

July 13, 2020

VIA ELECTRONIC MAIL TO: jblount@colpipe.com

Mr. Joseph A. Blount, Jr.
President and Chief Executive Officer
Colonial Pipeline Company
1185 Sanctuary Parkway, Suite 100
Alpharetta, Georgia 30009

Re: CPF No. 2-2018-5003

Dear Mr. Blount:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$61,100, and specifies actions that need to be taken by Colonial Pipeline Company 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 and the terms of the compliance order completed, as determined by the Director, Southern Region, this enforcement action will be closed. Service of the Final Order by electronic mail is effective upon the date of transmission as provided under 49 C.F.R. § 190.5

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. James Urisko, Director, Southern Region, Office of Pipeline Safety, PHMSA
Ms. Catherine D. Little, Esq., Troutman Sanders, LLP, catherine.little@troutman.com
Ms. Anne M. Cook, Esq., Troutman Sanders, LLP, annie.cook@troutman.com

CONFIRMATION OF 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

Colonial Pipeline Company,

Respondent.

CPF No. 2-2018-5003

FINAL ORDER

Beginning November 30, 2016, following receipt of a November 2, 2016 Congressional letter requesting an investigation of Colonial Pipeline Company's (Colonial or Respondent) maintenance and oversight activities and 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's facilities and records in Alpharetta, Georgia. Colonial's system extends from Texas to New York and consists of more than 5,500 miles of hazardous liquid pipeline.¹

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated August 28, 2018, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Colonial had violated 49 C.F.R. § 195.505(b) and (d) and proposed assessing a civil penalty of \$67,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain actions to correct the alleged violations.

Colonial responded to the Notice by letter dated September 28, 2018 (Response). Colonial contested one of the allegations, offered additional information in response to the Notice, sought mitigation or elimination of the proposed penalty, and requested a hearing. Colonial also requested a settlement meeting with the Southern Region.

As a result of subsequent discussions with the Region, Respondent withdrew its request for a hearing by letter dated October 29, 2019, and the Region recommended certain modifications to the proposed compliance terms.² I have reviewed the record and hereby issue this Final Order without further proceedings.

¹ Colonial website, *About Colonial*, available at <https://www.colpipe.com/about-us/our-company/system-map> (last accessed June 12, 2020).

² Respondent's Withdrawal of Request for Hearing, at 1 (October 29, 2019) (on file with PHMSA).

FINDINGS OF VIOLATION

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

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(d), which states:

§ 195.505 Qualification program.

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

(a) . . .

(d) Evaluate an individual if the operator has reason to believe that the individual's performance of a covered task contributed to an accident as defined in Part 195;

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(d) by failing to evaluate certain individuals whose performance of a covered task contributed to several accidents, as defined in Part 195. Specifically, the Notice alleged that Colonial failed to document, for three reportable accidents, whether the performance of a covered task was involved, whether performance of a covered task contributed to the accident, or which Colonial personnel performed any covered tasks during the activities leading to each accident. The Notice further alleged that Colonial was unable to confirm that it had completed any documentation indicating that the individuals' qualifications were suspended, as required by *Appendix D, Disqualification and Suspension*, of the company's written Operator Qualification (OQ) program; that such *Appendix D* information had been forwarded to the company's OQ Coordinator; or that it had notified Colonial's Technical Training Department, as required by Section 12 of the company's OQ program. These three incidents were documented on PHMSA Form 7000-1 (PHMSA Accident Report) and have the following report numbers and submittal dates: (1) No. 20140287-20157, dated August 11, 2014; (2) No. 2015286-20902, dated August 13, 2015; and (3) No. 20150326-22637,³ dated September 12, 2015.

Respondent did not contest this allegation of violation. Respondent, however, did request a reduction in the proposed civil penalty based on an additional explanation provided to clarify the facts at issue. This request for reduction is discussed in greater detail below. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(d) by failing to evaluate individuals whose performance of a covered task contributed to accidents, as defined in Part 195.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

§ 195.505 Qualification program.

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

(a) . . .

(b) Ensure through evaluation that individuals performing covered tasks are qualified;

³ The Notice incorrectly lists the last five digits of the report number as 20739.

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing certain covered tasks were qualified. Specifically, the Notice alleged that evaluation material from three service providers that Colonial's OQ program relied upon failed to evaluate an individual's knowledge, skill, and ability to perform a given covered task. The Notice alleged that the evaluation methods used to determine an individual's knowledge of the task, as well as performance verifications to evaluate an individual's skill and ability to perform the task, for four specific covered tasks were inadequate to constitute a valid evaluation process. These included Covered Task 7.6, "Apply Coating Using Spray Application"; Covered Task 7.7, "Perform Coating Inspection"; Covered Task 32.0, "Observation of Excavation Activities"; and Covered Task 39.0, "Backfilling a Trench Following Maintenance."

Respondent did not contest this allegation of violation. Respondent, however, requested a modification of the proposed compliance order to reflect the efforts Colonial had already taken to comply with the proposed terms. These modified terms, which Southern Region has recommended for approval through its Region Recommendation,⁴ are reflected in the Compliance Order below. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified.

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 an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.⁵ In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$67,000 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$67,000 for Respondent's violation of 49 C.F.R. § 195.505(d), for failing to evaluate individuals whose performance of a covered task contributed to three separate accidents, as defined in Part 195. In its Response, Colonial provided an explanation of the facts at issue, arguing for a reduction in the proposed penalty. First, Colonial contended that the work being performed at the time of one of the accidents or leading up to the

⁴ PHMSA Region Recommendation, dated November 16, 2019 (on file with PHMSA), at 2.

⁵ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

accident did not include the performance of a covered task. Specifically, Colonial claimed that a covered task was not being performed at the time of or leading up to the accident documented on PHMSA Accident Report No. 20150326-22637,⁶ dated September 12, 2015.⁷ Colonial stated that the accident was caused by a mini-excavator striking a thread-o-ring fitting that was connected to one of Colonial's mainline pipelines at its Kannapolis facility in North Carolina. Colonial further explained that the excavator was delivering backfill materials to other individuals who were performing Covered Task No. 39, "Backfilling a Trench Following Maintenance." Colonial, therefore, contended that the individual operating the mini-excavator was not actively engaged in excavating or backfilling activities as described in Covered Task No. 39.

The Notice alleged that all three accidents occurred while performing excavation and backfilling activities, which require both Covered Task No. 39, as well as Covered Task No. 32, "Observation of Excavation Activities." Neither the Notice, the Pipeline Safety Violation Report, nor the Region Recommendation provided more detailed information on the specific covered tasks that were allegedly being performed at the time of or leading up to each of the three accidents. Instead, the Region only offered a general application of two covered tasks to all three accidents without further explanation. Therefore, based on the clarification of the facts provided by Colonial, and the lack of evidence in the record refuting these facts, including PHMSA Accident Report No. 20150326-22637, I find that a reduction in the proposed penalty is warranted and that the number of instances of violation under "Part E6 – Gravity" of the Violation Report should be reduced from three to two.⁸

Next, Colonial contended that it had properly assessed whether the performance of a covered task could have contributed to the accidents and whether an individual's OQ should be suspended or withdrawn for each of the accidents. However, Colonial also conceded that there was no documentation that such assessments ever occurred. I find that this violation is not simply a recordkeeping violation, but, instead, an activity violation based on the lack of any documentation demonstrating that Respondent actually performed the assessments as required by § 195.505(d) and Colonial's own OQ procedures. Moreover, Colonial failed to provide any justification for its failure to either follow its OQ procedures or comply with a regulation that is clearly applicable. Therefore, I find no reason to reduce the penalty under the criteria of *nature*, *culpability*, or *good faith*.

Based upon the foregoing, I assess Respondent a reduced civil penalty of **\$61,100** for violation of 49 C.F.R. § 195.505(d).

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

⁶ The Response incorrectly lists the last five digits of the report number as 20739.

⁷ According to Part H – Narrative Description of the Accident on PHMSA Form 7000-1, "[o]n August 13, 2015 at approximately 11:00am, a contract crew backfilling the L2 Station Discharge Valve struck a ¾ inch valve attached to the top of Line 2" (on file with PHMSA).

⁸ Pipeline Safety Violation Report (Violation Report) (August 28, 2018) (on file with PHMSA), at 19.

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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$61,100 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

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 Notice proposed a compliance order with respect to Item 2 in the Notice for a violation of 49 C.F.R. § 195.505(d). In its Recommendation, the Southern Region supported modification of the proposed compliance order in order to more closely reflect the efforts that Colonial has already taken to comply with the proposed terms.⁹ Accordingly, Respondent is ordered to take the following actions, pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.505(d) (**Item 2**), Respondent must:
 - a. Perform a gap analysis of Colonial's procedures versus API RP 1161, *Recommended Practice for Pipeline Operator Qualification*, within 15 months of issuance of the Final Order. Colonial must develop protocols for the gap analysis, and provide a gap analysis report and procedure for managing, documenting, and addressing communication on identified gaps.
 - b. Develop audit protocols and process for OQ Service Provider Programs relative to API RP 1161 within three months of issuance of the Final Order.
 - c. Conduct audits of vendor programs relative to API RP 1161 and provide the audit reports, both individual ones for each covered task and consolidated, no later than 60 months after the issuance of the Final Order.
 - d. Provide quarterly process reports on Colonial's actions and results until this case is closed.

⁹ Withdrawal of Request for Hearing (October 29, 2019), at 1 (on file with PHMSA).

2. Colonial must submit to Director, Southern Region, Office of Pipeline Safety, PHMSA, documentation demonstrating compliance with and/or completion of the corrective actions listed above in Item 1(a) through 1(d).

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.

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), 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.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

July 13, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued