Mr. David Dunn
General Manager
Chevron USA, Inc.
Western Profit Center
P.O. Box 39100
Lafayette, Louisiana 70593

RE: CPF No. 42901

Dear Mr. Dunn:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, assesses a civil penalty of $2,000, and acknowledges certain corrective action. The penalty payment terms are set forth in the Final Order. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of	)	
	)	
Chevron USA, Inc.	)	CPF No. 42901
	)	
Respondent	)	
	)	

FINAL ORDER

On January 13, 22, 23, and 28, 1992, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Lafayette and New Orleans, Louisiana. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated May 8, 1992, a Notice of Probable Violation, Proposed Civil Penalty, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 192.465(a) and 199.7 and proposed assessing a civil penalty of $8,000 for the alleged violations. Additionally, the Notice proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its procedures for conducting drug testing under its anti-drug plan. Lastly, the Notice warned Respondent to take appropriate corrective action in its reporting of information required by 49 C.F.R. 191.17(a).

Respondent responded to the Notice by letter dated June 4, 1992 (Response). Respondent contested most of the allegations and requested a hearing that was held on January 15, 1993.

FINDINGS OF VIOLATION

CATHODIC PROTECTION

The Notice first alleged that Respondent was in violation of 49 C.F.R. § 192.465(a) for failing to perform a pipe-to-water test on its cathodically protected pipeline segment No. 4184, at offshore location "EI 313A", during calendar year 1991.

Respondent admitted that it did not conduct a pipe-to-water test at this particular location on the pipeline segment. However, at the hearing, Respondent stated that the pipeline segment at issue is 60 miles in length and is connected at either end to oil production platforms owned by other pipeline operators that are regulated by the Minerals Management Service (MMS). MMS's regulation of other pipeline companies' offshore operations platforms, to which Respondent's pipeline segment is connected, does not excuse Respondent's non-compliance with the pipeline safety regulations. The segment at issue is regulated by OPS and subject to the pipeline safety standards.

At the hearing, Respondent presented a June 11, 1992 internal Chevron memorandum indicating that on May 8, 1991, Texas Eastern Corporation had taken a test reading to determine the cathodic protection of one end of the pipe segment (segment No. 4184, offshore location "EC 286 A"). The result of the pipe-to-water test demonstrated that the point tested was cathodically protected. Subsequent to the hearing, Chevron provided information that Mobil took a similar test reading at the other end of the pipe segment which demonstrated that the point tested was cathodically protected. OPS has determined that this testing shows that Respondent's pipeline segment was cathodically protected. Accordingly, no finding of violation will be made with respect to the allegation concerning cathodic protection.

Anti-drug plan

The Notice also alleged that Respondent failed to adequately conform six areas of its anti-drug plan to the requirements of 49 C.F.R. § 199.7.

FIRST ALLEGATION

The Notice alleged that Respondent's anti-drug plan did not delineate between those provisions required by DOT's regulations and those provisions that are required by company policy. An anti-drug plan that does not clearly delineate between DOT and company requirements does not provide employees with clear information concerning their rights and responsibilities under the regulations, and thus does not conform to the requirements of 49 C.F.R. § 199.7. Respondent did not dispute that portions of its anti-drug plan mixed DOT and company requirements in a manner that could make it difficult for an employee to determine whether a particular provision contained in the plan was one required by DOT. Accordingly, I find that Respondent was in violation of 49 C.F.R. § 199.7.

SECOND ALLEGATION

The definition of "employee", as found in 49 C.F.R. § 199.3, means a person who performs, on a pipeline or LNG facility, an operating, maintenance, or emergency-response function regulated by Part 192, 193, or 195. The Notice alleged that Respondent improperly applied the definition of "employee" to include Chevron personnel that were not covered "employees". Specifically, the Notice alleged that Respondent improperly used the definition in two instances: (1) Respondent's Anti-drug plan (Article III, General Provisions, paragraph A, page 14, last sentence), indicated that DOT regulations apply to offshore employees who are not otherwise included in the random drug testing pool required by 49 C.F.R. § 199.11; and (2) Respondent's Anti-drug plan (Article XIX, page 10, response to "Question 6"), included job classifications that are not subject to DOT testing.

Respondent did not dispute these allegations. However, Respondent stated that these allegations were minor technicalities and brought to OPS's attention, the preamble language in the final rule published in the Federal Register (54 FR 49865; December 1, 1989) by the Department of Transportation (DOT), Office of the Secretary, implementing DOT's testing procedures in 49 C.F.R. Part 40. In the preamble, DOT stated that "during initial stages of the implementation of the Department's drug testing rules, the Department's focus will be on assisting employers to comply with the regulations, not on penalizing inadvertent or minor errors." RSPA issued its drug testing rule that uses the drug testing procedures set out by the DOT rule, approximately one week earlier (53 FR 47084; November 21, 1988). OPS did not start actively enforcing the anti-drug regulations until August 1991, one year after the date for compliance with RSPA's rules took effect. This one year period provided the pipeline industry with sufficient time to bring its operations into compliance with the regulations. In any case, Respondent stated that these deficiencies would be corrected, and as discussed below, OPS has received a revised copy of Respondent's anti-drug plan. Accordingly, I find that Respondent was in violation of 49 C.F.R. § 199.7(a).

THIRD ALLEGATION

The Notice alleged that Respondent's use of a consent form was in violation of 49 C.F.R. § 40.25(f)(22)(ii), which states,

> When specified by DOT agency regulation or required by the collection site (other than an employer site) or by the laboratory, the employee may be required to sign a consent or release form authorizing collection of the specimen, analysis of the specimen for designated controlled substances, and release of the result to the employer. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others.

At the hearing, Respondent argued that the regulation could not be read as a blanket prohibition against an operator's use of a consent or release form. Respondent argued that the regulatory language authorized a DOT agency, a collection site or laboratory to require a consent form, but to read the language as prohibiting an operator from using the consent forms was unreasonable.

While the regulation authorizes a DOT agency, a collection site, or a laboratory to obtain signed "consent forms" from employees prior to testing, it does not prohibit an employer from utilizing similar forms pursuant to company policy. While the pipeline operator cannot claim that DOT authorizes the use of such forms, nothing in the regulation prohibits an employer from using the type of consent forms described by the regulation from being used pursuant to company policy. Therefore, I withdraw this portion of the alleged violation of 49 C.F.R. § 199.7.

FOURTH ALLEGATION

The Notice alleged that Respondent's anti-drug plan was deficient because its procedures called for random drug testing to be performed on a calendar year cycle, rather than a yearly cycle based on the "April 20" to "April 19" initial compliance date described in 49 C.F.R. § 199.1 (1991) for operators with greater than 50 employees.

During the hearing, Respondent said that it believed the plain meaning of the regulation called for use of a calendar year (January 1 - December 31) random testing cycle. RSPA's use of an "April 20" to "April 19" random testing cycle has been in place since promulgation of the anti-drug regulations in 1990. Pursuant to 49 C.F.R. § 199.1, pipeline operators with more than 50 employees were required to begin implementation of the drug testing regulations on

April 20, 1990, operators with fewer than 50 employees were required to begin random drug testing on August 20, 1990. Compliance with yearly random testing cycles should have begun on these dates.

In a July 24, 1990 Federal Register notice (55 FR 30003), RSPA announced the availability of guidelines to be used in complying with its anti-drug regulations at 49 C.F.R. Part 199. The Federal Register notice included instruction to assist any interested party in obtaining the drug testing guidelines. This action sufficiently provided notice to the regulated community of various interpretations of the Anti-drug regulations. These guidelines stated that "a yearly drug testing cycle runs from April 20 through April 19 of the seceding [sic] year for operators with greater than 50 employees, and from August 21 through August 20 of the succeeding year for operators with 50 or fewer employees subject to drug testing."

Respondent argued that the preamble to RSPA's final rule on drug testing pipeline employees (53 FR 47084; November 21, 1988) called for a calendar year random testing cycle. Specifically, page 47090 stated that "all operators are required to randomly select a sufficient number of employees to enable the operator to conduct unannounced testing of 50 percent of employees who perform the applicable sensitive safety-related duties for the operator, during a calendar year." Although the preamble language conflicts with the interpretation in the guidelines, the guidance material was issued after the preamble and prevails. However, because of the apparent inconsistency, I will withdraw this alleged violation. Note that in 1994, the random test cycle was changed to a calendar year cycle.

FIFTH ALLEGATION

The Notice alleged that Respondent's anti-drug plan was deficient in that it did not correctly discuss an employee's right to have an original sample retested within 60 days after receipt of the final positive test results from the Medical Review Officer (MRO), as required by 49 C.F.R. § 199.17(b). The Notice alleged that Respondent's anti-drug plan limited pre-employment applicants to 72 hours from receipt of a positive test result from an MRO.

At the hearing, Respondent stated that the definition of employee in 49 C.F.R. § 199.3 does not include job applicants. Respondent argued that RSPA could not rely on DOT's definition of "employees" in 49 C.F.R. § 40.3, which

includes job applicants, because it conflicts with RSPA's definition. Respondent asserted that because of the difference between the two provisions, the "conflict" provision in 49 C.F.R. § 199.5 requires that RSPA must rely only on the definition in § 199.3.

In reviewing the issue, I have determined that there is no "conflict" between the two definitions of employee. The DOT definition is more expansive than RSPA's, thus merely supplementing it. As a result, applicants for employment are also "employees" for purposes of RSPA's drug testing regulations. Therefore, job applicants have the right to have their original positive test result retested within 60 days. Accordingly, I find Respondent in violation of this alleged violation of 49 C.F.R. § 199.7(a).

SIXTH ALLEGATION

Lastly, the Notice alleged that Respondent did not include procedures in its anti-drug plan concerning the contractor compliance requirements described in 49 C.F.R. § 199.21. Respondent did not dispute this allegation at the hearing. Accordingly, I find Respondent violated 49 C.F.R. § 199.7(a).

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

At the time the Notice was issued, under 49 U.S.C. § 60122, Respondent was subject to a civil penalty not to exceed $10,000 per violation for each day of the violation up to a maximum of $500,000 for any related series of violations. The Notice proposed assessing Respondent civil penalties of $5,000 for the alleged violation of 49 C.F.R. § 195.465(a) and $3,000 for the alleged violation of 49 C.F.R. § 199.7.

Titles 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.

As previously explained, the allegation concerning cathodic protection has been withdrawn and no penalty will be assessed.

With respect to the anti-drug plan, Respondent's failure to have an anti-drug plan that conforms to the pipeline safety regulations could lead to the use of unauthorized procedures during drug testing. As a result, pipeline safety is jeopardized. As previously explained, two of the six alleged violations of 49 C.F.R. § 199.7 have been withdrawn. Consequently, the civil penalty is reduced by $1,000. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $2,000.

Payment of the civil penalty **must be made within 20 days of service**. Payment can 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-320), P.O. Box 25770, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this **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**. After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel** (DCC-1), Research and Special Programs Administration, Room 8405, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590-0001.

Questions concerning wire transfers should be directed to: **Valeria Dungee**, Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125; **(405) 954-4719**.

Failure to pay the $2,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 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 an United States District Court.

AMENDMENT OF PROCEDURES

The Notice alleged inadequacies in Respondent's anti-drug plan and proposed to require that Respondent amend its procedures to

comply with the requirements of 49 C.F.R. § 199.7. Respondent contested the proposed Notice of Amendment.

Respondent also questioned RSPA's authority to require pipeline operators to amend their procedures. Respondent asserted that section 13 of the repealed Natural Gas Pipeline Safety Act (NGPSA) specifically provided the sole method for RSPA to require an operator to amend its operations and maintenance plan. Respondent contended that promulgation of 49 C.F.R. § 190.237 exceeds RSPA's authority under the pipeline safety laws.

Although the NGPSA has been repealed, all of its substantive provisions have been codified in 49 U.S.C. § 60101 et seq. The former section 13 is now codified in 49 U.S.C. § 60108. RSPA used its authority under 49 U.S.C. § 60108 for promulgating 49 C.F.R. § 190.237. This was accomplished through a final rule issued on July 9, 1991 (56 FR 31087). As explained in the rule, RSPA's statutory authority under section 13 of the repealed NGPSA, and section 210 of the repealed Hazardous Liquid Pipeline Safety Act (HLPSA) was the basis for this action. This regulation was duly promulgated without challenge by the affected community. Respondent's dissatisfaction with the regulation should have been brought forth during the rulemaking process through a petition to reconsider the final rule. The statutory deadline for challenging the rule in such a manner passed long ago, i.e. 60 days following issuance of the rule. As a result, I reject Respondent's argument.

Notwithstanding its objection, Respondent submitted copies of its amended procedures, which the Director, Southwest Region, OPS has accepted as adequate to assure safe operation of Respondent's pipeline system. Accordingly, no need exists to issue an order directing amendment.

WARNING ITEMS

The Notice warned Respondent that it is required to provide OPS with an annual report in accordance with 49 C.F.R. § 191.17(a). Each operator of a gas transmission system must provide the report (Form RSPA 7100.2-1) every calendar year. A pipeline operator can include information concerning its liquid pipeline operations in this report so long as it does not confuse the required information concerning the operator's gas transmission system. In this case, Respondent's 1990 calendar year report included information on both its gas and liquid pipeline segments without clearly distinguishing between the two.

The Notice did not propose a civil penalty for this item, but warned Respondent that it should take appropriate corrective action. The information that Respondent presented following the hearing shows that Respondent has addressed the cited items. However, should a violation come to the attention of OPS in a subsequent inspection, enforcement action will be taken.

Under 49 C.F.R. § 190.215, Respondent has a right to 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, shall remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.

\s\ Richard B. Felder

Richard B. Felder
Associate Administrator Pipeline Safety

Date: _____