

October 9, 2019

Mr. Thomas A. Hardison  
President  
Portland Pipe Line Corporation  
30 Hill Street  
South Portland, Maine 04106

**Re: CPF No. 1-2018-5029**

Dear Mr. Hardison:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and withdraws the proposed civil penalty of \$30,900. Accordingly, this case is now 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.

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

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** )

**Portland Pipe Line Corporation,** )

**Respondent.** )

---

**CPF No. 1-2018-5029**

**FINAL ORDER**

From August 6 through 10, 2018, 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 Portland Pipe Line Corporation<sup>1</sup> (PPLC or Respondent), in South Portland, Maine. PPLC owns and operates a tanker unloading facility, two tank farms (South Portland, Maine and Montreal, Quebec), and a system of pump stations and crude oil pipelines that traverse 236 miles along a common right-of-way from the state of Maine to Quebec. The pipelines deliver crude oil to customers in Montreal, Quebec. The tank farm in South Portland consists of 23 tanks with approximately 3.5 million barrels of storage capacity. Two pipelines (18-inch and 24-inch) and eight pump stations are operated out of the South Portland, Maine operations center, which moves the crude from the South Portland tank farm to Montreal.<sup>2</sup>

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated October 5, 2018, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that PPLC had violated 49 C.F.R. § 195.402(a) and proposed assessing a civil penalty of \$30,900 for the alleged violation.

PPLC responded to the Notice by letter dated November 2, 2018 (Response). The company contested the allegation and requested that it be eliminated or reduced to a Notice of Amendment (NOA) or a Warning Item, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

**FINDING OF VIOLATION**

---

<sup>1</sup> Portland Pipe Line Corporation is the United States based wholly owned subsidiary of Montreal Pipe Line, a privately held corporation that is incorporated in Canada. <http://www.pmpl.com/about-us/> (last accessed September 20, 2019).

<sup>2</sup> <http://www.pmpl.com/about-us/> (last accessed September 20, 2019).

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

**§ 195.402 Procedural manual for operations, maintenance, and emergencies**

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, the Notice alleged that PPLC failed to follow its written procedures for performing and documenting its pressure limiting and relief device inspections conducted per § 195.428(a).<sup>3</sup> In support of the allegation of violation, the Notice identified a total of 59 instances between 2016 and 2017 in which PPLC failed to document the “as-found” and “as-left” condition of relief valves on the 24-inch Main Line Pumping Station before and after testing.

The Notice alleged that PPLC’s own procedures required it to document these conditions. PPLC procedure titled *Portland-Montreal Pipe Line System Operations & Maintenance Procedures, Section 6.7 – Critical Systems and Equipment*, dated 11/10/16 (Procedure), provides in relevant part, as follows:

To ensure that relief valves will relieve at the specified set pressure when needed, information must be documented regarding the condition of the relief valve before and after the testing, that is, the “as-found” and “as-left” conditions. Testing documentation is recorded on the Protective Device Testing records and must include the specified set pressure, the as-found set pressure, and the as-left set pressure, along with the identity of the test technician and the date of the test. The acceptable as-found and as-left set pressures have been defined by engineering to ensure continued reliable safe operations, and are defined in this section, CMMS, or on the test record documentation forms. The acceptable as-left set pressures are defined within narrow tolerances to ensure acceptable protection to the MOP. The acceptable as-found set pressures are defined to ensure that relief valves continue to provide reliable, repeatable performance between testing intervals.<sup>4</sup>

According to the Notice, PPLC personnel, upon questioning by the PHMSA inspector, stated that

---

<sup>3</sup> Section 195.428 requires an operator to inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment at regular intervals.

<sup>4</sup> Notice, at 2.

information about the “as-found” and “as-left” set pressures “would be documented in the remarks section of the record form.” Review of the records provided by PPLC show that this information was missing from 17 inspections in 2016 and 42 inspections in 2017.

In its Response, PPLC contested the allegation of violation, requested that the alleged violation be withdrawn or reduced to a warning item or an NOA, and requested that the proposed civil penalty be eliminated or reduced. PPLC asserts that the 24-inch Main Line Pumping Station Protective Device Testing Records from 2016 and 2017 contained the “required engineering specified set pressure for the device noted in the inspection forms to guide the technicians and it is clear from the documentation that the devices were tested annually against the appropriate safety standard.”<sup>5</sup> In addition, PPLC argues that the 59 instances where information about the “as-found” and “as-left” set pressure was missing are irrelevant because that information is only documented if the “as-found” or “as-left” set pressures differ from the required set pressure for the device. If the “as-found” and “as-left” set pressure aligns with the required set pressure noted on the form, the “as-found” and “as-left” set pressure would not be documented. According to PPLC, “the absence of an entry in the remarks section indicates the ‘as-found’ and ‘as left’ set pressure aligns with the required set pressure indicated on the form.”<sup>6</sup> PPLC does not dispute that the records at issue failed to include the “as-found” and “as-left” set pressures as identified in the Notice, but rather, argued that the omission was due to PPLC personnel’s interpretation of what information was required to be documented on the forms. PPLC also notes that there is no allegation that it failed to test devices and verify them against the established set pressure for each device. Based on this, PPLC believes that the appropriate action is to withdraw the allegation of violation and convert this case to a Warning Letter or a Notice of Amendment (NOA).

Having reviewed the record and considered Respondent’s arguments, I find that PPLC failed to follow its Procedure 17 times in 2016 and 42 times in 2017 when it did not record the “as-found” and “as-left” set pressures. Respondent’s procedures required that it record testing documentation on the Protective Device Testing records and that information “must include” the “as-found” and “as-left” set pressures. Respondent failed to follow this procedure when it did not include this information on its inspection forms.

PPLC’s explanation of how its personnel interpreted what was required to be documented on the forms is unpersuasive because it is directly contradicted by the plain language of its own Procedure, which states, in relevant part, that “information must be documented regarding the condition of the relief valve before and after the testing, that is, the ‘as-found’ and ‘as-left’ conditions.”

Finally, I find that the Director was justified in issuing the Notice based on the facts that demonstrate Respondent violated § 195.402(a). There is no basis in this case, legally or factually, to override the Director’s exercise of discretion in bringing this matter as a notice of probable violation and not as an NOA or warning. As set forth in 49 C.F.R. Part 190, an NOA or warning is not the proper enforcement tool for alleging a violation and proposing a civil penalty.

---

<sup>5</sup> Response, at 1.

<sup>6</sup> *Id.* at 2.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its written procedures for performing and documenting its pressure limiting and relief device inspections.

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>7</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; 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 \$30,900 for the violation cited above.

**Item 1:** The Notice proposed a civil penalty of \$30,900 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its written procedures for performing and documenting its pressure limiting and relief device inspections.

In its Response, PLLC requested that the proposed civil penalty be reduced or withdrawn. PLLC argued that there is no allegation that it failed to inspect the relief valve devices, but rather the allegation is that it simply failed to properly document the inspections performed. PLLC is correct in this regard. The Notice does not allege a failure to perform the inspections, which are necessary to ensure pipeline safety. Rather, as I found above, PLLC violated § 195.402(a) by failing to follow its procedure. Pipeline safety was minimally impacted by PLLC's failure and the record reflects that the company did perform the necessary inspections. Accordingly, for the reasons detailed below, I find that a civil penalty in the amount of \$30,900 is not warranted in this case and it is withdrawn.

Regarding the *nature* criterion in the Violation Report, PHMSA noted that the violation was related to a failure to perform a required activity.<sup>8</sup> PLLC asserted that "at most this could be considered a documentation and recordkeeping violation . . . ."<sup>9</sup> I disagree. The Notice alleged a failure to follow procedures, not a failure to keep records. The Violation Report itself specifically identifies a failure to follow procedures as an example of an activities violation.

---

<sup>7</sup> 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).

<sup>8</sup> Violation Report, at 7.

<sup>9</sup> Response, at 2.

Regarding the *circumstances* criterion in the Violation Report, PHMSA noted that it discovered the violation, which started on November 11, 2016, and lasted for longer than 10 days.<sup>10</sup> PLLC does not dispute that PHMSA discovered the violation, nor the duration of the violation. PLLC disputes that a violation occurred at all. Having already found PLLC in violation of § 195.402(a), I find that PHMSA properly considered the fact that it discovered the violation, and that the violation lasted longer than 10 days in duration, in its calculation of the proposed civil penalty.

Regarding the *gravity* criterion, PHMSA noted in the Violation Report that the alleged violation “occurred; however, pipeline safety was minimally affected.”<sup>11</sup> This is the lowest category selectable for *gravity*. I find this selection accurately reflects the gravity of the violation committed by Respondent.

Regarding the *culpability and good faith* criteria, PHMSA noted in the Violation Report that PLLC failed to comply with a requirement that was “clearly applicable,” and that PLLC did not have a credible justification for its non-compliance.<sup>12</sup> There is no dispute that the regulation requiring PLLC to follow its procedures clearly applied, and that PLLC failed to follow its procedure.

Finally, § 190.225(b)(2) permits me to consider “other matters as justice may require” in determining the amount of a civil penalty under Part 195. Under this assessment factor, I find that the record demonstrates that PLLC did perform the inspections necessary to ensure pipeline safety, and this fact should be credited when considering justification for a civil penalty in this case. Further, PLLC’s failure to follow its procedure in this case does not evidence a problem area with the company as the inspections were performed on the devices, was not causally related to an incident, was not egregious or willful, and did not significantly increase the likelihood of a pipeline failure. PLLC’s procedures required them to go above and beyond what the minimum pipeline safety standards require, and they should be commended for operating in that manner, not penalized with a civil penalty for failing to properly document the actions performed. Finally, PLLC is advised to ensure that it follows its procedures going forward as the procedures assist in the continued safe operation of the pipeline, and a failure to follow procedures may result in future enforcement, including issuance of a civil penalty.

Based upon the foregoing, I withdraw the proposed penalty for violation of 49 C.F.R. § 195.402(a).

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 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.

---

<sup>10</sup> Violation Report, at 8.

<sup>11</sup> *Id.* at 9.

<sup>12</sup> *Id.* at 10.

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

October 9, 2019

---

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

---

Date Issued