

**JUL 12 2010**

Mr. Tim Felt  
President and Chief Executive Officer  
Colonial Pipeline Company  
1185 Sanctuary Parkway, Suite 100  
Alpharetta, GA 30009-4738

**RE: CPF 2-2008-5005**

Dear Mr. Felt:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$135,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Doug Belden, General Manager, Colonial Pipeline Company  
Mr. Wayne Lemoi, Director, Southern Region, PHMSA

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 1160 0001 0039 0584]**

**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,	)	CPF No. 2-2008-5005
	)	
Respondent.	)	
	)	

**FINAL ORDER**

From November 27, 2007 to December 14, 2007, 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 Colonial Pipeline Company's (Respondent or Colonial) facilities in South Carolina, Georgia, and Tennessee, and of company records in Austell, Chattahoochee, and Ringgold, GA, and in Belton and Spartanburg, SC. Based in Alpharetta, Georgia, Colonial Pipeline delivers gasoline, home heating oil, aviation fuel and other refined petroleum products throughout the southern and eastern United States.

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated March 26, 2008, a Notice of Probable Violation, Proposed Civil Penalty and Warning (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed certain violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$135,000 for the alleged violations. The Notice also proposed finding that Respondent had committed certain other probable violations of 49 C.F.R. Part 195 and warning Respondent to take appropriate corrective action or be subject to future enforcement action.

Respondent responded to the Notice by letter dated April 30, 2008 (Response). With the exception of Item 4A discussed below, Colonial did not dispute the allegations. Respondent offered information explaining its actions in regard to the other items and requested that the proposed penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

**FINDINGS OF VIOLATION**

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

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1), which states:

**§ 195.573 What must I do to monitor external corrosion control?**

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with § 195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1) by failing to perform tests to monitor external corrosion control at least once each calendar year, but with intervals not exceeding 15 months, to determine whether its cathodic protection (CP) system complied with 49 C.F.R. § 195.571. Specifically, the Notice alleged that Colonial's CP survey records showed that tests had not been conducted within the required intervals, as evidenced by the following information:

**A.** Line 02, Milepost 1835+28 Ridge Road. Surveys were not performed in 2005 and 2006 calendar years.

07/08/04: -1.4v

09/16/05: 0v (remarks indicate test lead was not found)

07/24/06: 0v (remarks indicate test lead was not found)

08/06/07: -1.986v;

**B.** Line 13, Milepost 635+73 Paces Ferry Rd. Surveys were not performed in 2005 and 2006 calendar years.

08/10/04: -0.915v

10/05/05: no reading (remarks indicate bad test lead)

08/13/06: no reading, no remarks

08/29/06: 0v (remarks indicate test station not found)

11/07/07: -0.974v;

**C.** Line 15, Milepost 1124+23 Remington Dr. Survey was not performed in 2005 calendar year.

08/10/04: -1.1v

10/05/05: no reading (remarks indicate test lead was not found)

08/12/06: no reading (remarks convey pipeline does not cross Remington)

08/29/06: -1.142v;

**D.** Line 16, Milepost 1356+28 PPL Xing. Surveys were not performed in 2004, 2005, and 2006 calendar years.

08/25/04: no reading (remarks indicate vegetation overgrowth, unable to find)

10/03/05: 0v

08/27/06: no reading (remarks indicate test station not found)

11/10/07: -0.889v;

**E.** Line 16, Milepost 1378+78 Hwy. 29. Surveys were not performed in 2004 and 2005 calendar years.

08/30/04: no reading (remarks indicate no test station)

10/03/05: no reading, no remarks

08/26/06: -1.004v;

**F.** Line 19 Milepost 6801+78 L&N Railroad spur. Surveys were not performed in 2005 and 2006 calendar years.

10/13/05: 0.000 (remarks indicate not found)

12/13/06: no reading (remarks indicate not found)

12/01/07: -1.369v;

**G.** Line 19 Milepost 6582+50 Sewer Crossing. Survey was not performed in 2005 calendar year. The 15-month maximum time interval was exceeded in 2007 by at least 13 days (date of PHMSA inspection).

10/11/05: 0.000 (remarks indicate test station could not be found).

08/30/06: -1.022v

12/01/07: 0.000 (remarks indicate test station could not be found);

**H.** Line 20, I-265 (East side) Milepost 6965+06. Surveys were not performed in 2004 and 2005 calendar years.

07/30/04: no reading (remarks indicate markers were present, but test station was not).

10/24/05: no reading (remarks indicate no test station was found)

12/12/06: -1.880v;

**I.** Line 20 Milepost 10+72 Span. Records indicate this location was not surveyed in calendar year 2005;

**J.** Line 01, Milepost 1329+91 Rector Road. Survey was not performed in calendar year 2006. Surveys were conducted on March 4, 2005 and May 10, 2007;

**K.** Line 20: The maximum allowed 15-month time period between the 2006 and 2007 surveys was exceeded at 22 test stations between Mileposts 3185+06 and 4474+09. Times exceeding the 15-month interval vary from 27 days to 56 days;

**L.** Sweetwater Pump Station surveys were performed on 08/08/06 and 11/16/07. The 15-month maximum time interval was exceeded by 8 days.

In its Response, Colonial did not dispute these allegations but explained that it had an ongoing corrosion control program in place to address test readings of cathodic protection levels that did not meet one or more of its criteria. The company indicated that it had reviewed its procedures relating to the scheduling and evaluation of annual surveys and that it planned to make certain

improvements to the procedures to ensure that future tests were completed within the time requirements. Respondent stated that cathodic protection tests had been conducted in 2007 at all locations, except for the location reflected in Item 3G. Colonial indicated that a new test station would be installed at Line 19 Milepost 6582+50 Sewer Crossing and a test scheduled. Respondent stated that it adhered to the continuing use of successfully applied criteria on its pipeline system, as referenced in NACE International Standard RP 0169.

Accordingly, after considering all the evidence, I find that Respondent violated 49 C.F.R. § 195.573(a) (1) by failing to conduct tests to monitor external corrosion control on its protected pipeline at least once each calendar year, with intervals not exceeding 15 months, to determine whether its CP system complied with 49 C.F.R. § 195.571. Specifically, I find that Colonial's records reveal 12 instances (3A-3L) from 2004 to 2007 of its failure to complete tests within the required interval.

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. §§ 195.573(e) and 195.401(b), which state, in relevant part:

**§ 195.573 What must I do to monitor external corrosion control?**

(a) . . .

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by § 195.401(b). However, if the deficiency involves a pipeline in an integrity management program under § 195.452, you must correct the deficiency as required by § 195.452(h).

**§ 195.401 General requirements.**

(a) . . .

(b) Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it shall correct it within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573 by failing to correct certain identified deficiencies in corrosion control, as required by § 195.401(b). Specifically, it alleged that Colonial failed, within a reasonable time, to correct certain deficiencies that could adversely affect the safe operation of its pipeline. PHMSA has generally considered a "reasonable time" to be the maximum time allowed between required annual cathodic protection surveys (15 months maximum from the discovery of a deficient survey reading).

The inspection revealed the following deficiencies:

**A.** Line 02 Milepost 7833+46, Liberty Church Road Survey reading taken on 03/01/06 was deficient. The deficiency was corrected in approximately 18 months.

03/01/06: -0.797v

03/22/07: -0.623v

A new cathodic protection system was completed on 08/25/07, with a close interval survey (CIS) performed on 08/30/07;

**B.** Line 19 Mileposts 1078+35 Cochran Road, 1141+60 Woods Road, and 1165+60 Fence. Survey readings taken on 07/16/04 were deficient. Records indicate the deficient conditions were not corrected until at least after 11/28/06 (28 + months from discovery). Survey readings for these three locations are listed below:

<u>Cochran Road</u>	<u>Woods Road</u>	<u>Fence</u>
07/16/04: -0.69v	07/16/04: -.064v	07/16/04: -0.645v
09/09/05: -0.72v	09/09/05: -.0655v	09/09/05: -0.803v
11/28/06: -0.672v	11/28/06: -0.621v	11/30/06: -0.717v
09/18/07: -1.064v	09/18/07: -1.411v	09/19/07: -1.436v;

**C.** Atlanta Junction breakout tanks. No documentation was provided indicating actions had been taken to correct “low” cathodic protection survey readings within a reasonable time, as evidenced by the following information:

Tank #333 Bottom

08/23/04: N side -0.528v, W side -0.559v.

11/22/05: N side -0.418v, W side -0.522v.

No documented survey in 2006.

12/06/07 Observed during inspection: N side -0.492v, W side -0.541v. No voltage on c.p. cable.

12/11/07: N side -0.858v, W side -0.949v;

Tank #334 Bottom

08/23/04: N side -0.394v, S side -0.480v, E side -0.302v, W side -0.445v.

11/22/05: N side -0.306v, S side -0.424v, E side -0.403v, W side -0.325v.

No documented survey in 2006.

12/06/07 Observed during inspection: N side -0.608v, S side -0.748v, E side -0.780v,

W side -0.680v. No voltage on c.p. cable.

12/11/07: N side -0.508v, S side -0.577v, E side -0.451v, W side -0.571v;

Tank #335 Bottom

08/23/04: W side -0.775v

11/22/05: W side -0.578v

No documented survey in 2006.

12/11/07: W side -0.953v; and

Tank #353 Bottom

11/22/05: N side -0.650v, S side -0.625v, E side -0.626v, W side -0.590v.

No documented survey in 2006.

12/06/07 Observed during inspection: W side -0.810v.

12/12/07: N side -0.890v, S side -0.980v, E side -1.012v, W side -0.828v.

In its response to **Item 4A**, Colonial contested this allegation of violation, arguing that, in addition to its annual survey, it had completed a CIS of this line segment on March 6, 2006. Respondent further contended that it had performed additional testing of existing rectifiers and groundbeds that influenced the area, in order to determine the proper solution to the exception. The company argued that its records indicated that it had discovered a CP deficiency on September 1, 2006, which was within the time allowed by §195.452(h) (2), and that an additional CP system was then designed and installed to remediate the deficient area by August 25, 2007. Respondent argued that the subject location was evaluated and repaired within a reasonable time and was therefore consistent with regulatory requirements.

I reject the company's argument that § 195.452(h)(2) applies to the deficiency identified here. The requirement under § 195.573(e) that operators correct deficiencies involving pipelines covered by an Integrity Management (IM) program in accordance with § 195.452(h) does not supplant the requirement that they correct identified corrosion control deficiencies for such pipelines *within a reasonable time* under §195.401(b). Under the integrity management regulations, once an operator discovers an anomalous condition on its pipeline through the integrity assessment process, it must promptly, but no later than 180 days after such assessment, ascertain whether the condition "presents a potential threat to the integrity of the pipeline." If so, then the operator must establish a schedule for further evaluation and remediation of such conditions based upon a prioritization of risk.

I interpret 49 C.F.R. § 195.573(e) to mean that corrosion control deficiencies identified through an operator's IM program may be corrected according to a prioritized schedule based upon risk, but that such schedule does not negate or supplant the requirement that deficiencies identified through an operator's regular corrosion control program be corrected within a reasonable time. To read the regulation otherwise would mean that corrosion control deficiencies on pipelines located in higher-risk areas covered by an IM program could be remediated less promptly than those located in lower-risk locations.

Respondent has not provided any evidence that the CP deficiency discovered on 03/01/06 was corrected within a reasonable time. The risk of corrosion on the pipeline significantly increases without proper cathodic protection systems. Accordingly, I find that Respondent's records show it failed to correct the identified corrosion control deficiencies within a reasonable time, as required by § 195.573(e).

In its response to **Item 4B**, Colonial explained that it had addressed many areas for corrosion each year, but the time required to determine if a deficiency actually existed (discovery of a deficiency) and to make repairs varied, depending up conditions at each site. Colonial contended that the timeline for making the required corrections in these particular locations was extended, primarily due to difficult local site conditions and local permit requirements, and that remediation had been made prior to the PHMSA inspection.

Respondent asserted that numerous attempts had been made in 2005 and 2006 to identify locations to install new CP systems, but there was a lack of available electrical power in the areas and that necessary right-of-way easements had not been obtained until 2007. While this may have been true, it does not constitute a valid defense to the allegation of violation. Accordingly, I find that Respondent's records show it failed to correct the identified corrosion control deficiencies within a reasonable time, as required by § 195.573(e).

In its response to **Item 4C**, Colonial explained that it had performed investigations and repairs of the Atlanta Journal breakout tanks identified in the Notice and had completed the proposed corrective actions. Accordingly, I find that Respondent's records show it failed to correct the identified corrosion control deficiencies within a reasonable time, as required by § 194.573(e).

Respondent has presented evidence showing that it has now completed follow-up investigations and repairs, but not that any attempts were made to achieve compliance prior to the PHMSA inspection. Respondent has an affirmative duty to achieve and maintain compliance. To demonstrate compliance, operators must provide relevant documentation and records during a pipeline safety inspection, as required by Federal pipeline safety laws and regulations. Having considered information relative to Items 4(a)-(c), and after considering all the evidence, I find Respondent violated 49 C.F.R. § 195.573(e) by failing to correct, within a reasonable time, the cited deficiencies in corrosion control.

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

### **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. 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; the Respondent's ability to pay the penalty 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 \$135,000 for the violations cited above.

The Notice in **Item 3** proposed a civil penalty of \$52,000 for Respondent's violation of 49 C.F.R. § 195.573(a) (1), for failing to perform CP tests at least once each calendar year, with intervals not exceeding 15 months. Inspection and testing at the required intervals are essential to knowing that the pipeline equipment is being maintained, that it will function properly, and that its integrity has not been compromised. Colonial requested a reduction in the proposed civil penalty based on its good faith efforts to correct the deficiencies before the PHMSA inspection

and before the Notice was issued. I am not persuaded in this case that non-compliant test survey frequencies could somehow be “corrected” after the fact or that such efforts demonstrate “good faith” in attempting to achieve compliance. Respondent has not shown any circumstance that would have prevented it from conducting CP tests on the pipeline within the required intervals or that would have justified its failure to do so. Respondent has not shown any circumstances that would justify reduction of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$52,000, for violation of § 195.573(a) (1).

The Notice in **Item 4** proposed a civil penalty of \$83,000 for Respondent’s violation of § 195.573(e), for failing to correct identified corrosion control deficiencies within a reasonable time, as required by § 195.401(b). An operator must provide protection for pipeline segments through preventive and mitigative measures to prevent a pipeline failure and to mitigate the consequences of a failure. The regulation requires safety precautions that minimize the risk of accident or injury to human life, the environment and property. Colonial requested a reduction in the amount of the proposed civil penalty because it disagreed that Item 4A constituted a violation and because it had corrected the alleged deficiencies before the PHMSA inspection and before the Notice was issued. During a pipeline safety inspection, operators must provide the documentation and records to demonstrate compliance, as required by Federal pipeline safety laws and regulations. Respondent failed to demonstrate compliance during the inspection or during the post-inspection exit interview. Respondent has not shown any circumstances that would justify reduction of the proposed civil penalty. Preventive maintenance is critical to the safety of the public, environment and property. I find that the penalty proposed for this violation is proportionate to the danger posed by the violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$83,000, for violation of 49 C.F.R. § 195.573(e).

Furthermore, I find that Respondent has the ability to pay the penalties discussed above without adversely affecting its ability to continue in business. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of **\$135,000**.

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-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$135,000 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 relief in a district court of the United States.

### WARNING ITEMS

With respect to Items 1, 2 and 5, the Notice alleged probable violations of Part 195 but did not propose civil penalties or a compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.567(a) (**Notice Item 1**) — Respondent’s alleged failure to have an electrical test lead on Line 19, Milepost 1733+08. Respondent’s annual CP survey records indicate that the pipeline was normally “probed” to obtain the pipe-to-soil survey reading. Respondent demonstrated that it had taken certain actions to address this item by installing a test lead on April 23, 2008;

49 C.F.R. § 195.567(c) (**Notice Item 2**) — Respondent’s alleged failure to maintain test lead wires in a condition that would enable a person to determine the pipeline’s CP status and obtain electrical measurements to determine whether the cathodic protection complied with § 195.571. Colonial demonstrated that it was taking certain actions to address this item with its corrosion control program by installing and maintaining test leads at the sites identified in the Notice; and

49 C.F.R. § 195.589(c) (**Notice Item 5**) — Respondent’s alleged failure to maintain records of the 2006 annual survey of its Atlanta Junction breakout tank bottoms for as long as the pipeline remained in service, as required by §§ 195.573(a) (1) and 195.573(d). Respondent demonstrated that it was taking certain actions to address this item by developing instructions related to retaining corrosion control information and documents. An evaluation of needed improvements, if any, was planned by Respondent to ensure that proper records were maintained.

Respondent presented information in its Response showing that it had taken certain actions to address the cited items. Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. § 195.567(a) (Notice Item 1), 49 C.F.R. § 195.567(c) (Notice Item 2) and 49 C.F.R. § 195.589(c) (Notice Item 5) have occurred and Respondent is hereby advised to correct such conditions. In the event that OPS finds a violation for any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

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 sent to: 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. PHMSA will accept petitions received no later than 20 days after receipt of service of the Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including

any required corrective actions. If Respondent submits payment of 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 upon service in accordance with 49 C.F.R. § 190.5.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued