U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

JUL 0 9 2015

Mr. Tom Jensen
President and CEO
Explorer Pipeline Company
P.O. Box 2650
Tulsa, OK 74101

Re: CPF No. 3-2013-5010M

Dear Mr. Jensen:

Enclosed please find the Order Directing Amendment issued in the above-referenced case. It makes findings of inadequate procedures and requires that Explorer Pipeline Company amend its operating and maintenance procedures. When the amendment of procedures has been completed, as determined by the Director, Central Region, OPS, this enforcement action will be closed. Service of the Order Directing Amendment by certified mail is effective as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

for Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Allan Beshore, Director, Central Region, Office of Pipeline Safety
Mr. Kevin Brown, DOT Administrator, Explorer Pipeline Company
P.O. Box 2650, Tulsa, OK 74101

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	)	
Explorer Pipeline Company,	)	**CPF No. 3-2013-5010M**
Respondent.	)	

ORDER DIRECTING AMENDMENT

On November 7-10, 2011, 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 inspection of the written operations and maintenance procedures of Explorer Pipeline Company (Explorer or Respondent) in Tulsa, Oklahoma.[1]

As a result of the inspection, the Director, Central Region, OPS (Director), issued a Notice of Amendment (Notice) to Respondent on March 26, 2013. In accordance with 49 C.F.R. § 190.206, the Notice alleged that two written procedures were inadequate to assure safe operations and must be amended.[2] The alleged inadequacies concerned Respondent's procedures for documenting the inspection of safety devices, and its procedures for identifying certain environmentally sensitive areas.

Explorer responded to the Notice by letter dated May 1, 2013 (Response). In its Response, Explorer contested the allegations and requested a hearing. Explorer provided a summary of its position and additional materials in two pre-hearing submissions dated October 3, 2013 (First Pre-hearing Submission) and January 17, 2014 (Second Pre-hearing Submission). In accordance with 49 C.F.R. § 190.211, a hearing was held on April 16, 2014, in Kansas City, Missouri, before a Presiding Official from the Office of Chief Counsel, PHMSA. The Presiding Official attended by video teleconference pursuant to § 190.211(c). Explorer submitted a post-hearing summary on May 13, 2014 (Post-hearing Summary).

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[1] Explorer operates approximately 1,800 miles of pipeline transporting refined petroleum products from Texas to states in the Midwest, as reported for calendar year 2013 pursuant to 49 C.F.R. § 195.49.

[2] The Notice was issued in conjunction with a separate Notice of Probable Violation (CPF No. 3-2013-5009). A Final Order concerning that case is being issued separately.

Item 1: The Notice alleged that Respondent's procedures were inadequate with regard to §§ 195.404(c)(3), which states:

> **§ 195.404 Maps and records.**
> (a) . . . .
> (c) Each operator shall maintain the following records for the periods specified . . .
> (3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.
>
> § 195.428 Overpressure safety devices and overfill protection systems.
> (a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year . . . inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent's procedures and forms for documenting inspections of overpressure safety devices were inadequate because they did not require recording the "as found" and "as left" settings of each device. The Notice alleged that recording such information is necessary to determine whether an overpressure safety device is functioning properly.

In its written submissions and at the hearing, Respondent stated that it performs and documents inspections for overpressure safety devices in accordance with the applicable regulations, advisory bulletins, and prior OPS audits. Respondent contested the allegation in the Notice on the ground that recording such information is not required by the agency's regulations or interpretations. Respondent stated that §§ 195.404 and 195.428 do not require documenting "as found" and "as left" settings when inspecting overpressure safety devices, and that PHMSA has never issued an interpretation requiring documentation of these settings. Therefore, Respondent argued, OPS may not require Explorer to perform these activities or have provisions for these activities in its procedures.

OPS personnel at the hearing explained why it is important for operators to record the "as found" and "as left" settings when inspecting overpressure safety devices. Without recording this information during regular inspections, the operator cannot assess whether a set point is drifting or changing after it has been calibrated. A safety device with a drifting set point is not functioning properly. Drifting can lead to the device having an improper set point, causing a pipeline to fail during an overpressure event. Explorer acknowledged at the hearing that if drifting was detected, it would be a safety concern that must be addressed.

In prior enforcement cases, PHMSA has determined that documenting "as found" and "as left" settings is necessary for safe operation in compliance with §§ 195.404 and 195.428 for hazardous liquid pipelines, and §§ 192.709 and 192.739 for natural gas pipelines. For example, in a July

2010 final order, PHMSA determined that an operator's failure to record the before and after device readings when inspecting overpressure safety devices constituted a violation of the gas standards.[3] In May 2004, PHMSA made a similar finding that documenting "as found" and "as left" settings was necessary to demonstrate compliance.[4] Much earlier, in January 2000, PHMSA issued an enforcement letter explaining that "without testing and documenting the [as found set points], there is no track record of the devices' performance to reasonably assure reliable operation of the equipment."[5]

More recently, in April 2013, PHMSA found an operator had violated § 195.404(c)(3) by failing to document if discharge pressure switches and transmitters were functioning properly.[6] A review of the notice of probable violation in that case demonstrates the violation was based on the operator's failure to document the "as found" and "as left" condition of the safety devices.

Despite Respondent's recognition of prior enforcement, the Company argued that OPS "did not produce regulations, statutes or letters of interpretation to support the claim" in the Notice.[7] Respondent argued that the regulations nowhere refer to documentation of "as found" settings, and that operators "cannot comply with non-transparent PHMSA expectations or intentions that are not supported by regulations, statues or letters of interpretation."[8]

A performance-based regulation, such as § 195.428(a), will generally establish a minimum level of safety, which operators must meet or exceed.[9] In this case, operators must annually determine that each pressure safety device is "functioning properly, is in good mechanical condition, and is adequate."[10] Among other things, operators must be able to detect if the set point for an overpressure safety devices is drifting because if that was occurring, the device would not be functioning properly. As the prior enforcement history demonstrates, documenting the "as found" and "as left" condition of safety devices ensures compliance with this requirement.

PHMSA has also issued guidance on this issue. PHMSA's *Operations & Maintenance (O&M) Enforcement Guidance: Part 195 Subpart F* (Dec. 2014) is a guidance document that describes practices used by PHMSA investigators when performing inspections and determining

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[3] Florida Gas Transmission Co., CPF No. 2-2008-1003, Item 3, 2010 WL 6518282 (Jul. 26, 2010). Prior final orders and notices can be viewed at http://www.phmsa.dot.gov/pipeline/enforcement (follow link for enforcement since 2002 and then actions issued by year).

[4] City of Palo Alto, CPF No. 5-2000-0004, Item 3, 2004 WL 6240948 (May 27, 2004).

[5] Colonial Pipeline Co., CPF No. 2-2000-5002C, Item 1A, 2000 WL 35501227 (Jan. 19, 2000).

[6] Buckeye Partners, LP, CPF No. 3-2013-5002, Item 1, 2013 WL 3208128 (Apr. 19, 2013).

[7] Post-hearing Summary at 3.

[8] Post-hearing Summary at 3.

[9] *See* Butte Pipeline Co., CPF No. 5-2007-5008, Item 4, 2009 WL 3190794 (Aug. 17, 2009) (discussing performance-based regulations in the context of ensuring pipeline repairs "are made in a safe manner").

[10] § 195.428(a).

respect to § 195.428, the guidance states that "maintenance records for mechanical pressure relief valves (thermal relief and pressure relief valves) should include . . . as found and as left set point pressure of the device."[12]

Respondent argued that guidance documents are not legally binding and this particular document was never published as a regulatory guideline. Respondent also noted that the document states that it "is not a regulation and creates no new legal obligations." [13]

In this case, the *O&M Enforcement Guidance* creates no new requirement, but provides additional information for use by PHMSA personnel and pipeline operators regarding the steps necessary to ensure safe operation and compliance with the cited regulations. The language in the guidance is consistent with interpretations made through prior enforcement proceedings where PHMSA concluded that operators must record the before and after device readings to determine if safety devices are functioning properly. While the guidance may not foreclose an alternative method of detecting set point drifting, in the present case neither party suggested there was an acceptable alternative available.

For the above reasons, PHMSA concludes there is an important safety reason for Explorer to record "as found" and "as left" settings during inspections to ensure each overpressure safety device is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation.

Having considered the record, PHMSA finds Respondent's procedures were inadequate because they failed to require recording the "as found" and "as left" settings on overpressure safety devices. Pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.206, Respondent is ordered to revise its procedure to address this inadequacy.

Item 2: The Notice also alleged that Respondent's procedures were inadequate with regard to § 195.402(c)(4), 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 . . . .
>
> (c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations . . .

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[12] O&M Enforcement Guidance at 84.

[13] O&M Enforcement Guidance at 2. The introduction to the guidance document in question recognizes further that: "The regulation is controlling. The materials in this document are explanatory in nature and reflect PHMSA's current application of the regulations . . . Alternative approaches are not precluded if they satisfy the requirements of the applicable regulation(s)."

> (4) Determining which pipeline facilities are located in areas that would require an immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned.

The Notice alleged that Respondent's written procedures were inadequate because they failed to identify certain areas that would require an immediate response in the event of a pipeline failure. In particular, the Notice alleged that pipe segments located within the primary levee and adjacent to the banks of the Mississippi River were not identified. The Notice also alleged that the identification procedure did not consider navigable waterways and drinking water resources.

In its written submissions and at the hearing, Respondent explained that it augments its processes for identifying high consequence areas (HCAs) to encompass commercially navigable waterways, highly populated areas, other populated areas, critical public drinking water areas, ecological sensitive areas, and locations where impaired mobility for evacuation or high density population exist.[14]

To clarify its written procedures, Respondent proposed to modify the header of its HCA report to convey that every identified area in the report requires an immediate response under § 195.402(c)(4). At the hearing, the Director agreed this clarification would satisfy the alleged inadequacy.

Accordingly, having reviewed the record, PHMSA finds Respondent's procedures are inadequate with regard to the header of its HCA report. Pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.206, Respondent is ordered to revise its procedures to address this inadequacy.

Within 30 days following receipt of this Order, Respondent must submit amended procedures pursuant to Items 1 and 2, above. Documentation must be submitted for review and approval by the Director, Central Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 901 Locust Street, Suite 462, Kansas City, MO 64106.

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 demonstrating good cause for an extension.

It is requested that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Order and submit the total to the Director. 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 physical changes to pipeline infrastructure, including pipeline replacement and additions.

Failure to comply with this Order may result in the 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.

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[14] Operators identify HCAs under the integrity management regulations at § 195.452.

Under 49 C.F.R. § 190.243, Respondent may submit a petition for reconsideration of this Order Directing Amendment to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, D.C. 20590, no later than 20 days after receipt of the Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The terms of this Order, including the amendment of procedures, remain in effect upon the filing of a petition for reconsideration unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

JUL 0 9 2015
Date Issued