

March 27, 2009

Mr. Thomas A. Bannigan
President, Plantation Pipe Line Company
500 Dallas Street, Suite 1000
Houston, Texas 77002

RE: CPF No. 1-2005-5017

Dear Mr. Bannigan:

Enclosed is the Final Order in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$155,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of this 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. Ron McClain, Vice-President, Product Pipelines, Kinder Morgan, Inc.
500 Dallas Street, Suite 1000, Houston, Texas 77002
Ms. Jessica Toll, Assistant General Counsel, Kinder Morgan, Inc.
P. O. Box 281304, Lakewood, Colorado 80228
Mr. Byron Coy, Director, Eastern Region, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 0390 0005 6163 7442]

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

In the Matter of)	
)	
)	
Plantation Pipe Line Company, a subsidiary of Kinder Morgan Energy Partners, L.P.,)	CPF No. 1-2005-5017
Respondent.)	

FINAL ORDER

Between July 20-23, 2004, and July 27-30, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Virginia State Corporation Commission (SCC), as agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site safety inspection of the hazardous liquid pipeline facilities and records of Plantation Pipe Line Company (Plantation or Respondent), a subsidiary of Kinder Morgan Energy Partners, L.P., at its Washington Station and Roanoke Terminal facilities in Virginia. Respondent operates a 3,100-mile petroleum pipeline system in the southeastern United States that runs from Louisiana to Washington, D.C.

As a result of the inspection, the Director, Eastern Region OPS (Director), issued to Respondent, by letter dated November 10, 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 certain violations 49 C.F.R. §§ 195.402(a), 195.402(d)(1)(iv), and 195.404(a)(1)(iv), and proposed assessing a civil penalty of \$155,000 for the alleged violations.

By letter dated December 22, 2005, Respondent submitted a Response to the Notice (Response). Plantation contested the allegations of violation, provided information to demonstrate its compliance with the cited regulations, and requested withdrawal of the Notice and elimination of the proposed civil penalties. Respondent also requested a hearing if OPS decided not to withdraw the Notice. A hearing was subsequently held on June 7, 2006, in Washington, D.C., with Renita K. Bivins, Esquire, Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel. Respondent submitted a post-hearing statement by letter dated June 29, 2006 (Closing).

FINDINGS OF VIOLATION

Item 1 in the Notice alleged that Respondent violated 49 C.F.R. §195.402(a), which states:

§ 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 and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least each calendar year, and appropriate changes made as necessary to insure that the manual is effective. . . .

Item 1 of the Notice alleged that Respondent violated § 195.402(a) by failing to review its Facility Response Plan (Plan) at the Washington Station facility, at intervals not exceeding 15 months but at least each calendar year, and to make appropriate changes as necessary to insure that the Plan was effective. Specifically, Section 1.4 of the Plan stated that personnel should, “at least once per year, review and make appropriate revisions as required by changes in the names and telephone numbers detailed in Section 2.” The Notice alleged that the last revision to this section of the Plan prior to the July 2004 inspection was in November 2001 and that a discussion with Plantation’s operating supervisor at the time of the inspection confirmed that the Plan had not been properly reviewed and updated. During the hearing, an SCC representative testified that the inspection revealed that the list of names and telephone numbers in the Plan failed to reflect the current area code for the facility as of 2004; the area code changed between the end of 2001 and beginning of 2002.

Before and during the hearing, Respondent argued that the Plan had been reviewed each calendar year, as required by § 195.402(a), and that it had conducted both a corporate and local review of the Plan in years 2002 and 2003. Plantation personnel testified that the Plan had also been used during its annual Hazwoper training in 2002 and 2003, which added an additional level of review. The annual “tabletop exercise” conducted during the Hazwoper training was designed to demonstrate Respondent’s readiness in executing the provisions of the Plan.

Respondent further argued that during the OPS inspection, approximately 5-10 emergency responder telephone numbers from the Plan had been randomly selected and checked to verify their accuracy. All the numbers dialed were correct. Although Respondent acknowledged that the pages reviewed by the inspector had not been revised since November 2001, it contended that the Plan had, in fact, been reviewed in 2002 and 2003. The local right-of-way technician for the Washington Station stated that although he did not have any documentation substantiating the dates of such reviews, he was sure that they had been conducted. According to Plantation, no revisions had been made to the Plan’s telephone contact list because the contact numbers were correct. Furthermore, the list was updated on an ongoing basis at the company’s Control Center in Alpharetta, Georgia, and placed on Respondent’s intranet for access by field personnel.

I have given full consideration to all of the evidence and arguments presented by OPS and Respondent. Despite Plantation’s contention that it conducted timely reviews of the Plan, the

record shows that no revisions had been made to the Plan since 2001, that the company failed to document any reviews since that time, and that its operating supervisor acknowledged not having reviewed the Plan. Accordingly, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to review, at the required interval, its manual of written procedures for operations, maintenance and emergencies to insure that the manual was effective.

Item 2 of the Notice alleged that Respondent violated 49 C.F.R. § 195.402(d)(1)(iv), which states:

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

(a)

(d) *Abnormal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

(1) Responding to, investigating, and correcting the cause of: . .

(iv) Operation of any safety device;

Item 2 of the Notice alleged that Plantation violated § 195.402(d)(1)(iv) by failing to follow its own local operating procedures that provided for the operation of safety devices when the operating design limits of its facilities were exceeded. Specifically, the Notice alleged that on March 25, 2004, the interface tank at the Washington Station experienced a high tank level alarm, indicating that the tank's operating design limits had been exceeded and causing the (incoming) block valve and pressure reducing valve to close.¹ The Notice alleged that Plantation's Control Center Team Leader gave permission to bypass the high tank alarm, relieve the line pressure, and restart the mainline, in violation of a company procedure entitled, "Requisite Relief Capacity, Tank 113, Local Operating Procedures Washington Station," dated November 15, 2000 (Tank 113 Procedure). That procedure states, "Under no circumstances, during normal operating conditions, should the High Level Alarm, on Tank 113, be exceeded." According to the Notice, operating Tank 113 at a level above its operating design could have caused a release of product.

In its written submissions and at the hearing, Respondent raised several defenses to this allegation but argued primarily that the Tank 113 Procedure was not in effect at the time of the incident.² On the contrary, Plantation contended that the local procedure "was a remnant of historical operations when the facility was operated locally and no longer valid for current operations." The company presented evidence to show that the Washington Station had been

¹ The Notice indicated that Tank 113 also served as relief flow for the company's 14W mainline.

² In its Response, Plantation also asserted that the high level tank alarm was not a "safety device", as defined under § 195.402(d)(1)(iv), for Tank 113 and that during the March 25, 2004, incident, the capacity design limit of the tank was never exceeded. Response, at 3, 4. It is unnecessary to reach these defenses because, as noted below, Plantation treated the incident as a violation of the company's own procedures for operating a safety device by completing an Accident/Near Miss Notification report.

operated remotely by Plantation's Control Center in Alpharetta, Georgia, since July 2003 and contended that the Tank 113 Procedure should never have been provided to the SCC inspector.³

Among the documents submitted by Plantation were copies of Memorandum of Change (MOC) Procedure #1529, and other related emails and paperwork, which, the company argued, showed that certain operational changes at the Washington Station were in the process of taking place when the March 25, 2004, incident occurred. According to Plantation, these procedures allowed Respondent to bypass the high level alarm on Tank 113.

During the hearing, OPS responded by asserting that the agency had not received any documentation showing that Plantation had actually *implemented* any procedure other than the Tank 113 Procedure as of the date of the incident. As for the MOC Procedure #1529, OPS personnel pointed out that the document lacked any effective date. Respondent eventually acknowledged during the hearing and in its Closing that the MOC Procedure #1529 and other changes at the Washington Station were still in the company's approval *process* when the March 25, 2004, incident occurred and were not finally approved until March 26, 2004.⁴ The company never presented any documentation showing that the Tank 113 Procedure had been superseded or had become obsolete as of the date of the incident.

