

MAY 2, 2014

Mr. Connell Rader
President
Enmark Energy, Inc.
104 First Choice Drive, Suite A
Madison, MS 39110

Re: CPF No. 2-2014-6002

Dear Mr. Rader:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions that need to be taken by Enmark Energy, Inc., to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Southern Region, 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. Wayne T. Lemoi, Director, Southern Region, OPS

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)	
)	
Enmark Energy, Inc.)	CPF No. 2-2014-6002
)	
Respondent.)	
)	

FINAL ORDER

On August 12-15 and 27, 2013, 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 Enmark Energy, Inc. (Enmark or Respondent) Sandhill and Air Liquide Carbon Dioxide (CO2) pipelines in Madison, Mississippi. The Sandhill pipeline is six inches in diameter and 1.4 miles in length, and the Air Liquide pipeline is composed of six- and eight-inch diameter pipe and is eight miles in length. Both pipelines are fed upstream by Denbury Onshore, LLC (Denbury) and deliver CO2 to the Sandhill and Air Liquide plants.¹ Enmark operates and maintains over one hundred miles of high-pressure natural gas and CO2 lines in the State of Mississippi.²

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated January 14, 2014, a Notice of Probable Violation 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 Enmark had committed various violations of 49 C.F.R. Part 195 and proposed ordering Respondent to take certain measures to correct the alleged violations. The warning item required no further action, but warned the operator to correct the probable violation or face possible enforcement action. Enmark responded to the Notice by letter dated February 11, 2014 (Response). Respondent did not contest the allegations of violation and expressed its intent to complete the measures in the proposed compliance order. Respondent did not request a hearing and therefore has waived its right to one.

¹ See Pipeline Safety Violation Report (Violation Report) (January 14, 2014) (on file with PHMSA), at 1.

² See, <http://enmarkenergy.com/About.html>, last accessed March 3, 2014.

FINDINGS OF VIOLATION

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

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b), which states:

§ 195.406 Maximum operating pressure.

(a) ...

(b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b) by failing to provide adequate controls and protective equipment to control the pressure in its pipelines from exceeding 110 percent of the established maximum operating pressure (MOP) during surges or other variations from normal operations. Specifically, the Notice alleged that Enmark did not control the valves and equipment needed to ensure that the Sandhill and Air Liquide lines did not exceed the 110 percent as set forth in the regulation above. During the inspection, Enmark acknowledged that the pressure of the pipelines was controlled by the upstream operator, Denbury. Enmark was unable to demonstrate that appropriate procedures, personnel qualifications, and recordkeeping had been undertaken by Denbury on behalf of Enmark that satisfied Enmark's responsibilities concerning the use of adequate controls and protective equipment necessary to control the pipeline pressures on its Sandhill and Air Liquide lines.³ 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. § 195.406(b) by failing to provide adequate controls and protective equipment to control the pressure of the Sandhill and Air Liquide pipelines from exceeding 110 percent of the operating pressure.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.420(a), which states:

§ 195.420 Valve maintenance.

(a) Each operator shall maintain each valve that is necessary for safe operation of its pipeline systems in good working order at all times....

The Notice alleged that Respondent violated 49 C.F.R. § 195.420(a) by failing to maintain each valve necessary to operate its pipelines. Specifically, the Notice alleged that Enmark failed to provide any information showing that it had maintained the block valves at the upstream and downstream ends of the Sandhill or Air Liquide pipelines necessary for their safe operation. While the valves necessary to maintain safe operation of its pipelines may be controlled by other entities, Enmark was again unable to provide any documentation that those entities were in fact taking those necessary steps to maintain the valves or had agreed to maintain those valves, in accordance with the regulation. Respondent did not contest this allegation of violation.

³ There was not even a written agreement between Denbury and Enmark concerning any division of responsibilities.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.420(a) by failing to maintain each valve necessary for the safe operation of its Sandhill and Air Liquide pipeline systems.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(i)(3), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) ...

(i) *What preventive and mitigative measures must an operator take to protect the high consequence area?*

(1) ...

(3) *Leak detection.* An operator must have a means to detect leaks on its pipeline system. An operator must evaluate the capability of its leak detection means and modify, as necessary, to protect the high consequence area. An operator's evaluation must, at least, consider the following factors – length and size of the pipeline, type of product carried, the pipeline's proximity to the high consequence area, the swiftness of leak detection, location of nearest response personnel, leak history, and risk assessment results.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(i)(3) by failing to have a means to detect leaks on its Air Liquide pipeline system to protect high consequence areas (HCA). Specifically, the Notice alleged that although Enmark's written integrity management program procedures indicate that it has a continuously operating condition monitoring program in place, it relied on Denbury to monitor the Air Liquide pipeline. When asked to demonstrate how Enmark could know whether this monitoring was being carried out by Denbury in a manner that met Enmark's regulatory obligations, Respondent was unable to produce any records of oversight by Enmark or even copies of written agreements between Enmark and Denbury. Therefore, Enmark was unable to show that it was properly monitoring the Air Liquide pipeline system. 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. § 195.452(i)(3) by failing to have a means to detect leaks on its Air Liquide pipeline system to protect HCAs, or proof that it had an agreement with others to actively monitor its Air Liquide pipeline, in accordance with the regulations.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(l), which states in relevant part:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) ...

(l) An operator must maintain for review during an inspection:

(i) ...

(ii) Documents to support the decisions and analyses, including any modifications, justifications, variances, deviations and determinations made, and actions taken, to implement and evaluate each element of the integrity management program listed in paragraph (f) of this section.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(l) by failing to maintain records required to support its Integrity Management Program (IMP) decisions and analyses. Specifically, the Notice alleged that while Enmark's IMP Section 4 indicated that Enmark adopted the previous owner's dispersion model results, those results were not available for review during PHMSA's inspection. 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. § 195.452(l) by failing to maintain records required to support its Integrity Management Program (IMP) decisions and analyses.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.505, which states in relevant part:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (a) Identify covered tasks;
- (b) Ensure through evaluation that individuals performing covered tasks are qualified;
- (c) ...

The Notice alleged that Respondent violated 49 C.F.R. § 195.505 by failing to identify certain Operator Qualification (OQ) covered tasks on its pipelines and did not ensure through evaluation that individuals performing covered tasks were qualified. Specifically, the Notice alleged that Enmark had not determined what covered tasks performed by Denbury would affect the operation and safe shutdown of its Sandhill and Air Liquide pipelines. Additionally, Enmark had not, through evaluation, ensured that personnel performing covered tasks were qualified in accordance with the requirements of the Enmark OQ program. 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. § 195.505 by failing to identify certain OQ covered tasks and did not ensure through evaluation that individuals performing covered tasks are qualified.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(c), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (a) ...
- (c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified;

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(c) by failing to include sufficient provisions in its written OQ program for allowing individuals that were not qualified to perform OQ covered tasks. Specifically, the Notice alleged that despite Enmark's OQP *Section 11 and 12* which discuss who is responsible for limiting the number of non-qualified individuals

from performing OQ tasks, the program failed to provide any span of control ratios or indicate what was or was not acceptable to Enmark. 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. § 195.505(c) by not adequately addressing the process of allowing individuals that were not qualified to perform an OQ for covered tasks.

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

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 3, 4, 5, 6, and 7 in the Notice for violations of 49 C.F.R. §195. 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. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.406(b) (**Item 1**), Respondent must **either** provide adequate controls and protective equipment to control the pressures in its Sandhill and Air Liquide pipelines such that it will not exceed 110 percent of the pressure limit established under §195.406(a) during surges or other variations from normal operations; **or**

If Enmark continues to rely on Denbury, Air Liquide, and/or Sandhill to provide controls and protective equipment to control the pressure in its pipelines, then Enmark must:

- i. Develop and implement a written formal agreement between Enmark and Denbury concerning the adequate control and protective equipment necessary to control the pressure in its Air Liquide and Sandhill pipelines such that it will not exceed 110 percent of the operating pressure limit established under §195.406 during stages or variations from normal operations.
- ii. Develop and implement a written formal agreement between Enmark and Denbury concerning the adequate control and protective equipment necessary to control the pressure in the Air Liquide pipeline such that it will not exceed 110 percent of the operating pressure limit established under §195.406 during surges or other variations from normal operations.
- iii. Develop and implement a written formal agreement between Enmark and Sandhill concerning the adequate control and protective equipment necessary to control the pressure in the Sandhill pipeline such that it will not exceed 110 percent of the operating pressure limit established under §195.406 during surges or other variations from normal operations.
- iv. Modify its written operations and maintenance (O&M) procedures, as necessary, to ensure the agreements in Items 1i, 1ii, and 1iii above, are properly developed and implemented.
- v. Complete the actions required in Item 5 to ensure that any Denbury, Air Liquide, and/or Sandhill personnel performing covered tasks on or affecting Enmark's pipelines are properly qualified.

vi. Collect and maintain records, as required, to demonstrate compliance with the modified O&M procedures and written agreement.

2. With respect to the violation of § 195.420(a) (**Item 3**), Respondent must **either** provide adequate valves to allow safe operation of its Sandhill and Air Liquide pipelines and maintain each valve in good working order at all times; **or**

If Enmark continues to rely on Denbury, Air Liquide, and/or Sandhill to provide and maintain valves necessary for the safe operation of its pipelines then Enmark must:

i. Develop and implement a written agreement between Enmark and Denbury concerning the maintenance on the Denbury pipeline system of valves that are required to block-in the upstream end of Enmark's Sandhill pipeline.

ii. Develop and implement a written agreement between Enmark and Sandhill concerning the maintenance of valve(s) at the Sandhill facility that are required to block-in the downstream end of Enmark's Sandhill pipeline.

iii. Develop and implement a written agreement between Enmark and Air Liquide concerning the maintenance of valve(s) at the Air Liquide facility that are required to block-in the downstream end of Enmark's Air Liquide pipeline.

iv. Modify its written O&M procedures, and its Operator Qualification Program (OQP), as necessary, to ensure the agreements in Items 2i, 2ii, 2iii above are properly developed and implemented.

v. Complete the actions required in Item 5 to ensure that any Denbury, Air Liquide, and/or Sandhill personnel performing covered tasks on or affecting Enmark's pipelines are properly qualified.

vi. Collect and maintain, as required, records to demonstrate compliance with the modified O&M procedures and written agreement.

3. With respect to the violation of § 195.452(i)(3) (**Item 4**), Respondent must **either** provide a means to continuously monitor and detect leaks on its Air Liquide pipeline system; **or**

If Enmark continues to rely on Denbury, Air Liquide, and/or Sandhill to provide and maintain valves necessary for the safe operation of its pipelines then Enmark must:

i. Develop and implement a written agreement between Enmark and Denbury, and/or Enmark and Air Liquide to provide a means to continuously monitor and detect leaks on the Air Liquide pipeline;

ii. Modify its written O&M procedures, and OQP, as necessary, to ensure the agreement(s) in Item 3a above is/are properly developed and implemented; and

iii. Collect and maintain, as required, records to demonstrate compliance with the modified O&M procedures, OQP and the written agreement.

4. With respect to the violation of § 195.452(l) (**Item 5**), Respondent must maintain for review during an inspection records required to support its IMP; Enmark must also create or gather records to fully support its IMP and make such records available to PHMSA inspectors at the time of inspection.

5. With respect to the violation of § 195.505 (**Item 6**), Respondent must properly and thoroughly identify all OQ covered tasks on its Sandhill and Air Liquide pipelines;
 - i. Ensure through evaluation that individuals performing OQ covered tasks on its Sandhill and Air Liquide pipelines are qualified under its OQP; and
 - ii. Collect and maintain, as required, records to demonstrate compliance with its OQP and to demonstrate compliance with this Order.
6. With respect to the violation of § 195.505(c) (**Item 7**), Respondent must specify in its OQP what is an acceptable span of control while covered tasks are being performed.
7. Enmark must complete the above Items within the following time requirements:
 - i. Within 60 days of receipt of the Final Order Enmark must complete the requirements of Item 4 and 6 above and make available to PHMSA inspection records and documentation showing the completion of Item 4.
 - ii. Within 90 days of receipt of the Final Order, Enmark must provide written documentation confirming the completion of Items 4 and 6 above to the Director, Officer of Pipeline Safety, PHMSA Southern Region.
 - iii. Within 90 days of receipt of the Final Order, Enmark must complete the requirements of Items 1, 3, and 5 above.
 - iv. Within 120 days of receipt of the Final Order, Enmark must provide written notification to the Director, Office of Pipeline Safety, PHMSA Southern Region, confirming the completion of Item 1, 3, and 5 above and make available for PHMSA inspection all records and documentation showing the completion of Items 1, 3 and 5.
8. It is requested (not mandated) that Enmark Energy, Inc. maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Mr. Wayne T. Lemoi, Director, Southern Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total costs associated with preparation/revision of plans, procedures, studies and analysis, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 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 ITEM

With respect to Item 2 the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 195.410 (**Item 2**) — Respondent’s alleged failure to place and maintain line markers along the buried Sandhill pipeline in sufficient number so that its location was accurately known.

If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

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

Date Issued