

DEC 16 2010

Mr. Rick Peterson
General Manager
Jayhawk Pipeline, LLC
2000 S. Main Street
McPherson, Kansas 67460

Re: CPF No. 3-2008-5006

Dear Mr. Peterson:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$365,000. 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,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. David Barrett, Director, Central Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0041 0749]

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

In the Matter of)	
)	
Jayhawk Pipeline, LLC,)	CPF No. 3-2008-5006
)	
Respondent.)	
)	

FINAL ORDER

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 an incident involving the pipeline system operated by Jayhawk Pipeline, LLC (Jayhawk or Respondent), in McPherson, Kansas. The investigation arose out of a release of crude oil from Respondent's El Dorado pipeline on August 18, 2006. Jayhawk, a subsidiary of the National Cooperative Refinery Association, operates approximately 1200 miles of crude oil transmission and gathering pipelines in Kansas, Nebraska, Oklahoma, and Texas.¹

As a result of the investigation, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated May 19, 2008, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Jayhawk had violated 49 C.F.R. §§ 195.402, 195.406, and 195.428, and proposed assessing a civil penalty of \$365,000 for the alleged violations.

Jayhawk responded to the Notice by letter dated June 17, 2008 (Response). The company did not contest the allegations of violation, but provided an explanation of its actions and requested that the proposed civil penalty be eliminated. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Jayhawk did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

¹ Jayhawk website, www.jayhawkpl.com, accessed July 19, 2010.

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states in relevant part:

§ 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. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 194.402(a) by failing to follow its written procedures for transferring crude oil from the El Dorado pipeline to a tank at the McPherson, Kansas refinery. Specifically, the Notice alleged that Jayhawk’s dispatcher failed to follow the procedures for aligning the proper valves for delivery of product to the proper tank. On the day of the spill, the Oil Movements Supervisor directed the dispatcher to begin delivery to tank J-6. However, the dispatcher directed the oil to tanks J-5/J-7, and the entry valves for this path were closed. This caused the overpressure condition at the manifold that led to the spill.

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. § 195.402(a) by failing to follow its written procedures for transferring crude oil from a pipeline to a refinery tank.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.406, which states in relevant part:

§ 195.406 – Maximum operating pressure.

(a)

(b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406 by failing to provide adequate controls and protective equipment to maintain pipeline pressure within the required limit. Specifically, the Notice alleged that, before 2001, Respondent rendered its overpressure system inoperable by placing a plate over part of a relief valve installed for overpressure protection. The Notice alleged that this overpressure system remained inoperable through the date of the inspection. 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. § 195.406 by failing to provide adequate controls and protective equipment to maintain pipeline pressure within the required limit.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.406, as quoted above, by permitting the pressure in its pipeline to exceed 110 percent of the established operating pressure limit. Specifically, the Notice alleged that on the day of the spill, Respondent caused the

pressure in the El Dorado pipeline to exceed the permissible pressure by over 100 percent. The established operating pressure of the pipeline at McPherson was 275 psig, meaning that the maximum pressure allowed under § 195.406 was 302.5 psig. The Notice alleged that on the day of the spill, pressure at McPherson reached 609 psig, and reached 680 and 665 psig at two other locations on the pipeline. 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. § 195.406 by permitting the pressure on its pipeline to exceed 110 percent of the maximum operating pressure.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.428, which states in relevant part:

§ 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, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7½ months, but at least twice 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 violated 49 C.F.R. § 195.428 by failing to inspect and test ten pressure relief valves at least once each calendar year. Specifically, the Notice alleged that Respondent failed to inspect ten specified relief valves between 2001 and the date of the inspection. 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. § 195.428 by failing to conduct required inspections of relief valves.

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 \$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.

The Notice proposed a total civil penalty of \$365,000 for the violations cited above. In its Response, Jayhawk argued generally that the entire proposed civil penalty should be eliminated based on its recent efforts to improve safety. First, Jayhawk stated that it installed overpressure protection throughout its system less than sixty days after the spill. Second, Jayhawk stated that its pipeline assessment and repair program had reduced the frequency of spill incidents on its system, and noted that its last pipeline release (as of June 17, 2008, the date of the Response) was on October 27, 2005. Third, Jayhawk stated that in recent years it had committed significant resources to upgrading and improving its stations. These improvements consisted of:

- Pipeline improvements at Schurr station completed in 2006 at a cost of \$585,000;
- Modifications to Valley Center station completed in June 2008 at a cost of \$441,000;
- Modifications at Taloga station that were in progress as of June 2008 and for which an expenditure of \$380,000 had been authorized;
- Modifications at Eubanks station that were in progress as of June 2008 and cost \$585,000; and
- Previously completed assessments and modifications at Burrton, Chase, Hudson, Coffeyville Delivery, and Harper Ranch stations.

Finally, Jayhawk claimed that the proposed penalty exceeded its “budgeted” monthly income and expressed its view that the amount would be better utilized for maintenance projects.

With respect to the corrective actions Jayhawk took on its overpressure protection system after the August 2006 spill, these actions do not support reducing or eliminating the proposed penalty. Pipeline operators are responsible for complying with the pipeline safety regulations at all times. The proposed penalty was based on Jayhawk’s non-compliance with the regulations at the time of the inspection. Jayhawk was obligated to promptly correct conditions that violated the regulations after PHMSA identified them. Jayhawk presented no evidence that it attempted in good faith to comply with the regulations before the violations were identified. Jayhawk’s post-inspection repairs to correct violations are not relevant to a penalty assessment and do not support any change in the proposed penalty.

Second, Jayhawk’s progress in reducing the frequency of pipeline releases does not support reducing or eliminating the proposed penalty. Jayhawk’s own incident reports submitted to PHMSA indicate that Jayhawk’s system experienced nineteen spills from October 27, 2005 to the date of the Response. While many of these spills may be characterized as station releases rather than pipeline releases, this record indicates that Jayhawk has experienced frequent incidents in recent years. While any reduction in the number of pipeline releases is a positive development, given the nature of this incident it does not support reducing or eliminating the proposed penalty.

Third, Jayhawk’s station improvements are a regular part of maintenance. Jayhawk noted in its Response that it had experienced problems with respect to station integrity, and that it was consequently carrying out improvements to its stations. Such improvements are consistent with the general requirements of the pipeline safety regulations but do not support reducing or eliminating the proposed penalty.

Fourth, Jayhawk's claim that the proposed penalty exceeded its "budgeted" monthly income did not demonstrate an inability to pay to justify eliminating the proposed penalty. The regulations require PHMSA to consider "the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business" when assessing a civil penalty. Jayhawk claimed that the proposed penalty exceeded its monthly "budgeted" income, but it provided no evidence to indicate that Jayhawk would be unable to pay the proposed penalty. For a company to demonstrate financial hardship it must provide PHMSA with certified financial statements by which the agency may accurately determine the company's ability to pay but Jayhawk did not do so. Accordingly, Jayhawk did not establish financial hardship in a manner that would support reducing or eliminating the proposed penalty. Finally, Jayhawk's view that the funds that it would use to pay the civil penalty would be better used for pipeline maintenance does not constitute grounds for a penalty reduction. All pipeline operators are obligated to maintain compliance and satisfy their regulatory oversight responsibilities.

Item 1: The Notice proposed a civil penalty of \$84,000 for Respondent's violation of 49 C.F.R. § 195.402. As discussed above, I found that Respondent violated § 195.402 by failing to follow its written procedures for transferring crude oil to a refinery tank. On the day of the spill, Respondent's dispatcher violated the company's procedures by erroneously delivering oil to the wrong tank. The dispatcher directed an oil delivery to the wrong tank, and because the valves to this tank were closed and the overpressure system was disabled, an oil spill occurred. This incident illustrates the importance of following the operations manual, and specifically of closely following instructions regarding oil deliveries to tanks. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$84,000 for violation of 49 C.F.R. § 195.402.

Item 2: The Notice proposed a civil penalty of \$101,000 for Respondent's violation of 49 C.F.R. § 195.406. As discussed above, I found that Respondent violated § 195.406 by failing to provide adequate controls and protective equipment to maintain pipeline pressure within the required limit. Respondent disabled the overpressure protection equipment at the McPherson, Kansas refinery from 2001 until after the August 2006 oil spill. This threatened the safety of employees at the refinery, which is located in a high consequence area (HCA), as well as the environment. Overpressure protection is important to preventing oil spills. In this case, functioning overpressure protection would likely have prevented a spill from occurring. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$101,000 for violation of 49 C.F.R. § 195.406.

Item 3: The Notice proposed a civil penalty of \$84,000 for Respondent's violation of 49 C.F.R. § 195.406. As discussed above, I found that Respondent violated § 195.406 by permitting the pressure in its pipeline to exceed 110 percent of the established operating pressure limit. On the day of the oil spill, the pressure inside Respondent's pipeline system reached a level that was nearly double the maximum pressure permitted by the regulations. The pressure reached this level because the overpressure protection system was disabled, and the high pressure levels led to a release of crude oil. This incident illustrates the importance of ensuring that pressure levels remain within the permitted range, and demonstrates the consequences of allowing excessive

pressure to develop in a pipeline. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$84,000 for violation of 49 C.F.R. § 195.406.

Item 4: The Notice proposed a civil penalty of \$96,000 for Respondent's violation of 49 C.F.R. § 195.428. As discussed above, I found that Respondent violated § 195.428 by failing to conduct annual inspections of ten pressure relief valves between 2001 and the date of the inspection. Regular inspections of overpressure protection devices are crucial to ensuring the safe operation of pipelines. Inspections allow operators to identify and repair problems before incidents, such as oil spills, occur. Respondent's failure to inspect ten pressure relief valves during a period of at least six years in this case illustrates the importance of annual valve inspections. Respondent failed to identify the problem with the overpressure valve that allowed the spill to occur. Had Respondent carried out inspections as required, the spill may have been prevented. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$96,000 for violation of 49 C.F.R. § 195.428.

Based on the discussion above, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$365,000.

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 \$365,000 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. § 190.215, Respondent has the right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, 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. § 190.215. 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued