



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Avenue SE
Washington DC 20590

MAY 16 2019

Mr. Todd Karran
President and Chief Executive Officer
Nova Chemicals Inc. (d/b/a Vantage Pipeline)
P.O. Box 2518
Calgary, Alberta, T2P 5C6

Re: CPF No. 3-2018-5005

Dear Mr. Karran:

Enclosed please find the Final Order issued in the above-referenced case to Nova Chemicals, Inc., regarding the Vantage Pipeline. It makes findings of violation and assesses a civil penalty of \$77,700. This is to acknowledge receipt of partial payment, by wire transfer dated August 3, 2018, in the amount of \$77,690. There is a remaining balance of \$10.00 that is still due. Remit the remaining balance in accordance with the payment instructions set forth in the Final Order. This enforcement action closes automatically upon receipt of this remaining payment. Service of the Final Order by certified mail is effective upon the date of mailing as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Allan C. Beshore, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. William C. Mitchell, General Counsel and Assistant Corporate Secretary,
Nova Chemicals Inc. (via electronic transmission to Bill.Mitchell@novachem.com)

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)

Nova Chemicals Inc.,)
d/b/a Vantage Pipeline,)

Respondent.)
_____)

CPF No. 3-2018-5005

FINAL ORDER

Between October 10 and November 5, 2016, 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 Nova Chemicals Inc., d/b/a Vantage Pipeline (Nova or Respondent), in Joffre, Alberta, Canada, and North Dakota. Nova operates Vantage Pipeline, which is an approximately 80-mile, 10-inch and 8-inch, liquefied petroleum gas and natural gas liquids pipeline, running from the Hess plant in Williams County, North Dakota, to the United States and Canadian border.¹

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated July 3, 2018, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Nova had violated 49 C.F.R. §§ 195.428, 195.440 and 195.446 and proposed assessing a civil penalty of \$77,700 for the alleged violations.

Nova responded to the Notice by letter dated August 2, 2018 (Response). The company did not contest the allegations of violation and made a partial payment in the amount of \$77,690 of the proposed civil penalty of \$77,700.² In accordance with 49 C.F.R. § 190.208(a)(1), such payment authorizes the Associate Administrator to make findings of violation and to issue this final order without further proceedings.

¹ Pipeline Violation Safety Report (Violation Report), (July 3, 2018) (on file with PHMSA), at 1.

² In its Response, Nova stated that it had “made a wire transfer in the amount of \$77,700 through the Federal Reserve Communications System to the account of the U.S. Treasury.” Response, at 1. The wire transfer voucher received by PHMSA, dated August 3, 2018, identified the amount received by the U.S. Treasury as \$77,690. The \$10.00 deficiency was apparently due to Nova’s bank assessing a \$10 transfer fee.

FINDINGS OF VIOLATION

In its Response, Nova 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. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overfill 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 7½ 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 Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test the overpressure protection devices on the Vantage Pipeline, which carries highly volatile liquids, at intervals not to exceed 7½ months but at least twice each calendar year. Specifically, the Notice alleged that the pipeline's pressure-control devices (Honeywell STG 974-EIA) on its control valves were not calibrated or tested during calendar years 2014, 2015, and 2016.

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. § 195.428(a) by failing to inspect and test the overpressure protection devices on the Vantage Pipeline, which carries highly volatile liquids, at intervals not to exceed 7½ months but at least twice each calendar year.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a), which states:

§ 195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* § 195.3).

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a) by failing to develop and implement a written continuing education program that follows the guidance provided by API RP 1162. Specifically, the Notice alleged that Nova did not have a public awareness program until 2016, even though the Vantage Pipeline has been in operation and transporting product since 2014.

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. § 195.440(a) by failing to develop and implement a written continuing education program that follows the guidance provided by API

RP 1162 until 2016, even though the Vantage Pipeline has been in operation and transporting product since 2014.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.446(h)(1), which states:

§ 195.446 Control room management.

(a)

(h) *Training.* Each operator must establish a controller training program and review the training program content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months. An operator's program must provide for training each controller to carry out the roles and responsibilities defined by the operator. In addition, the training program must include the following elements:

(1) Responding to abnormal operating conditions likely to occur simultaneously or in sequence; . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.446(h)(1) by failing to train its controllers in responding to abnormal operating conditions likely to occur simultaneously or in sequence. Specifically, the Notice alleged that Nova failed, until August 2017, to identify the abnormal operating conditions likely to occur simultaneously or in sequence in its control room and to train their controllers to respond to such conditions, despite the Vantage Pipeline having been in operation since 2014.

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. § 195.446(h)(1) by failing to train its controllers in responding to abnormal operating conditions until 2017, despite having operated the Vantage Pipeline since 2014.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.³ 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; 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

³ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223; Revisions to Civil Penalty Amounts, 83 Fed. Reg. 60732, 60744 (Nov. 27, 2018).

damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$77,700 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$40,300 for Respondent's violation of 49 C.F.R. § 195.428(a), for failing to inspect and test the overpressure protection devices on the Vantage Pipeline, which carries highly volatile liquids, at intervals not to exceed 7½ months but at least twice each calendar year. Nova neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$40,300 for violation of 49 C.F.R. § 195.428(a).

Item 2: The Notice proposed a civil penalty of \$18,700 for Respondent's violation of 49 C.F.R. § 195.440(a), for failing to develop and implement a written continuing education program that follows the guidance provided by API RP 1162. Nova neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$18,700 for violation of 49 C.F.R. § 195.440(a).

Item 3: The Notice proposed a civil penalty of \$18,700 for Respondent's violation of 49 C.F.R. § 195.446(h)(1), for failing to train its controllers in responding to abnormal operating conditions. Nova neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$18,700 for violation of 49 C.F.R. § 195.446(h)(1).

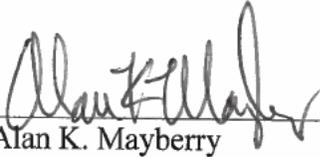
In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of \$77,700. Nova partially paid this penalty by wire transfer dated August 3, 2018, in the amount of \$77,690. Therefore, a balance of **\$10.00** remains outstanding.

Payment of the civil penalty must be made within 20 days of service of this Final Order. Payment may be made by sending a certified check or money order (containing the CPF Number for this case), made payable to "U.S. Department of Transportation," to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMK-325), 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit 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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$10 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. This enforcement action closes automatically upon receipt of payment.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.



Alan K. Mayberry
Associate Administrator
for Pipeline Safety

MAY 16 2019

Date Issued