

April 25, 2022

VIA ELECTRONIC MAIL TO: mike.mears@magellanlp.com

Mr. Michael Mears
Chief Executive Officer
Magellan Midstream Partners, LP
P.O. Box 22186
Tulsa, Oklahoma 74121

Re: CPF No. 3-2021-067-NOPV

Dear Mr. Mears:

Enclosed please find the Final Order issued in the above-referenced case to Magellan Pipeline Company, LP. It makes findings of violation and assesses a reduced civil penalty of \$59,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt 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. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Mark Materna, Director, Pipeline Integrity, Magellan Midstream Partners, LP,
mark.materna@magellanlp.com
Mr. Jason Smith, Vice President, Asset Integrity, Magellan Midstream Partners, LP,
jason.smith@magellanlp.com

Mr. Aaron Milford, Chief Operating Officer, Magellan Midstream Partners, LP,
aaron.milford@magellanlp.com

Ms. Laurie England, Senior Regulatory Compliance Coordinator, Magellan Midstream
Partners, LP, laurie.england@magellanlp.com

CONFIRMATION OF 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)	
)	
Magellan Pipeline Company, LP,)	CPF No. 3-2021-067-NOPV
a subsidiary of Magellan Midstream Partners, LP,)	
)	
Respondent.)	
)	

FINAL ORDER

From March 9, 2020, through April 3, 2021, 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 Magellan Pipeline Company, LP (Magellan or Respondent) in Texas. Magellan is a subsidiary of Magellan Midstream Partners, LP. Magellan’s Texas system consists of 46 breakout tanks and approximately 1,017 miles of refined products pipelines from El Paso to Odessa.¹

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated October 20, 2021, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Magellan had committed two violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$66,800 for the alleged violations. The Notice also included an additional warning item pursuant to 49 C.F.R. § 190.205, which required no further action, but warned the operator to correct the probable violation or face possible future enforcement action.

After requesting and receiving an extension of time to respond, Magellan responded to the Notice by letter dated January 25, 2022 (Response). The company did not contest the allegations of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

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

¹ Pipeline Safety Violation Report (Violation Report), at 1, (October 20, 2021) (on file with PHMSA).

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with § 195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. However, if tests at those intervals are impractical for separately protected short sections of bare or ineffectively coated pipelines, testing may be done at least once every 3 calendar years, but with intervals not exceeding 39 months.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1) by failing to conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. Specifically, the Notice alleged that a review of Magellan’s corrosion-control records showed 46 missing cathodic protection inspections and three inspections exceeding 15 months on the Odessa to El Paso unit.

Respondent did not contest this allegation of violation but provided additional information and requested a reduction of the civil penalty. Accordingly, based on a review of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(a)(1) by failing to conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(c), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) ...

(c) *Rectifiers and other devices.* You must electrically check for proper performance each device in the first column at the frequency stated in the second column.

Device	Check frequency
Rectifier..... Reverse current switch. Diode. Interference bond whose failure would jeopardize structural protection.	At least six times each calendar year, but with intervals not exceeding 2 ½ months.
Other interference bond.....	At least once each calendar year, but with intervals not exceeding 15 months.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(c) by failing to electrically check for proper performance of rectifiers or critical interference bonds at least six times each calendar year, at intervals not to exceed 2 ½ months, and other interference bonds at least once each calendar year, but with intervals not exceeding 15 months. Specifically, the Notice alleged that Magellan failed to conduct 15 readings on a rectifier from 2017-2019; three readings on a critical bond in 2019; and two readings on three others interference bonds in 2017 and 2018, for a total of six readings.

Respondent did not contest this allegation of violation but provided additional information and requested a reduction of the civil penalty. Accordingly, based on a review of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(c) by failing to electrically check for proper performance of rectifiers or critical interference bonds at least six times each calendar year, at intervals not to exceed 2 ½ months, and other interference bonds at least once each calendar year, but with intervals not exceeding 15 months.

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.²

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; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 \$66,800 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$23,100 for Respondent's violation of 49 C.F.R. § 195.573(a)(1), for failing to conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. Specifically, the Notice alleged that a review of Magellan's corrosion-control records showed 46 missing cathodic protection inspections and three inspections exceeding 15 months on the Odessa to El Paso unit for a total of 49 instances of violation. As fully described below, I reduce the number of instances of violation from 49 to 33.

With respect to gravity, Magellan stated that from July 3, 2013, to July 31, 2019, it leased a portion of its pipeline to DCP Midstream (DCP). Magellan noted that it filed the Operator

² These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

Registry Notification in 2013 regarding DCP's status as "Operator of Record," and again in 2019 when Magellan resumed as "Operator of Record." Therefore, Magellan contended it was not the Operator of Record for the applicable portions of the pipeline corresponding to 43 of the 46 missing cathodic protection readings. For the remaining three instances of missing cathodic protection readings, Magellan stated that mileposts (MP) 113.8, 113.88 and 113.9 were not installed until 2018 thus there were no missing readings associated with these locations in 2017. Magellan also provided additional records that it obtained from DCP regarding the PHMSA identified missing records (Missing Records). The Missing Records contained the 2018 inspection records for MP zero through 13 in Kermit Station. The Missing Records also included information demonstrating that the rectifier location at MP zero was not a test point. In consideration of the Missing Records and the lease agreement with DCP, Magellan requested a reduction in the proposed civil penalty.

Magellan's argument that it was not the "Operator of Record" does not excuse it from compliance with Part 195.³ Section 195.2 defines an operator as any "person who owns or operates pipeline facilities."⁴ Consequently, Magellan is an operator as long as it owns pipeline facilities, irrespective of any other contractual arrangements. Further, although "[a]n operator may make arrangements with another person for the performance of any action required by [Part 195] ... the operator is not thereby relieved from the responsibility for compliance with any requirement of [Part 195]."⁵ Thus, although Magellan leased portions of its pipeline facilities to DCP, it maintained responsibility for compliance with Part 195 throughout the lease term (i.e., July 3, 2013, to July 31, 2019).

However, having reviewed and considered the Missing Records provided by Magellan, I withdraw the instances of allegation of missing test records for MP 113.8, 113.88, and 113.9 in 2017; from MP zero through 13 in Kermit Station in 2018; and MP zero, for the reasons discussed above. As such, I reduce the number of instances of violation by 16, from 49 to 33.

With respect to culpability, Magellan asserted that it "conducted all required inspections in accordance with 49 CFR § 195.573(a)(1)" upon expiration of the DCP lease agreement.⁶ However, all of the missing inspections occurred during the lease term. Therefore, Magellan's actions upon expiration of the lease term to comply with § 195.573(a)(1), while commendable, do not warrant further reduction in the civil penalty.

Based on the foregoing, I assess Respondent a reduced civil penalty of \$21,000 for violation of 49 C.F.R. § 195.573(a)(1).

³ "Operator of Record" is not a status PHMSA recognizes. That phrase does not appear in the pipeline safety statute or regulations. If a person owns or operates a pipeline, it is responsible for compliance with Part 195.

⁴ 49 C.F.R. § 195.2.

⁵ *Id.* § 195.10.

⁶ Violation Report, at 9.

Item 3: The Notice proposed a civil penalty of \$43,700 for Respondent’s violation of 49 C.F.R. § 195.573(c), for failing to electrically check for proper performance of rectifiers and critical interference bonds at least six times each calendar year, at intervals not to exceed 2 ½ months and other interference bonds at least once each calendar year, but with intervals not exceeding 15 months. As fully described below, I reduce the number of instances of violation from 24 to 6.

With respect to gravity, as noted above, Magellan stated that DCP was the “Operator of Record” of the applicable portion of the Odessa to El Paso pipeline during the time frame alleged in the Notice. Therefore, Magellan coordinated with DCP to obtain records and respond to the allegations in the Notice. Regarding the alleged 15 instances of violation for failure to electrically check for the proper performance of a rectifier, Magellan obtained the 2017, 2018, and 2019 rectifier inspection records for line segment 6936 at MP 107.955 (Rectifier Records). Concerning an alleged three instances of violation for failure to electrically check for the proper performance of critical interference bond on line segment 6936 at MP 88.07, Magellan argued that the bond was not critical to its pipeline and provided records to satisfy the bond inspection requirement as non-critical bond (Non-Critical Bond Records). Lastly, for the alleged six instances of violation for failure to electrically check for the proper performance of other interference bonds, Magellan argued that those bonds were not protecting the leased Magellan pipeline. Rather, Magellan averred that those interference bonds were protecting DCP’s Red Bluff and Hidalgo pipelines. Magellan stated further that these interference bonds were installed during the lease term and removed after the lease expired. In light of the records and information obtained from DCP, Magellan requested a reduction in the proposed civil penalty.

As explained above, although Magellan leased portions of its pipeline facilities to DCP, it maintained responsibility for compliance with Part 195 throughout the lease term (i.e., July 3, 2013, to July 31, 2019). However, having reviewed and considered the Rectifier Records and the Non-Critical Bond Records, I withdraw the 15 instances of allegation of violation for missing inspection records for the rectifier located on line segment 6936 at MP 107.955, and three instances of allegation of violation for missing critical bond records. Concerning the interference bonds, I am not persuaded by Magellan’s argument that the bonds did not need to be inspected because they were protecting DCP’s Red Bluff or Hidalgo pipelines. These interference bonds were located on Magellan’s pipeline and Magellan has failed to provide any documentation indicating that they were inspected. Therefore, I find no reduction in the number of instances of violation is warranted for Magellan’s failure to electrically check for the proper performance of other interference bonds, line segment 6936, mile posts 49.595, 100.887, and 113.212. Therefore, in sum, I reduce the number of instances of violation by 18, from 24 to 6.

With respect to culpability, as noted above, Magellan asserted that it “conducted all required inspections in accordance with 49 CFR § 195.573(a)(1)” upon expiration of the DCP lease agreement.⁷ However, the remaining missing inspections all occurred during the lease term. Therefore, Magellan’s actions upon expiration of the lease term to comply with § 195.573(a)(1), while commendable, do not warrant further reduction in the civil penalty.

⁷ Violation Report, at 9.

Based on the foregoing, I assess Respondent a reduced civil penalty of \$38,000 for violation of 49 C.F.R. § 195.573(c).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a reduced civil penalty of **\$59,000**.

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. 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 (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 \$59,000 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 ITEM

With respect to Item 1, the Notice alleged a probable violation of Part 195, but identified it as a warning item pursuant to § 190.205. The warning was for:

49 C.F.R. § 195.452(l)(1)(ii) (**Item 1**) — Respondent's alleged failure to complete and maintain documents to support the decisions and analyses, including any modifications, justifications, deviations and determinations made, variances, and actions taken, to implement and evaluate each element of the integrity management program.

If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. 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.

April 25, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued