



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

DEC 11 2006

**RECEIVED**

**DEC 15 2006**

Ms. Anna Black  
President  
Key Pipelines LTD  
355 Ashland Loop Road  
Ashland, Oregon 97520

Re: CPF No. 5-2005-5016

Dear Ms. Black:

Enclosed is the Final Order issued by the Acting Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$7,500. The Final Order also specifies actions to be taken to comply with the pipeline safety regulations and revision of certain operating and maintenance procedures/plans. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the Compliance Order and Amendment of Procedures are completed, as determined by the Director, Western Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds  
Pipeline Compliance Registry  
PHMSA-Office of Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, P.E., Director, Western Region, PHMSA

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

**DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, DC 20590**

\_\_\_\_\_ )  
**In the Matter of** )

**Key Pipelines LTD,** )

**Respondent** )  
\_\_\_\_\_ )

**CPF No. 5-2005-5016**

**FINAL ORDER**

Between November 22 and 23, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration's (PHMSA's)<sup>1</sup> Office of Pipeline Safety conducted an on-site pipeline safety inspection of Respondent's Integrity Management Program (IMP) at your offices in Wheatland, Wyoming. As a result of the inspection, the Director, Western Region, PHMSA, issued to Respondent, by letter dated March 9, 2005, a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$10,000 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its procedures/plans.

After requesting and receiving an extension of time to respond, Respondent responded to the Notice by letter dated May 11, 2005 (Response). Respondent responded to many of the allegations but did not contest some of the Notice Items. Respondent did not request a hearing, and therefore has waived its right to one.

**FINDINGS OF VIOLATION**

**Item 1(a)** in the Notice alleged Respondent violated 49 C.F.R. § 195.452(b)(1) by failing to develop a written IMP by February 18, 2003 as the regulation requires of an operator of a

<sup>1</sup> Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) succeeded Research and Special Programs Administration as the agency responsible for regulating safety in pipeline transportation and hazardous materials transportation. See, section 108 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). See also, 70 Fed. Reg. 8299 (February 18, 2005) re delegating the pipeline safety authorities and functions to the PHMSA Administrator.

Category 2 pipeline that could affect a high consequence area (HCA). During the IMP inspection, records indicated that the written IMP was initially completed in April 2004, which exceeds the mandated Category 2 pipeline deadline of February 18, 2003 by approximately thirteen months.

In its Response, Respondent contends that although its IMP was not formalized until April 2004, the plan was being implemented prior to its formalization. However, Respondent did not provide any evidence to support its claim that its IMP plan was developed prior to its formalization.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.452(b)(1) in the Notice.

**Item 1(b)** in the Notice alleged Respondent violated 49 C.F.R. § 195.452(b)(2) by failing to identify pipeline segments that could affect an HCA by November 18, 2002 as the regulation requires of an operator of a Category 2 pipeline. At the time of the IMP inspection, Respondent was unable to present any documentation showing that it had completed segment identification before the November 18, 2002 due date for a Category 2 pipeline, exceeding the mandated deadline by approximately 17 months.

In its Response, Respondent stated that when the plan was formalized in April 2004, it determined that it would not be necessary to distinguish segments on its single pipeline and integrity testing would be conducted for compliance on that one line.

The rule requires that segments that could affect an HCA be identified as part of the IMP regardless of the size of the system or the extent of the integrity testing (assessment). These areas require a higher level of testing and remediation.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.452(b)(2) in the Notice.

**Item 4** in the Notice Amendment alleged Respondent violated 49 C.F.R. § 195.452(e) by failing to complete a risk analysis of its pipeline segments that could affect an HCA to determine baseline and continual integrity assessment schedules as the regulation requires of a pipeline operator. At the time of the IMP inspection, Respondent had not yet completed a risk analysis for this pipeline.

In its Response, Respondent stated that it will do a comprehensive risk analysis in conjunction with the baseline assessment for its pipeline.

A baseline assessment plan (BAP) is a required part of a complete IMP that should have been in place February 18, 2003. A required part of a BAP under 195.452(c) is an evaluation of risk factors to establish an assessment schedule. Respondent did not provide supporting documentation that it has completed such an evaluation.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.452(e) in the Notice.

**Item 5(b)** in the Notice alleged Respondent violated 49 C.F.R. § 195.452(f)(1) by failing to have a process in its IMP plan to identify segments that could affect HCAs.

In its Response, Respondent stated that it had determined that pipeline segments were not necessary.

49 C.F.R. § 195.452 does not allow an operator to decide whether or not pipeline segments need to be determined for its pipeline. Segments were required to have been delineated by November 18, 2002.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.452(f)(1) in the Notice.

**Item 11** in the Notice alleged Respondent violated 49 C.F.R. § 195.452(i)(2) by failing to evaluate the consequences associated with a pipeline release that could affect an HCA in determining preventive and mitigative future actions. It appeared that Respondent had incorrectly estimated the volume that could drain from its pipeline should a leak occur at the end of its pipeline in Guernsey, Wyoming. Respondent assumed that the pipeline would only drain from the first high point upstream from Guernsey, Wyoming, which is only about 2000 lineal feet of pipe. However, in reviewing the topography of this pipeline, it appears that where it crosses a divide approximately five miles from the Dwyer station, the pipeline generally drops about 550 vertical feet in eleven miles. Therefore, it appears that the drain down volume for this pipeline would exceed the volume contained in the 2000 lineal feet of pipe that is indicated in the IMP.

Respondent did not contest this item and stated that a detailed analysis of the potential drainage volume from the "worst case" release will be incorporated into the IMP.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.452(i)(2) in the Notice.

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 a 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.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require. The Notice proposed a total civil penalty of \$10,000 for the violations.

**Item 1(a)** of the Notice proposed a civil penalty of \$5,000 for violation of 49 C.F.R. § 195.452(b)(1), as more fully described in the Notice and as discussed above, in that Respondent failed to develop a written IMP by February 18, 2003 as the regulation requires of an

operator of a Category 2 pipeline that could affect an HCA. In its Response, Respondent contends that although its IMP was not formalized until April 2004, the plan was being implemented prior to its formalization. However, Respondent did not provide any evidence to support its claim that its IMP plan was developed prior to its formalization. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for the violation.

**Item 1(b)** of the Notice proposed a civil penalty of \$5,000 for violation of 49 C.F.R. § 195.452(b)(2), as more fully described in the Notice and as discussed above, in that Respondent failed to identify pipeline segments that could affect an HCA by November 18, 2002 as the regulation requires of an operator of a Category 2 pipeline. In its Response, Respondent stated that when the plan was formalized in April 2004, it determined that it would not be necessary to distinguish segments on its single pipeline and integrity testing would be conducted for compliance on that one line. The rule requires that segments that could affect an HCA be identified as part of the IMP regardless of the size of the system or the extent of the integrity testing (assessment). These areas require a higher level of testing and remediation. Accordingly, having reviewed the record and considered the assessment criteria under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I assess Respondent a civil penalty of \$2,500 for the violation.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$7,500. Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-300), P.O. Box 25082, Oklahoma City, OK 73125.

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-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$7,500 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 Items 4, 5b, and 11 in the Notice.

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. Respondent must-

1. With respect to Item 4 of the Notice, complete a risk analysis of its pipeline and associated facilities. An evaluation of Respondent's risk analysis risk factors must be used-
  - a. To help explain Respondent's choice of its baseline assessment method, and
  - b. In the establishment of its assessment schedule;
2. With respect to Item 5(b) of the Notice, Respondent must include a segment identification process in its IMP. Respondent's segment identification process must-
  - a. Include sources to be used for making HCA determinations such as National Pipeline Mapping System (NPMS), etc.,
  - b. Include guidance for the periodic reviews of HCA sources to ensure that segments reflect any HCA changes or additions,
  - c. Ensure Respondent's each segment that either directly intersects an HCA or that affects an HCA is identified by beginning and ending points, and
  - d. Include an overland spread analysis and water transport analysis. These analyses must be used to determine the beginning and ending points of the segments that could affect the Guernsey, Wyoming Other Populated Area HCA and possibly any HCAs downstream of Guernsey,
  - e. Include an air dispersion analysis. Results from this analysis shall be used for determining if there are any additional segments that could affect HCAs, and
  - f. Include an objective analysis of its Dwyer Pump Station facilities, including the breakout tank, to determine whether this facility will affect an HCA or not;
3. With respect to Item 11 of the Notice, Respondent must conduct a rigorous drain down volume analysis for its pipeline at the North Platte River crossing and at Guernsey, Wyoming. Respondent must incorporate this rigorous drain down volume analysis for its pipeline into its IMP;
4. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Director, Western Region, PHMSA. Costs shall 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;  
and

5. Within 60 days of receipt of the Final Order, submit documentation of procedures, costs and evidence of actions taken to the Director, Western Region, Pipeline and Hazardous Materials Safety Administration, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228. Please refer to CPF No. 5-2005-5016 on any correspondence or communication in these matters.

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

Failure to comply with this Order may result in the 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.

### **AMENDMENT OF PROCEDURES**

Items 2(a-b), 3, 5(a), 6, 7(a-c), 8, 9(a-c), 10, 12(a-b), and 13 of the Notice alleged inadequacies in Respondent's procedures/plans and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. § 195.452.

With respect to Notice Item 6, Respondent provided information, which Director, Western Region, PHMSA, reviewed, that its IMP states that the risk analysis team will be made up of qualified people. Accordingly, based on the results of this review and in light that Notice Item 6 was generated from protocol 5.07, which is no longer a protocol question, I find no need exists to issue an Order Directing Amendment with respect to Item 6.

Respondent did not contest the Items 9(a-c), 12 (a-b), and 13 in the Notice of Amendment. With respect to Notice Items 2(a-b), 3, 5(a)<sup>2</sup>, 7(a-c), 8, and 10, although Respondent provided information and/or explanation to the Director, Western Region, PHMSA, the information/explanation(s) provided does(do) not address all of the inadequacies described in the Notice. Accordingly, I find that Respondent's procedures as described in the Notice are inadequate to ensure safe operation of its pipeline system. Pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. §190.237, Respondent is ordered to make the following revisions to its procedures:

1. Amend its BAP to include an explanation of the processes used in determining its use of Subpart E pressure test as the baseline assessment method (Notice Item 2(a));
2. Amend its IMP to include an evaluation of risk factors for establishing an assessment schedule (Notice Item 2(b));
3. Amend its IMP to ensure that supporting justifications for revisions to its IMP are documented (Notice Item 3);

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<sup>2</sup> Respondent did not provide any amended maps as evidence.

4. Amend its IMP to show the drinking water HCA east of Guernsey, Wyoming that is shown on the NPMS (Notice Item 5(a));
5. Amend its IMP to either refer to, or provide guidance for, determining when anomalous conditions exist through information analysis of close interval surveys, potential third party strikes, etc. (Notice Item 7(a));
6. Amend its IMP to provide guidance for corrective actions to be taken when anomalous conditions are discovered through information analysis (Notice Item 7(b));
7. Amend its IMP to include the repair criteria listed in 49 C.F.R. § 195.452(h)(4) (Notice Item 7(c));
8. Amend its IMP to include specific guidance to periodically review and recommend future assessment methods (Notice Item 8);
9. Amend its IMP to include a process for identifying additional preventive and mitigative actions to protect HCAs in its IMP. Respondent's preventive and mitigative action identification process must include consideration of risk and must cover a broad spectrum of alternatives. Risk factors must play a role in determining additional preventive and mitigative actions. Respondent's preventive and mitigative action identification process must include preventive and mitigative actions taken to date (Notice Item 9(a));
10. Amend its IMP to include a process to evaluate Respondent's leak detection capabilities. The process must, at least, consider the following factors: length and size of the pipeline, type of product carried, the pipeline's proximity to an HCA, the swiftness of leak detection, location of nearest response personnel, leak history, and risk analysis results (Notice Item 9(b));
11. Amend its IMP to include a process to determine if emergency flow restriction devices could protect an HCA in the event of a hazardous liquid pipeline release. This determination must at least consider the following factors: the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, the pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, topography between the pipeline segment and the HCA, and benefits expected by reducing the spill size (Notice Item 9(c));
12. Amend its BAP to include qualifications, roles, and responsibilities of those who will be reviewing the results of its baseline assessment as well as any future assessments (Notice Item 10);

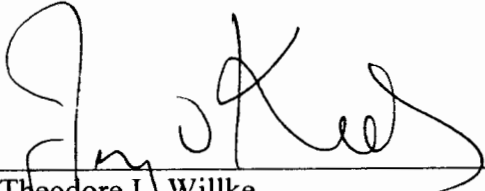


13. Amend its IMP to state that if it is going to use an engineering justification to exceed an assessment interval, it must notify PHMSA 270 days before the end of the five-year (or less) interval of the justification for a longer interval, and additionally it will propose an alternative interval (Notice Item 12(a));
14. Amend its IMP to state that if it plans to have a longer assessment interval because of the unavailability of technology it must notify PHMSA 180 days before the end of the five-year (or less) interval that it may require a longer assessment interval, and in addition it will provide an estimate of when the assessment can be completed (Notice Item 12(b));
15. Amend its IMP to state that if technology other than pressure testing or in-line inspection is planned, notification to PHMSA is required at least 90 days before conducting the assessment (Notice Item 13); and
16. Within 30 days following receipt of this Order, submit the amended procedures to the Director, Western Region, PHMSA.

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

Failure to comply with this Order Directing Amendment may result in the administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in the referral the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). 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 and amendment of procedures, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective on receipt.

  
 Theodore L. Willke  
 Acting Associate Administrator  
 for Pipeline Safety

DEC 11 2009

Date Issued