

June 26, 2020

VIA ELECTRONIC MAIL TO: jblount@colpipe.com

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

Re: CPF No. 1-2017-5015

Dear Mr. Blount:

Enclosed please find the Decision on the Petition for Reconsideration filed by Colonial Pipeline Company, LLC in the above-referenced case. For the reasons explained therein, the Decision grants your Petition for Reconsideration. This Decision constitutes the final administrative action in this preceding. Service of the Decision by electronic mail is deemed effective upon the date of transmission, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Ms. Catherine Little, Esq., Troutman Sanders, LLP, catherine.little@troutman.com

CONFIRMATION OF 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,)

Petitioner.)

CPF No. 1-2017-5015

DECISION ON PETITION FOR RECONSIDERATION

On August 15, 2019, the Pipeline and Hazardous and Materials Safety Administration (PHMSA) issued an Amended Final Order¹ to Colonial Pipeline Company (Colonial or the Respondent), in connection with a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (NOPV) issued to the Respondent on July 25, 2017. The Amended Final Order found that Colonial violated 49 C.F.R. Part 195.505(a) by failing to identify removal of a casing as a covered task in its Operator Qualification (OQ) program; assessed a civil penalty of \$29,300; and imposed a Compliance Order requiring corrective action within sixty (60) days.

On September 9, 2019, Colonial filed a Petition for Reconsideration² of the Amended Final Order requesting that PHMSA reconsider its sole finding that removal of a casing is an OQ covered task. The Petitioner argued that the Amended Final Order was a novel interpretation of the OQ regulations and impermissibly expanded upon prior enforcement precedent and agency guidance. It also argued that, for reasons of public policy, its Petition should be granted.

Colonial also requested that PHMSA stay the Compliance Order pursuant to 49 C.F.R. Part 190.243(c), a request that the Associate Administrator granted on September 27, 2019.

Background

During an inspection of field activities in Woodbine, Maryland, Office of Pipeline Safety (OPS) inspectors observed Colonial contractors removing a casing from Line 04 to examine an anomaly on the pipeline. When asked for the qualification records of the contractors removing the casing, Colonial stated that it did not consider removal of a casing to be a covered task and therefore this activity was not included in its written operator qualification program.

¹ *Colonial Pipeline Company LLC*, Amended Final Order, CPF No. 1-2017-5015 (August 15, 2019) (Amended Final Order). On August 5, 2019, a Final Order was issued that mistakenly omitted a paragraph. This error was corrected and the Amended Final Order, referenced above, was issued on August 15, 2019.

² Petition for Reconsideration, dated September 9, 2019 (Petition).

On July 25, 2017, PHMSA issued the NOPV, which alleged two violations, proposed a total civil penalty of \$50,100, and proposed a compliance order with two requirements. Colonial filed a timely Request for Hearing and participated in a hearing on February 20, 2018. On August 5, 2019, PHMSA issued a Final Order³ that withdrew one item, upheld a finding of violation under 49 C.F.R. Part 195.505(a), assessed a reduced civil penalty of \$29,300, and required corrective action to ensure that removal of a casing was identified as a covered task in Colonial's written qualification program within 60 days. Colonial submitted a timely Petition for Reconsideration on September 9, 2019.

In its Petition, Colonial objected to the Final Order on the following grounds: that (1) no express law, enforcement precedent, guidance or industry standard identifies removal of a casing as a covered task; and (2) this case was the first instance in which OPS had ever cited a pipeline operator for failure to identify removal of a casing as an OQ covered task.

Standard of Review

Under 49 C.F.R. § 190.243, a respondent is afforded the right to petition the Associate Administrator for reconsideration of a Final Order. However, that right is not an appeal or an opportunity to seek a de novo review of the record.⁴ It is a venue for presenting the Associate Administrator with information that was not previously available or requesting that any errors in the Final Order be corrected. Requests for consideration of additional facts or arguments must be supported by a statement of reasons as to why those facts or arguments were not presented prior to the issuance of the Final Order. Repetitious information or arguments will not be considered.

Analysis

In this case, the Notice alleged that "Colonial failed to have and follow a written qualification program that identified removing a casing as a covered task on January 27, 2017, in accordance with §195.505(a)."⁵ After reviewing the record in this case, I have determined that this case should have proceeded as a Notice of Amendment directing Colonial to amend its OQ plan to indicate casing removal as a covered task. This decision is based on the specific circumstances of this case and does not broadly prohibit OPS from pursuing a Notice of Probable Violation in similar cases. Therefore, I am granting the Petitioner's requested relief by withdrawing the finding of violation in Item 1 of the August 15, 2019 Amended Final Order. The Compliance Order is also withdrawn.

RELIEF GRANTED

³ This Final Order was amended on August 15, 2019. All references to the agency's Final Order refer to the holding in the Amended Final Order.

⁴ 49 C.F.R. § 190.243(a)-(d).

⁵ Notice, at 2.

Based on the information provided in the Petition, a review of the record, and for the reasons stated above, the relief sought in the Petition is granted and the finding of violation in Item 1 of the August 15, 2019 Amended Final Order is withdrawn. The Compliance Order is also withdrawn.

This Decision is the final administrative action in this proceeding.

June 26, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued