

**DEC 14 2011**

Mr. Michel E. Nelson  
Senior Vice President  
OKTEX Pipeline Company, L.L.C.  
100 West Fifth Street  
Tulsa, OK 74103-4298

**Re: CPF No. 4-2011-1005**

Dear Mr. Nelson:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$35,700. It further finds that OKTEX Pipeline Company L.L.C. has completed the actions specified in the Notice to comply with the pipeline safety regulations. When the civil penalty has been paid, 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  
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety, PHMSA

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164202982368]**

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

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<b>In the Matter of</b>	)	
	)	
<b>OKTEX Pipeline Company, L.L.C.,</b>	)	<b>CPF No. 4-2011-1005</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

From October 18-22, 2010, 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 facilities and records of OKTEX Pipeline Company, L.L.C. (OKTEX or Respondent) in El Paso, Texas. OKTEX is an interstate pipeline company owned and operated by ONEOK Partners, L.P., with interconnects in Oklahoma, New Mexico and Texas.<sup>1</sup>

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated April 19, 2011, an Amended<sup>2</sup> 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 OKTEX violated 49 C.F.R. § 192.739(a)(2) and proposed assessing a civil penalty of \$35,700 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation. The warning items required no further action, but advised the operator that it may be subject to future enforcement action, if OPS finds violation of these provisions in subsequent inspections.

OKTEX responded to the Amended Notice by letter dated March 24, 2011 (Second Response). The company did not contest the allegation of violation, but provided an explanation of its actions, requested that the proposed civil penalty be reduced or eliminated, and provided

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<sup>1</sup> <http://www.oneokpartners.com/Investor/FinancialInformation/SECFilings.aspx> accessed November 2, 2011.

<sup>2</sup> PHMSA issued the first NOPV related to this matter on February 24, 2011. On March 24, 2011, OKTEX's First Response noted that Item 2 of the NOPV cited to §192.743, which does not require capacity calculations and comparison. OKTEX stated that no pressure relief devices exist at the five pressure regulating stations cited in the Item 2 of the February 24, 2011 NOPV. PHMSA responded with an Amended NOPV that replaced the Item 2 violation for §192.743 with a new Item 2 for violation of §192.739. The Second Amended NOPV was considered in the preparation of this Final Order. Both Respondent's February 24, 2011 and May 19, 2011 Responses were considered.

evidence that it took all actions required by the Proposed Compliance Order. Respondent did not request a hearing and therefore has waived its right to one.

### **FINDING OF VIOLATION**

In its Second Response, OKTEX did not contest the allegation in the Notice that it violated 49 C.F.R. Part 192, as follows:

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 192.739(a)(2), which states:

**§ 192.739 Pressure limiting and regulating stations: Inspection and testing.**

(a) Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is—

- (1) . . .
- (2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;

The Notice alleged that Respondent violated 49 C.F.R. § 192.739(a)(2) by failing to determine that its pressure regulating stations were adequate from the standpoint of capacity and reliability of operation for the service in which they were employed. Specifically, the Notice alleged that OKTEX did not perform initial capacity calculations on five pressure limiting devices so that it could determine whether its devices were adequate, as to capacity or reliability. The Notice also alleged that OKTEX failed to use the forms specified by its Operating Procedure for the calculation of the required capacity for these pressure limiting devices.

In its Second Response, OKTEX acknowledged that “copies of the calculations and comparisons done by the previous operator have not been located.”<sup>3</sup> In addition, the Respondent noted that no firm delivery volumes are assigned to its downstream meters, further complicating the required analysis. Therefore, in order to measure required versus actual capacity, OKTEX reviewed 39 months of historical delivery totals and arrived at the conclusion that sufficient capacity exists for these relief devices to protect the facilities to which they are connected.

However, at the time of the inspection, Respondent had not performed this analysis. Therefore, while OKTEX performed required inspections and testing at the intervals required by § 192.739(a), no reliable baseline was established as a comparison point. Therefore, Respondent could not determine adequacy of capacity and operation for these relief devices and therefore was not in compliance with § 192.739(a)(2).

I will consider OKTEX’s request for elimination or modification of the proposed penalty in a subsequent section.

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. § 192.739(a)(2) by failing to

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<sup>3</sup> Second Response, at 3.

determine that five pressure relief devices were adequate from the standpoint of capacity and reliability of operation for the service in which they were employed.

### ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative 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. 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; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of 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.

**Item 2:** The Notice proposed a civil penalty of \$35,700 for Respondent's violation of 49 C.F.R. §193.739(a)(2), for failing to determine that its pressure regulating stations were adequate from the standpoint of capacity and reliability of operation for the service in which they were employed. While it offered further information, Respondent did not contest that it violated Item 2.

Respondent argued that the proposed civil penalty should be either reduced or eliminated for the following reasons:

- (1) [Item 2] did not affect the safety of the public or OKTEX employees;
- (2) No physical changes to the system or delivery rates were made since OKTEX took over operation;
- (3) The new calculations confirm that the regulators have adequate capacity; and
- (4) OKTEX promptly responded when it received notice of the violation.

Admittedly, Respondent's failure to establish a baseline against which to measure subsequent testing and inspections did not ultimately affect the safety of the public or its employees. However, the company never conclusively established that adequate capacity existed, until prompted by PHMSA. OKTEX reasons that, since no fundamental changes to the system or delivery rates occurred since its acquisition of the pipeline in 2003, it was unnecessary to determine a starting point for its pressure limiting devices. However, if baseline calculations were indeed made by the previous operator, OKTEX did not have and was not able to locate them. Respondent's own procedures confirm the importance of establishing this baseline.<sup>4</sup> OKTEX had no way of knowing whether its subsequent tests and inspections demonstrated

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<sup>4</sup> ONEOK procedure OKSop3.160.102, Section 3.10 states: "Calculate the required capacity, or review a previous calculation, of each relief device . . . Review all applicable parameters to ensure new calculations or past calculations are valid . . ." Section 6.1 further states: "Keep relief device capacity calculations done manually for the life of the particular relief situation. Keep verifications of previous calculations until the subsequent year's confirmation is completed . . ." Pipeline Safety Violation Report, at 7.

adequate capacity or reliability, as required by § 192.739(a)(2). As such, it cannot credibly argue that it performed its due diligence, as its inspections were performed in a vacuum, without adequate context. Therefore, even though no consequences to public safety or OKTEX employees were realized, the pipeline safety regulations require confirmation of these kinds of assumptions through concrete records and analysis.

In addition, while OKTEX promptly performed these calculations, they were not performed until after the deficiency was identified by PHMSA's inspectors. Therefore, Respondent's remedial efforts are not adjudged to be in good faith. It did not self report the failure to conduct this analysis until prompted by an inspection.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$35,700 for violation of 49 C.F.R. § 192.739(a)(2).

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to 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-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$35,700 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 district court of the United States.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to the violation cited above. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601.

The Director has indicated that the Respondent has provided the required forms and calculations and PHMSA has verified that Respondent took the following actions specified in the proposed compliance order:

1. Respondent has performed the required analysis and verified that the pressure regulators have adequate capacity to provide reliable service to the downstream facilities.

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice are not included in this Order.

**WARNING ITEMS**

With respect to Items 1 and 3, the Notice alleged probable violations of Part 192 and specifically considered them as warning items. The warnings were for:

49 C.F.R. § 192.475 (**Item 1**) — Respondent’s alleged failure to inspect the internal surface of any pipeline removed, for any reason, for evidence of internal corrosion; and

49 C.F.R. § 192.805 (**Item 3**) — Respondent’s alleged failure to ensure that individuals performing covered tasks are qualified.

In its response, OKTEX presented information showing that it took certain actions to address the cited items. If OPS finds violations of these provisions in a subsequent inspection, Respondent may be subject to future enforcement action.

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

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued