



U.S. Department
of Transportation
Pipeline and Hazardous Materials
Safety Administration

NOV 21 2011

1200 New Jersey Ave., SE
Washington, DC 20590

Mr. Tim Heilig
Vice President of Mechanical Operations
Norfolk Southern Corporation
1200 Peachtree Street, N.E. (Box: 184)
Atlanta, GA 30309

Re: CPF No. 2-2011-6003

Dear Mr. Heilig:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$126,000. It further finds that Norfolk Southern Corporation has completed the actions specified in the Notice to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid, this enforcement action will be closed. 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. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety
Mr. Wayne Lemoi, Director, OPS Southern Region
Ms. A. Gayle Jordan, General Solicitor-Environmental, Norfolk Southern Corporation
Mr. Brian Ball, Energy Logistics, Buckeye Development & Logistics, LLC

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164202812672]

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

In the Matter of)

Norfolk Southern Corporation,)

Respondent.)

CPF No 2-2011-6003

FINAL ORDER

On December 13-14, 2010, 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 Norfolk Southern Corporation (Norfolk or Respondent) in Macon, Georgia. Respondent operates 5.5 miles of diesel fuel pipeline in Macon.¹

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated February 16, 2011, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Norfolk had committed various violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$126,000, and proposed requiring that Respondent take certain measures to comply with the regulations. The warning items required no further action, but advised the operator to correct the probable violations or face possible enforcement action.

Norfolk responded to the Notice by letter dated March 17, 2011 (Response). The company did not contest the allegations of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Norfolk did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

¹ <http://www.nscorp.com/> (last accessed 8/11/2011).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(4), 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

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1) . . .

(4) Determining which pipeline facilities are located in areas that would require an immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned.

The Notice alleged that Norfolk violated 49 C.F.R. § 195.402(c)(4) by failing to follow its written procedural manual for operations, maintenance, and emergencies (O&M Manual).² Specifically, the Notice alleged that the company failed to follow its procedures requiring the company to identify pipeline facilities located in High Consequence Areas (HCAs)³ along its pipeline that would require an immediate response to prevent hazards to the public if the facilities failed or malfunctioned.

Respondent did not contest the allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(4) by failing to follow its own written procedures for operations, maintenance, and emergencies.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(12), which states:

² Norfolk Southern Corporation, Procedural Manual for Operation, Maintenance, and Emergencies; Brosnan Yard Pipeline; December 2010, (PMOME) Section 1 - Procedural Manual for Operation, Maintenance, and Emergencies, Revision 2, December 2010. This section states: "This Section requires operators to determine which pipeline facilities/segments are located within areas that would require an immediate response by the operator to prevent hazards to the public in the event 'the facilities failed or malfunctioned'. High Consequence Areas (HCA's) within the pipeline area are defined in NSR's Integrity Management Plan (Part 2). Sections of the pipeline that traverse sensitive environments, as defined by 49 CFR Part 194, are described in Sections 1 and 9 of Norfolk Southern's Response Plan located in Part 4." See Exhibit A, Pipeline Safety Violation Report (Feb. 16, 2011) (Violation Report), at 2.

³ A "High Consequence Area" is defined in 49 C.F.R. § 195.450 as:

(1) A *commercially navigable waterway*, which means a waterway where a substantial likelihood of commercial navigation exists;

(2) A *high population area*, which means an urbanized area, as defined and delineated by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile;

(3) An *other populated area*, which means a place, as defined and delineated by the Census Bureau, that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area;

(4) An *unusually sensitive area*, as defined in § 195.6.

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

(a)

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1) ...

(12) Establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(12) by failing to establish and maintain liaison with fire, police, and other appropriate public officials who may respond to an emergency on Norfolk's pipeline. PHMSA asserted that Norfolk personnel had stated that while the Company had met with fire department personnel about potential emergencies at the railroad yard, they had not discussed the pipeline.

Respondent acknowledged that it had not discussed the pipeline with local emergency response officials, but stated that it had discussed the risks of oil spills from tanks in the railroad yard. The company advised PHMSA of its intent to contact local emergency response officials in order to comply with the regulation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(12) by failing to establish and maintain liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.403(a)(1-5), which states:

§ 195.403 Emergency response training.

(a) Each operator shall establish and conduct a continuing training program to instruct emergency response personnel to:

(1) Carry out the emergency procedures established under 195.402 that relate to their assignments;

(2) Know the characteristics and hazards of the hazardous liquids or carbon dioxide transported, including, in case of flammable HVL, flammability of mixtures with air, odorless vapors, and water reactions;

(3) Recognize conditions that are likely to cause emergencies, predict the consequences of facility malfunctions or failures and hazardous liquids or carbon dioxide spills, and take appropriate corrective action;

(4) Take steps necessary to control any accidental release of hazardous liquid or carbon dioxide and to minimize the potential for fire, explosion, toxicity, or environmental damage; and

(5) Learn the potential causes, types, sizes, and consequences of fire and the appropriate use of portable fire extinguishers and other on-site fire

control equipment, involving, where feasible, a simulated pipeline emergency condition.

The Notice alleged that Respondent violated 49 C.F.R. § 195.403(a)(1-5) by failing to establish and conduct a continuing training program to instruct its personnel on how to respond to an emergency on its pipeline. PHMSA asserted that Norfolk did not have records or any other documentation to demonstrate that its personnel had been trained to respond to pipeline emergencies, as described in the company's O&M Manual.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.403(a)(1-5) by failing to establish and conduct a continuing training program to instruct emergency response personnel on how to recognize and respond to pipeline emergencies.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a), which states:

§ 195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* § 195.3) . . .

(i) The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a) by failing to implement a written continuing public education program that followed the guidance provided in [American Petroleum Institute (API)] Recommended Practice 1162. PHMSA asserted that Norfolk did not have any documentation available for review to demonstrate that its public awareness program had actually been implemented.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.440(a) by failing to implement a written continuing public education program that followed the guidance provided in API Recommended Practice 1162.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(2), 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) . . .

(2) Identify not more than 2 years after cathodic protection is installed, the circumstances in which a close-interval survey or comparable technology is practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE SP 0169 (incorporated by reference, *see* § 195.3).

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(2) by failing to identify the circumstances in which a close-interval survey or comparable technology was practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE SP 0169. PHMSA asserted that Norfolk's O&M Manual did not address or contain procedures necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE SP 0169.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(a)(2) by failing to identify the circumstances in which a close-interval survey or comparable technology was practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE SP 0169 within the required two-year interval.

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(3), which states:

§ 195.404 Maps and records.

(a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information:

- (1) . . .
- (3) The maximum operating pressure of each pipeline.

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(3) by failing to maintain current records for the maximum operating pressure (MOP) of its pipeline system. PHMSA asserted that Norfolk's MOP records were inconsistent and unclear. Specifically, the Notice alleged that Norfolk had hydrostatically pressure-tested the pipeline to 374 psig on August 31, 2006, as part of its integrity management program, yet recorded this MOP differently in two separate manuals and did not have records to show how the MOP had been established. Norfolk's records listed the MOP as 265 psig in one place but as 450 psig in another. After a review of the company's records, PHMSA maintained that the 374 psig test pressure could validate 265 psig, but not 450 psig, as the proper MOP.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(a)(3) by failing to maintain current records for the MOP of its pipeline system.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative 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 \$126,000 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$10,400 for Respondent's violation of 49 C.F.R. § 195.402(c)(4), for failing to follow its own procedures for identifying pipeline facilities in HCAs requiring an immediate response to prevent hazards to the public if the facilities failed or malfunctioned. Respondent did not contest the allegation of violation. Norfolk contended, however, that the proposed penalty should be mitigated because a series of maps detailing segments of the pipeline and their relation to HCAs was included in Appendix A of its Integrity Management Program (IMP), and a macro version map was included in the company's IMP and Public Awareness Program. The company acknowledged that these HCA maps were not in its O&M Manual at the time of the inspection. Norfolk also contended that because its pipeline was only 5.5 miles, its personnel were instructed to respond immediately to any failure, irrespective of where it occurred on the pipeline.⁴

I find these arguments unpersuasive. First, the company's O&M Manual did not indicate how Norfolk personnel were supposed to know which pipeline facilities on its system were located within areas needing immediate response. Since the company's own O&M Manual called for the inclusion of such procedures, the fact that facility maps were included in an appendix to the company's IMP is immaterial.

Second, the regulation requires that Norfolk assess its entire pipeline to identify the areas that require an immediate response and to delineate specific procedures for responding to emergencies in those riskier areas, regardless of the size of the system or the total length of the pipeline. Instructing personnel to respond immediately to *any* failure does not demonstrate an attempt to comply with either the letter or the intent of the regulation, which is designed to require operators to prioritize the risks to its pipeline system. Therefore, I fail to see any circumstances that would warrant mitigation or elimination of the penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,400 for violation of 49 C.F.R. § 195.402(c)(4).

Item 2: The Notice proposed a civil penalty of \$25,400 for Respondent's violation of 49 C.F.R. § 195.402(c)(12), for failing to establish and maintain liaison with fire, police, and other appropriate public officials who may respond to a pipeline emergency. Respondent did not contest the allegation of violation, but requested mitigation of the penalty because it had established and maintained liaison with local officials regarding risks on the railroad right-of-way and in the railroad yard, but not regarding emergencies from pipelines. This was a major oversight on the part of Norfolk. When an operator fails to establish and maintain liaison with fire, police, and other appropriate public officials, the proper response procedures may not be clear to those responsible for responding to pipeline, as opposed to other types of, emergencies. I find that Respondent has not provided any evidence that would justify mitigation or elimination of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$25,400 for violation of 49 C.F.R. § 195.402(c)(12).

⁴ Response, at 2.

Item 4: The Notice proposed a civil penalty of \$29,100 for Respondent's violation of 49 C.F.R. § 195.403(a)(1-5), for failing to establish and conduct a continuing training program to instruct emergency response personnel on how to recognize and respond to emergencies on its pipeline. Respondent did not contest the allegation of violation. The company acknowledged that it did not have a training program to address pipeline emergencies, but contended that the penalty should be eliminated because its personnel were trained to respond to emergencies in the company's rail yard and to spills from tanks and locomotives.

I find such an argument unconvincing. The regulation specifically requires pipeline operators to instruct emergency response personnel on how to recognize and respond to *pipeline* emergencies. Norfolk presented no evidence or documentation demonstrating that its personnel had been trained to respond to pipeline emergencies. The regulation's objective is to ensure that an operator's emergency response personnel are prepared to recognize conditions that are likely to cause emergencies; to know the characteristics and hazards of the product transported; to respond to any accidental release of hazardous liquids; and to minimize the potential danger to the public and environment if a failure or malfunction occurs. I find no evidence to support elimination or reduction of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$29,100 for violation of 49 C.F.R. § 195.403(a)(1-5).

Item 5: The Notice proposed a civil penalty of \$29,100 for Respondent's violation of 49 C.F.R. § 195.440, for failing to implement a written continuing public education program that followed the guidance provided in API Recommended Practice 1162. Respondent did not contest the allegation of violation. When an operator fails to implement a continuous training program for emergency response personnel, the risk of harm increases to the company's own personnel and to the public. Respondent has not presented any information that would warrant elimination or mitigation of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$29,100 for violation of 49 C.F.R. § 195.440.

Item 6: The Notice proposed a civil penalty of \$14,100 for Respondent's violation of 49 C.F.R. § 195.573(a)(2), for failing to identify when a close-interval survey or comparable technology was practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE SP 0169. Respondent did not contest the allegation of violation. Maintaining continuous and effective cathodic protection is a key part of pipeline safety. In order to assess the effectiveness of their cathodic protection systems, operators must select electrical survey methods that provide base line operating data, locate areas of inadequate protection, and identify areas likely to be adversely affected by construction or stray currents. These measures enable operators to take appropriate remedial measures, such as clearing shorts, repairing inoperative cathodic protection equipment or adding supplemental cathodic protection to prevent corrosion. In this case, Respondent has not presented any information to warrant elimination or mitigation of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$14,100 for violation of 49 C.F.R. § 195.573(a)(2).

Item 8: The Notice proposed a civil penalty of \$17,900 for Respondent's violation of 49 C.F.R. § 195.404(a)(3), for failing to maintain current records for the maximum operating pressure of its

pipeline system. Respondent did not contest the allegation of violation. Accurate and consistent documents are integral to conducting normal operations and maintenance, and responding to emergencies. In this case, Norfolk's inconsistent records posed a potentially significant threat to pipeline safety. Respondent has not presented any information that would warrant elimination or mitigation of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$17,900 for violation of 49 C.F.R. § 195.404(a)(3).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$126,000**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require 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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$126,000 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 district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, 4, 5, 6, and 8 in the Notice for violations of 49 C.F.R. §§ 195.402(c)(4), 195.402(c)(12), 195.403(a)(1-5), 195.440(a), 195.573(a)(2) and 195.404(a)(3), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director indicates that, effective July 1, 2011, Respondent turned over operation of the Macon pipeline to Buckeye Development & Logistics, LLC (Buckeye).⁵ Buckeye now operates and maintains Norfolk's pipeline, using Buckeye's O&M procedures, OQ Plan and IMP. As the new operator, Buckeye is expected to comply fully with the regulatory requirements of this Order. The Director has reviewed and accepted the corrective measures set forth in the proposed compliance order in the Notice and indicates that no further action is required with respect to those compliance terms.

⁵ The Development & Logistics segment of Buckeye consists primarily of terminal and pipeline operations and maintenance services and related construction services for third parties. (<http://www.buckeye.com>)

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 3 and 7, the Notice alleged probable violations of Part 195 and specifically considered these to be warning items. The warnings were for:

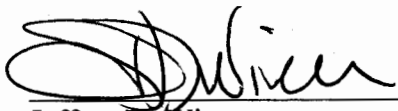
49 C.F.R. § 195.402(c)(13) (**Item 3**) — Respondent's alleged failure to periodically review the work done by its personnel to determine the effectiveness of procedures used in normal operation and maintenance and to take corrective action where deficiencies were found; and

49 C.F.R. § 195.589(c) (**Item 7**) — Respondent's alleged failure to maintain records of its inspections for atmospheric corrosion of each portion of its pipeline.

Norfolk presented information in its Response showing that it had taken certain actions to address the cited warning items. Accordingly, having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. § 195.402(c)(13) (Notice Item 3) and 49 C.F.R. § 195.589(c) (Notice Item 7) have occurred and Respondent is hereby advised to correct such conditions. If PHMSA finds a violation of these provisions 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, 2nd 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 this 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.



Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

NOV 21 2011

Date Issued