On the contrary, the record shows that Plantation's own personnel considered the incident to be an abnormal operation under the company's operating procedures. OPS produced an "Accident/Near Miss Notification" report that Plantation personnel filed the day after the incident, based upon the Control Center Team Leader's action in overriding the Tank 113 Procedure.⁵ On the same day that the report was filed, the company finally approved the operational changes contained in MOC Procedure #1529.

Accordingly, upon consideration of all of the evidence and arguments presented during the hearing and in Respondent's Closing, I find that Plantation's Tank 113 Procedure was in effect at the time of the March 25, 2004, incident and that the company violated such policy by allowing the high tank alarm on Tank 113 to be exceeded, bypassing the alarm, and continuing to operate the line. Accordingly, I find that Respondent violated 49 C.F.R. § 192.402(d)(1)(iv) by failing to follow its own procedures providing for the operation of safety devices when the operating design limits of its facilities were exceeded.

Item 3 of the Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(1)(iv), which states:

§ 195.404. Maps and records.

(a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information:

- (1) Location and identification of the following pipeline facilities: . . .
- (iv) Pipeline valves

³ Response, at 3, 4.

⁴ Closing, at 5.

⁵ Violation Report, Exhibit 2.

Item 3 of the Notice alleged that Respondent violated § 195.404(a)(1)(iv) by failing to maintain current maps and records of its pipeline systems. Specifically, the Notice alleged that Plantation failed to depict block valves 1A and 1B for the PPL to KMST delivery line on the company's alignment sheets. The Notice alleged that during the inspection, the company's Operations and Maintenance Supervisor stated that he did not know why the valves were not shown on the alignment sheets.

In its Response and at the hearing, Respondent acknowledged that the valves were not depicted on the alignment sheets. The company argued, however, that the valves were shown on its Delorme Maps, which were used by field personnel when responding to emergencies, and that such maps were accessible to all personnel on the company's intranet. In addition, Plantation contended that the valves were included in its semi-annual valve inspections and also in its annual Corrosion Survey. Therefore, the company contended that because the valves were shown on other maps and records and the company included them in its routine inspection programs, this constituted compliance with § 195.404(a)(1)(iv).

I disagree. Inherent in an operator's obligation under § 195.404(a) to maintain "current maps and records" is the need for such records to be complete and accurate. The last revision date on this particular alignment sheet was October 21, 1991, which was after the date that the valves were installed. Therefore, the alignment sheets being used by Plantation personnel were not "current." As OPS noted at the hearing, if company field personnel had an immediate need for information regarding the location of block valves 1A and 1B, their ability to quickly locate, drive to, and shut the valves could have been compromised by the lack of accurate alignment sheets.

Furthermore, Respondent failed to produce any verifiable documentation or tangible evidence that the alignment sheets were actually accessible to field personnel on Respondent's intranet or otherwise. A primary objective of § 195.404 is to ensure that operators are able to effectively locate their pipeline facilities during emergencies. If alignment sheet are inaccurate, it may be difficult for personnel to follow the proper procedures and techniques to prevent hazards. Accordingly, upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. §195.404(a)(1)(iv) by failing to maintain current alignment sheets of its pipeline systems that showed the two block valves.

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: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of

Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$155,000 for violations of 49 C.F.R. Part 195.

Item 1 of the Notice proposed a civil penalty of \$5,000 for violation of 49 C.F.R. § 195.402(a), for Respondent's failure to review its Plan at the Washington Station facility in 2002 and 2003, at intervals not exceeding 15 months but at least once each calendar year. As discussed above, the record shows that despite Plantation's contention that it conducted annual reviews of the Plan, the company was unable to provide any verifiable contemporaneous documentation or other persuasive evidence to show that it actually performed such reviews within the required intervals. Sound recordkeeping serves to authenticate a company's procedures, controls, and reviews; they are an essential means of demonstrating compliance with regulatory requirements and ensuring accountability within an operator's organization. Respondent has not provided any evidence that would justify mitigation or elimination of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for its violation of 49 C.F.R. § 195.402(a).

Item 2 of the Notice proposed a civil penalty of \$100,000 for violation of 49 C.F.R. §195.402(d)(1)(iv), for Respondent's failure to follow its own Tank 113 Procedure on March 25, 2004, when the company allowed the high tank level alarm on Tank 113 to be exceeded. As discussed above, I found that said procedure was in effect at the time of the incident and that Respondent failed to comply with it, as required under § 195.402(d)(1)(iv). It is critical that procedures dealing with abnormal operations be kept up-to-date and adequately communicated to employees so that they can perform their assigned tasks without jeopardizing their own personal safety or that of the pipeline. In this case, the company failed to follow its own procedures for the operation of a critical safety device and even documented such failure by filing a "Near Miss" report. The failure of the company to have and follow current safety procedures could have resulted in potentially serious safety and environmental consequences. Respondent has not provided any evidence that would justify mitigation or elimination of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$100,000 for its violation of 49 C.F.R. § 195.402(d)(1)(iv).

Item 3 of the Notice proposed a civil penalty of \$50,000 for violation of 49 C.F.R. §195.404(a)(1)(iv), for Respondent's failure to maintain current maps and records of its pipeline system. As discussed above, Respondent acknowledged that the two block valves in question were not depicted on the alignment sheet for the PPL to KMST delivery line, but argued that because the valves were shown on other maps that were available to company personnel, the company demonstrated compliance with the regulation. I rejected this argument, finding that Respondent violated § 195.404(a)(1)(iv) by failing to update the alignment sheets for this facility to show the accurate location of the two block valves.

Respondent argued that the proposed penalties for Items 2 and 3 were excessive because: (1) the alleged violations had not resulted in any adverse impact on the environment; (2) all of the

company's actions were undertaken in a good faith effort to achieve compliance and Plantation did not have a history of similar violations; (3) omission of the valves on the alignment sheets was merely an oversight, since the company was well aware of the valves via inspections and maintenance; and (4) accurate maps were accessible to its personnel via the company's intranet. I find all of these arguments unpersuasive. The fact that no safety or environmental harm resulted from the violations may simply have been fortuitous. It is correct that PHMSA recognizes the good faith efforts of operators to achieve compliance with the regulations; for example, they may misinterpret a regulatory requirement in establishing their own policies and procedures. In this case, however, Plantation failed to follow its *own* procedures for the operation of the high tank level alarm and treated the incident as a "near miss." Therefore, I cannot consider this to constitute a good faith effort to achieve compliance with § 195.402(d)(1).

As for Respondent's contention that the omission of the valves on the alignment sheets was a mere oversight, that does not reduce its potential risk. PHMSA is aware of serious accidents on other pipelines that could have either been prevented or greatly mitigated if field personnel had had accurate alignment sheets readily available to them on their job sites. Even if company personnel inspected the valves regularly and knew their location, this doesn't reduce the need for all personnel and contractors to have ready access to accurate maps and records in the event of emergencies. In such situations, field personnel may not have sufficient time to check the company's intranet for the location of valves.

Respondent also failed to produce any verifiable documentation or evidence showing that accurate alignment sheets were actually accessible to personnel in the field on Respondent's intranet or otherwise. Respondent has not shown any circumstance that would justify its failure to maintain accurate alignment sheets that included valves 1A and 1B. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$50,000 for its violation of 49 C.F.R. § 195.404(a)(1)(iv).

In summary, having reviewed the entire record and considered the assessment criteria, I assess Respondent a total civil penalty of **\$155,000**. There is nothing in the record indicating that payment of this penalty would adversely affect Respondent's ability to continue in business.

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 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$155,000 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.

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. All other 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 shall be effective upon receipt.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued