

April 12, 2023

VIA ELECTRONIC MAIL TO: richard_prior@tcenergy.com

Richard Prior
President, Liquids
TC Oil Pipeline Operations, Inc.
700 Louisiana Street, Suite 700
Houston, Texas 77002

CPF No. 3-2022-025-NOPV

Dear Mr. Prior:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and TC Oil Pipeline Operations, Inc., which was executed on April 11, 2023. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission and acknowledgement of receipt, 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: Consent Order and Consent Agreement

cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA

CONFIRMATION OF 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)	
)	
TC Oil Pipeline Operations, Inc.,)	CPF No. 3-2022-025-NOPV
)	
Respondent.)	
_____)	

CONSENT ORDER

By letter dated October 14, 2022, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) to TC Oil Pipeline Operations, Inc. (TC Oil or Respondent).

In response to the Notice, Respondent requested a hearing on Item 1 (Response). TC Oil also asked for the opportunity to meet informally with PHMSA to discuss Item 1 of the Notice. Respondent and PHMSA (the Parties) subsequently met to discuss the issues raised in the Response. As a result of those discussions, as explained in more detail below, the Parties have agreed to a Consent Agreement, which finds a violation, finds that the terms of the proposed compliance order have been completed, and assesses a reduced civil penalty of **\$259,200**.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Consent Order. TC Oil is hereby ordered to comply with the terms of the Consent Agreement pursuant to its terms. Pursuant to 49 U.S.C. § 60101, *et seq.*, failure to comply with this Consent Order may result in the assessment of civil penalties as set forth in 49 U.S.C. § 60122 and 49 C.F.R. § 190.223.

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

April 12, 2023

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

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

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In the Matter of)	
)	
TC Oil Pipeline Operations, Inc.,)	CPF No. 3-2022-025-NOPV
)	
Respondent.)	
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CONSENT AGREEMENT

From May 12 to May 13, 2020, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.), performed a specialized inspection of TC Oil Pipeline Operations, Inc.'s (TC Oil or Respondent) Lucas delivery facility in Beaumont, Texas, following a crude oil spill that occurred there on May 7, 2020.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated October 14, 2022, a Notice of Probable Violation, Proposed Compliance Order and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that TC Oil committed a violation of 49 C.F.R. Part 195 (Item 1), proposed ordering Respondent to take certain measures to correct the alleged violation, and proposed a civil penalty of \$518,400.

TC Oil responded to the Notice by letter dated November 30, 2022 (Response). The company requested a hearing on Item 1 of the Notice and an informal meeting to discuss the allegation of violation. PHMSA and Respondent (the Parties) subsequently met to discuss the issues raised in the Response. As a result of those discussions and as explained in more detail below, the Parties have agreed to a Consent Agreement, which finds a violation, finds that the terms of the proposed compliance order have been completed and assesses a reduced civil penalty of **\$259,200**.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and will serve the public interest by promoting safety and protection of the environment, pursuant to 49 U.S.C. § 60101, *et seq.* and 49 C.F.R. Part 190, and upon consent and agreement, the Parties hereby agree as follows:

I. General Provisions

1. Respondent acknowledges that as the operator of the pipeline facilities subject to the Notice, Respondent and its referenced pipeline facilities are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Consent Agreement (Agreement), Respondent acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder.

2. After Respondent returns this signed Agreement to PHMSA, the Agency's representative will present it to the Associate Administrator for Pipeline Safety, recommending that the Associate Administrator adopt the terms of this Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement.

3. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals, except for the Dispute Resolution provisions set forth herein. Respondent agrees to withdraw its request for an administrative hearing regarding the Notice upon receipt of the signed Agreement.

4. This Agreement shall apply to and be binding upon PHMSA and Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this Agreement.

5. This Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

6. Nothing in this Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

7. For all transfers of ownership or operating responsibility of Respondent's pipeline system referenced herein, Respondent will provide a copy of this Agreement to the prospective

transferee at least 30 days prior to such transfer. Respondent will provide written notice of the transfer to the Director no later than 60 days after the transfer occurs.

8. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

9. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. Respondent agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Agreement.

10. Except as set forth herein, this Agreement does not constitute a finding of violation of any other federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of a violation of any law, rule, regulation, or requirement, except in a proceeding to enforce the provisions of this Agreement or in future PHMSA enforcement actions.

11. Upon issuance of the Consent Order, the Parties agree to the following terms.

II. Findings of Violation:

12. *Item 1- 49 C.F.R. § 195.579(a)*: The Notice alleged TC Oil failed to investigate the corrosive effect of crude oil in the surge relief piping at the Lucas delivery facility and take adequate steps to mitigate internal corrosion. Respondent does not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.579(a).

13. Item 1 will be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against Respondent for the five (5)-year period following the *Effective Date* of this Agreement.

III. Civil Penalty:

14. *Item 1*: The Notice proposed assessing a civil penalty in the amount of \$518,400 for Item 1. Respondent requested a reduction of the proposed civil penalty and provided mitigating information. PHMSA agrees to a reduced civil penalty based on consideration of additional information provided by Respondent. Specifically, PHMSA finds that there was little or no known environmental damage. Respondent agrees to pay a reduced, total civil penalty in the amount of **\$259,200** for the violation in Item 1, pursuant to the payment instructions at 49 C.F.R. § 190.227(a), to be paid in full no later than 20 days from the *Effective Date* of this Agreement.

IV. Compliance Order:

15. **Item 1:** The Notice proposed certain compliance order actions to address the alleged non-compliance. Since the accident occurred, TC Oil committed to working with PHMSA in investigating the cause of the release, evaluated integrity of surge relief lines, and developed procedures to address internal corrosion at facilities. As such, TC Oil completed the terms required by the proposed compliance order. Therefore, it is not necessary to include the proposed compliance terms in this Consent Agreement.

V. Enforcement:

16. This Agreement is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. § 60122, of up to \$257,664 per violation for each day the violation continues and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not complying with the terms of this Agreement in accordance with the determinations made by the Director, or in accordance with decisions of the Associate Administrator if resolved pursuant to the Dispute Resolution process herein. The maximum civil penalty amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223.

VI. Dispute Resolution:

17. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement, including any decision of the Director under the terms of Section IV. Compliance Order. If Respondent and the Director are unable to informally resolve the dispute within 15 calendar days after the dispute is first raised, in writing, to the Director, Respondent may submit a written request for a determination resolving the dispute from the Associate Administrator for Pipeline Safety, PHMSA. Such request must be made in writing and provided to the Director, counsel for the Central Region, and to the Associate Administrator for Pipeline Safety, no later than 10 calendar days from the 15-day deadline for informal resolution referenced in this paragraph. Along with its request, Respondent must provide the Associate Administrator with all information Respondent believes is relevant to the dispute. Decisions of the Associate Administrator under this paragraph will constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process.

VII. Effective Date:

18. The term "Effective Date," as used herein, is the date on which the Consent Order is issued by the Associate Administrator, PHMSA, incorporating the terms of this Agreement.

VIII. Recordkeeping and Information Disclosure:

19. Unless otherwise required in this Agreement, Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five (5) years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, Respondent

may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA determines release of any information submitted pursuant to this Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

IX. Modification:

20. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

X. Termination:

21. This Agreement will remain in effect until the Civil Penalty in Section III is satisfied, as reasonably and timely determined by the Director. The Agreement shall not terminate until the Director confirms, in writing, that the Agreement is terminated in accordance with this paragraph. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement.

XI. Ratification:

22. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

23. The Parties hereby agree to all findings, conditions, and terms of this Agreement.

[Signature Lines on Following Page]

For TC Oil Pipeline Operations, Inc.:

Richard Prior
President, Liquids

Date

For PHMSA:

Gregory Ochs
Director, Central Region, Office of Pipeline Safety

Date