

DEC 28 2009

Mr. Richard A. Olson
Senior Vice President, Operations and Technical Services
Magellan Midstream Partners, L.P.
Magellan Pipeline Company, L.P.
One Williams Center, MD-27
Tulsa, OK 74172

Re: CPF No. 4-2007-5050

Dear Mr. Olson:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and assesses a total civil penalty of \$66,000. The Final Order also specifies actions that Magellan needs to take to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of this document is in accordance with 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. Rod M. Seeley, Director, Southwest Region, PHMSA

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7009 1410 0000 2464 5805]

**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, L.P.,)	CPF No. 4-2007-5050
)	
Respondent.)	
)	

FINAL ORDER

On August 8-11, August 14-18, and October 24-26, 2006, 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, L.P.'s (Magellan or Respondent) Longhorn Partners Pipeline system (Longhorn Pipeline) near El Paso, Texas, as well as the Magellan Operations Control Center in Tulsa, Oklahoma. Magellan, a subsidiary of Magellan Midstream Partners, L.P., operates approximately 10,000 miles of pipelines in the United States, transporting refined petroleum products, highly volatile liquids, and crude oil. The 700-mile Longhorn Pipeline delivers refined petroleum products from Galena Park to El Paso, Texas.

As a result of this inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated December 20, 2007, 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 Respondent had committed certain violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$66,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. In accordance with 49 C.F.R. § 190.205, the Notice further proposed finding that Respondent had committed certain other probable violations of 49 C.F.R. Part 195 and warning Respondent to take appropriate corrective action to address them or be subject to future enforcement action.

Respondent responded to the Notice by letter dated January 22, 2008 (Response). Respondent initially requested a hearing "to discuss the interpretations applied in the inspection upon which the [Notice] is based, the requirements set forth in the Proposed Compliance Order, and the proposed civil penalty." In accordance with § 190.211, a hearing was scheduled for January 28, 2009; however, by letter dated January 16, 2009, Magellan withdrew its request for a hearing, thereby waiving its right to one and authorizing the entry of this final order based on the case file.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.410, which states:

§ 195.410 Line markers.

(a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:

(1) Markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known

The Notice alleged that Respondent violated § 195.410(a)(1) by failing to place and maintain line markers over each buried pipeline in sufficient number so that its location would be accurately known. In addition, the Notice alleged Respondent failed to comply with relevant provisions in the company's Longhorn Mitigation Plan (LMP), which specified additional marking requirements.¹ Observations during the OPS inspection, as well as photographic evidence, indicated the pipeline did not appear to have an adequate number of markers. The Notice stipulated that Magellan had made some improvements since the date of the OPS inspection, but that the company needed to ensure full compliance with the regulatory and procedural requirements pertaining to pipeline markers.

In its Response, the company contended that "Magellan's response may include but not necessarily be limited to presenting information that applicable regulatory and procedural requirements were being met." Respondent, however, did not present any further information, either in its Response or subsequent letter withdrawing its request for a hearing. Therefore, after considering all the evidence, I find that Respondent violated 49 C.F.R. § 195.410(a)(1) by failing to place and maintain line markers over each buried pipeline in sufficient number so that its location would be accurately known.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.432, which states:

§ 195.432 Inspection of in-service breakout tanks.

(a)

(b) Each operator shall inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to section 4 of API Standard 653. However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3)

¹ The LMP, dated September 2000, as amended, consists of detailed commitments and mitigation measures for the Longhorn Pipeline that address environmental and safety concerns raised by Federal agencies and the general public during an environmental assessment of the Longhorn Partners Pipeline system. The LMP is incorporated into Magellan's manual of written procedures for the operations and maintenance of the Longhorn Pipeline. Respondent is required to comply with such procedures pursuant to 49 C.F.R. § 195.402.

The Notice alleged that Respondent violated § 195.432(b) by failing to inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to section 4 of API Standard 653.² Observations and photographs taken during the OPS inspection indicated a number of cracks in the foundations of breakout tanks that had not been addressed according to section 4 of API Standard 653, which requires measures be taken to prevent minor foundation cracks from becoming future structural problems.

In its Response, the company contended that “Magellan’s response may include but not necessarily be limited to presenting information with respect to applicable regulatory requirements and factual matters.” Respondent, however, did not present any further information. Therefore, after considering all the evidence, I find that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of certain aboveground breakout tanks according to section 4 of API Standard 653.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.573, which states:

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

(a)

(d) *Breakout tanks.* You must inspect each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank to ensure that operation and maintenance of the system are in accordance with API Recommended Practice 651. However, this inspection is not required if you note in the corrosion control procedures established under §195.402(c)(3) why compliance with all or certain operation and maintenance provisions of API Recommended Practice 651 is not necessary for the safety of the tank

The Notice alleged that Respondent violated § 195.573(d) by failing to inspect each cathodic protection system used to control corrosion on the bottom of aboveground breakout tanks, to ensure that operation and maintenance of the system were in accordance with API Recommended Practice 651.³ Pipe-to-soil cathodic protection readings taken during the OPS inspection, as well as in Respondent’s own records, indicated the bottom of some aboveground breakout tanks did not meet either the -850mV or the 100mV criteria specified in API Recommended Practice 651.⁴

In its Response, the company contended that “Magellan’s response may include but not necessarily be limited to presenting information with respect to applicable regulatory requirements and factual matters.” Respondent, however, did not present any further information. Therefore, after considering all the evidence, I find that Respondent violated 49 C.F.R. § 195.573(d) by failing to inspect each cathodic protection system used to control

² American Petroleum Institute (API) Standard 653, “Tank Inspection, Repair, Alteration, and Reconstruction,” is incorporated by reference at 49 C.F.R. § 195.3.

³ API Recommended Practice 651, “Cathodic Protection of Aboveground Petroleum Storage Tanks,” is incorporated by reference at 49 C.F.R. § 195.3.

⁴ The -850mV and 100mV criteria are specified in API Recommended Practice 651 for determining whether cathodic protection is adequate.

corrosion on the bottom of an aboveground breakout tank, to ensure that operation and maintenance of the system were in accordance with API Recommended Practice 651.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.402, which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted

The Notice alleged that Respondent violated § 195.402(a) by failing to follow its manual of written procedures for conducting operations and maintenance activities. Specifically, the Notice alleged that Respondent did not follow requirements in the LMP pertaining to: leak detection sensitivity and response time; continuous monitoring of pump stations using video cameras; maintenance of the right-of-way; and prevention of encroachments.

In its Response, the company contended that “Magellan’s response may include but not necessarily be limited to presenting information with respect to applicable regulatory requirements and factual matters, including but not limited to the following subjects: (a) Leak response time; (b) Leak detection sensitivity; (c) Video camera capabilities; [and] (d) ROW condition and encroachments.” Respondent, however, did not present any further information. Therefore, after considering all the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow certain written procedures in the LMP for conducting operations and maintenance activities.

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. The Notice proposed a total civil penalty of \$66,000 for violations of 49 C.F.R. §§ 195.410 (Item 1) and 195.402 (Item 6).

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.

Item 1: The Notice proposed a civil penalty of \$25,000 for Respondent's violation of 49 C.F.R. § 195.410(a)(1), for failing to place and maintain line markers over each buried pipeline in sufficient number along each buried line so that its location would be accurately known. In its Response, the company contended that "Magellan will also request and present information regarding the determination of both the proposed civil penalties and the Proposed Compliance Order, and will move for the reduction, if not the elimination, of the proposed civil penalties." Respondent, however, did not present any further information that would warrant mitigation of the proposed civil penalty under the assessment criteria.

The nature, circumstances, and gravity of Respondent's failure to adequately mark its pipeline support the proposed civil penalty. Respondent is culpable for the violations and has a history of prior offenses, as specified in the Pipeline Safety Violation Report, dated December 7, 2007 (Violation Report). Respondent has not provided any evidence suggesting the company is not able to pay the proposed civil penalty; therefore, I find Respondent is able to pay the penalty without adversely affecting its ability to continue in business. I recognize Respondent's good faith in attempting to comply with the pipeline safety regulations, but find it does not warrant mitigation of the proposed penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$25,000 for the violation of 49 C.F.R. § 195.410(a)(1).

