



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

OCT 14 2005

Rick A. Olsen
Vice President, Pipeline Operations
Magellan Pipeline Company
One Williams Center
P.O. Box 22186
Tulsa, OK 74121-2186

Re: CPF No. 3-2004-5006

Dear Mr. Olsen:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$32,000. It further finds that you have completed the actions specified in the Notice required to comply with the pipeline safety regulations. When the civil penalty is paid, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Ivan Huntoon, Director
Central Region, Office of Pipeline Safety

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of)
)
Magellan Pipeline Company,)
)
Respondent.)
_____)

CPF No. 3-2004-5006

FINAL ORDER

Between May 2003 and November 2003, pursuant to 49 U.S.C. § 60117, representatives of the Office of Pipeline Safety (OPS) and the Minnesota Office of Pipeline Safety conducted on-site pipeline safety inspections of Respondent's facilities and records in Missouri, Kansas, Iowa, Nebraska, North Dakota, South Dakota, and Minnesota. As a result of the inspection, the Director, Central Region, OPS, issued to Respondent, by letter dated March 4, 2004, 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 Respondent had committed violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$40,000 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated April 9, 2004 (Response). Respondent offered explanations and contested some of the allegations, offered information concerning corrective measures it has taken, and requested that the proposed civil penalty amount be reduced. Respondent did not request a hearing, and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Respondent did not contest several of the alleged violations in the Notice. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. § 195.402(c)(3) (Notice Item 2b) – failing to have written procedures for monitoring and controlling pressures when the Capehart Junction to Capehart Terminal line is being operated;

49 C.F.R. § 195.406(b) (Notice Item 5) – failing to prevent pressure surges on the Omaha to Eppley and the Omaha to KCI lines from exceeding 110 percent of maximum operating pressure; and

49 C.F.R. § 195.428 (Notice Item 7b) – failing to timely inspect and test 35 thermal relief devices at the Topeka Terminal.

Item 1 in the Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(1) by failing to maintain up-to-date maps of the piping configuration of its Faribault and Albert Lea stations at each facility where they may be necessary in the event of a safety-related incident. Specifically, the Notice alleged that the “as built” prints of the Faribault and Albert Lea stations were last updated on October 6, 1987 and September 16, 1992, respectively, and that subsequent changes to station piping were “penciled-in” on the diagrams. The Notice further alleged that up-to-date maps for these stations were not maintained at the Tulsa headquarters facility.

In its response, Respondent contended that the drawings at the stations were accurate and were sufficient to enable its operations personnel to safely operate the stations. Respondent, however, did not dispute that it failed to maintain up-to-date maps of the specified stations at its Tulsa headquarters. Accordingly, I find that Respondent violated §195.402(c)(1) by failing to maintain up-to-date maps of the piping configuration of its Faribault and Albert Lea stations at each facility where they may be necessary in the event of a safety-related incident.

Item 3 in the Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(12) by failing to follow its written procedures for establishing and maintaining liaison with fire, police, and other appropriate public officials in certain of its operating areas. Specifically, the Notice alleged that with respect to Missouri, while Respondent generally met with the heads of the county Local Emergency Planning Committees (LEPCs), in many counties it failed to establish liaison with police and fire departments or other actual responders, particularly in areas where only underground facilities were present. The Notice further alleged that with respect to South Dakota, Respondent was unable to demonstrate that any liaison meetings had been conducted in 2001. The procedures Respondent had in place at the time required planning meetings to be conducted with the responders on an annual basis.

In its response, Respondent stated that with respect to Missouri, it had met with a number of fire, police, 911 centers, and highway patrol departments in addition to the meetings with LEPCs described to OPS during the inspection visit. Respondent acknowledged, however, that many of these additional meetings were not conducted until after the OPS inspection. With respect to South Dakota, Respondent did not dispute that it failed to conduct planning meetings in 2001. Accordingly, I find that Respondent violated §195.402(c)(12) by failing to follow its written procedures for establishing and maintaining liaison with fire, police, and other appropriate public officials in the specified areas on an annual basis.

Item 8 in the Notice alleged that Respondent violated 49 C.F.R. § 195.442(c)(1) by failing to demonstrate that the lists of excavators who engage in excavation activities in the area in which its pipelines are located were sufficiently current to ensure effective notification of its damage prevention program. Specifically, the Notice alleged that Respondent failed to verify whether the third-parties it used in some cases to meet this requirement maintained lists accurately reflecting its pipeline, and failed to ensure that information concerning excavation activities obtained by its personnel in the course of maintaining and operating its pipelines was incorporated into the lists.

In its response, Respondent described the actions that it was currently taking to verify the accuracy of the lists of excavators but did not dispute the allegation of violation. Accordingly, I find that Respondent violated §195.442(c)(1) by failing to demonstrate that the lists of excavators who engage in excavation activities in the area in which its pipelines are located as they existed at the time of the inspection were sufficiently current to ensure effective notification of its damage prevention program.

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.

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

With respect to Item 1, the Notice proposed that Respondent be assessed a civil penalty of \$10,000 for violating §195.402(c)(1) by failing to maintain up-to-date maps of the piping configuration of its Faribault and Albert Lea stations at each facility where they may be necessary in the event of a safety-related incident. Adequate maintenance of station maps at both the stations and the associated headquarters facility is essential to ensuring safety because in the event of a safety-related incident, decisions about control of the stations may have to be made at the headquarters facility. We acknowledge that Respondent took corrective action following the OPS inspection by implementing a facility drawings management program in January 2004. Respondent, however, has not presented information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for this violation.

With respect to Item 3, the Notice proposed that Respondent be assessed a civil penalty of \$5,000 for violating §195.402(c)(12) by failing to follow its written procedures for establishing and maintaining liaison with fire, police, and other appropriate public officials in certain of its operating areas. In its response, Respondent provided information concerning additional meetings with responders, implementation of community relations programs to enhance consistency with API 1162, and improved documentation of liaison activities. Based on the forgoing, I find that a partial reduction in the civil penalty proposed in the Notice for this item is warranted. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$1,000 for this violation.

With respect to Item 5, the Notice proposed that Respondent be assessed a civil penalty of \$10,000 for violating §195.406(b) by failing to prevent pressure surges on the Omaha to Eppley and the Omaha to KCI lines from exceeding 110 percent of maximum operating pressure (MOP). Preventing pressure surges from exceeding 110 percent of MOP is critical to the safe operation of a pipeline because such surges can adversely impact the integrity of the pipe. In this case, the specified line segments run through highly populated urban areas and a release could have had serious consequences. We acknowledge that Respondent has now taken corrective measures intended to better control the operating pressures of the specified line segments and prevent excessive surges. Respondent, however, has not presented information that would warrant a reduction in the civil penalty amount proposed in the Notice for this item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for this violation.

With respect to Item 7b, the Notice proposed that Respondent be assessed a civil penalty of \$10,000 for violating §195.428 by failing to timely inspect and test 35 thermal relief devices at the Topeka Terminal. Inspecting control system components within the time intervals specified in the regulations is a key part of ensuring the safe operation of a pipeline system because malfunctioning components must be identified and corrected before they cause or contribute to a safety-related incident. Respondent has not presented information that would warrant a reduction in the civil penalty amount proposed in the notice for this item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for this violation.

With respect to Item 8, the Notice proposed that Respondent be assessed a civil penalty of \$5,000 for violating §195.442(c)(1) by failing to demonstrate that the lists of excavators who engage in excavation activities in the area in which its pipelines are located were sufficiently current to ensure effective notification of its damage prevention program. In its response, Respondent provided information concerning amendments it has made to its written operating procedures and described its commitment to ensuring that all relevant information concerning excavators who operate in the vicinity of its pipeline is integrated into its damage prevention program notification process. Based on the forgoing, I find that a partial reduction in the civil penalty proposed in the Notice for this item is warranted. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$1,000 for this violation.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$32,000.

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-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$32,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to Item 2b in the Notice for the violation of § 195.402(c)(3) – failing to have written procedures for monitoring and controlling pressures when the Capehart Junction to Capehart Terminal line is being operated. 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 Regional Director has indicated that Respondent has taken the following actions specified in the Proposed Compliance Order:

Respondent established operational procedures for controlling the pressure in the specified line to be used until an over-pressure protection device could be installed and made a copy of these procedures available to OPS. Respondent installed the device in May 2004.

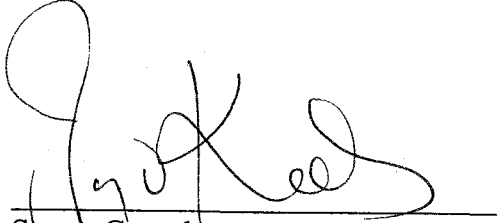
Since compliance has been achieved with respect to this violation, it is unnecessary to include terms directing compliance in this Order.

WARNING ITEMS

The Notice did not propose a civil penalty or corrective action for Items 2a, 4, 6, and 7a in the Notice. Therefore, these are considered warning items. Respondent presented information in its response showing that it is addressing these items. Respondent is again warned that if OPS finds a violation for any of these items in a subsequent inspection, enforcement action will be taken.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, the petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing

of a petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.



for

Stacey Gerard
Associate Administrator
for Pipeline Safety

OCT 14 2005

Date Issued