

August 8, 2019

Mr. George J. Damiris
Chief Executive Officer
Holly Energy Partners, LP
2828 N. Harwood, Suite 1300
Dallas, Texas 75201

Re: CPF No. 4-2018-5005

Dear Mr. Damiris:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws three of the allegations of violation, makes other findings of violation, assesses a reduced civil penalty of \$55,200, and specifies actions that need to be taken by Holly Energy Partners Operating, LP, a subsidiary of Holly Energy Partners, LP, 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 effective upon the date of mailing, as 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: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Mark Cunningham, P.E., Senior Vice President – Operations and Engineering, Holly
Energy Partners Operating, LP, Mark.Cunningham@hollyenergy.com

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**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)))))
Holly Energy Partners Operating, LP, a subsidiary of Holly Energy Partners, LP,))))	CPF No. 4-2018-5005
Respondent.)))))

FINAL ORDER

From November 28, 2016, through May 19, 2017, pursuant to 49 U.S.C. § 60117, representatives 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 Holly Energy Partners Operating, LP, a subsidiary of Holly Energy Partners, LP (HEP or Respondent), in New Mexico, Oklahoma, and Texas. The facilities inspected consisted of the following units: (1) Unit #2634 - 156 miles of 6-inch refined products pipeline from Artesia, New Mexico, to El Paso, Texas; (2) Unit #2334 – River & Trust Pipeline; (3) Unit #2644, 8-inch and 12-inch product pipeline originating in Artesia, New Mexico; and (4) Unit #73518 – Roadrunner Pipeline.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated June 20, 2018, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that HEP had committed five violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$227,200 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct one of the alleged violations. The warning items required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

After requesting and receiving an extension of time to respond, HEP responded to the Notice by letter dated August 29, 2018 (Response). HEP contested the allegations and requested a hearing. In its Response, HEP also requested an informal meeting to provide additional documentation and discuss the Notice with the Director prior to a hearing being conducted. On October 4, 2018, PHMSA and HEP met informally to discuss the Notice (Informal Meeting). On October 19, 2018, HEP submitted additional documentation to PHMSA regarding the allegations in the

¹ Pipeline Safety Violation Report (Violation Report), (June 20, 2018) (on file with PHMSA), at 1-2.

Notice. This additional documentation was not available to, or reviewed by, PHMSA inspectors at the time of the on-site pipeline safety inspection. By letter dated December 5, 2018, Respondent withdrew its request for a hearing and thereby authorized the entry of this Final Order without further notice (Withdrawal Letter). Respondent also submitted an additional letter on January 17, 2019 detailing its additional safety actions regarding Item 4 below.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.403(b), which states:

§ 195.403 Emergency response training.

- (a)
- (b) At the intervals not exceeding 15 months, but at least once each calendar year, each operator shall:
 - (1) Review with personnel their performance in meeting the objectives of the emergency response training program set forth in paragraph (a) of this section; and
 - (2) Make appropriate changes to the emergency response training program as necessary to ensure that it is effective.

The Notice alleged that Respondent violated 49 C.F.R. § 195.403(b) by failing to review with personnel their performance in meeting the objectives of the emergency response training program and to make appropriate changes to the emergency response training program as necessary to ensure that it is effective. Specifically, the Notice alleged that HEP failed to provide documentation for the review of emergency personnel performance for calendar years 2014-2016, and failed to comply with its own operations and maintenance (O&M) manual, which required yearly evaluations of emergency personnel.

During the Informal Meeting, HEP submitted additional documentation to PHMSA consisting of 18 exhibits related to emergency response training for the years 2014-2016. The exhibits consist of table-top exercises, questions to evaluate personnel following emergency response training, emergency response scenarios, lessons-learned training, emergency response critiques, recommendations, and other related training documents. The exhibits contained examples of performance reviews and feedback to emergency response personnel to demonstrate the effectiveness of the training.

Accordingly, after considering all of the evidence, I find no violation of § 195.403(b) as alleged in the Notice. Based upon the foregoing, I hereby order that Item 1 of the Notice be withdrawn.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.446(h)(1), which states:

§ 195.446 Control room management.

