U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

AUG 29 2005

Mr. David Ysebaert
General Manager
ConocoPhillips Pipelines and Terminals
P.O. Box 2197 (77252)
600 North Dairy Ashford
Houston, TX 77079

RE: CPF No. 3-2004-5013

Dear Mr. Ysebaert:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, assesses a civil penalty of $35,000, makes a finding of inadequate procedures and requires amendment of certain operating and maintenance procedures. The Final Order also specifies actions to be taken to comply with the pipeline safety regulations and revision of certain operating and maintenance procedures. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the compliance order and amendment of procedures are completed, as determined by the Director, Central Region, 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

Enclosure

cc: Steven G. Cooper, Counsel for ConocoPhillips
Stephen G. Ellison, Counsel for ConocoPhillips
Keith H. Wooten, Pipeline Integrity Director, ConocoPhillips
Ivan Huntoon, Director, Central Region, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Background

In 2002, Conoco merged with Phillips Petroleum Company to create a new entity, ConocoPhillips Pipelines and Terminals. At that time each entity was operating a separate Integrity Management Program (IMP). An IMP inspection was conducted at Phillips in February 2002. Conoco's IMP was inspected by OPS in September, 2002. Although Respondent informed OPS of its intent to integrate the two separate IMPs, OPS told Respondent in 2002 that they could maintain two separate baseline assessments. The Notice is unrelated to the fact that Respondent had two separate IMPs at the time of the inspection.

FINDINGS OF VIOLATION

Uncontested

Respondent did not contest the alleged violation of § 195.452 in Items 3(B), 4(A-C), 5(A-C), 6(A-B), and 7(A- E), 8(A, C), 9(A-C) and 10(A-B) of the Notice. Accordingly, I find that Respondent violated 49 C.F.R. Part 195, as more fully described in the Notice:

> 49 C.F.R. § 195.452(e)(1) – failure to identify or document the primary risk threats for each assessed segment.
>
> 49 C.F.R. § 195.452(f) – failure to include in its written integrity management program a process for reviewing and updating assumptions used in the risk analysis.
>
> 49 C.F.R. § 195.452(g) and (j)(1-4) – failure to analyze all available information about the integrity of the entire pipeline and the consequences of a failure, as Respondent failed to provide for the timely use of the Assessment History and Planning Document, used to capture data from the information analysis; failure to develop a formal process to assure that the input information is current prior to running the risk analysis, as the data obtained from prior internal inspection tools (ILI) was not being used as required for input to the risk model or as validation of the risk results; and failure to develop a formal process for conducting Subject Matter Experts (SME) evaluations that provides a logical documented structure.
>
> 49 C.F.R. § 195.452(i)(1) – failure to take sufficient measures to prevent and mitigate the consequences of a pipeline failure that could affect HCA, as Respondent's Preventive and Mitigative Process needs to be expanded to identify HCA specific risk drivers that exist in each HCA and failure to integrate its risk analysis with the preventive and mitigative process for HCA segments.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

Contested

Item 2 of the Notice alleged that Respondent violated 49 C.F.R. § 195.452 (c)(1)(i)(a) by not including in its written baseline assessment plan(BAP) internal inspection tools (ILI) capable of detecting deformation anomalies in the pipe that must be repaired as required by 49 C.F.R. § 195.452(h). At the time of the inspection, Respondent was performing pipeline excavations to evaluate only top side dents identified in High Consequences Areas (HCAs). OPS inspectors reviewed five out of eight ILI tool runs which revealed that only a gauging plate had been used to identify deformations in the piggable segments. OPS determined that these eight assessments, all identified as prior assessments in the BAP, will require a geometry tool run to qualify as a prior assessment.

In its response to Item 2, Respondent asserted that OPS failed to provide an adequate regulatory basis for the Notice and that the IMP rules does not require that the internal inspection tool used in its baseline assessment must be capable of discerning the anomalies listed in 49 C.F.R. § 195.452(h). Respondent argued that the internal inspection performed in its prior assessments clearly meet the requirements of the IMP rule. Respondent advised that it has made unprecedented effort to understand how OPS interpreted and implemented IMP. Respondent further advised that the merger and integration of its two IMPs, Conoco and Phillips, is very complex. Respondent asserted that it was first notified during the inspection that OPS interpreted the IMP regulations on baseline assessments to require running geometry inspection tools in a more rigorous fashion that the rule requires.

OPS argued that the process used by Respondent was inadequate to find a defect or anomaly, as Respondent's plan was to run a MFL tool for top side dents with metal loss. The MFL tool is not the type of tool that can find the requisite defects and that the plan should have included the use of a deformation tool. OPS further argued that Respondent understands the intent of and has clear knowledge of the rule. As a result of an IMP inspection in February 2002, Phillips received an enforcement document that directed it to provide more details in the IMP processes and to document the inputs and outputs of these processes. On a second occasion, this matter was discussed at length with the IMP team members of both Conoco and Phillips in September 2002, as Phillips IMP official were present during most of the Conoco IMP inspection. OPS argued that after having gone through two IMP inspections and the resulting enforcement action, Respondent was fully aware of the IMP rule requirements.

Respondent argued that had OPS advised Respondent earlier of OPS interpretation, the violation could have been avoided. Respondent suggested that the violation has been cured, as it has completed the baseline assessment for 50% of its pipe segments that could affect HCAs by employing the ILI tools identified by OPS.

OPS countered that, during the hearing, Respondent was informed that once its new procedures for conducting a correct risk analysis were in place it should complete a new risk ranking of all segments in the Conoco and Phillips BAPs. OPS also requested the new risk analysis process be applied first to those line segments that had not yet been assessed and then applied to those segments that had already been assessed. OPS concluded that Respondent's post hearing submissions still fail to show that Respondent addressed OPS directions and require additional modification.

Contrary to Respondent's position, the focus of the Notice are the inadequate plan, processes and procedures to achieve the optimal results and not the fact that Respondent had two separate IMPs or was in the process of integrating the two program. In 2002, OPS told Respondent that they could maintain two separate baseline assessments.

At the time of the inspection, Conoco was using a geometry tool to assess deformations in the pipe along with an ILI tool to find other anomalies. However, Phillips used a gauging plate and only used a geometry tool occasionally. Phillips was only digging top side dents. The process was in place but the process was inadequate to find the deformation anomalies, defects, gouges and grooves. The plan should have included the use of a deformation tool. The MFL tool is not the type of tool that can identify the requisite defects. There are two pieces of IMP involved, the implementation and the plan and process. There was a lack of consideration in the plan. While Respondent may have changed its plan as suggested on page 8 of its brief dated August 11, 2004, and intends to meet the baseline assessment, at the time of the inspection Respondent was performing pipeline excavations to evaluate only top side dents identified in HCAs. Respondent's post hearing submissions fail to show that this issue has been satisfactorily addressed. Accordingly, I find that Respondent violated 49 C.F.R. § 195.452 (c)(1)(i)(a) by not including in its written baseline assessment plan ILI tools capable of detecting deformation anomalies in the pipe that must be repaired as required by 49 C.F.R. § 195.452(h).

Item 3A of the Notice alleged that Respondent violated 49 C.F.R. § 195.452 (e)(1) by not establishing an integrity assessment schedule that prioritizes pipeline segments for assessment. The Notice further alleged Respondent did not base the assessment schedule on all risk factors that reflect the risk conditions on the pipeline segment. The factors an operator must consider include, but are not limited to 49 C.F.R. § 195.452 (e)(1)(I) through (e)(1)(ix). At the time of the inspection, Respondent was using two different risk models to risk rank the pipelines and the inspection team was not provided adequate information to determine whether the highest risk pipeline segments were being assessed as required by the IMP rule.

