

OCT 18 2010

Mr. Mark Cunningham
Vice President, Operations
Holly Energy Partners, L.P.
100 Crescent Court, Suite 1600
Dallas, TX 75201

Mr. Terry Hurlburt
Senior Vice President, Operations
Enterprise Products Operating, L.P.
P. O. Box 4324
Houston, TX 77210-4324

Re: CPF No. 4-2010-5007

Dear Mr. Cunningham and Mr. Hurlburt:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$45,000, and specifies actions that need to be taken by Holly Energy Partners, L.P., and Enterprise Products Operating, L.P., to comply with the pipeline safety regulations. This is to acknowledge receipt of payment of the full penalty amount, by wire transfer, dated March 31, 2010. When the terms of the compliance order have been completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided 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. R. M. Seeley, Director, Southwest Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0041 0282]

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

_____)	
In the Matter of)	
)	
Holly Energy Partners, L.P.,)	CPF No. 4-2010-5007
)	
and)	
)	
Enterprise Products Operating, L.P.,)	
)	
Respondents.)	
_____)	

FINAL ORDER

On November 3-7, 2008, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the Rio Grande Pipeline in Artesia, New Mexico, which Holly Energy Partners, L.P. (Holly), operated and partially owned at the time of the inspection.

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Holly, by letter dated February 26, 2010, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Holly had violated 49 C.F.R. §§ 195.571 and 195.573(e), and proposed assessing a civil penalty of \$45,000 for the alleged violations. The Notice also proposed that Holly be required to take certain measures to correct the alleged violations.

Holly responded to the Notice by letter dated March 29, 2010 (Holly Response). The company did not contest the allegations of violation and paid the proposed civil penalty of \$45,000 as provided in 49 C.F.R. § 190.227. Holly stated that it transferred operation of, and its majority ownership in, the Rio Grande Pipeline on December 1, 2009, and that it would therefore be unable to satisfy any terms of the proposed compliance order with respect to that facility. By letter dated May 27, 2010, Enterprise Products Operating, L.P. (Enterprise), a subsidiary of Enterprise Products Partners, L.P., informed PHMSA that it was the new operator and majority owner of the Rio Grande Pipeline (Enterprise Response). The company explained that it had received the Notice and stated that it intended to satisfy the terms of the proposed compliance order. Neither Holly nor Enterprise requested a hearing, and therefore they have each waived their right to one.

In their Responses, the Respondents did not contest the following allegations in the Notice:

Item 1: The Notice alleged that Holly violated 49 C.F.R. § 195.471, which states:

§ 195.471 What criteria must I use to determine the adequacy of cathodic protection?

Cathodic protection required by this Subpart must comply with one or more of the applicable criteria and other considerations for cathodic protection contained in paragraphs 6.2 and 6.3 of NACE SP 0169 (incorporated by reference, *see* §195.3).

The Notice alleged that Holly failed to ensure that cathodic protection complied with applicable criteria in paragraphs 6.2 and 6.3 of NACE Standard RP 0169 (NACE RP 0169).¹ Section 195.571 specifies that cathodic protection must comply with one or more of the criteria established in paragraphs 6.2 and 6.3 of NACE RP 0169. Paragraph 6.2.2.1.1 of NACE RP0169 establishes one of the criteria as a negative potential of at least 850 mV with the cathodic protection applied.

The Notice alleged, based on records of pipe-to-soil readings, that thirteen specific test points on Holly's system did not meet the -850 mV cathodic protection criterion at various points during the period from 2005 to 2008. Holly did not contest this allegation of violation.

Records of pipe-to-soil readings indicated that Holly failed to maintain adequate cathodic protection levels at the thirteen locations identified in the Notice. Accordingly, based upon a review of all of the evidence, I find that Holly violated 49 C.F.R. § 195.471 by failing to ensure that cathodic protection complied with the -850 mV criterion contained in paragraph 6.2 of NACE RP 0169.

Item 2: The Notice alleged that Holly violated 49 C.F.R. § 195.573(e), which states:

§ 195.573 -- What must I do to monitor external corrosion control?

(a)

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by §195.401(b). However, if the deficiency involves a pipeline in an integrity management program under §195.452, you must correct the deficiency as required by §195.452(h).

The Notice alleged that Holly violated 49 C.F.R. § 195.573(e) by failing to correct identified deficiencies in corrosion control as required by § 195.401(b). As described in Item 1, Holly failed to demonstrate that adequate cathodic protection levels were maintained for the thirteen locations identified in the Notice. Pipe-to-soil readings at ten of those locations exceeded the -850 mV criterion for at least two consecutive years. Any such inadequate reading constitutes a deficiency in corrosion control that, per § 195.401(b), must be corrected "within a reasonable

¹ NACE International Standard Recommended Practice 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems," incorporated by reference at § 195.3.

time,” which PHMSA has interpreted to mean before the next annual cathodic protection inspection cycle.² The Notice alleged further that Holly’s corrosion control procedures did not specify a timeline for correction of identified deficiencies in corrosion control.

In its Response, Holly did not contest the allegation of violation, but it described the actions it had taken to address the inadequate pipe-to-soil readings. Holly stated that, after it took over operations of the Rio Grande Pipeline in 2005, it recognized the deficiencies indicated by the inadequate readings. The company stated that it attempted to address these inadequate readings by installing new impressed current cathodic protection systems and by replacing and upgrading existing anode beds. According to the company, these steps failed to correct the pipe-to-soil readings, and therefore it conducted an internal inspection tool assessment. Because this assessment showed no defects that met the criteria for repair, Holly determined that the inadequate pipe-to-soil readings did not indicate conditions that were detrimental to the safety of the pipeline.

Although Holly took certain corrective actions in response to the low readings, the record demonstrates, and Holly did not contest, that the cathodic protection deficiencies were not corrected within a reasonable time pursuant to §§ 195.573(e) and 195.401(b).

Accordingly, based upon a review of all of the evidence, I find that Holly violated 49 C.F.R. § 195.573 by failing to correct identified deficiencies in corrosion control within a reasonable time.

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

Having reviewed the record and considered the assessment criteria, I assess Holly a civil penalty of \$45,000 for the violations, which has already been paid.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 2 in the Notice for violations of 49 C.F.R. §§ 195.571 and 195.573(e), respectively. 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.

Because Enterprise received the Notice and is now the operator of the Rio Grande Pipeline, it is responsible for satisfying the terms of the Compliance Order relating to the pipeline system at issue in this proceeding. Holly is responsible for complying with the terms of the Compliance Order relating to its own procedures.

² See, e.g., *In the Matter of Colonial Pipeline Co.*, Final Order, CPF 1-2002-5009, 2003 WL 25429887 (Dec. 10, 2003) (finding violations of § 195.401(b) for cathodic protection deficiencies lasting two or three consecutive years).

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Enterprise is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. Enterprise must provide documentation to the Director, Southwest Region, that substantiates that the Rio Grande Pipeline system throughout West Texas is in compliance with § 195.573. This documentation must include the pipe-to-soil test points listed in Tables I and II of the Notice.
2. Within 30 days of receipt of this Final Order, Enterprise must provide the documentation described above to the Director, Southwest Region, Office of Pipeline Safety, PHMSA, 8701 South Gessner, Suite 1110, Houston, TX 77074.
3. Enterprise must maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit that total to the Director, Southwest Region. Costs shall be reported in two categories: (1) total cost associated with preparation and revision of plans, procedures, studies, and analyses, and (2) total cost associated with replacements, additions, and other changes to pipeline infrastructure.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Holly is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. Holly must provide documentation to the Director, Southwest Region, demonstrating that its corrosion control procedures contain language that specifies a timeline for correction of identified deficiencies in corrosion control, as indicated by inadequate pipe-to-soil readings. These procedures must be consistent with the requirements of §§ 195.401(b) and 195.452(h).
2. Within 30 days of receipt of this Final Order, Holly must provide the documentation described above to the Director, Southwest Region, Office of Pipeline Safety, PHMSA, 8701 South Gessner, Suite 1110, Houston, TX 77074.
3. Holly must maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit that total to the Director, Southwest Region. Costs shall be reported in two categories: (1) total cost associated with preparation and revision of plans, procedures, studies, and analyses, and (2) total cost associated with replacements, additions, and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by either Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.215, each Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of this Final Order by the Respondents, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. Unless the Associate Administrator, upon request, grants a stay, the terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued