



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

APR 13 2006

Mr. Leonard W. Mallet
Vice President of Operations
Texas Eastern Pipeline Products Company
2929 Allen Parkway
Houston, TX 77252

RE: CPF No. 2-2005-5013

Dear Mr. Mallet:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$35,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

cc: James E. Mike, Manager Regulatory Compliance, TEPPCO
Ms. Linda Daugherty, Director, Southern Region, OPS

Enclosure

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED) AND TELECOPY

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

In the Matter of)	
)	
Texas Eastern Pipeline Products Company,)	CPF No. 2-2005-5013
)	
Respondents.)	

FINAL ORDER

On November 4-8, 2002, September 27-30, 2004, and October 4-8, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an inspection of Respondent's facilities and records in Baytown, Texas, and Seymour, Indiana. As a result of the inspection, the Director, Southern Region, issued to Respondent, by letter dated September 15, 2005, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$35,000 for the alleged violations.

In a letter dated October 17, 2005, Respondent submitted a Response to the Notice. Respondent contested one of the alleged violations, offered an explanation and requested withdrawal or reduction of the proposed civil penalty. Respondent did not request a hearing and therefore, has waived the right to one.

FINDINGS OF VIOLATIONS

Uncontested

Respondent did not contest the alleged violations of 49 C.F.R. §§ 195.403(c) and 195.410 in the Notice. Accordingly, I find that Respondent violated 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. §195.403(c) – failure to maintain records to demonstrate and verify the supervisors' knowledge of emergency response procedures, in accordance with §195.402.

49 C.F.R. §195.410 – failure to place and maintain pipeline markers over each buried pipeline. Respondent's P-74 line east of mile post 381 was improperly marked and pine trees have been planted on top of where the line locator showed the P-74 line to be buried. Respondent's P-31 line southwest of mile post 106, and its P-2 and P-62 lines north of the Ouachita River were not sufficiently marked to accurately locate the pipelines in many areas along the right-of-way.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

Item 1 in the Notice alleged that Respondent violated 49 C.F.R. §195.402(a) and (c) (4), as Respondent had not designated which pipeline facilities are located in areas that would require immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned. This regulation provides safety precautions that minimize the risk of injury to human life, the environment, and property during an emergency.

Along with its Response, Respondent submitted a section of its Operating and Maintenance (O&M) manual entitled *Procedure E-405—Identifying Locations Requiring Immediate Response*. Respondent advised that its O&M states, "All pipeline systems, regardless of location, are in areas that would require an immediate response to prevent hazards in the public and the environment if the system failed or malfunctioned." Respondent further advised that the Emergency Plan section of its O&M manual states, "It shall be the policy of TEPPCO to treat the failure or malfunction of any of its facilities as a potential hazard to the public and respond immediately." Respondent contended that its submission shows its compliance with federal regulations and requested withdrawal of the proposed civil penalty.

Respondent submitted a portion of its O&M manual and Emergency Plan as evidence that it designated all of its pipeline systems as requiring an immediate response by TEPPCO to prevent hazards to the public if the facilities failed or malfunctioned. While Respondent's effort to ensure pipeline safety is acknowledged, the evidence was submitted after completion of the inspection. Evidence that relates to activities that occurred after the inspection is not relevant to determining whether a violation occurred. The documents were not provided during the inspection nor during the post inspection exit interview. The evidence was submitted after completion of the inspection. Respondent has not shown any circumstance that would have prevented or justified its failure to demonstrate compliance during the inspection or during the post inspection. Accordingly, I find that Respondent violated 49 C.F.R. §195.402(a) and (c) (4), as Respondent failed to designate which pipeline facilities are located in areas that would require immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned.

Item 2 in the Notice alleged that Respondent violated 49 C.F.R. §195.403(a) and (b), as Respondent did not demonstrate that it conducts a continuous training program to instruct emergency response

personnel. Respondent did not provide records to demonstrate that each employee's performance in meeting the objectives of the emergency response training was accomplished each calendar year, at intervals not exceeding 15 months, but at least once each calendar year.

In its Response, Respondent advised that it completed an extensive training program some time ago, but it has not sufficiently developed a system-wide documentation program to demonstrate its effectiveness nor the personnel involved in the program. Respondent submitted an excerpt of the minimum program elements for its field operations personnel. Respondent explained that it is currently in the process of developing a more comprehensive and precise documentation system to capture involvement of its personnel in ongoing emergency response training. Respondent also advised that it recognizes the limitations of its documentation process. Nevertheless, Respondent contended that it is in compliance with the intent and spirit of the regulation.

Respondent has not sufficiently developed a system-wide documentation program. Respondent is currently in the process of developing a more comprehensive and precise documentation system. While Respondent demonstrated that it is working toward compliance, Respondent failed to demonstrate that it is in compliance. Without this history to demonstrate each employee's performance in meeting the objectives of the emergency response training, an operator increases the risk of harm to its personnel and the public. Respondent has not provided any evidence that would justify elimination of the proposed civil penalty. Accordingly, I find that Respondent violated 49 C.F.R. §195.403(a) and (b), as Respondent failed to demonstrate that it conducts a continuous training program to instruct emergency response personnel.

Item 5 in the Notice alleged that Respondent violated 49 C.F.R. §195.412(a), as Respondent failed to properly inspect the surface conditions on or adjacent to each pipeline right-of-way. Respondent patrols its right-of-ways by aircraft but the aerial patrol views are obstructed by significant overhanging tree canopy in many areas, effectively blocking the view of various right-of-ways.

In its Response, Respondent advised that it is assessing each location specified in the Notice and working to insure additional canopies are removed. Respondent further advised that each patrol pilot has been interviewed to insure no additional locations requiring attention have been overlooked. Respondent contended that certain areas may have had restricted viewing capabilities but there was sufficient exposure for adequate inspection of the system.

The patrolling of right-of-ways is essential to help identify potential problems which could develop from third party activities along the pipeline. Patrolling is also crucial for leak detection. Respondent failed to exercise vigilance commensurate with the danger to protect the public, environment, and property from injury and destruction. Inspections by Respondent that were obstructed by significant overhanging tree canopy were inefficient. The failure to properly patrol and follow-up on activities along the right-of-way could lead to significant harm to the public and the environment should damage to the pipeline occur or a leak develops. Accordingly, I find that Respondent violated 49 C.F.R. §195.412, as Respondent failed to properly inspect the surface conditions on or adjacent to each pipeline right-of-way.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require. The Notice proposed a total civil penalty of \$ 35,000 for violations of 49 C.F.R. Part 195.

The proposed civil penalty for **Item 1** is \$5,000 for violation of 49 C.F.R. §192.402(a), as Respondent failed to designate which pipeline facilities are located in areas that would require immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned. Respondent subsequently submitted sections of its O&M manual to demonstrate compliance. Respondent contended that its submission shows its compliance with federal regulations and requested withdrawal of the proposed civil penalty. The documentation submitted by Respondent was not provided during the inspection nor during the post inspection exit interview. The evidence was submitted after completion of the inspection. Evidence that relates to activities that occurred after the inspection is not relevant to determining whether a violation occurred. Respondent has not shown any circumstance that would have prevented or justified its failure to demonstrate compliance during the inspection. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for this violation.

The proposed civil penalty for **Item 2** is \$5,000, for violation of 49 C.F.R. §192.403(a) and (b), as Respondent failed to demonstrate that it conducts a continuous training program to instruct emergency response personnel. Although Respondent advised that it is in the process of developing a more comprehensive and precise documentation system, it failed to provide records to demonstrate that each employee's performance in meeting the objectives of the emergency response training was accomplished each calendar year, at intervals not exceeding 15 months. An objective of the regulation is to assure that operator emergency response personnel are prepared to recognize conditions that are likely to cause emergencies, know the characteristics and hazards of the product transported and take steps necessary to control any accidental release of hazardous liquids and minimize the potential danger to the public and environment if the facilities failed or malfunctioned in an expeditious and safe manner. When an operator fails to conduct a continuous training program to instruct emergency response personnel, the proper procedures and techniques to follow may not be clear to those responsible for responding to an emergency, which increases the risk of harm to its personnel and the public. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for this violation.

The proposed civil penalty for **Item 3** is \$5,000 for violation of 49 C.F.R. §192.403(c), as Respondent failed to maintain records to demonstrate and verify the supervisors' knowledge of emergency response procedures, in accordance with §195.402. Respondent did not contest the violation or the civil penalty. The supervisors' knowledge of emergency response procedures is essential to reduce potential harm to the public and the environment that may result from a pipeline emergency. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for violation for 49 C.F.R. § 192.403(c).

The proposed civil penalty for **Item 4** is \$10,000 for violation of 49 C.F.R. §192.410(a), as Respondent failed to place and maintain pipeline markers over each buried pipeline. Respondent's P-74 line east of mile post 381 was improperly marked and pine trees have been planted on top of where the line locator showed the P-74 line to be buried. Respondent's P-31 line southwest of mile post 106, and its P-2 and P-62 lines north of the Ouachita River were not sufficiently marked to accurately locate the pipelines in many areas along the right-of-way. Respondent did not contest the violation or the civil penalty. The rule contemplates the protection of both people and property from an accidental discharge from the pipeline. Unmarked or inaccurate line markers increase the risk of harm to the public, environment, and property. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for this violation.

The proposed civil penalty for **Item 5** is \$10,000 for violation of 49 C.F.R. §192.412(a), as Respondent failed to properly inspect the surface conditions on or adjacent to each pipeline right-of-way. Respondent patrols its right-of-ways by aircraft but the aerial patrol views are obstructed by significant overhanging tree canopy in many areas, effectively blocking the view of various right-of-ways. Respondent advised that it is assessing each location specified in the Notice. Respondent requested a reduction in the proposed civil penalty. Respondent argued that certain areas may have had restricted viewing capabilities but there was sufficient exposure for adequate inspection of the system. Although Respondent contended in its response that there was sufficient exposure, during the exit interview, Respondent's personnel stated that they had not flown with the pilot to verify the contention that there was sufficient exposure for adequate inspection of the system. A proper system of inspection should be maintained to insure reasonable promptness in the detection of all surface conditions on and adjacent to the pipeline right-of-way for indications of any and all factors affecting the safety and operations of the pipeline. Inspections by Respondent that were obstructed by significant overhanging tree canopy were inefficient. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for violation of 49 C.F.R. §192.412(a).

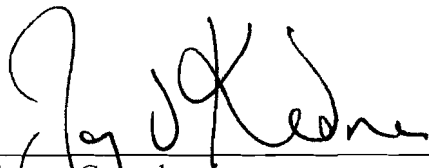
Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$35,000.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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 (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$35,000 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 United States District Court.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for 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 on receipt.



for
Stacey Gerard
Associate Administrator
for Pipeline Safety

APR 13 2006

Date Issued