In its response to Item 3A, Respondent asserted that prior to the merger each operator successfully completed baseline assessments of 50% of its riskiest pipeline segments that could affect an HCA within the required time frame and that each developed a written integrity management plan that addressed the risks of each segment, with the baseline assessment to be developed by each operator from prioritizing the risk factors on each segment. Respondent explained that since the merger, efforts have been made to meet the requirements of each of the integrity management plans of the two legacy companies by performing the planned baseline assessments. Respondent also advised that it has been working to create a third integrated integrity management plan that adopts the best practices of each of the two legacy plans that one day will fully replace the two plans. Respondent posed that OPS is aware of these efforts and support them. Respondent further argued that the IMP rule recognizes that the IMP is a continually changing program that will evolve from the initial program and that a provision of the rule requires Respondent to document changes to its baseline plan. The rule specifically contemplates at least one such change-when a new HCA is identified and that newly identified HCA must be added to the baseline plan within one year and assessed in 5 years.

OPS clarified that there can be a Conoco baseline assessment plan (BAP) and separate Heritage BAP or the Respondent can have a single BAP. It is the Respondent's choice. The issue is not whether there are separate BAPs or a single BAP. OPS argued that its findings stemmed from Respondent's failure to provide sufficient information during the inspection to support the assertion that the two lists were risk ranked as required by 49 C.F.R. § 195.452. There is a lack of detail to explain the process or to show how Respondent created the list of the highest risk pipeline segments. Both IMPs lacked the attributes to demonstrate risk ranking, as OPS could not determine from the information provided how Respondent arrived at its results.

Contrary to Respondent=s position, the focus of Item 3 is an inadequate description or explanation of the processes used to achieve the identified results, not whether it had separate BAPs or a single BAP. Respondent submitted additional information during the pre-hearing and post-hearing stages. Much of the information submitted addressed Respondent's future plans to complete a single BAP. While there is no requirement that Respondent have a single BAP, Respondent must provide adequate details to explain the process used to determine the prioritization of pipeline segments assessed. Nevertheless, Respondent provided no information to support the prioritization process used to develop the two lists that risk ranked the pipelines. The process for determining the relative priority of assessment action must be carefully explained. Respondent has failed to adequately document the risk analysis process. Accordingly, I find that Respondent violated 49 C.F.R. §195.452 (e)(1).

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 $35,000 civil penalty for violations of 49 C.F.R. Part 195.

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.

Item 2 of the Notice proposed a civil penalty of $20,000 for violation of 49 C.F.R. §195.452(c)(1)(a), as Respondent failed to include in its written baseline assessment plan a ILI capable of detecting deformation anomalies in the pipe that must be repaired as required by 49 C.F.R. § 195.452(h). In response to Item 2, the Respondent argued that the proposed civil penalty should not be levied for any real or perceived missteps it may have made in the learning process because the IMP rule was meant to be a broad and flexible, performance based system with few detailed requirements. Respondent explained that Conoco and Phillips were two distinct companies and that both met the first two IMP deadlines, to identify all pipeline segments that could affect HCAs and develop a written IMP. Respondent further explained that OPS recognized during the inspection the challenges ConocoPhillips faced in its efforts to create an integrated IMP shortly after a merger.

The focus of the Notice and this Order are the inadequate plan, processes and procedures to achieve the optimal results. The Notice is unrelated to the fact that Respondent had two separate IMPs at the time of the inspection. The primary objective of the Federal pipeline safety standards is public safety. Failure to find the deformation anomalies, defects, gouges and grooves in the subject areas could result in a release and adversely affect public safety and the environment. Respondent has not shown any circumstance that would have prevented or justified it not including in its written baseline assessment plan an ILI capable of detecting deformation anomalies in the pipe that must be repaired as required by 49 C.F.R. § 195.452(h). Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $20,000, for violation of 49 C.F.R. § 195.452.

Item 3A of the Notice proposed a civil penalty of $10,000 for violation of 49 C.F.R. § 195.452 (e)(1), as Respondent failed to provide sufficient details of the process used for priority assessment, to prioritize the highest risk pipeline segments, and failed to adequately document the risk analysis process.

Respondent argued that OPS proposed a civil penalty because Respondent was unable to state with absolute certainty that the baseline assessments performed on the two legacy IMP plans will capture 50% of all the highest risk pipeline segments.

While there is no requirement for a statement of absolute certainty, Respondent must establish an integrity assessment schedule that shows it prioritized the highest risk pipeline segments and describe in sufficient details the process and procedures used to achieve its results. Respondent is required to base the assessment schedule on all relevant categories of risk factors that reflect the risk conditions on its pipeline, in accordance with 49 C.F.R. § 195.452 (e)(1)(i) through (e)(l)(ix). An operator's failure to sufficiently document its risk analysis process and analyze the potential effects of pipeline failures on high consequence areas at specific locations along the pipeline will leave it ill-prepared to address the severity and extent of the consequences that ensue following a failure. A release or failure under such circumstances increases the risk of harm to the public and the environment. Respondent has not shown any circumstance that would have prevented or justified it not including sufficient details about the processes and procedures used to risk rank its HCA segments and the segments listed in Respondent's BAP. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $10,000, for violation of 49 C.F.R. § 195.452(e)(l).

Item 4C of the Notice proposed a civil penalty of $5,000 for violation of 49 C.F.R. § 195.452(f), as Respondent's factors for risk ranking facilities do not include the presence of HCAs. A fundamental reason for applying risk analysis techniques to integrity management programs is to obtain an integrated understanding of threats to segment integrity and potential consequences from losses of integrity. Therefore, it is essential that an operator's risk assessment approach clearly identifies the major threats to HCAs for a given pipeline segment or facility, identify how those threats rank in relation to each other, and how the segments and facilities compare to each other based on the risk to HCAs. Respondent did not contest the allegation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $5,000, for violation of 49 C.F.R. § 195.452(f).

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of $35,000. A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue 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**. After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel** (DCC-1), Pipeline and Hazardous Materials Administration, Room 8417, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001.

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) 954-8893.

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 an United States District Court.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with regards to Item 3(A-B), 4(A), 5(A-C), and 7(A,C), violation of 49 C.F.R. ' 195.452(e)(1), 195.452(f), 195.452(g)(j)(1-4), and 195.452(i)(1).

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R § 190.217, Respondent is hereby ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to Respondent's operations:

1. Within 30 days provide a proposed schedule for establishing and implementing the following amendments:

    I. With regard to Item 3(a), develop a risk ranked Baseline Assessment Plan, either jointly or separately, with sufficient information to show that the highest risk pipeline segments are being assessed in a prioritized manner and include detailed processes and procedures on how conducting the risk ranking of the HCAs could affect segments and the risk ranking of the segments listed in the BAP, in accordance with 49 C.F.R. § 195.452 (e)(1).

    II. With regard to Item 3(b), establish the primary risk threats for each assessed segment in accordance with 49 C.F.R. § 195.452 (e)(1).

III. With regard to Item 4(a), establish a process for reviewing and updating assumptions that were used in the risk analysis process, in accordance with 49 C.F.R. § 195.452 (f).

IV. With regard to Item 5(a), revise your Assessment Plan History and Planning Document to provide sufficient details of the results of your Information Analysis, in accordance with 49 C.F.R. § 195.452 (g).

V. With regard to Item 5(b), develop a process to review and ensure that input information is the most up to date information available when running a risk analysis, in accordance with 49 C.F.R. § 195.452 (g).

VI. With regard to Item 5(c), develop a formal process for conducting SME evaluations that provides a logical documented structure, if SME evaluations are to be used as a part of the IMP, in accordance with 49 C.F.R. § 195.452 (g).

VII. With regard to Item 7(a), develop a process to identify risk specific threats that exist for each HCA and review the existing preventive and mitigative measures to determine whether additional measures are required, in accordance with 49 C.F.R. § 195.452(i)(1) and (i)(4).

VIII. With regard to Item 7(c), develop a process that integrates the results of the risk analysis of each HCA that could affect segment with the preventive and mitigative process for that same segment in accordance with 49 C.F.R. §195.452(i)(1) and (I)(4).

IX. With regard to Item 1 (I-VIII), submit written procedures and proof of implementation of the procedures satisfying the requirements of Part 195, within 180 days of receipt of this Order, to Mr. Ivan Huntoon, Director, Office of Pipeline Safety, Central Region, 901 Locust, Room 452, Kansas City, MO 64106-2641.

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.

AMENDMENT OF PROCEDURES

Items 2, 4(B-C), 6(A-B), 7(B, D, E), 8(A, C), 9(A-C) and 10(A-B) of 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(c)(1)(a), 195.452(f), 195.452 (h)(2-4), 195.452(i)(1), 195.452(j)(1)(2), 195.452(k), 195.452(l)(1)(i)(ii).

Respondent did not contest the proposed Notice of Amendment but requested an alternative schedule to implement the provisions. Accordingly, I find that Respondent's integrity management procedures are 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 integrity management program and procedures. Respondent must:

1. Amend your procedures to include a process that requires the use of tools capable of detecting deformation anomalies when internal tool surveys are chosen as the assessment method, in accordance with those listed in 49 C.F.R. § 195.452(h).

2. Amend your procedures to include a process that documents the overall results of integrated data analysis and conclusions regarding the integrity of the segment. The process must provide details on how to perform a detailed review of the assessment results, generate a repair schedule, and perform an integrated evaluation of overall pipeline integrity.

3. Amend your procedures to include a process for risk ranking facilities that includes factors for the presence of HCAs.

4. Amend your procedures to provide sufficient details that clearly describe your procedure for discovery and repair of anomalies.

5. Amend your procedures to revise your existing process for pressure reduction found in Appendix K of part 3 of your IMP. The revised process must be consistent with the requirements of paragraph 451.7 of ANSI B31.4 regarding the implementation of a required pressure reduction.

6. Amend your procedures to include a process for evaluating preventive and mitigative measures, including the impact on risk of implementing a preventive or mitigative project.

7. Amend your procedures to revise your existing process for evaluating the leak detection capability for HCAs that are in close proximity to the pipeline, including the evaluation of the potential risk reduction on these HCA could affect segments.

8. Amend your procedures to expand your process for EFRD evaluation to include guidance for the utilization of the flow chart for evaluation of preventive and mitigative measures.

9. Amend your procedures to expand your procedure for selecting the appropriate assessment method and selection of the appropriate ILI tool(s), if applicable.

10. Amend your procedures to expand your procedures for conducting a hydrostatic assessment of a HCA that could affect the segment, as the revised hydrostatic test procedures submitted on August 11, 2004, requires additional modification.

11. Amend your procedures to expand your process for evaluating the effectiveness of your IMP, as the August 11, 2004, submission requires additional modification.

12. Amend your procedures to expand your process for communicating within your company the performance evaluation results on the effectiveness of IMP, including any follow-up that may be required as the August 11, 2004, submission requires additional modification.

13. Amend your procedures to expand your Management of Change process or develop a revision control process to specifically address revision control in your IMP.

14. Amend your procedures to revise your corporate document retention schedule to include the documents required by your IMP.

15. Submit the amended procedures within 30 days following receipt of this Order to Director, Office of Pipeline Safety Central Region, 901 Locust, Room 452, Kansas City, MO 64106-2641.

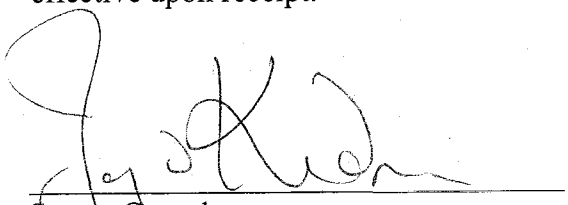
The Regional Director may extend the period for complying with the required items if the Respondent requests an extension and adequately justifies the reasons for the extension.

WARNING ITEM

The Notice did not propose a civil penalty or corrective action for Item 1, 4(D) and 4(E) but warned Respondent that it should take appropriate corrective action to correct the item. Respondent presented information in its response showing that it has addressed the cited item. Respondent is again warned that if OPS finds a violation in a subsequent inspection, enforcement action will be taken.

Failure to comply with this Final 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 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 and amendment of procedures, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.



Stacey Gerard
Associate Administrator
for Pipeline Safety

for

AUG 29 2005

Date Issued