

JUNE 28, 2013

Mr. James S. Loving
President
National Cooperative Refinery Association
2000 South Main Street
McPherson, Kansas 67460

Re: CPF No. 3-2013-5011

Dear Mr. Loving:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$82,400, and specifies actions that need to be taken by National Cooperative Refinery Association and its affiliates, Jayhawk Pipeline, LLC, and Kaw Pipe Line Company, to comply with the pipeline safety regulations. This letter acknowledges receipt of payment of the full penalty amount, by wire transfer dated May 6, 2013. When the compliance order has been completed, as determined by the Director, Central Region, 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: Mr. David Barrett, Director, Central Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Richard S. Peterson, Vice President, Transportation, National Cooperative Refinery Association

CERTIFIED MAIL - RETURN 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)	
)	
National Cooperative Refinery Association,)	CPF No. 3-2013-5011
a nonprofit corporation,)	
)	
Respondent.)	
)	

FINAL ORDER

On December 5-8, 2011, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the records and integrity management program (IMP) of Jayhawk Pipeline, LLC (Jayhawk), in McPherson, Kansas. Jayhawk is a wholly-owned subsidiary of National Cooperative Refinery Association (NCRA or Respondent).¹ NCRA operates a refinery in McPherson and transports product from that refinery through pipelines in Kansas, Nebraska, and Iowa.² Jayhawk transports crude oil over more than 1,000 miles of pipeline in Nebraska, Kansas, Oklahoma, and Texas.³ Jayhawk also operates pipelines for Kaw Pipe Line Company (Kaw),⁴ which is majority-owned by NCRA.⁵ The IMP inspection covered the NCRA, Jayhawk, and Kaw pipeline systems.⁶

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Jayhawk, by letter dated April 5, 2013, 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 Jayhawk had committed various violations of 49 C.F.R. § 195.452 and proposed assessing a civil penalty of \$82,400 for the alleged violations. The Notice also proposed

¹ Jayhawk Pipeline, LLC, website (Jayhawk website), *available at* <http://www.jayhawkpl.com/> (last accessed June 6, 2013)

² NCRA website, *available at* <http://www.ncra.coop/MediaCenter/Gettoknow.pdf> (last accessed June 6, 2013).

³ Jayhawk website, *supra* note 1.

⁴ *Id.*

⁵ NCRA website, *supra* note 2.

⁶ Pipeline Safety Violation Report (Violation Report), (April 5, 2013) (on file with PHMSA), at 1.

ordering Jayhawk to take certain measures to correct the alleged violations.⁷

NCRA responded to the Notice on behalf of NCRA, Jayhawk, and Kaw, by letter dated May 3, 2013 (Response). NCRA did not contest the allegations of violation and paid the proposed civil penalty of \$82,400, as provided in 49 C.F.R. § 190.227. Payment of the penalty authorizes the Associate Administrator to make findings of violation as to the uncontested items, with prejudice to Respondent.

FINDINGS OF VIOLATION

In its Response, NCRA did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(j)(2), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a)

(j) *What is a continual process of evaluation and assessment to maintain a pipeline's integrity?—(1)*

(2) *Evaluation.* An operator must conduct a periodic evaluation as frequently as needed to assure pipeline integrity. An operator must base the frequency of evaluation on risk factors specific to its pipeline, including the factors specified in paragraph (e) of this section. The evaluation must consider the results of the baseline and periodic integrity assessments, information analysis (paragraph (g) of this section), and decisions about remediation, and preventive and mitigative actions (paragraphs (h) and (i) of this section).

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(j)(2) by failing to conduct a periodic evaluation of its line pipe as frequently as needed to assure pipeline integrity. Specifically, the Notice alleged that NCRA's evaluation process failed to consider the results of integrity assessments and information analyses for two Jayhawk line segments and three NCRA line segments.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(j)(2) by failing to conduct a periodic evaluation of its line pipe as frequently as needed to assure pipeline integrity.

⁷ Although the Notice was issued solely to Jayhawk, it alleged violations by NCRA, Jayhawk, and Kaw. Since NCRA controls all three entities, responded to the Notice on behalf of Jayhawk, and did not contest any of the violations, this Final Order is being issued to NCRA, the parent organization.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(i)(3), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a)

(i) *What preventive and mitigative measures must an operator take to protect the high consequence area?—(1)*

(3) *Leak detection.* An operator must have a means to detect leaks on its pipeline system. An operator must evaluate the capability of its leak detection means and modify, as necessary, to protect the high consequence area. An operator’s evaluation must, at least, consider, the following factors—length and size of the pipeline, type of product carried, the pipeline’s proximity to the high consequence area, the swiftness of leak detection, location of nearest response personnel, leak history, and risk assessment results.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(i)(3) by failing to evaluate the capability of its pipeline leak detection system to detect leaks that could affect high consequence areas (HCAs).⁸ Specifically, the Notice alleged that Respondent did not perform a leak detection capability evaluation on any segment in the NCRA, Jayhawk, or Kaw pipeline systems.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(i)(3) by failing to evaluate the capability of its pipeline leak detection system to detect leaks that could affect HCAs.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(i)(4), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a)

(i) *What preventive and mitigative measures must an operator take to protect the high consequence area?—(1)*

(4) *Emergency Flow Restricting Devices (EFRD).* If an operator determines that an EFRD is needed on a pipeline segment to protect a high consequence area in the event of a hazardous liquid pipeline release, an operator must install the EFRD. In making this determination, an operator must, at least, consider the following factors—the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline segment and the high consequence area, and benefits expected by reducing the spill size.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(i)(4) by failing to determine whether an EFRD was needed on a pipeline segment. Specifically, the Notice alleged that

⁸ “High Consequence Areas” are defined as commercially navigable waterways, high population areas, other populated areas, and unusually sensitive areas. *See* 49 C.F.R. § 195.450.

