



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

September 11, 2020

VIA ELECTRONIC MAIL TO: melanie.little@magellanlp.com

Ms. Melanie A. Little
Senior Vice President, Operations and Environmental, Health, Safety & Security
Magellan Midstream Partners, LP
One Williams Center
Tulsa, Oklahoma 74172

Re: CPF No. 4-2020-5009

Dear Ms. Little:

Enclosed please find the Final Order issued to Magellan Terminals Holdings, LP, in the above-referenced case. It makes one finding of violation and assesses a reduced civil penalty of \$124,400. 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 electronic mail is effective upon the date of transmission as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

**ALAN KRAMER
MAYBERRY** Digitally signed by ALAN
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Date: 2020.09.11
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Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Mary L. McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Michael N. Mears, President and Chief Executive Officer, Magellan Midstream
Partners, LP, mike.mears@magellanlp.com
Mr. Mark Materna, Director - Pipeline Integrity, Magellan Midstream Partners, LP,
mark.materna@magellanlp.com

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

**Magellan Terminals Holdings, LP,
a subsidiary of Magellan Midstream Partners, LP,**

Respondent.

CPF No. 4-2020-5009

FINAL ORDER

Between April 15-19, and June 3-7, 2019, 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 on-site pipeline safety inspection of the facilities and records of Magellan Terminals Holdings, LP's¹ (Magellan or Respondent) Breakout Tank #2533 located in Cushing, Oklahoma, following an accident that allegedly occurred on December 18, 2018. Magellan operates four 250,000 bbl gross volume cone roof tanks and associated station piping and equipment in Cushing, Oklahoma.²

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated May 12, 2020, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Magellan had violated 49 C.F.R. § 195.202 and proposed assessing a civil penalty of \$213,268 for the alleged violation.

Magellan responded to the Notice by letter dated June 15, 2020 (Response). The company did not contest the allegation of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

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

¹ Magellan Terminals Holdings, LP is a subsidiary of Magellan Midstream Partners, LP, *see* <https://sec.report/Document/0001126975-20-000047/exhibit21201910-k.htm> (identifying subsidiaries of Magellan Midstream Partners, LP as of December 31, 2019) (last accessed September 9, 2020).

² Pipeline Safety Violation Report, dated May 12, 2020 (Violation Report), at 1 (on file with PHMSA).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.202, which states:

§ 195.202 Compliance with specifications or standards.

Each pipeline system must be constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.202 by failing to construct its Breakout Tank #2533, located in Cushing, Oklahoma, in accordance with its written *Specification For Aboveground Atmospheric Storage Tanks Rev 9, Date 1-25-2017*, and in accordance with the requirements of § 195.132(b)(3), both of which contain certain requirements for vacuum tests on bottom lap welds for aboveground breakout tanks. Specifically, the Notice alleged that an accident investigation of tank #2533, which was placed into service on December 16, 2018, and had a failure two days later, led to the discovery of a pinhole leak on a bottom plate weld seam caused by a localized inadequate penetration weld defect. Following the accident, Magellan conducted vacuum box retesting of the bottom plate welds to determine if there were more defects that had not been found and repaired during the construction. The vacuum box re-testing revealed that an additional 79 bottom plate welds failed the tests. The company's detailed written specifications, *Specification For Aboveground Atmospheric Storage Tanks Rev 9, Date 1-25-2017*, requires the welds to be examined by vacuum box testing at the time of construction. The accident investigation and post-accident testing of the welds allegedly indicated that the vacuum box testing was performed, but failed to identify approximately 80 defective welds on the tank bottom; therefore, the testing was insufficient to follow the company's own written specifications.

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. § 195.202 by failing to construct its Breakout Tank #2533, located in Cushing, Oklahoma, in accordance with its own written specifications, and in accordance with the requirements of § 195.132(b)(3).

This finding of violation will be considered a prior offense 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.³ 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

³ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

penalty of \$213,268 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$213,268 for Respondent's violation of 49 C.F.R. § 195.202, for failing to construct its Breakout Tank #2533, located in Cushing, Oklahoma, in accordance with its own written specifications, and in accordance with the requirements of § 195.132(b)(3). In its Response, Magellan stated that certain information contained in the Case File and used to calculate the proposed civil penalty was incorrect. Specifically, Magellan stated that the actual release volume from the incident was 1.00 barrel of crude oil, of which 0.50 barrel was recovered, not 1,000 barrels released with 950 barrels recovered, as stated in the Civil Penalty Worksheet. Magellan relied on the Final 7000-1 Report, date July 9, 2019, in support. In addition, Magellan stated that the violation occurred prior to November 27, 2018, not after as alleged in the Civil Penalty Worksheet. For violations occurring prior to November 27, 2018, but before July 31, 2019, the maximum total penalty for a single violation is \$213,268, while a violation that occurred between November 2, 2015, and November 27, 2018, carries a maximum penalty for a single violation of \$209,002. In support, Magellan relied on the vacuum box testing report showing that the violation (failure to follow its procedures for vacuum testing) occurred on June 29, 2018. Magellan did not contest the proposed civil penalty calculation on any of the other assessment criteria used to calculate the proposed civil penalty in this case. The Director conceded Magellan's corrections to the record and recommended that the penalty be reduced accordingly.

Upon review of the record and the Civil Penalty Worksheet, I find it is appropriate to reduce the proposed penalty under 49 C.F.R. § 190.225(b)(2) in consideration of such other matters as justice may require. Specifically, the proposed penalty was based largely on the fact that this accident was considered a reportable incident under 49 C.F.R. § 195.50. However, since the incident involved a spill of only 1.00 barrel of oil, of which 0.50 barrel was recovered, and the amount spilled was similar to amounts that would not be considered reportable under § 195.50, I find it is appropriate in this case to reduce the penalty to an amount that would ordinarily be assessed for a non-reportable incident, or \$124,400.⁴

Based upon the foregoing, I assess Respondent a reduced civil penalty of **\$124,400** for violation of 49 C.F.R. § 195.202.

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 \$124,400 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

⁴ Respondent also objected to the proposed penalty amount due to the date that the violation occurred. Since that date only affects a proposed penalty amount when it involves a maximum per-day penalty, the date becomes immaterial when the maximum penalty is not reached.

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 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 the Final Order by Respondent. Any petition submitted must 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. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. 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.

ALAN KRAMER
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Alan K. Mayberry
Associate Administrator
for Pipeline Safety

September 11, 2020

Date Issued