Item 6: The Notice proposed a civil penalty of \$41,000 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow certain written procedures in the LMP for conducting operations and maintenance activities. In its Response, the company contended that "Magellan will also request and present information regarding the determination of both the proposed civil penalties and the Proposed Compliance Order, and will move for the reduction, if not the elimination, of the proposed civil penalties." Respondent, however, did not present any further information that would warrant mitigation of the proposed civil penalty under the assessment criteria.

The nature, circumstances, and gravity of Respondent's failure to follow its procedures support the proposed civil penalty. Respondent is culpable for the violations and has a history of prior offenses, as specified in the Violation Report. Respondent has not provided any evidence suggesting the company is not able to pay the proposed civil penalty; therefore, I find Respondent is able to pay the penalty without adversely affecting its ability to continue in business. I recognize Respondent's good faith in attempting to comply with the pipeline safety regulations, but find it does not warrant mitigation of the proposed penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$41,000 for the violation of 49 C.F.R. § 195.402(a).

In summary, having reviewed the record and considered the assessment criteria for all of the Items discussed above, I assess Respondent a total civil penalty of **\$66,000**.

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 \$66,000 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Notice Items 1, 4, 5, and 6, pertaining to violations of §§ 195.410, 195.432, 195.573, and 195.402, 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. Respondent must:

1. Demonstrate that Magellan has adequate pipeline markers along the route of the Longhorn Pipeline in accordance with the requirements of § 195.410 and the LMP (Notice Item 1).
2. Demonstrate that cracks in the ringwall foundations of the breakout tanks located at the El Paso terminal facility have been addressed according to API Standard 653, as required by § 195.432(b) (Notice Item 4).
3. Demonstrate that at least one of the applicable cathodic protection criteria specified in API Recommended Practice 651 is met for the breakout tanks on the Longhorn Pipeline in accordance with § 195.573(d) (Notice Item 5).
4. Demonstrate that the procedural compliance issues identified in the Notice have been addressed in accordance with the LMP, and that such procedures and being followed in accordance with § 195.402(a) (Notice Item 6).

5. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and report the total cost as follows: (a) total cost associated with preparation and revision of plans and procedures, and performance of studies and analyses; and (b) total cost associated with physical changes, if any, to the pipeline infrastructure, including replacements and additions.
6. Complete each of the above items and submit documentation of compliance within 30 days of receipt of this Final Order. Documentation shall be submitted to the Director, Southwest Region, Office of Pipeline Safety, 8701 South Gessner Dr, Suite 1110, Houston, TX 77074-2949.

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 demonstrating good cause for an extension.

Failure to comply with this Order may result in 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.

WARNING ITEMS

With respect to Items 2, 3 and 7, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.420(b) (Notice Item 2) – Respondent’s alleged failure to inspect two mainline valves at intervals not exceeding 7½ months, but at least twice each calendar year. The inspections allegedly exceeded the specified interval by a few days.

49 C.F.R. § 195.420(c) (Notice Item 3) – Respondent’s alleged failure to provide protection for each valve from unauthorized operation and vandalism. While the majority of aboveground valves were located inside locked fences, some valves were allegedly not fenced to protect against vandalism.

49 C.F.R. § 195.436 (Notice Item 7) – Respondent’s alleged failure to provide protection for the El Paso Terminal facility from vandalism and unauthorized entry. While the facility had a security fence and electrically-operated gates, an OPS representative allegedly observed personnel entering the facility without positive identification.

Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of §§ 195.420(b) (Notice Item 2), 195.420(c) (Notice Item 3), and 195.436 (Notice Item 7) have occurred and Respondent is hereby advised to correct such conditions. In the event that OPS finds a violation for any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a 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. 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) and meet all other requirements of 49 C.F.R. § 190.215. The filing of the petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. 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