Respondent added the Kaw pipeline system to its IMP in 2009 but failed to evaluate whether that system needed one or more EFRDs.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(i)(4) by failing to determine whether an EFRD was needed on a pipeline segment.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(l)(1)(ii), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a)

(f) *What are the elements of an integrity management program?* An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program:

(1) A process for identifying which pipeline segments could affect a high consequence area;

(2) A baseline assessment plan meeting the requirements of paragraph (c) of this section;

(3) An analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure (see paragraph (g) of this section);

(4) Criteria for remedial actions to address integrity issues raised by the assessment methods and information analysis (see paragraph (h) of this section);

(5) A continual process of assessment and evaluation to maintain a pipeline's integrity (see paragraph (j) of this section);

(6) Identification of preventive and mitigative measures to protect the high consequence area (see paragraph (i) of this section);

(7) Methods to measure the program's effectiveness (see paragraph (k) of this section);

(8) A process for review of integrity assessment results and information analysis by a person qualified to evaluate the results and information (see paragraph (h)(2) of this section).

(g)

(l) *What records must be kept?* (1) An operator must maintain for review during an inspection:

(i)

(ii) Documents to support the decisions and analyses, including any modifications, justifications, variances, deviations and determinations made, and actions taken, to implement and evaluate each element of the integrity management program listed in paragraph (f) of this section.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(l)(1)(ii) by failing to maintain for review during an OPS inspection the documents supporting the decisions and analyses made, and actions taken, to implement and evaluate each element of the operator's IMP. Specifically, the Notice alleged eight deficiencies in NCRA's IMP recordkeeping: (a) insufficient documentation showing new HCAs identified after 2006; (b) missing documentation of the Communication of Evaluation for 2010; (c) missing documentation of a baseline assessment on the Kaw pipeline system; (d) missing documentation of a continual assessment and evaluation on the NCRA pipeline system for 2008 and 2009; (e) missing documentation of a reassessment interval analysis for the NCRA, Jayhawk, and Kaw pipeline systems; (f) missing documentation of effectiveness reviews for the NCRA system; (g) missing documentation of performance measure evaluations for the NCRA and Jayhawk pipeline systems from 2006 to the date of the inspection; and (h) missing documentation of a preventive and mitigation measure review for a Kaw pipeline segment that was risk-ranked in April 2010.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(l)(1)(ii) by failing to maintain for review during an OPS inspection the documents supporting the decisions and analyses made, and actions taken, to implement and evaluate each element of its IMP.

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 \$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 \$82,400 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$29,300 for Respondent's violation of 49 C.F.R. § 195.452(j)(2), for failing to conduct a periodic evaluation of its line pipe as frequently as needed to assure pipeline integrity. NCRA paid the proposed penalty, which serves to authorize the Associate Administrator to assess the proposed penalty, with prejudice to Respondent. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$29,300 for violation of 49 C.F.R. § 195.452(j)(2).

Item 2: The Notice proposed a civil penalty of \$33,100 for Respondent's violation of

49 C.F.R. § 195.452(i)(3), for failing to evaluate the capability of its pipeline leak detection system to detect leaks that could affect HCAs. NCRA paid the proposed penalty, which serves to authorize the Associate Administrator to assess the proposed penalty, with prejudice to Respondent. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$33,100 for violation of 49 C.F.R. § 195.452(i)(3).

Item 4: The Notice proposed a civil penalty of \$20,000 for Respondent's violation of 49 C.F.R. § 195.452(l)(1)(ii), for failing to maintain for review during OPS inspections the documents supporting the decisions and analyses made, and actions taken, to implement and evaluate each element of its IMP. NCRA paid the proposed penalty, which serves to authorize the Associate Administrator to assess the proposed penalty, with prejudice to Respondent. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$20,000 for violation of 49 C.F.R. § 195.452(l)(1)(ii).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$82,400**.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 2, 3, and 4 in the Notice for violations of 49 C.F.R. § 195.452(i)(3), (i)(4), and (l)(1)(ii), respectively. 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. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.452(i)(3) (**Item 2**), Respondent must conduct a leak detection capability analysis on the NCRA, Jayhawk, and Kaw pipeline systems.
2. With respect to the violation of § 195.452(i)(4) (**Item 3**), Respondent must perform an EFRD analysis of the Kaw pipeline system.
3. With respect to the violation of § 195.452(l)(1)(ii) (**Item 4**), Respondent must establish a document management and retention system within 90 days of receipt of this Final Order. Respondent must submit the proposed document management process to the Director within 30 days of receipt of this Final Order for the Director's approval.
4. Respondent must complete the evaluations required in paragraphs 1 and 2 of this Compliance Order within 60 days of receipt of this Final Order. Respondent must submit documentation of the evaluations to the Director within 30 days of completion.

5. PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. PHMSA requests that Respondent report these costs in two categories: (1) total cost associated with preparation and revision of plans, procedures, studies, and analyses; and (2) total cost associated with replacements, additions, and other changes to pipeline infrastructure.

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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 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.

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