

January 6, 2017

Mr. Robert G. Phillips
Chairman, President and CEO
Crestwood Midstream Partners, LP
700 Louisiana Street, Suite 2550
Houston, TX 77002

Re: CPF No. 1-2015-1026

Dear Mr. Phillips:

Enclosed please find the Final Order issued to your subsidiary, Arlington Storage Company, LLC, in the above-referenced case. It makes findings of violation and assesses a total civil penalty of \$98,100. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Acting Regional Director, Eastern Region, PHMSA, OPS
Ms. Alice Ratcliffe, Pipeline Compliance Manager, Arlington Storage Company, LLC,
801 Cherry Street, Suite 3800, Unit 20, Fort Worth, Texas 76102

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)

)
Arlington Storage Company, LLC,)
a subsidiary of Crestwood Midstream Partners, LP,)

CPF No. 1-2015-1026

)
Respondent.)
_____)

FINAL ORDER

On August 17-19, 2015, pursuant to 49 U.S.C. § 60117, a representative of the New York State Department of Public Service (NYSDPS), acting as agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the records and above-ground piping of Arlington Storage Company, LLC (Arlington or Respondent), at the company's Seneca Lake gas storage facility in Watkins Glen, New York. Arlington, a wholly-owned subsidiary of Crestwood Midstream Partners, LP (Crestwood), currently controls 1.5 billion cubic feet of natural gas storage in upstate New York. Crestwood is a publicly-traded master limited partnership that owns and operates midstream assets located primarily in the Marcellus Shale, Bakken Shale, Delaware Permian Basin, PRB Niobrara Shale, Barnett Shale, Fayetteville Shale and Haynesville Shale areas.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated November 17, 2015, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Arlington had committed various violations of 49 C.F.R. Part 192 and assessing a civil penalty of \$98,100 for the alleged violations.

Crestwood responded to the Notice on behalf of Arlington, by letter dated December 15, 2015 (Response). The company did not contest the allegations of violation but offered additional information in response to the Notice and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

¹ See <http://www.crestwoodlp.com/home/default.aspx>. Current as of 5/20/2016.

FINDINGS OF VIOLATION

Respondent did not contest the following allegations of violation of 49 C.F.R. Part 192:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.705(b), which states:

§ 192.705 Transmission lines: Patrolling.

(a) . . .

(b) The frequency of patrols is determined by the size of the line, the operating pressures, the class location, terrain, weather, and other relevant factors, but intervals between patrols may not be longer than prescribed in the following table:

Class location of line	Maximum interval between patrols	
	At highway and railroad crossings	At other places
1,2	7½ months; but at least twice each calendar year	15 months; but at least once each calendar year
3	4½ months; but at least four times each calendar year	7½ months; but at least twice each calendar year
4	4½ months; but at least four times each calendar year	4½ months; but at least four times each calendar year.

The Notice alleged that Respondent violated 49 C.F.R. § 192.705(b) by failing to conduct patrols of the company’s Seneca West Pipeline at the required frequency. Specifically, the Notice alleged that Arlington’s patrolling records and procedures for highway and railroad crossings from 2013 through 2015 showed Arlington had failed to conduct four patrols at the required frequency. According to the Notice, the patrols in Class 1 and 2 locations that had been conducted on June 4, 2014 and April 13, 2015 exceeded the code requirement by 16 and 85 days, respectively. In addition, the patrols in Class 3 areas that had been conducted on June 11, 2014 and January 21, 2015 exceeded the code requirement by 74 and 47 days, respectively.

In its Response, Arlington did not contest the allegations of violation but requested mitigation of the proposed penalty for several reasons. These arguments will be discussed in the “Assessment of Penalty” section below. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.705(b) by failing to conduct patrols on the Seneca West Pipeline at the required frequency.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.706, which states, in relevant part:

§ 192.706 Transmission lines: Leakage surveys.

Leakage surveys of a transmission line must be conducted at intervals not exceeding 15 months, but at least once each calendar year. However,

in the case of a transmission line which transports gas in conformity with § 192.625 without an odor or odorant, leakage surveys using leak detector equipment must be conducted –

(a) In Class 3 locations, at intervals not exceeding 7½ months, but at least twice each calendar year; . . .

The Notice alleged that Respondent violated 49 C.F.R. § 192.706 by failing to conduct leakage surveys on the Seneca West Pipeline at the required frequency. Specifically, the Notice alleged that Arlington’s leak-survey records and procedures for highway and railroad crossings from 2013 through 2015 showed Arlington had failed to conduct patrols at the required frequency on two occasions. The Class 3 leak surveys performed on June 11, 2014 allegedly exceeded the deadline by 23 days and only one survey, instead of two, had been conducted in calendar year 2014.

In its Response, Arlington did not contest the allegations of violation, but requested mitigation of the proposed penalty for several reasons. These arguments will be discussed in the “Assessment of Penalty” section below. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.706 by failing to conduct leakage surveys on the Seneca West Pipeline at the required frequency.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.709, which states, in relevant part:

§ 192.709 Transmission lines: Record keeping.

Each operator shall maintain the following records for transmission lines for the periods specified:

(a) ...

(c) A record of each patrol, survey, inspection, and test required by subparts L and M of this part must be retained for at least 5 years or until the next patrol, survey, inspection, or test is completed, whichever is longer.

The Notice alleged that Respondent violated 49 C.F.R. § 192.709 by failing to keep records of each inspection and test required by subparts L and M of Part 192 for at least five years or until the next inspection or test is completed, whichever is longer. Specifically, the Notice alleged that Arlington did not have records showing that each transmission-line valve for the Seneca West Pipeline that might be required during an emergency was inspected and partially operated at intervals not exceeding 15 months, but at least once each calendar year.² During the NYSDPS inspection conducted on August 17, 2015, Arlington personnel stated that valve-inspection records for 2014 were missing and could not be located.

In its Response, Arlington did not contest the allegations of violation, but requested mitigation of the proposed penalty for several reasons. These arguments will be discussed in the “Assessment of Penalty” section below. Accordingly, after considering all of the evidence, I find that

² Required under 49 C.F.R. § 192.745(a).

Respondent violated 49 C.F.R. § 192.709 by failing to keep records of each inspection and test required by subparts L and M of Part 192 for at least five years or until the next inspection or test is completed, whichever is longer.

These findings of violation will be considered prior offenses 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 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 \$98,100 for the violations cited above.

As noted above, Respondent did not contest any of the allegations of violation but requested mitigation of all three proposed penalties for several reasons. First, Arlington argued that it was going through a merger process at the time of the violations and that there were "changes in philosophy, leadership and responsibility that ultimately contributed to delays and confusion."³ Second, the company pointed out that the untimely death of a "seasoned supervisor only three (3) months before the August 2015 inspection, created a void of regulatory and compliance knowledge which furthered confusion for employees."⁴

Third, Arlington argued that there were a number of other key personnel losses that led to deficiencies in the timeliness of certain periodic activities and record keeping that would not have otherwise occurred. Fourth, the company argued that Crestwood had taken affirmative steps to address a number of deficiencies as a result of the NYSDPS inspections and had even created a U.S. Department of Transportation (DOT) Compliance Team to oversee the company's compliance regime.

While PHMSA acknowledges that compliance lapses may sometimes occur during changes in management or personnel, applauds Arlington's recent efforts to improve compliance, and understands Crestwood's commitment to the highest level of safety, I am not convinced that any of these factors justifies a reduction in the proposed penalties in this particular case. If anything, changes in ownership and personnel are precisely the sorts of events that routinely occur with many pipeline operators and should be anticipated so that no safety violations occur during such

³ Response, at 1.

⁴ *Id.*

changes. As for the creation of a new DOT Compliance Team and other measures taken by Crestwood to improve compliance, these are laudable efforts but ones that any prudent operator would be expected to take in the wake of PHMSA or NYSDPS inspections and notices of violation.

Each of the proposed penalties are discussed more specifically below.

Item 1: The Notice proposed a civil penalty of \$42,100 for Respondent's violation of 49 C.F.R. § 192.705(b), for failing to conduct patrols of the Seneca West Pipeline at the required frequency. As discussed above, I found that Arlington violated § 192.705(b) and that the company's general arguments for mitigation of the proposed penalty were unpersuasive. This violation involved a failure to conduct necessary patrolling of Respondent's pipeline facilities in a High Consequence Area (HCA), where an accident could potentially affect populated or environmentally sensitive areas. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$42,100 for violation of 49 C.F.R. § 192.705(b).

Item 2: The Notice proposed a civil penalty of \$39,900 for Respondent's violation of 49 C.F.R. § 192.706, for failing to conduct leak surveys on the Seneca West Pipeline at the required frequency. As discussed above, I found that Arlington violated § 192.706 and that the company's arguments for mitigation of the proposed penalty were unpersuasive. This violation involved a failure to conduct leakage surveys of Respondent's pipeline facilities in an HCA, where an accident could potentially affect populated or environmentally sensitive areas. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$39,900 for violation of 49 C.F.R. § 192.706.

Item 3: The Notice proposed a civil penalty of \$16,100 for Respondent's violation of 49 C.F.R. § 192.709, for failing to keep records of each inspection and test required by subparts L and M of Part 192 for at least five years or until the next test is completed, whichever is longer. As discussed above, I found that Arlington violated § 192.709 and that the company's arguments for mitigation of the proposed penalty were unpersuasive. This violation involved a failure to keep proper records of inspections and tests performed in HCAs, where an accident could potentially affect populated or environmentally sensitive areas. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$16,100 for violation of 49 C.F.R. § 192.709.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$98,100**.

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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S. MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$98,100 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.

Under 49 C.F.R. § 190.243, Respondent has the 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 service of the Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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

January 6, 2017

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued