

March 7, 2018

Mr. Joseph A. Blount, Jr.  
President and Chief Executive Officer  
Colonial Pipeline Company  
1185 Sanctuary Parkway, Suite 100  
Alpharetta, GA 30009

**Re: CPF No. 1-2017-5013**

Dear Mr. Blount:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$32,800. 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 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. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA  
Mr. Jim Fischer, Virginia State Corporation Commission

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

<b>In the Matter of</b>	)	
	)	
<b>Colonial Pipeline Company,</b>	)	<b>CPF No. 1-2017-5013</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

On June 7, 2016, pursuant to 49 U.S.C. § 60117, a representative of the Virginia State Corporation Commission (VA SCC), as agent for 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 Colonial Pipeline Company (Colonial or Respondent) in Cumberland County, Virginia, at the site of the company’s Cobbs Creek Relocation Project. Colonial owns and operates approximately 5,500 miles of hazardous liquid pipeline from Texas to New Jersey.<sup>1</sup>

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated April 27, 2017, a Notice of Probable Violation and Proposed Civil Penalty. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding Colonial had violated 49 C.F.R. § 195.202 and proposed assessing a civil penalty of \$32,800 for the alleged violation.

After requesting and receiving an extension of time to respond, Colonial responded to the Notice by letter dated June 14, 2017 (Response). The company did not contest the allegation of violation but 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**

**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.

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<sup>1</sup> Colonial Pipeline Company website, available at <http://www.colpipe.com/home/about-colonial/system-map> (last accessed Oct. 12, 2017).

The Notice alleged that Respondent violated 49 C.F.R. § 195.202 by failing to construct its pipeline system in accordance with comprehensive written specifications or standards that are consistent with the requirements of Part 195. Specifically, the Notice alleged that Colonial failed to follow its own written procedures and the manufacturer's specifications for coating application on the main at 1617 Columbia Road near Cedar Plains Road in Cumberland County, Virginia.

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 pipeline system in accordance with comprehensive written specifications consistent with the requirements of Part 195.

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.<sup>2</sup> 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; and 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 \$32,800 for the violation cited above.

**Item 1:** The Notice proposed a civil penalty of \$32,800 for Respondent's violation of 49 C.F.R. § 195.202, for failing to follow its own written procedures and the manufacturer's specifications for coating application on its pipeline system. This proposed penalty amount was based, among other factors, on consideration of Colonial's history of prior offenses for the five-year period prior to the approximate date of the Notice. In this case, Colonial had one prior offense in the five-year period preceding the Notice.<sup>3</sup> See, *In the Matter of Colonial Pipeline Company*, Final Order, CPF No. 1-2011-5007 (May 24, 2012) (finding that Colonial violated § 195.402(a) by failing to include procedures in its operations and maintenance manual for having personnel, equipment, instruments, tools, and material available as needed at the scene of an emergency).

In its Response, Colonial sought mitigation of the proposed penalty amount because it did not

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<sup>2</sup> These amounts are adjusted annually for inflation. See, e.g., Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

<sup>3</sup> Violation Report, at 3.

believe that this prior offense should factor into the penalty assessment.<sup>4</sup> Specifically, Colonial asserted that although the date of the Final Order (May 24, 2012) was within the five-year period prior to the approximate date of the Notice, the underlying inspection occurred in October 2010, which lay outside the five-year period.<sup>5</sup> Therefore, Colonial concluded that this should not count as a prior offense.

In evaluating an operator's history of prior offenses in a given case, PHMSA considers prior offenses to consist of findings of violation, as set forth in a Final Order issued within the past five years. Potential compliance issues discovered during inspections and merely alleged to be probable violations in Notices are not considered because the allegations may not be upheld in the Final Order. For example, after an inspection, PHMSA may elect to issue a Notice of Probable Violation setting forth regulatory violations that an operator is "alleged to have violated." § 190.207(b)(1). This initiates an enforcement proceeding that concludes (absent certain appellate options) in a Final Order, which sets forth findings of violations. *See* § 190.213(a)(1) (noting that a final order includes "[a] statement of findings and determinations on all material issues, including a determination as to whether each alleged violation has been proved"). Therefore, the date of an inspection or the date of the notice of probable violation are not the dates on which a finding of violation is made. For these reasons, PHMSA only considers Final Orders to determine if an operator has had prior findings of violation in the five-year period prior to the Notice.<sup>6</sup> In this case, the Final Order issued on May 24, 2012, is considered a prior offense for purposes of calculating the proposed civil penalty for the Notice issued on April 27, 2017.

Further, in reviewing the other civil penalty assessment criteria, I find that Colonial failed to comply with a requirement that was clearly applicable, that the company did not have a reasonable justification for its noncompliance, but that occurred in a non-high consequence area (HCA). I would also note that the application of coating is an important task that, if not properly carried out in accordance with the manufacturer's specifications, can subject the pipe to accelerated corrosion and potential failure. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$32,800 for violation of 49 C.F.R. § 195.202.

Failure to pay the \$32,800 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.

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, 2<sup>nd</sup> 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

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<sup>4</sup> Response, at 1.

<sup>5</sup> *Id.*, at 1-2.

<sup>6</sup> *See, e.g.*, Violation Report at 3 (noting the number of *findings* of violation in Order) (emphasis added).

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.

March 7, 2018

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued