

JUN 17 2011

Mr. Eric Amundsen
Vice President Technical Services
Panhandle Eastern Pipeline Company
5444 Westheimer Road
Houston, TX 77056

RE: CPF No. 3-2008-1002

Dear Mr. Amundsen:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$180,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. 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. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety
Mr. David Barrett, Director, Central Region, PHMSA
Mr. Louis Soldano, Chief Legal Officer, Panhandle Eastern Pipeline Co.
Mr. Jerry Rau, Director of Pipeline Integrity and Codes, Panhandle Eastern Pipeline Co.

CERTIFIED MAIL – RETURN RECEIPT REQUESTED[7005 1160 0001 0075 9459]

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

In the Matter of)
)
Panhandle Eastern Pipeline Company,) **CPF No. 3-2008-1002**
)
Respondent.)

FINAL ORDER

On April 29, 2007, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), initiated an investigation of an incident involving the pipeline system of Panhandle Eastern Pipeline Company (Respondent or Panhandle) near Pawnee, Illinois (Incident). Panhandle operates various gas pipeline systems, consisting of over 15,000 miles of transmission lines: Panhandle Eastern Pipeline; Florida Gas Transmission; Trunkline Gas; and Transwestern Pipeline. The company also operates approximately 6,500 miles of natural gas pipeline, extending from Amarillo, Texas, to Detroit, Michigan.¹

The investigation arose out of a failure on Panhandle's Glenarm 200 Line near Pawnee, Illinois, on April 29, 2007. The failure blew out a 109-inch section of 22-inch diameter pipe, releasing 38 *mmcf* of natural gas that ignited. The rupture and fire resulted in the evacuation of one residence and the death of farm animals.²

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated July 1, 2008, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 192.479 and assessing a civil penalty of \$180,000 for the alleged violation.

The company responded to the Notice by letter dated August 6, 2008 (Response). Panhandle contested the allegation, offered additional information regarding mitigation of the proposed penalty, and requested a hearing. A hearing was subsequently held on December 11, 2008, in Kansas City, Missouri, with an attorney in the Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel. At the close of the hearing, Panhandle was

¹ www.panhandleenergy.com, (last accessed 5/28/2011).

² Violation Report, page 2 of 12.

given 30 days to provide a post-hearing submission, which it subsequently provided by letter dated January 30, 2009 (Closing).

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.479, which states, in relevant part:

§ 192.479 Atmospheric corrosion control: General.

(a) Each operator must clean and coat each pipeline or portion of the pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

(b) Coating material must be suitable for the prevention of atmospheric corrosion....

The Notice alleged that Respondent violated 49 C.F.R. § 192.479 by failing to coat each pipeline or portion of the pipeline exposed to the atmosphere with coating material suitable for the prevention of atmospheric corrosion. Specifically, it alleged that Panhandle failed to maintain suitable coating on a portion of its Glenarm 200 Line that was exposed to the atmosphere. In support of the allegation, the Notice asserted that Panhandle's own records indicated it had violated the company's operating procedures by failing to repair and remove the poor coating after it had first been identified in 2003 and then again in 2005. PHMSA also alleged that Panhandle's failure to address the poor coating at this location was "a major factor" in the eventual failure that resulted in the Incident.

In its Response, Panhandle acknowledged that "the atmospheric coating system installed at this location was in poor condition," but raised several defenses to the allegation that it had violated § 192.479.³ First, it disputed the assertion that the company's own records suggested the coating needed remediation. Second, it argued that the company had identified external corrosion at the site of the exposed pipe but had addressed it in an appropriate manner.⁴ Respondent acknowledged that the company's *Standard Operating Procedure, Atmospheric Pipe Inspection, 2-5020* (SOP2-5020) referenced in the Notice required atmospheric corrosion inspections, but asserted that the company had managed this particular section of pipe in accordance with a different procedure, *Inadequate Cover and Waterway SOP 1-6050* (SOP1-6050), which did not require inspections for atmospheric corrosion.⁵ Third, the company argued that neither Panhandle nor its third-party contractor had been able to determine whether the external corrosion defect that caused the failure had been on a buried or an exposed section of pipe.⁶ Since this third defense relates to the gravity of the alleged violation (i.e., whether the violation

³ Response, at 3.

⁴ Hearing Transcript, page 7, lines 9-12 and page 9, lines 18-25, dated December 11, 2008.

⁵ Panhandle stated it had classified the portion of the pipeline in question as "shallow pipe" and had therefore managed it in accordance with SOP1-6050.

⁶ Response, at 3.

was a cause of the accident), rather than the substantive violation itself, it will be discussed in the Assessment of Penalty section below.

As for Panhandle's first argument that its records did not in fact indicate the corrosion on the exposed pipe needed remediation, the company proffered that its records showed the exposure in question was classified as a "Priority C" condition with a recommended remediation interval greater than five years.

In response, PHMSA asserted that Panhandle's own 2003 and 2005 atmospheric corrosion inspection records documented the poor condition of the coating on the exposed portion of the Glenarm 200 Line, but that no remediation was undertaken following either inspection.⁷ PHMSA explained that Panhandle's own photo, dated February 3, 2005, showed an exposed six-foot section of the Glenarm 200 Line at MP160+89, with a handwritten notation stating "[c]oating is in poor condition, the pipe is rusty but there is no pitting visible. 20 feet of recoat would be required."

PHMSA also referenced Respondent's own Incident Report, dated June 11, 2007, which acknowledged that external corrosion "on the body of the pipe at an area exposed to the atmosphere" had contributed to the failure.⁸ Finally, the agency pointed to the Respondent's SOP2-5020, which required the repair and removal of poor coating.⁹ From these three pieces of evidence, it is evident that external corrosion existed on this exposed section of pipe as early as 2003 and that under the company's own SOP2-5020, the coating was so poor that it warranted remediation before the next inspection and was not "suitable for the prevention of atmospheric corrosion."

As for Panhandle's second argument that it had properly addressed the atmospheric corrosion, Respondent referenced 49 CFR §192.479 (c)(1) to suggest that pipeline operators are allowed to determine whether or not corrosion appearing as light surface oxide will be detrimental to the integrity of the system. Panhandle is correct that the regulation does allow operators to make such a determination. However, the regulation applies to pipelines "for which the operator demonstrates by test, investigation, or experience appropriate to the environment of the pipeline that corrosion will only be a light surface oxide; or not affect the safe operation of the pipeline before the next scheduled inspection." The regulation is not applicable here, as Panhandle has failed to provide any evidence demonstrating that it satisfied the four elements of the regulation.

The company further argued that under SOP1-6050, immediate remediation of the coating was not required. Respondent proffered that under that procedure, "remediation should be *scheduled based on priority*" (emphasis in original) and that this section of pipe had been given an appropriate schedule for remediation based on the severity of the corrosion.¹⁰

⁷ Violation Report, Exhibit F, page 10 of 12. PHMSA contended that the manner in which Panhandle "classified" pipe and the various versions of its SOPs may have led to a blurring of the lines between the assessments of exposed and buried pipe and to the company's decision to treat the pipe as "shallow" instead of "exposed."

⁸ Violation Report Exhibit E, page 9 of 12.

⁹ When Panhandle discovered the poor coating, the company needed to determine the extent of the deterioration and determine the appropriate action to remediate the poor coating, per SOP2-5020. In 2005, the Respondent's inspection indicated that the coating needed repairs. Violation Report, Exhibit G, page 11 of 12.

¹⁰ Closing, at 3.

I reject both arguments. As for the first, I find that Panhandle's own Pipeline Exposure Inspection History form¹¹ indicated that this particular section of pipe had been treated by the company not as shallow pipe but as "Exposed Pipe in Creeks and Ditches," a fact confirmed during the hearing.¹² As for the second, it is immaterial which procedure applied to this section of exposed pipe. There is no question but that the six feet of pipe with poor coating was exposed to the atmosphere from 2003-2007, with no indication that it was ever cleaned or coated with suitable protective material under either procedure. Therefore, it does not matter which procedure should have been used or when Panhandle intended to remediate the coating on this section of pipe. The record shows that the company failed to maintain coating material suitable for the prevention of atmospheric corrosion on this section of exposed pipe.

I am convinced that Respondent's atmospheric coating system installed in the area of the pipe that failed was in poor condition as early as 2003, that Panhandle discovered and documented the poor condition of the coating at that time and also in 2005, and that the company took no action to remediate the external corrosion prior to the Incident. Further, the issue of which procedure applied to the remediation of external corrosion on this section of pipe is immaterial. Respondent has not been charged with violating its own procedures; instead, it has been charged with failing to maintain proper coating on this section of pipe.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.479 by failing to coat each pipeline or portion of the Glenarm 200 Line pipeline exposed to the atmosphere with coating material suitable for the prevention of atmospheric corrosion.

This finding of violation will be considered a prior offense 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 \$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 \$180,000 for the violation cited above.

¹¹ Panhandle's Pipeline Exposure Inspection History form, dated April 26, 2003, that was used to document pipeline inspections had a place to indicate the type of inspection and the form clearly shows a check mark in the box next to Exposed Pipe in Creeks and Ditches. (Violation Report, Exhibit F, page 10 of 12)

¹² Hearing Transcript, at 20.

Item 1: The Notice proposed a civil penalty of \$180,000 for Respondent's violation of 49 C.F.R. § 195.479, for failing to coat a portion of its Glenarm 200 Line pipeline exposed to the atmosphere with coating material suitable for the prevention of atmospheric corrosion. The Notice also alleged that a major factor in the eventual failure of the pipeline was Panhandle's failure to address the poor coating. As noted above, I found that Respondent's own records substantiated the company's failure to properly remediate atmospheric corrosion on the exposed pipe after the poor condition of the coating was noted in 2003 and 2005.

Panhandle made two basic arguments for reduction of the proposed penalty. First, it argued that there was "no evidence" that the alleged failure to address the poor coating on the exposed pipe was a major factor in the eventual failure of the line.¹³ Second, it argued that the company's good-faith efforts to comply with the regulation, both before and after the Incident, warranted a sizeable reduction in the penalty.

I disagree. As for the first argument, Panhandle discovered the corrosion on the exposed section of pipe during a 2003 close interval survey.¹⁴ Despite a notation by a Panhandle technician that 20 feet of remediation was required, the company took no action to address the corrosion. While it is accurate to say that the record does not pinpoint the exact location of the failure, I find it reasonable to rely on the metallurgical report and other evidence presented at the hearing showing that the location of the rupture was at Station Number 160+98, plus or minus several feet, and that the exposed pipe was situated nearby at Station Number 160+89.¹⁵ The metallurgical report also confirmed that the rupture initiated at a region of the external wall loss that was the result of corrosion.¹⁶ Furthermore, Part G of the Respondent's own Incident Report, in which the company described the factors contributing to the failure, stated that "apparently external corrosion occurred on the body of the pipe at an area exposed to the atmosphere" and that "the external coating had become disbanded allowing external corrosion to occur on the top of the pipe."¹⁷

Considering all of the evidence, including the proximity of the failure location to the six feet of section of exposed pipe and the company's Incident Report, I find that Panhandle's failure to maintain a suitable coating on the section of exposed pipe lying within a few feet of the failure location constituted a contributing cause of the failure and supports the proposed penalty.

¹³ Closing, at 2.

¹⁴ The close interval survey was performed on the buried portion of the pipeline to the edge of the bank where the pipe was exposed to the atmosphere. The survey failed to show any cathodic protection deficiencies on the buried pipe. If corrosion were occurring in this area, the readings at the banks, or in the area of the banks, would have displayed some sort of deficient reading.

¹⁵ Hearing Transcript, page 15-16; Violation Report, Exhibit C, page 7 of 12. As noted above, Respondent's own records showed six feet of exposed pipe with corrosion and a 2003 notation calling for 20 feet of recoating.

¹⁶ The metallurgical report states, "[t]he rupture initiated at a region of the external wall loss that was the result of corrosion... results of the analysis showed that the rupture occurred when the size and extent of the external corrosion exceeded the critical flaw size for the material properties, dimensions, and operating pressure of the pipe."

¹⁷ Violation Report, Exhibit E, page 9 of 12.

The gravity of a violation is one of the principal factors that PHMSA considers in assessing civil penalties. Pipeline accidents, regardless of whether they constitute “near-misses,” spills, property damage, injuries, or fatalities, constitute the most serious threats to life, property and the environment under the federal Pipeline Safety Laws. When regulatory violations are contributing causes of such accidents, it is both logical and appropriate that they serve to elevate substantially the amounts of the penalties assessed. In this case, the potentially disastrous consequences of the Incident were directly linked to Respondent’s violation of its own procedures and the regulation. Therefore, the specific facts of this case elevate both the gravity of the violation and the magnitude of the penalty.

Second, Respondent argued that it took a number of good-faith actions, both prior to and following the failure, that should serve to reduce or eliminate the proposed penalty. Respondent advised that it had modified the section of the Glenarm 200 pipeline to accommodate a July 2007 smart pig for in-line inspection that was not a regulatory requirement. Panhandle further advised that its Midwest Division had remediated 25 exposed/shallow pipe segments between 2003 and 2007.

The company further indicated that following the Incident, it performed metallurgical testing to identify the cause of the failure, completed an erosion control project at the failure location, ran a high-definition caliper tool and a high-resolution magnetic flux leakage tool, and accelerated the remediation of 69 anomalies identified as a result of the tool runs. Respondent proffered that it had further demonstrated good faith, prior to the failure, when it performed a close interval survey in 2003 to confirm cathodic protection and depth-of-cover on its four mainlines in the area.

While I acknowledge the value of these various actions taken by Panhandle, the fact remains that most of them were either regulatory requirements or performed after, and as a result of, the Incident and were steps that any reasonable and prudent operator might take to prevent future accidents. I also find that the actions taken after the Incident do not cure the violation, demonstrate good faith, or warrant a reduction in the civil penalty.¹⁸ As for those taken prior to the Incident, none of them was aimed at achieving compliance with § 195.479. Furthermore, the fact remains that the company failed to take effective action, over a period of approximately four years, to address known corrosion on this particular section of exposed pipe and that such violation could easily have had catastrophic consequences. Although Panhandle argued that under its assessment program, it had five years to remediate this location, the failure actually occurred within a few feet of where the company had recorded the discovery of corrosion in 2003 and 2005.

After considering and balancing Respondent’s arguments with the nature (corrosion), circumstances (failing to maintain coating to prevent atmospheric corrosion and failing to remediate) and the gravity of the violation (the rupture and fire, the nexus between the regulatory violation and the cause of the failure, and the evacuation of one residence and the death of farm animals), I can find no basis for elimination or reduction of the civil penalty. The degree of

¹⁸ With respect to Respondent’s argument that a comment in the Violation Report was erroneous because it stated that Panhandle had not exhibited good faith in attempting to achieve compliance. Panhandle may have misinterpreted the comment. It simply means that the operator is not entitled to a credit or reduction in the proposed penalty on account of good faith.

Respondent's culpability is also high, in light of, the company's knowledge of the corrosion since 2003. The question of Respondent's ability to pay is not an issue. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$180,000**.

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-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$180,000 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.

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 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