

August 15, 2019

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

Re: CPF No. 1-2017-5015

Dear Mr. Blount:

Enclosed is an Amended Final Order issued in the above-referenced case. It makes a finding of violation, assesses a civil penalty of \$29,300, and specifies actions that need to be taken by Colonial Pipeline Company, LLC, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Eastern Region, this enforcement action will be 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.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Ms. Catherine D. Little, Esq., Counsel for Colonial, 600 Peachtree Street N.E. Suite
3000, Atlanta, GA 30308

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)

Colonial Pipeline Company, LLC,)

Respondent.)
_____)

CPF No. 1-2017-5015

FINAL ORDER

From January 23-26, 2017, pursuant to 49 U.S.C. § 60117, representatives 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 Colonial Pipeline Company, LLC (Colonial or Respondent), in Woodbine, Maryland. Colonial’s system extends from Texas to New York and consists of more than 5,500 miles of pipeline.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated July 25, 2017, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Colonial violated 49 C.F.R. § 195.505 and proposed assessing a civil penalty of \$50,100 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Colonial responded to the Notice by letter dated October 2, 2017 (Response), contested all the allegations, and requested a hearing. A hearing was subsequently held on February 20, 2018 in West Trenton, NJ with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel. After the hearing, Respondent provided a post-hearing statement for the record, by letter dated March 16, 2018 (Closing).

FINDINGS OF VIOLATION

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(a), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program.
The program shall include provisions to:

¹ Colonial website, *About Colonial*, available at <http://www.colpipe.com/home/about-colonial> (last accessed December 18, 2018).

(a) Identify covered tasks;

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(a) by failing to have and follow a written qualification program, which must include provisions to identify covered tasks. Specifically, the Notice alleged that Colonial's written qualification program failed to identify removal of a casing as a covered task. "Cased" carrier pipes are routinely used by industry for pipelines that cross under highways and railroads.

As noted above, OPS conducted both a field and office inspection of Colonial's Line 04 in Woodbine, Maryland. During the field inspection, an OPS inspector observed Colonial contractors removing casing from Line 04 to directly examine an anomaly. The OPS inspector requested that Colonial provide its procedure for removal of a casing and the Operator Qualification (OQ) records for the relevant contractors. Colonial provided its procedure, but stated that it follows American Petroleum Institute, Recommended Practice of Pipeline Operator Qualification (API RP 1161) – and therefore does not consider removal of a casing to be a "covered task" requiring OQ.

Subpart G of Part 195 (Qualification of Pipeline Personnel) defines a "covered task" and sets forth the requirements for the qualification of any individuals performing covered tasks on a pipeline facility. For an activity to be considered a "covered task", the task must meet four criteria, commonly known as the "four-part test." The task must: (1) be performed on a pipeline facility; (2) be an operations or maintenance task; (3) be performed as a requirement of Part 195; and (4) affect the operation or integrity of the pipeline. To determine whether Colonial violated 49 C.F.R. § 195.505(a), I must determine whether removal of a casing qualifies as a covered task under the four-part test.

At the hearing, Colonial acknowledged that its written qualification program does not include removal of a casing as a covered task. However, the Respondent argued that removal of a casing should not qualify as a covered task because it fails to meet the third and fourth required elements of the four-part test.² Colonial also argued that PHMSA has never considered this specific activity as a covered task or, to its knowledge, have other operators. By issuing this enforcement action, Colonial argues that PHMSA is "impermissibly expand[ing] the relevant plain language of the [OQ] rule," thereby regulating through enforcement and violating fair notice, as required by the Administrative Procedure Act (APA).

Since Colonial has conceded to the application of parts one and two, I will turn to parts three and four, separately. As to part three, § 195.501(b)(3) requires that the activity be performed as a requirement of Part 195. Colonial argues that there is no enumerated requirement in Part 195 that speaks to removal of a casing, and therefore part 3 is unmet. In support of this argument, Colonial states that it knows of no other operator that identifies removal of a casing as a covered task or vendor that provides OQ training for this specific activity.

This argument is unpersuasive. As correctly pointed out by OPS in its Regional Recommendation, § 195.505 confers on Colonial the responsibility of identifying which tasks

² "Colonial acknowledges that the activity of removing a casing meets parts 1 and 2 of the four-part test. Colonial does not agree, however, that removal of a casing meets parts 3 or 4." Closing, at 2.

should be covered. To satisfy the third prong, it is enough that the task be so integral to meeting the requirements of the regulation that it must be considered as a separate covered task. The fact that Colonial maintains a specific procedure entitled “Remove Casing,” which painstakingly details how to affect removal “to facilitate examination, repair, relocation or improvement of the line pipe section,” is highly indicative of the fact that removal of a casing is an essential or integral part of the process for safely repairing the line, as required by § 195.422.³ The third prong is therefore met.

Part four of the four-part test requires that the task “must affect the operation or integrity of the pipeline.” Colonial argued in its Closing that, in removing a casing, neither the operation nor the integrity of the pipeline itself is implicated, since neither the pipeline nor pipeline operations are affected. In my opinion, the pipeline would certainly be affected by removing a section of casing in an unsafe manner. In such a case, the operation or integrity of the carrier pipe would undoubtedly be called into question. Colonial already maintains a procedure for removal of a casing because improper execution could affect the operation or integrity of the pipeline. This procedure is driven by the necessity of following a standard operating procedure for a commonplace activity. While maintenance of a procedure for a task is not dispositive of whether the task should be covered or “affects the operation or integrity of the pipeline,” it can certainly be considered as supportive evidence. Therefore, I consider the removal of a casing to be a task that “affect[s] the operation or integrity of the pipeline.”

Accordingly, after considering all the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.505(a) by failing to have and follow a written qualification program for identifying removal of a casing as a covered task.

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

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program.

The program shall include provisions to:

(b) Ensure through evaluation that individuals performing covered tasks are qualified;

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to have and follow a written qualification program, which must include provisions to ensure through evaluation that individuals performing covered tasks are qualified. Specifically, the Notice alleged that Colonial failed to ensure that the individuals who removed the casing on January 26, 2017, were qualified to perform that task.

In its Closing, Colonial argued that the welders performing the task, though not qualified on “removal of a casing” were qualified under various other welding tasks and therefore it should

³ It is noteworthy that the regulated community has been on notice since the issuance of Final Order (3-2009-5022) that critical activities can be covered tasks even if they are not specifically called out by the regulations in Part 195.

not be penalized for failing to have OQ qualified contractors performing this task. OPS countered, in its Region Recommendation, that the welding qualifications held by the contractors “did not involve the same processes or considerations that would be involved when removing a casing.”⁴ I agree with OPS. As I discussed above, removal of a casing meets the requirements of the four-part test and should be considered a covered task (or part of another covered task). Therefore, there is no question that Colonial should ensure that individuals performing this task are qualified pursuant to a separate covered task “removal of a casing” or subsumed within another covered task.

Nonetheless, I find that these violation items are “so closely connected that they overlap” and that a “single act occurred,” namely the failure to consider the removal of a casing as a covered task.⁵ OPS Enforcement Procedures afford inspectors latitude in determining whether to pursue a single or separate violation. However, in this case, I find the evidence in Items 1 and 2 to be so closely related that Item 2 should be withdrawn. In fact, the evidence for Violations 1 and 2 in the Violation report are identical.⁶

Accordingly, after considering the evidence and the legal issues presented, I hereby order that Item 2 be withdrawn.

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.⁷ 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 penalty of \$50,100 for Item 1 cited above.

Item 1: The Notice proposed a civil penalty of \$50,100 for Respondent’s violation of 49 C.F.R. § 195.505(a) for failing to have and follow a written qualification program, which must include provisions to identify covered tasks. The Respondent presented a reasonable justification for its non-compliance. While ultimately unpersuasive, Colonial held a genuine belief that this specific

⁴ “Region Recommendation, 8.

⁵ “Use caution before citing the same code section or subsection for more than one Item in a Notice of Probable Violation letter because if the Items are based on the same evidence, it may result in a single violation being inappropriately alleged as multiple violations.” Pipeline Safety Enforcement Procedures, 26.

⁶ Violation Report, 6-7 and 14-15.

⁷ These amounts are adjusted annually for inflation. See, 49 C.F.R. § 190.223; Revisions to Civil Penalty Amounts, 83 Fed. Reg. 60732, 60744 (Nov. 27, 2018).

activity did not meet the criteria of the four-part test. Therefore, I will afford it credit for good faith. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$29,300** for violation of 49 C.F.R. § 195.505(a).

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 \$29,300 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 2 in the Notice for violations of 49 C.F.R. § 195.505. 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:

1. With respect to the violation of § 195.505(a) (**Item 1**), Respondent must ensure that any and all activities associated with removing a casing on its pipeline facilities, which meet the four-part test, are identified as a covered task in its written OQ program, as prescribed in § 195.505(a). Colonial must submit the related amendment(s) from its covered task list. Colonial must also submit related documentation showing the method used to identify the covered task. This submission must be provided within 60 days of receipt of the Final Order to Director, Eastern Region, 820 Bear Tavern Road, Suite 103, West Trenton, NJ 08628.
2. With respect to the violation of § 195.505(b) (**Item 2**), I have withdrawn Item 2 and the associated compliance item.

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

It is requested that Respondent maintain documentation of the safety improvement costs

associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), 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.

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. Any petition submitted must contain a 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 corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

August 15, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued