



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

JAN - 3 2006

Mr. Paul S. Broker
Vice President
Mid-Valley Pipeline Company
907 South Detroit Avenue
Tulsa, OK 74120

Re: CPF No. 3-2003-5022

Dear Mr. Broker:

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 \$35,000. 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)
)
Mid-Valley Pipeline Company,)
)
Respondent.)
)

CPF No. 3-2003-5022

FINAL ORDER

On May 20-24, 2002, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an on-site pipeline safety inspection of Respondent's facilities and records in its Burlington, Kentucky, Ohio, and Michigan operational areas. As a result of the inspection, the Director, Central Region, PHMSA, issued to Respondent, by letter dated August 26, 2003, 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 \$35,000 for the alleged violations.

Respondent responded to the Notice by letter dated September 12, 2003 (Response). Respondent acknowledged some of the allegations, offered information to explain the allegations, described the corrective actions it had taken, and requested that the proposed civil penalty be reduced or eliminated.

FINDINGS OF VIOLATION

Item 3 in the Notice alleged that Respondent violated 49 C.F.R. § 195.440 by failing to establish a continuing public education program to enable those who could be affected by its pipeline to recognize and report pipeline emergencies. 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 had hand delivered calendars to people along the right-of-way each year. Respondent, however, failed to demonstrate that the material in the calendar was adequate to accomplish the purpose of the regulation. Respondent also failed to demonstrate that its program was presented to any government organizations or public officials. Accordingly, I find that Respondent violated § 195.440 by failing to establish a continuing public education program to enable those who could be affected by its pipeline to recognize and report pipeline emergencies.

Item 4 in the Notice alleged that Respondent violated 49 C.F.R. § 195.442(c) by failing to provide notification of its damage prevention program to persons who engage in excavation activities along its pipeline since 1996. Section 195.442(c) requires pipeline operators to provide actual notification of its damage prevention program to all persons who normally engage in excavation activities in the area where its pipeline is located as often as needed to make them aware of the damage prevention program. In its response, Respondent explained that at the time, the one-call program in which it participates provided notification to emergency responders about the damage prevention programs of pipeline operators in their areas. Respondent, however, failed to demonstrate that it provided actual notice of its damage prevention program to any excavators. Accordingly, I find that Respondent violated § 195.442(c) by failing to provide notification of its damage prevention program to persons who engage in excavation activities along its pipeline after 1996.

Item 5 in the Notice alleged that Respondent violated 49 C.F.R. § 195.571 by failing to ensure the cathodic protection for breakout tank #83 met the minimum criteria for the pipe-to-soil readings in years 2000, 2001, and 2002. In its response, Respondent did not contest this allegation. Accordingly, I find that Respondent violated § 195.571 by failing to ensure the cathodic protection for breakout tank #83 met the applicable criteria.

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 \$25,000 per violation for each day of the violation up to a maximum of \$500,000 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 3, the Notice proposed a civil penalty of \$15,000 for failing to establish a continuing public education program to enable those who could be affected by its pipeline to recognize and report pipeline emergencies. 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. Pipeline operators are obligated to fully meet the requirement for a continuing public education program and to present the program to all affected stakeholders because the failure to do so can put the public safety at increased risk. 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 \$15,000 for violating 49 C.F.R. § 195.440.

With respect to Item 4, the Notice proposed a civil penalty of \$15,000 for failing to provide notification of its damage prevention program to persons who engage in excavation activities along its pipeline after 1996. Preventing damage to pipelines caused by excavation activity is an important part of operating a pipeline safely. Excavators need to be made aware of the existence of pipelines in their area. Pipeline operators are obligated to provide notice of their damage prevention programs to excavators including information about pipeline location marking, utilizing the one-call system prior to excavation activity, and what to do if the pipeline is damaged during excavation. In this case, Respondent last sent out a mailer to excavators in 1996. We acknowledge that Respondent has initiated actions to address this violation including using its one-call program to address notification of excavators beginning in 2003. Respondent, however, has provided no information that would warrant a reduction in the civil penalty proposed in the Notice for this violation. Accordingly, I assess Respondent a civil penalty of \$15,000 for violating 49 C.F.R. § 195.442(c).

With respect to Item 5, the Notice proposed a civil penalty of \$5,000 for failing to ensure the cathodic protection for breakout tank #83 met the applicable criteria. Ensuring that pipeline systems have adequate cathodic protection is an important part of preventing release incidents caused by corrosion. If an inadequacy in cathodic protection is identified during an annual survey, pipeline operators are obligated to take prompt corrective action. We acknowledge that Respondent corrected the condition in June 2002. Nevertheless, the cathodic protection for breakout tank #83 was below the applicable criteria for three years. Respondent has presented no information that would warrant a reduction in the civil penalty proposed in the Notice for this violation. Accordingly, I assess Respondent a civil penalty of \$5,000 for violating 49 C.F.R. § 195.571.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$35,000.

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.

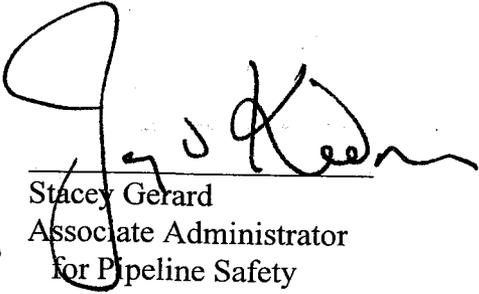
Failure to pay the \$35,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not 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 Items 1 and 2 in the Notice. Therefore, these are considered warning items. The warnings were for Respondent's failure to address the requirements of Subpart H of Part 195 in its operations and maintenance procedures in accordance with § 195.402, and failure to demonstrate that the monthly inspection of breakout tank #69 has been performed in accordance with § 195.432(b). Respondent presented information in 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.

for


Stacey Gerard
Associate Administrator
for Pipeline Safety

JAN - 3 2006

Date Issued