



U S Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

400 Seventh Street, S W
Washington, D C 20590

J/J' - 9 0/

Mr Ron Sands
Vice President
Explorer Pipeline Company
6846 S Canton Avenue, Suite 300
Tulsa, OK 74136

Re CPF No 3-2004-5010

Dear Mr Sands

Enclosed is the Final Order issued by the Acting Associate Administrator for Pipeline Safety in the above-referenced case It withdraws one of the allegations of violation, makes findings of violation, and assesses a civil penalty of \$42,750 The penalty payment terms are set forth in the Final Order This enforcement action closes automatically upon payment 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, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

WITHDRAWAL OF ALLEGATION

Item 2 in the Notice alleged that Respondent had violated 49 C F R § 195 404(b)(1) by failing to maintain daily operating records of the discharge pressure at the Decatur Pump Station for the months of January, November, and December 2000. In its response, Respondent submitted information demonstrating that it did maintain these records. Based on this information demonstrating compliance with the regulation, I am withdrawing this allegation of violation.

ASSESSMENT OF PENALTY

Under 49 U S C § 60122 (2001), Respondent is subject to a civil penalty not to exceed \$25,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations.¹

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 \$2,750 for violating § 195 401(b) by failing to correct low pipe-to-soil cathodic protection readings at the specified locations within a reasonable time. The pipeline safety regulations require pipeline operators to conduct tests to determine the adequacy of cathodic protection on an annual basis and to correct any condition it discovers that could adversely affect the safe operation of its pipeline within a reasonable time meaning, in this case, before the next annual inspection.

In its response, Respondent briefly described the corrective measures it had taken after the OPS inspection to address the cathodic protection issues in the specified areas. Respondent, however, presented no information that would warrant a reduction in the 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 \$2,750 for this violation.

With respect to Item 3, the Notice proposed that Respondent be assessed a civil penalty of \$40,000 for violating § 195 406(b) by failing to ensure that actual operating pressure did not exceed 110 percent of the established maximum operating pressure (MOP) at the East St. Louis

¹ The Pipeline Safety Improvement Act of 2002 (Pub. L. No. 107-355, 116 Stat. 2992) increased the maximum civil penalty liability to \$100,000 per violation for each day of the violation and \$1,000,000 for any related series of violations. However, because the violations were discovered prior to December 17, 2002, the effective date of the Act, Respondent is not subject to the higher maximums in this case.

Station on two specified dates. 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 station facility is located near the Mississippi River which is a commercially navigable waterway and is considered to be a high consequence area. In its response, Respondent indicated that it had taken corrective action including installation of a pressure relief system after receiving the Notice from OPS. We acknowledge that Respondent has now taken measures that will better control the operating pressure and prevent excessive surges. Respondent, however, presented no information that would warrant a reduction in the 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 \$40,000 for this violation.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$42,750.

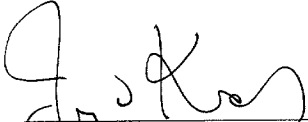
Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the 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 \$42,750 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.

WARNING ITEM

The Notice did not propose a civil penalty or corrective action for Item 1A in the Notice – failure to address items discovered during the annual inspections conducted at the Hammond tank farm in 1999 and 2000. Therefore, this is considered to be a warning item. Respondent is warned that if it does not take appropriate action to correct this item, enforcement action will be taken if a subsequent inspection reveals a violation.

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.



Theodore L. Willke
Acting Associate Administrator
for Pipeline Safety



Date Issued