

JANUARY 8, 2015

Mr. Greg Smith
President
Shell Pipeline Company, LP
Two Shell Plaza
777 Walker Street
Houston, Texas 77002

Re: CPF No. 4-2014-5022

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation, specifies actions that need to be taken by Shell Pipeline Company, LP, to comply with the pipeline safety regulations, and assesses a civil penalty of \$144,000. This is to acknowledge receipt of your payment of the full penalty amount, by wire transfer, dated October 27, 2014. 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, OPS
Ms. Deborah Price, Integrity & Regulatory Services Manager, Shell Pipeline Company
LP - Two Shell Plaza, 777 Walker Street, Houston, Texas 77002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

_____)	
In the Matter of)	
)	
Shell Pipeline Company, LP,)	CPF No. 4-2014-5022
a subsidiary of Royal Dutch Shell, plc,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On March 7, 2014, 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 investigation of a pipeline accident near Port Neches, Texas, involving the Houston-to-Houma pipeline operated by Shell Pipeline Company, LP (Shell or Respondent). Shell, a subsidiary of Royal Dutch Shell, plc,¹ owns and operates seven tank farms across the United States, and annually transports more than 1.5 billion barrels of crude oil and refined products through 3,800 miles of pipelines across the Gulf of Mexico and five states.² The Houston-to-Houma pipeline is comprised of more than 350 miles of 20-inch and 22-inch-diameter pipe running from Houston, Texas, to Houma, Louisiana.³

The investigation arose out of an accident occurring on March 6, 2014, when a contractor working for Shell damaged the Houston-to-Houma pipeline when preparing to perform a horizontal directional drill (HDD) installation (Accident). An anchor for the HDD equipment was lowered into the ground directly above the pipeline, rupturing the line and releasing approximately 364 barrels of crude oil into the environment.

As a result of the PHMSA investigation, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated September 15, 2014, 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 Shell had violated 49 C.F.R. § 195.442(a), assessing a civil penalty of \$144,000 for the alleged violation, and ordering Respondent to take certain measures to correct the alleged violation.

¹ *About Shell – Who We Are – Shell at a glance*, <http://www.shell.us/aboutshell/who-we-are-2013/at-a-glance.html> (last visited November 7, 2014).

² *About Shell – About Shell Pipeline Company, L.P.*, <http://www.shell.us/products-services/solutions-for-businesses/pipeline/about-shell-pipeline.html> (last visited November 7, 2014).

³ Pipeline Safety Violation Report (Violation Report), (September 15, 2015) (on file with PHMSA), at 1.

Shell responded to the Notice by letter dated October 14, 2014 (Response). Respondent did not contest the allegation of violation but provided information concerning the corrective actions it had taken. As provided in 49 C.F.R. § 190.227, Shell paid the proposed civil penalty of \$144,000 by wire transfer dated October 27, 2014. Payment of the penalty serves to close the case with prejudice to Respondent as to those items for which a penalty was proposed. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

In its Response, Shell did not contest the allegation that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.442(a), which states:

§ 195.442 Damage prevention program.

(a) Except as provided in paragraph (d) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term “excavation activities” includes excavation, blasting, boring, tunneling, backfilling, the removal of above-ground structures by either explosive or mechanical means, and other earthmoving operations.

The Notice alleged that Respondent violated 49 C.F.R. § 195.442(a) by failing to carry out a section of its own written damage prevention program. Specifically, the Notice alleged that Shell failed to mark its Houston-to-Houma pipeline as specified in Section 3.23 of its procedure, *Pipeline Inspection & Maintenance Manual, Section 3.23 – Temporary Locating and Marking*.

The Notice further alleged that as a result of Shell’s failure to properly locate and mark its own line, on March 6, 2014, a second-party contractor working for Shell damaged the pipeline when preparing to perform an HDD installation. As the pipeline had not been temporarily identified and marked by Shell personnel, as required by Section 3.23, an anchor for the HDD equipment was lowered into the ground directly above the pipeline, rupturing the line and releasing approximately 364 barrels of crude oil into the environment.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.442(a) by failing to carry out a section of its own written damage prevention program.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must 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; and any effect that the penalty may have on its ability to continue doing business; and the good faith of the 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 \$144,000 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$144,000 for Respondent's violating 49 C.F.R. § 195.442(a), by failing to carry out a section of its own written damage prevention program. As discussed above, I found that a Shell contractor failed to follow Section 3.23 of the company's procedure for locating and marking a section of its Houston-to-Houma pipeline, resulting in an accident and release of crude oil into the environment. The company paid the proposed penalty, which serves to close the case with prejudice to Respondent.

Accordingly, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$144,000** for violating 49 C.F.R. § 195.442(a), which amount has already been paid in full.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1, for violating 49 C.F.R. § 195.442(a). 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.

In its Response, Shell did not contest the allegation of violation and stated its intent to address the violation stated in the Notice.⁴ Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.442(a), (**Item 1**), Respondent must revise its damage prevention procedures in the following areas:
 - a. Revise or update the detailed work process for all project work that requires coordination between Shell Right-of-Way Technicians and Shell Projects Personnel to ensure clear roles and responsibilities for line locating and temporary marking of pipeline facilities. Additionally, all roles and responsibilities related to monitoring and/or observation activities shall be reviewed, and any necessary procedural revisions formalized, through a Management of Change process; and

⁴ In its Response, Shell took issue with a statement in the Violation Report that the PHMSA inspector had discovered the violation leading to the Accident. Respondent asserted this statement was incorrect, that the company had actually discovered the violation and reported it to PHMSA, and that the record should be corrected. Since the penalty has been paid and Respondent has not submitted any evidence to support its claim, I am not in a position to modify the record as requested.

- b. Develop a requirement within the Comprehensive Horizontal Directional Drill (CHDD) Plan to provide to Shell contractors. The requirement shall ensure coordination of activities associated with the CHDD Plan. Additionally, ensure that the evaluation of equipment is considered during the project planning phase and subsequent damage prevention activities.
2. Shell shall carry out training for all affected employees to cover the procedural revisions resulting from Item 1 of this Compliance Order, and share the lessons learned from the investigation within the Shell organization affected employees.
3. Shell shall complete Item 1 above no later than 90 days after the issuance of the Final Order and submit the procedures for review and concurrence from PHMSA prior to carrying out the training required by Item 2.
4. Shell shall complete Item 2 above no later than 60 days after the PHMSA approval of the procedures submitted under Item 1.
5. It is requested, not mandated, that Shell maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to R.M. Seeley, Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/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 the Respondent and demonstrating good cause for an extension.

Failure to comply with this Final Order may result in administrative assessment of civil penalties not to exceed \$200,000 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.

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