

SEP 13 2010

Mr. Brian S. Coffman
President
ConocoPhillips Pipe Line Company
600 North Dairy Ashford
Houston, TX 77079

Re: CPF No. 3-2005-5015

Dear Mr. Coffman:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$39,000. 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: David Barrett, Director, Central Region, PHMSA
Van P. Williams, Esq., Senior Counsel, ConocoPhillips

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7009 1410 0000 2472 2742]

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

_____)	
In the Matter of)	
)	
ConocoPhillips Pipe Line Company,)	CPF No. 3-2005-5015
)	
Respondent.)	
_____)	

FINAL ORDER

On March 22-26, April 1-2 and 5-9, June 7-11, September 20-24, and October 6, 2004, 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 ConocoPhillips Pipe Line Company (CPPL or Respondent) in Wichita, Kansas, Jefferson City, Missouri, Decatur, Illinois, East Chicago, Indiana, Cheyenne, Wyoming and Sidney, Nebraska. CPPL operates several hazardous liquid pipeline facilities at and in between these locations. Nationwide, CPPL operates over 11,000 miles of pipelines and related pipeline facilities.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated March 14, 2005, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that CPPL had violated 49 C.F.R. §§ 195.402 and 195.428(a) and proposed assessing a civil penalty of \$184,500 for the alleged violations. The Notice also proposed finding that Respondent had committed certain other probable violations of 49 C.F.R. Part 195 and warning CPPL to take appropriate corrective action or be subject to future enforcement action.

Respondent responded to the Notice by letter dated April 18, 2005 (Response). CPPL contested one of the allegations and requested a hearing. A hearing was held on September 24, 2007 in Kansas City, Missouri, with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel. After the hearing, Respondent provided a post-hearing statement and additional documents for the record, by letter dated November 28, 2007 (Closing).

FINDINGS OF VIOLATION

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

Item 1b: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), 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. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

Item 1b of the Notice alleged that CPPL violated 49 C.F.R. § 195.402(a) by failing to follow its manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies (O&M Manual). Specifically, it alleged that CPPL failed to properly adjust the set point for a high pressure shutdown switch on its Blue Line. Respondent's O&M Manual specified that the switch was to be set at 1085 pounds per square inch gauge (psig), but CPPL documents collected during the OPS field inspection indicated that the switch was set to 1210 psig. Respondent did not contest this allegation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overflow protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7 ½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that CPPL violated 49 C.F.R. § 195.428(a) by failing to test relief valves on certain highly volatile liquids (HVL) pipelines at intervals not to exceed 7 ½ months. Specifically, it alleged that Respondent failed to test 387 thermal relief valves during certain 2003 and 2004 valve inspections. The Notice also alleged that Respondent failed to test an additional 49 thermal relief valves during 2004 inspections. Thermal relief valves are intended to prevent overpressure of the pipeline due to increases in ambient temperature. CPPL visually inspected these valves but did not actually test them.

CPPL contested this allegation on numerous grounds. First, Respondent argued that OPS had “approved” the company’s procedures that provided for visual inspection of relief valves, rather than physical testing, by not raising the issue during a 1999 inspection.¹ I find this argument unpersuasive. OPS inspections often cover dozens of regulations, safety issues and operator procedures. There is no requirement that OPS allege every possible violation or raise every possible issue after an inspection. Nor does the review of procedures during an inspection constitute an approval of procedures by OPS. OPS has the enforcement discretion to allege the violations it determines appropriate under the circumstances of each case. Moreover, OPS did, in fact, notify CPPL that the agency considered its practice of not physically testing the relief valves to be a probable violation of the regulation. On July 1, 2003, approximately 9 months before the OPS inspection in this case, OPS issued a warning letter to CPPL warning the company that its practice of not testing the relief valves during inspections was a probable violation of § 195.428.²

Next, CPPL argued that no violations are warranted for its failure to perform tests of the relief valves in 2003. Respondent argued that because the 2003 OPS warning letter did not contain a compliance order, the company had time to amend its procedures and the agency’s ability to later allege violations for CPPL’s conduct in 2003 was foreclosed.³ I find Respondent’s argument unpersuasive. Immediately upon receipt of the 2003 warning letter, CPPL was on notice that OPS considered its practice of visual inspection of relief valves to be a violation of § 195.428. CPPL should have promptly begun testing valves, yet it failed to do so until March 2004, approximately 9 months after the OPS warning.

CPPL also contested the number of valves that OPS alleged were not tested. In its Violation Report, OPS included a summary of valves allegedly not tested. In the Violation Report, OPS also included a document entitled “Thermals Not Pop Tested According to 195.428,” which listed the valves CPPL had not tested. However, the Violation Report included only a sample of CPPL’s actual valve inspection records, and only those for a portion of the 2003-2004 time period at issue. For the 2003 time period, CPPL admitted that it did not test its thermal relief valves on its HVL lines.⁴ CPPL stated that it has 384 relief valves, approximately 51% of which were on HVL pipelines. Therefore, I find that 196 thermal relief valves were not tested in 2003.

Regarding the 2004 time period, OPS’s Violation Report contains very few records of 2004 valve tests. In its Closing, CPPL provided numerous records of 2004 tests. While some of these records show that tests were performed in 2004, others are inconclusive. Respondent provided computer generated records of certain valve inspections but they do not show that tests were

¹ *Response* at 2; *Closing* at 1-4. Respondent argued that OPS had “approved” the thermal pressure device installation and maintenance procedures of Heritage Phillips, CPPL’s predecessor, during a 1999 audit.

² *In the Matter of ConocoPhillips Pipe Line Company*, Notice of Probable Violation, CPF No. 3-2003-5017 (Jul. 1, 2003). Though titled a Notice of Probable Violation, this matter consisted only of warning items. OPS prepared the letter after April and May, 2003 inspections of CPPL facilities and records.

³ *Closing* at 5.

⁴ *Id.*

performed.⁵ Given the limited evidence in the Violation Report and the inconclusive nature of certain 2004 records provided by CPPL, there is insufficient evidence on which to make a finding of violation for the majority of the 2004 valve inspections. The record only supports a finding that CPPL failed to test 22 thermal relief valves in 2004.⁶

In summary, I find that CPPL violated 49 C.F.R. § 195.428(a) by failing to test relief valves on certain HVL pipelines at intervals not to exceed 7 ½ months. Specifically, I find that CPPL failed to test 196 thermal relief valves in 2003 and 22 thermal relief valves in 2004.

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 **\$184,500** for the violations cited above.

Item 1(b): The Notice proposed a civil penalty of \$3,000 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its manual of written procedures for normal operations and maintenance activities. CPPL neither contested the allegation nor presented any evidence or argument justifying a reduction or elimination of the proposed penalty. CPPL's failure to adjust the set point for a high pressure shutdown switch in accordance with the pressure limit in its O&M Manual reduced the margin of safety provided by the regulation. When properly calibrated, shutdown switches can protect pipeline integrity by preventing pipeline failures and ruptures. The modest penalty proposed for this item is consistent with the relatively low gravity of the violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$3,000 for violation of 49 C.F.R. § 195.402(a).

Item 2: The Notice proposed a civil penalty of \$181,500 for Respondent's violations of 49 C.F.R. § 195.428(a) by failing to test numerous thermal relief valves on certain HVL pipelines at intervals not to exceed 7 ½ months. At the hearing, OPS explained that the proposed penalty had been arrived at by assigning a monetary value for each missed thermal relief valve. The Notice proposed finding that Respondent failed to test 387 valves in 2003 and 2004 and an additional 49 valves in 2004. Having found that CPPL failed to test 196 thermal relief valves in 2003 and 22 of these valves again in 2004, I find that a reduced total civil penalty is appropriate.

⁵ CPPL provided screen printouts from its electronic work order system, but these records do not list all thermal reliefs and lack information on whether or to what settings the tests were performed.

⁶ *Closing* at 6.

Respondent is fully culpable for its failure to test the valves. At least as early as July 1, 2003, CPPL was on notice that PHMSA viewed its practice of not testing these valves as a probable violation of § 195.428(a). Yet CPPL failed to begin actual testing of the valves until approximately 9 months later. Thermal relief valves are important to pipeline safety because, when in proper working order, they can prevent pipeline overpressure that could lead to ruptures and leaks. CPPL increased the potential consequences of a pipeline overpressure by failing to test large numbers of such valves. The modest proposed penalties for this item are far below the maximum per-violation penalty of \$100,000 per violation per day. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$36,000 for violation of 49 C.F.R. § 195.428(a).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a reduced total civil penalty of **\$39,000**.

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 \$39,000 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.

WARNING ITEMS

With respect to **Items 1a, 3 and 4**, the Notice alleged probable violations of 49 C.F.R. §§ 195.402(a), 195.440 and 195.442(c)(2), but did not propose a civil penalty or compliance order for these Items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.402(a) (**Item 1a**) - Respondent's failure to conduct an annual review of its manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies within the required 15-month interval;

49 C.F.R. § 195.440 (**Item 3**) - Respondent's alleged failure to establish a continuing educational program for landowners or tenants that do not live in the pipeline corridor; and

49 C.F.R. § 195.442(c)(2) (**Item 4**) - Respondent's alleged failure to provide notification to excavators as often as needed to make them aware of the company's damage prevention program.

Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. §§ 195.402(a), 195.440 and 195.442(c)(2) have occurred and Respondent is hereby advised to correct such conditions. If OPS finds a violation for any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has the 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 the 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

Date Issued