

November 29, 2018

Mr. Michael N. Mears
President and Chief Executive Officer
Magellan Midstream Partners, LP
One Williams Center
Tulsa, OK 74172

Re: CPF No. 1-2017-6001

Dear Mr. Mears:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Magellan Terminals Holdings, LP. It makes a finding of violation and assesses a civil penalty of \$28,600. 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, Official Pipeline Safety, PHMSA
Mr. Jason Smith, Director, Asset Integrity, Magellan Midstream 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)
)
Magellan Terminals Holdings, LP,)
a subsidiary of Magellan Midstream Partners, LP,) **CPF No. 1-2017-6001**
)
Respondent.)

FINAL ORDER

From May 18 through May 22, 2015, 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 facilities and records of Magellan Terminal Holdings, LP (Magellan or Respondent), in New Haven, Connecticut. Magellan, a subsidiary of Magellan Midstream Partners, LP, operates five marine terminals throughout the country in Connecticut, Delaware, Louisiana, and two sites in Texas. The terminals transport and store a full range of petroleum products, as well as operate in-place storage facilities and associated piping.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated January 20, 2017, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Magellan had violated 49 C.F.R. § 195.432, and proposed assessing a civil penalty of \$28,600 for the alleged violation.

Magellan Midstream Partners, LP, responded to the Notice on behalf of Magellan by letter dated March 13, 2017 (Response). The company did not contest the allegation of violation but provided information concerning the actions it had taken. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

In its Response, Magellan did not contest the allegation in the Notice that it violated 49 C.F.R. § 195.432, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), which states:

¹ See <https://www.magellanlp.com/WhatWeDo/MarineStorage.aspx>. Current as of 9/14/2018.

§ 195.432 Inspection of in-service breakout tanks.

(a) ...

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks according to API Std 653 (except section 6.4.3, *Alternative Internal Inspection Interval*) (incorporated by reference, *see* § 195.3). However, if structural conditions prevent access to the tank bottom, its integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3). The risk-based internal inspection procedures in API Std 653, section 6.4.3 cannot be used to determine the internal inspection interval.

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Standard 653. Specifically, the Notice alleged that Magellan did not conduct an external inspection of 7 breakout tanks within the 5-year interval specified under API Standard, 653 Section 6.3.2.1 – External Inspection, which states:

All tanks shall be given a visual external inspection by an authorized inspector. This inspection shall be called the external inspection and must be conducted at least every 5 years or $RCA/4N$ years (where RCA is the difference between the measured shell thickness and the minimum required thickness in mils, and N is the shell corrosion rate in mils per year) whichever is less. Tanks may be in operation during this inspection.

During the inspection, PHMSA allegedly examined Magellan's inspection reports, and found that seven tanks (Hamden 4H / Hamden 5H / Hamden 6H / Hamden 7H / Hamden 11H / New Haven 4A / New Haven 11A) exceeded the maximum interval specified by API Standard 653. Respondent had no record of having inspected the tanks on or before the five-year anniversary of the last inspections that had taken place from April 20 to May 20, 2010. In a subsequent email dated July 10, 2015, PHMSA allegedly asked for the inspection records and Magellan responded that there was no date set for the inspections but that they would be completed during the "5th calendar year."

In its response, Magellan did not contest the allegation of violation and acknowledged that it had been operating on a "5th calendar year" system instead of a "5th anniversary of the last inspection" system to determine subsequent inspections and that it had revised its Tank Integrity Program to require inspections on the anniversary date of a tank's last inspection.

Accordingly, based upon a review of all the evidence, I find that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Standard 653.

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.² 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 \$28,600 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$28,600 for Respondent's violation of 49 C.F.R. § 195.432(b), for failing to inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Standard 653. Magellan neither contested the allegation nor presented any evidence or argument justifying elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$28,600** for violation of 49 C.F.R. § 195.432(b).

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 \$28,600 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.

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

November 29, 2018

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

² 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).