

**APR 14 2011**

Mr. Larry Davied  
Senior Vice President, Operations and Technical Services  
Magellan Pipeline Company, L.P.  
A subsidiary of Magellan Midstream Partners, L.P.  
One Williams Center  
P.O. Box 22186  
Tulsa, OK 74121-2186

**Re: CPF No. 4-2010-5003**

Dear Mr. Davied:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation, assesses a reduced civil penalty of \$20,000, and specifies actions that must be taken by Magellan Pipeline Company, L.P. to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, 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. Paul Pratt, Associate General Counsel, Magellan Midstream Partners, L.P.

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED [ 7005 1160 0001 0075 8827]**



**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), 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 . . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow the LMP contained in its manual of written procedures. The relevant portion of the LMP states: “As part of the Longhorn Continuing Integrity Commitment, [Magellan] has agreed to implement and be bound by . . . the Mitigation Commitments described in Section 1.2 hereof.”<sup>1</sup> Longhorn Mitigation Commitment (LMC) 39, the pertinent Mitigation Commitment in Section 1.2 of the LMP, states:

At the time [Magellan] submits any proposed changes or modifications to the Longhorn Mitigation Plan for DOT review and approval, the proposed changes or modifications along with [Magellan’s] justifications therefore shall (a) be made available to the public by posting the same on the [Magellan] corporate Internet website and (b) be provided to the General Manager of the Lower Colorado River Authority and to the Mayors of Houston, Austin, and El Paso.<sup>2</sup>

The Notice alleged that Magellan did not comply with LMC 39 when it sent a letter to OPS proposing to change or modify the LMP because it failed to make the proposal available to the public on the company’s website or provide it to the named local authorities at the same time. Specifically, Magellan sent its letter to the Director on December 17, 2009, requesting “PHMSA’s approval to extend the UT inspection timing requirement [in LMC 12] to December, 2010.” The Notice alleged that this request constituted a proposal to change or modify LMC 12 of the LMP. That provision requires Respondent to perform an in-line inspection of the pipeline “no more than 5 years after system startup.” System start occurred on January 27, 2005, making the deadline in LMC 12 for the in-line inspection January 27, 2010.

In its Response, Magellan argued that the company’s December 17, 2009, letter did not constitute a proposal to change or modify the LMP and therefore the company did not need to comply with the requirements in LMC 39. Respondent explained that the letter did not propose a modification, because it did not propose “a permanent change to the [procedures] that becomes incorporated into the [procedures] as a new, lasting, and legally binding standard that is enforceable by the regulator.”

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<sup>1</sup> The LMP, dated September 2000, as amended, consists of detailed commitments and mitigation measures for the Longhorn Pipeline that address environmental and safety concerns raised by Federal agencies and the general public during an environmental assessment of the Longhorn Partners Pipeline system. The LMP is incorporated into Magellan’s manual of written procedures for the operations and maintenance of the Longhorn Pipeline. Respondent is required to comply with such procedures pursuant to 49 C.F.R. § 195.402.

<sup>2</sup> Violation Report, Exhibit A (Longhorn Mitigation Plan excerpt).

I find Magellan's argument unconvincing. The deadline itself is a fundamental part of the requirement to perform the in-line inspection. A proposal to change the deadline, therefore, necessarily equates to a proposal to change that key part of the requirement. For this reason, Magellan's proposal to change the deadline to December 2010, which was submitted for PHMSA review and approval, constituted a proposal to change the LMP. This conclusion is no different under Magellan's own theory of "modification," since any new deadline resulting from the company's request would be "a new, lasting, and legally binding standard that is enforceable by the regulator." Furthermore, it is important to consider the purpose of LMC 39 is to ensure the public and specified parties remain fully informed of any potential changes to the terms of the LMP.

As such, LMC 39 required Magellan to make its proposal available to the public and provide it to the local authorities at the same time the request was submitted to PHMSA for review and approval. The evidence demonstrates Magellan did not comply with this requirement. The company did not post its extension request on the company's website or provide it to the local authorities until January 26, 2010—prior to the deadline for performing the in-line inspection, but more than a month after the request was submitted to PHMSA. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its written procedures specified in LMC 39 for proposing changes to the LMP.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.<sup>3</sup>

### **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. The Notice proposed a total civil penalty of \$51,000 for the violation of § 195.402(a) (Notice Item 1).

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.

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<sup>3</sup> Magellan also contested an allegation in Item 1 of the Notice that it had reduced the availability of public information about the Longhorn pipeline by allowing it to become cumbersome and difficult to find the information on the company's website. In its Response, Magellan indicated that it has made changes to the website to ensure easy access to the information by the public, but argued nevertheless that any reduced availability did not rise to the level of a violation. Since the issue of general availability of information does not directly pertain to the issue of whether or not Magellan complied with LMC 39 on December 17, 2009, this allegation is not considered part of the violation.

Although Respondent contested the allegation of violation, the company did not direct any of its arguments to the civil penalty assessment criteria. That said, as a part of my review pursuant to 49 C.F.R. § 190.213(c), I have determined that the proposed civil penalty for this violation should be reduced.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$20,000.

Payment of the civil penalty must be made within 20 days of receipt of this Final Order. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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, OK 73125; (405) 954-8893.

Failure to pay the \$20,000 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 United States District Court.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Item 1 in the Notice for the violation of 49 C.F.R. § 195.402(a).

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids by pipeline or who owns or operates a hazardous liquid pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations. With respect to the violation of § 195.402(a) (Notice Item 1), Respondent must perform each of the following. To the extent an item has already been performed, submit documentation to the Director demonstrating that such has been completed:

1. Revise Magellan's System Integrity Plan to incorporate the requirements of the LMP, specifically LMC 39, and submit a copy of the revised procedures to the Director.
2. Following development of the procedure in Item 1 of this Compliance Order, revise Magellan's request for extending the deadline in the LMP with respect to LMC 12 and resubmit it to the Director in accordance with LMC 39 and the other items in this Compliance Order. The resubmission must provide a detailed justification for not meeting the original deadline, and developed alternative actions to be taken until the performance of the internal inspection by ultrasonic wall measurement tool in accordance with LMC 12 can be completed.

3. Revise the Longhorn Corporate Internet site to make the LMP and other public information required by the LMP readily apparent and available. Post the revised change request and associated justifications and alternatives developed under this Compliance Order on the Internet site at the same time they are submitted to the Director for review and approval.
4. Notify the entities identified in LMC 39 regarding the status of compliance with LMC 12, and provide to those entities a copy of the revised change request and associated justifications and alternatives to be developed under this Compliance Order at the same time they are submitted to the Director for review and approval.
5. Identify the alternatives and the associated costs for each alternative considered in lieu of meeting the original timing requirements of LMC 12 and submit the alternative cost analysis to the Director.
6. Provide a detailed schedule for the timing of the inspections (and applicable proposed alternatives to the inspections) required under both LMC 12 and LMC 12A for each pipeline segment on the Longhorn System.
7. Upon approval by the Director of the revised change request and associated justification and alternatives to be developed under this Compliance Order, provide monthly updates to the Director regarding the status of approved activities, costs, and schedule for the completion of LMC 12 (and applicable alternatives) and LMC 12A, until such time that the alternatives or the requirements of LMCs 12 and 12A are complete and the Director no longer requires updates be provided.
8. Complete each of the above items and submit necessary documentation to demonstrate compliance within 45 days of receipt of this Final Order. The revised change request, associated justification and alternatives, shall be subject to the review and approval of the Director. The Director will consider any comments from those entities named in LMC 39 in his review and approval determination. Documentation shall be submitted to the Director, Southwest Region, Office of Pipeline Safety, 8701 South Gessner, Suite 1110, Houston, TX 77074-2949.
9. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and report the total cost as follows: (a) total cost associated with preparation and revision of plans and procedures, and performance of studies and analyses; and (b) total cost associated with physical changes, if any, to the pipeline infrastructure, including replacements and additions.

The Director may grant an extension of time to comply with any of the requirements of the Compliance Order upon a written request timely submitted by the Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$100,000 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.

**WARNING ITEM**

With respect to Item 2, the Notice alleged a probable violation of Part 195 and specifically considered this to be a warning item. The warning was for:

49 C.F.R. § 195.402(a) (**Item 2**) – Respondent’s alleged failure to meet the requirements in LMC 12, which required the company to perform an in-line inspection by January 27, 2010. Magellan allegedly failed to provide timely notice to PHMSA that an extension was needed, as the preparations alone for such an in-line inspection would require more than the time between December 17, 2009, when Respondent requested the extension, and the original deadline of January 27, 2010.

In the event that OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. If submitting a petition, 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, and a copy sent to the Chief Counsel, PHMSA, at the same address. The petition must be received within 20 days of service, but may be considered timely if received within 20 days of Respondent’s receipt of this Final Order. The petition must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of the petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. 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