segments (the cribbing pipe) placed at 50-foot intervals. The cribbing pipe shall be at least 24-inches in length and sleeved with a non-electrically conductive sleeve, such as plastic or reinforced fiberglass, placed between the cribbing pipe and the aboveground gas pipeline to prevent electrical contact between the aboveground pipeline and the soil.
2. Until Item 1 is completed in full, conduct annual inspections (spot checks) for corrosion conditions on un-cribbed aboveground pipeline segments at the points of transition from wet to dry soil conditions. These inspections shall consist of digging beneath the pipe, cleaning the pipe, and determining whether corrosion activity is taking place. Document

each inspection and detail findings of corrosion on a "Record of Pipe Inspection" form. If corrosion is observed, the section of pipe must be cribbed or an anode must be installed unless Respondent can document that the corrosion is of a light oxide variety that will not affect the safe operation of the pipeline

3. Monitor all aboveground annually for corrosion activity and maintain documentation of corrosion monitoring and determinations of the presence and degree of corrosion. Monitoring shall continue for the life of the pipeline OR until otherwise determined in writing by the Director, Eastern Region, OPS.
4. Install a sacrificial anode at each transition point on the pipeline where buried/coated pipe meets aboveground/uncoated pipe. Installation of anodes MUST be completed by September 30, 2007
5. Within 90 days of receipt of this Amendment, submit to the Director, Eastern Region, OPS, for approval a plan and schedule for implementing each of the above items
6. At least once each six months, starting September 30, 2005, submit a written report on the status of actions taken under each of the above items. Submit the report to the Director, Eastern Region, OPS, and the Director, Division of Utility and Railroad Safety, Virginia State Corporation Commission. Supplement the written report with applicable data if requested by the Director, Eastern Region, OPS. Respondent shall submit annual reports for the life of the pipeline OR until otherwise determined in writing by the Director, Eastern Region, OPS

The Director, Eastern Region, OPS may grant an extension of time to comply with any of the required items upon a written request by the Respondent demonstrating good cause for an extension.

ITEM B: AMENDMENT OF PROCEDURES

Pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.237, OPS issued to Respondent, on December 3, 2002, a Final Order (CPF No. 1-2002-0002M) requiring Respondent revise its Operations and Maintenance Procedures within 90 days. Although Respondent did not timely comply with the Order, Respondent submitted amendments by email to the Director, Eastern Region, OPS on April 21, 2004. The Director, Eastern Region, OPS has reviewed the amended procedures and indicated that Respondent has achieved compliance only with Items 1, 2, 3, 4, 5, 7, and 12 of the Order. Respondent has not achieved compliance with Items 6, 8, 9, 10, 11, 13, and 14 of the Order. Accordingly, I find portions of Respondent's procedures remain inadequate to ensure the safe operation of its pipeline system. Respondent must make the following revisions to its procedures, which were originally ordered in the above referenced Final Order. Respondent must:

1. Amend its **Operating and Maintenance Procedures** to include procedures for checking variations from normal operation after abnormal operation has ended at sufficient critical locations in the system to determine continued integrity and safe operation, in accordance with 49 C.F.R. § 192.605(c)(2). (Item 6 in original).
2. Amend its Operating and Maintenance Procedures to include procedures for periodically reviewing the **response** of operator personnel in controlling abnormal operation and taking corrective **action** where deficiencies are found, in accordance with 49 C.F.R. § 192.605(c)(4). (Item 8 in original)
3. **Amend** its Operating and Maintenance Procedures to include procedures for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions, in accordance with 49 C.F.R. § 192.613(a). If a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator must take action to recondition or phase out the segment involved, or, if the segment cannot be reconditioned or phased out, to reduce the maximum allowable operating pressure, in accordance with 49 C.F.R. § 192.613(b). (Item 9 in original). Respondent's procedures do not address **leakage history**, corrosion, and substantial changes in cathodic protection requirements.
4. **Amend** its Operating and Maintenance Procedures for its damage prevention program to include procedures for follow-up inspection of pipelines that it has reason to believe could be damaged by excavation activities, in accordance with 49 C.F.R. § 192.614(c)(6). (Item 10 in original). Respondent's **procedures** do not address leakage surveys in the case of blasting.
5. Amend its **Operating and Maintenance Procedures** to include procedures for analyzing accidents and failures, including **the** selection of samples of the failed facility or equipment for laboratory examination, where appropriate, for the purpose of determining the causes of the failure and minimizing the possibility of a recurrence, in accordance with 49 C.F.R. § 192.617. (Item 11 in original).
6. **Amend its Operating and Maintenance Procedures** to reflect the requirement that each tap made on a pipeline under pressure must be **performed** by a crew qualified to make hot taps, in accordance with 49 C.F.R. § 192.627. (Item 13 in original). Respondent's procedures do not include a requirement that the crew be qualified.
7. **Amend** its Operating and Maintenance Procedures to include procedures for addressing the reduction in pipeline wall thickness caused by localized or general corrosion, in accordance with 49 C.F.R. § 192.485. (Item 14 in original) Respondent's procedures do not define what "**severe pitting**" means.

Respondent must submit the amended procedures to the Regional Director, Eastern Region, OPS, within 30 days following receipt of this Final Order. 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 Order 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 Amendment to Final Order. The petition must be received within 20 days of Respondent's receipt of this Amendment and must contain a brief statement of the issue(s). The terms of the order, including any required corrective action, remain in full effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective on receipt.

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Stacey Gerard
Associate Administrator
for Pipeline Safety

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Date Issued