



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

OCT 23 2002

Mr. Dave Ysebaert
Phillips Pipe Line Company
252 E-1 Adams Building
Bartlesville, OK 74004

Re: CPF No. 4-2002-5002

Dear Mr. Ysebaert:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$ 37,500. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of)
)
Phillips Pipe Line Company,) CPF No. 4-2002-5002
)
Respondent)
_____)

FINAL ORDER

During the months of May, June, October, and November, 2001, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Texas and Oklahoma. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated April 8, 2002, 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 violated 49 C.F.R. §§ 195.401, 195.403, 195.404, 195.416, and 195.420 (Items 1-5 respectively), and proposed assessing a civil penalty of \$37,500 for the violations alleged in Items 4 and 5 of the Notice.

Respondent responded to the Notice by letter dated May 15, 2001 (Response). Respondent did not contest the allegations of violation but offered an explanation and provided information in mitigation of the civil penalty proposed for Items 4 and 5. Respondent did not request a hearing; consequently, Respondent waived its right to one.

FINDINGS OF VIOLATION

Uncontested Violations

Respondent did not contest the violations alleged in the Notice. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. § 195.416(a) – failure to demonstrate that tests were conducted to determine the adequacy of the cathodic protection at the Amarillo Terminal facility within the specified maximum interval;

49 C.F.R. § 195.420(b) – failure to demonstrate that certain mainline block valves were inspected within the specified maximum intervals.

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 a civil penalty not to exceed \$25,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

As for the violation of 49 C.F.R. § 195.416(a) (Item 4), a civil penalty of \$5,000 was proposed in the Notice. In its response, Respondent explained that it had informed OPS of the deficiency regarding cathodic protection testing at the Amarillo Terminal facility by letter dated October 16, 2001 and that prompt corrective action had been taken. The failure to properly maintain a pipeline system can put the public safety at risk. Inspection and testing of corrosion control equipment are essential elements of pipeline maintenance. Failure to perform documented testing within the required intervals can result in inadequate protection of the piping, potentially resulting in the occurrence of leaks. The last documented cathodic protection test at the Amarillo facility was conducted on June 7, 2000. Therefore, it was due for re-inspection no later than September 6, 2001. The Respondent was unable to demonstrate that an inspection was performed until October 11, 2001, exceeding the maximum interval of fifteen months by over 30 days. Respondent has not presented information that warrants mitigation of the civil penalty proposed for this violation. Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty of \$5,000 for failing to comply with the requirements of 49 C.F.R. § 195.416(a).

As for the violation of 49 C.F.R. § 195.420(b) (Item 5), a civil penalty of \$32,500 was proposed in the Notice. In its response, Respondent contended that the majority of the valves it failed to inspect in accordance with § 195.420(b) were "not actually necessary" for operating its system in compliance with the pipeline regulations. These valves, however, are described as regulated equipment and required to be tested by the Respondent's own procedural manual. Moreover, no evidence demonstrating that these valves were unnecessary was provided, nor was any indication that Respondent had amended its procedures or trained its personnel to distinguish between "necessary" valves and those it now contends are unnecessary. Respondent has not presented information that warrants mitigation of the civil penalty proposed for this violation. Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty of \$32,500 for failing to comply with the requirements of 49 C.F.R. § 195.420(b).

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$37,500. A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue business.

Payment of the civil penalties 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. After completing the wire transfer, send a copy of the electronic funds transfer receipt to the Office of the Chief Counsel (DCC-1), Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590-0001.

Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$37,500 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 an United States District Court.

WARNING ITEMS

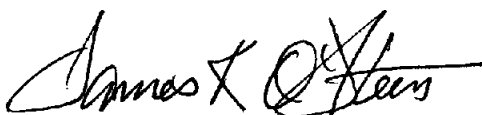
The Notice did not propose a civil penalty or corrective action for the following Items; therefore, Respondent is warned that if it does not take appropriate corrective action to address the items and OPS finds a violation in a subsequent inspection, enforcement action will be taken.

Item 1 in the Notice alleged that Respondent failed to utilize certain forms and procedures referenced in its written procedural manual when conducting facility inspections.

Item 2 in the Notice alleged that Respondent failed to properly conduct its training program in connection with break-out tank inspections in the Borger area.

Item 3 in the Notice alleged that Respondent failed to properly record the month, day, and year that various inspections were performed.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. However, upon payment of the civil penalty, the case closes automatically and Respondent waives the right to petition for reconsideration. The filing of the petition automatically stays the payment of any civil penalty assessed. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The terms and conditions of this Final Order are effective on receipt.



for Stacey Gerard
Associate Administrator
for Pipeline Safety

OCT 23 2002

Date Issued