(a)

(h) *Training*. Each operator must establish a controller training program and review the training program content to identify improvements at least once each calendar year, but at intervals not to exceed 15 months. An operator's program must provide for training each controller to carry out the roles and responsibilities defined by the operator. In addition, the training program must include the following elements:

(1) Responding to abnormal operating conditions likely to occur simultaneously or in sequence;

The Notice alleged that Respondent violated 49 C.F.R. § 195.446(h)(1) by failing to provide controller training for responding to abnormal operating conditions likely to occur simultaneously or in sequence, for calendar years 2014, 2015, and 2016. Specifically, the Notice alleged that HEP could not provide any records regarding controller training except the list of operator qualification (OQ) tasks for the controllers.

During the Informal Meeting, HEP submitted additional documentation to PHMSA consisting of 16 exhibits related to controller training for the years 2014-2016. The exhibits submitted consisted of table top scenarios and questions posed to controllers on abnormal operating conditions (AOCs), annual internet-based AOC trainings, PowerPoint presentations reflecting simultaneously or sequentially occurring AOCs, and other related training documents.

Accordingly, after considering all of the evidence, I find no violation of § 195.446(h)(1) as alleged in the Notice. Based upon the foregoing, I hereby order that Item 2 of the Notice be withdrawn.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(2), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) *Protected pipelines*. You must do the following to determine whether cathodic protection required by this subpart complies with § 195.571:

(1)

(2) Identify not more than 2 years after cathodic protection is installed, the circumstances in which a close-interval survey or comparable technology is practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE SP 0169 (incorporated by reference, *see* § 195.3).

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(2) by failing to identify the circumstances in which a close interval survey (CIS) or comparable technology is necessary to evaluate the adequacy of cathodic protection at the pipe-to-soil interface within two years of the installation of its pipeline. Specifically, the Notice alleged that HEP's Corrosion Supervisor failed to provide CIS data along with the evaluation reports and findings to the integrity specialist for integration in the risk assessment, integrity analysis and assessment plans for each

pipeline. HEP could not show that it had identified the circumstances in which a CIS or comparable technology is practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE SP 0169 not more than 2 years after cathodic protection was installed, as required by § 195.573.

In its Withdrawal Letter, HEP stated that it no longer contested this Item. In January 2019, HEP also submitted information documenting its subsequent (post-PHMSA inspection) program improvements regarding CIS.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(a)(2) by failing to identify the circumstances in which CIS or comparable technology is necessary to evaluate the adequacy of cathodic protection at the pipe-to-soil interface within two years of the installation of each pipeline.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.577(a), which states:

§ 195.577 What must I do to alleviate interference currents?

(a) For pipelines exposed to stray currents, you must have a program to identify, test for, and minimize the detrimental effects of such currents.

The Notice alleged that Respondent violated 49 C.F.R. § 195.577(a) by failing to identify, test for, and minimize the detrimental effects of interference current in sufficient detail to demonstrate the adequacy of corrosion-control measures or that corrosion requiring control measures does not exist. Specifically, the Notice alleged that although HEP's records of annual cathodic-protection surveys document interference current readings along with the annual pipe-to-soil potential readings, HEP personnel were unable to identify the threshold limit of interference for current readings that would trigger further investigation, and did not know if the cathodic-protection measurements encountered interference currents.

During the Informal Meeting, HEP submitted additional documentation to PHMSA consisting of seven exhibits related to HEP's program to mitigate interference currents. The exhibits consisted of AC coupon listings for all of the units inspected, as well as procedures for interference and protection, interference maintenance and mitigation, and electrical isolation monitoring and maintenance. HEP also submitted interference current and AC threat assessment studies on the Texas and New Mexico pipeline systems. These studies were completed prior to the commencement of PHMSA's inspection.

Accordingly, after considering all of the evidence, I find no violation of § 195.577(a) as alleged in the Notice. Based upon the foregoing, I hereby order that Item 6 of the Notice be withdrawn.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.583(b)-(c), which state:

§ 195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion

(b) During inspections you must give particular attention to pipe at soil-

to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(c) If you find atmospheric corrosion during an inspection, you must provide protection against the corrosion as required by § 195.581.

The Notice alleged that Respondent violated 49 C.F.R. § 195.583(b)-(c), by failing to give particular attention to certain areas during atmospheric corrosion inspections and protecting against the atmospheric corrosion of the station piping and the breakout tank terminal. Specifically, the Notice alleged that HEP's Wichita Falls Tank Terminal showed visual evidence of severe atmospheric corrosion in the tank farm and pump station piping, and in the tank shell, tank bottom and dike areas. PHMSA also observed the following: pitted corrosion at the lower part of the shell; paint that had peeled off; a tank bottom and foundation that was completely covered in soil; vegetation that surrounded the tank bottom and foundation; a chime that had completely or partially disappeared or corroded; and irregular grading of the dike area.

In its Withdrawal Letter, HEP stated that it does not contest this Item.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.583(b)-(c) by failing to give particular attention to certain areas during atmospheric corrosion inspections and protecting against the atmospheric corrosion of the station piping and the breakout tank terminal.

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.² 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; 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 \$227,200 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$67,000 for Respondent's violation of 49 C.F.R. § 195.403(b), for failing to review with personnel their performance in meeting the objectives of the emergency response training program and to make appropriate changes to the emergency

² These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223; Revisions to Civil Penalty Amounts, 83 Fed. Reg. 60732, 60744 (Nov. 27, 2018).

response training program as necessary to ensure that it is effective. As discussed above, I have withdrawn this alleged violation. Therefore, the proposed penalty is withdrawn.

Item 2: The Notice proposed a civil penalty of \$67,000 for Respondent's violation of 49 C.F.R. § 195.446(h)(1), for failing to provide controller training for responding to abnormal operating conditions likely to occur simultaneous or in sequence, for calendar years 2014, 2015, and 2016. As discussed above, I have withdrawn this alleged violation. Therefore, the proposed penalty is withdrawn.

Item 4: The Notice proposed a civil penalty of \$55,200 for Respondent's violation of 49 C.F.R. § 195.573(a)(2), for failing to identify the circumstances in which CIS or comparable technology is necessary to evaluate the adequacy of cathodic protection at the pipe-to-soil interface within two years of the installation of each pipeline. On January 17, 2019, HEP submitted a letter to PHMSA stating that it did not contest the proposed civil penalty for this item. Although HEP did not contest the alleged violation or associated proposed civil penalty, it did provide PHMSA with additional information regarding program improvements to its practices for CIS. Although not a mitigating factor in assessing a civil penalty for a violation of the pipeline safety regulations, I note that HEP has improved its CIS program to address the violation detailed in Item 4. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$55,200 for violation of 49 C.F.R. § 195.573(a)(2).

Item 6: The Notice proposed a civil penalty of \$38,000 for Respondent's violation of 49 C.F.R. § 195.577(a), for failing to identify, test for, and minimize the detrimental effects of the interference current in sufficient detail to demonstrate the adequacy of corrosion-control measures or that corrosion requiring control measures does not exist. As discussed above, I have withdrawn this alleged violation. Therefore, the proposed penalty is withdrawn.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total reduced civil penalty of **\$55,200**.

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 \$55,200 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 Item 7 in the Notice for a violation of 49 C.F.R. § 195.583(b) and (c). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a 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:

1. With respect to the violation of § 195.583(b)-(c) (**Item 7**), Respondent must conduct inspections to comply with the code requirements of § 195.583 in accordance with its procedures, and must provide protection against the corrosion as required by § 195.581 to include external corrosion on tanks, tank bottoms and concrete foundations.
2. Respondent must submit documentation evidencing completion of paragraph 1 of this Compliance Order to the Director, Southwest Region.
3. Respondent must complete the requirements of paragraphs 1 and 2 of this Compliance Order within 180 days following receipt of the Final Order.

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

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), 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 ITEMS

With respect to Items 3 and 5, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

- 49 C.F.R. § 195.452(j)(2) (**Item 3**) — Respondent's alleged failure to document the process for evaluating pipeline integrity to ensure all of the required risk

factors are accounted for and to ensure the effectiveness of the continual evaluation process; and

49 C.F.R. § 195.573(d) (**Item 5**) — Respondent's alleged failure to inspect each cathodic protection system used to control corrosion on the bottom of its above-ground breakout tanks to ensure that operation and maintenance of the systems are in accordance with API RP 651 (incorporated by reference, *see* § 195.3).

Under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred. I note for the record, however, that with regard to Item 3, HEP submitted additional documentation including risk analysis reports and annual integrity management comparisons from 2014 through 2016, which the Director found acceptable.

If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a 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. The other terms of the order, including corrective action, remain in 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.

August 8, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued