

May 20, 2019

Mr. Dan Borgen
President and Chief Executive Officer
USD Partners, LP
811 Main Street, Suite 2800
Houston, Texas 77002

Re: CPF No. 5-2016-6007

Dear Mr. Borgen:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and finds that USD Partners, LP has completed the actions specified in the Notice to comply with the pipeline safety regulations. Therefore, this case is now 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: Mr. Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA
Mr. Keith Benson, General Counsel, USD Partners, LP

CERTIFIED MAIL - RETURN 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)

USD Partners, LP,)

Respondent.)
_____)

CPF No. 5-2016-6007

FINAL ORDER

From April 11 through 14, 2016, 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 Casper Crude to Rail facilities and records of USD Partners, LP (USDP or Respondent), in Casper, Wyoming. The Casper Crude to Rail facility is a 24-inch diameter pipeline that transports crude oil from the Spectra Energy storage facility to the Casper Terminal, a rail facility located approximately six miles away. The entire pipeline lies within a high consequence area.¹

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated October 17, 2016, a Notice of Probable Violation 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 USD Partners, LP had committed three violations of 49 C.F.R. Part 195 and proposed ordering Respondent to take certain measures to correct one of the alleged violations. The two warning items required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

USDP responded to the Notice by letter dated January 4, 2017 (Response).² Respondent contested the allegation associated with the Proposed Compliance Order and requested a hearing on that item. A hearing was subsequently held via telephone conference on July 13, 2017, before a Presiding Official from the Office of Chief Counsel, PHMSA. At the hearing, Respondent was represented by counsel.

¹ Pipeline Safety Violation Report (Violation Report) (Oct. 14, 2016) (on file with PHMSA), at 1.

² On November 16, 2016, USDP requested a 45-day time extension to respond to the Notice, which was granted by PHMSA on December 1, 2016.

FINDING OF VIOLATION

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a)...

(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(13) Periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13) by failing to periodically review the work done by its personnel to determine the effectiveness of the procedures used in normal operation and maintenance and take corrective action where deficiencies are found. Specifically, the Notice alleged that USDP failed to adequately review the effectiveness of its valve inspection procedures in that it used a 5-step Operator Qualification Task Specific Field Evaluation Form CT-22 for this purpose when it should have used a 19-step procedure for valve inspections found in section 11.3 of the manual.

In its Response and during the hearing, USDP explained that its normal practice was to conduct the periodic review of the work done by its personnel to determine the effectiveness of the procedures and correct any deficiencies on an annual basis and because the OPS inspection occurred at the mid-point of that annual period, it thought the OPS inspector was reviewing the field qualifications and performance of its valve inspection personnel. Respondent stated that because of this misunderstanding, it provided the 5-step Operator Qualification Task Specific Field Evaluation form to the inspector.³ USDP also pointed out that it had conducted an annual review of the operations and maintenance manual under § 195.402(a) on November 9, 2016, and that no revisions to the valve inspection procedures were made as a result.⁴

During the hearing, OPS noted that section 1.9 of USDP's manual entitled "Operating Personnel Procedure Reviews" required Respondent to utilize Form 20.1 in documenting reviews conducted to determine the effectiveness of the procedures used by its personnel. OPS stated that during the inspection, when Respondent was asked for documentation of the reviews conducted to determine the effectiveness of the valve inspection procedures, Respondent's personnel stated in response that Form CT-22 was being used for this purpose.⁵ With respect to

³ USDP acquired the Casper Crude to Rail pipeline from an unrelated entity on November 17, 2015, and developed the operations and maintenance manual at that time.

⁴ Response, at 3-4.

⁵ Region Recommendation, at 2.

USDP's point that it had conducted an annual review of the operations and maintenance manual under § 195.402(a) on November 9, 2016 and that no revisions to the valve inspection procedures were made as a result, OPS noted that this was a separate requirement from the reviews required under § 195.402(c)(13).⁶

Having considered the information and arguments presented by Respondent, I find the preponderance of the evidence shows that USDP did not adhere to its own process set forth in section 1.9 of its manual which directed the use of Form 20.1 for this purpose, not Form CT-22. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(13) by failing to adequately review the effectiveness of its valve inspection procedures during the relevant period.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 3 in the Notice for violation of 49 C.F.R. § 195.402(c)(13). 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. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 195.402(c)(13) (**Item 3**), Respondent has revised section 1.9 of its operating and maintenance procedures, revised Form 20.1 to re-designate it as Form 20.18 and include a specific reference to 49 C.F.R. § 195.402(c)(13) to ensure that its full valve inspection procedure is used during reviews of the effectiveness of its valve inspection procedures. In addition, Respondent submitted a completed Form 20.18 dated April 10, 2017 documenting the annual review for the April 2016 to April 2017 period.

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice are not included in this Order.

WARNING ITEMS

With respect to Items 1 and 2, 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:

⁶ Region recommendation, at 3.

49 C.F.R. § 195.266 (**Item 1**) — Respondent’s alleged failure to maintain a record documenting the repair of weld number MLX 5 which was rejected by a weld inspector; and

49 C.F.R. § 195.436 (**Item 2**) — Respondent’s alleged failure to provide protection from vandalism and unauthorized entry around pumping stations and other exposed facilities at the Casper terminal.

USDP presented information in its Response showing that it had taken certain actions to address the cited items. 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. Should Respondent elect to do so, any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243.

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

May 20, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued