

JUN 3 2011

Mr. John. S. Watson
Chairman and Chief Executive Officer
Chevron Headquarters
6001 Bollinger Canyon Rd.
Building A
San Ramon, CA 94583

Re: CPF No. 4-2008-5020

Dear Mr. Watson:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$100,000. 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 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. R.M. Seeley, Director, PHMSA Southwest Region
Mr. David Chang, Litigation Counsel, Chevron Pipeline Company
Mr. Andrew J. Cloutier, Hinkle, Hensley, Shanor & Martin, L.L.P. for Chevron Pipeline Co.
Mr. Ben Fred, Counsel, PHMSA Southwest Region

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 1160 0001 0075 9299]

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of)	
)	
)	
CHEVRON PIPELINE COMPANY,)	CPF No. 4-2008-5020
)	
Respondent.)	

FINAL ORDER

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 investigation of two accidents involving the Chevron West Texas LPG pipeline system operated by Chevron Pipe Line Company (CPL or Respondent) near Hobbs, New Mexico and Snyder, Texas. Chevron Pipe Line Company operates on its own behalf and for its affiliated companies, pipeline assets that transport crude oil, refined petroleum products, liquefied petroleum gas, natural gas and chemicals within the United States. The Chevron West Texas LPG pipeline system transports liquefied petroleum gas and consists of 657 miles of 6-inch and 8-inch main lines.

The investigation arose out of two separate accidents involving third-party excavators striking CPL's 6-inch pipeline and releasing liquefied petroleum gas. The accidents occurred on March 31, 2008 in Snyder, Texas and on April 7, 2008 near Hobbs, New Mexico. No injuries, fatalities, or evacuations occurred.

As a result of the investigation, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated September 10, 2008, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Chevron had violated 49 C.F.R. § 195.442 and proposed assessing a civil penalty of \$100,000 for the alleged violation.

Respondent responded to the Notice by letter dated September 30, 2008 to request an extension of time to respond to the Notice. Respondent was granted an extension and responded to the Notice by letter dated November 5, 2008 (Response). CPL contested the allegation, offered additional information in response to the Notice and in mitigation of the proposed penalty, and requested a hearing. A hearing was subsequently held on March 31, 2009, in Houston, Texas with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel. After the hearing Respondent submitted a letter dated April 1, 2009 correcting a statement in the November 5 response. The Notice proposed one allegation of violation for two separate incidents. The two incidents are addressed separately.

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195.442, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.442, which states in relevant part:

§ 195.442 -- Damage prevention program.

(a) Except as provided in paragraph (d) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term “excavation activities” includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations...;

(c) The damage prevention program required by paragraph (a) of this section must, at a minimum:

(1) Include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located.

(2) Provides for notification of the public in the vicinity of the pipeline and actual notification of persons identified in paragraph (c)(1) of this section of the following as often as needed to make them aware of the damage prevention program:

(i) The program's existence and purpose; and

(ii) How to learn the location of underground pipelines before excavation activities are begun.

(3) Provide a means of receiving and recording notification of planned excavation activities.

(4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings.

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.

(6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

(i) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and

(ii) In the case of blasting, any inspection must include leakage surveys.

The Notice alleged that CPL violated 49 C.F.R. §§ 195.442(c) by failing to follow its Core Liquid Pipeline Operating and Maintenance Procedural Manual (O&M Manual) to monitor excavation activities to prevent damage to its pipeline system. PHMSA maintained that CPL's failure to follow procedures result in two separate accidents involving a third-party excavator striking CPL's 6-inch pipeline and releasing liquefied petroleum gas. The two accidents are addressed separately below:

With respect to the March 31, 2008 accident in Snyder, Texas, the Notice alleged that Respondent failed to follow CPL's O&M Manual Section 5: Damage Prevention, procedure 5.7, which states, "A Company representative shall be present when excavation activities occur within close proximity of a Company pipeline. A Company representative must be present during and after the excavation activities to verify pipeline integrity, adequate support of the line while exposed, proper backfill, and to perform the visual inspection of any exposed pipelines. Refer to MIP-206 for Foreign Crossing."¹

PHMSA asserted that the CPL representative retreated to his vehicle after having a pre-excavation meeting with the excavator and failed to keep an eye on the excavation to prevent damage to the pipeline. The agency also asserted that a statement made by CPL's Senior Facility Inspector that he was inside his vehicle filling out forms when the excavator struck the pipeline demonstrated CPL's failure to follow its O&M Manual, violating 49 C.F.R. § 195.442(c).

In Response, the Company argued that prior to the excavation CPL exposed the pipeline on both sides of the proposed excavation and clearly and accurately marked the location of the buried pipeline in the area of the excavation. Respondent contended that after marking and exposing the pipeline, the CPL representative confirmed that the excavator understood the location of the pipeline. Respondent acknowledged that the incident occurred shortly after the CPL representative went to his vehicle near the excavation site. Respondent argued that, contrary to the Notice, the CPL representative's presence during the excavation was discretionary. Respondent further argued that CPL's O&M Manual refers to a representative being "present" but does not require that the representative actively "monitor" every moment of excavation activity. Respondent then contended that the accident was caused by a mistake or error by the excavator who failed to properly operate the machinery and struck the pipeline that had been marked and exposed.

Accordingly, after considering all of the evidence, for the March 31, 2008 accident, I find that Respondent violated 49 C.F.R. §§ 195.442(c). The CPL representative presence in a truck does not meet the CPL O&M requirement that a "Company representative **shall be present** when excavation activities occur ... **must be present during** and after the excavation activities to verify pipeline integrity, adequate support of line while exposed, proper backfill and to perform the visual inspection of any exposed pipelines".² I find that the CPL O&M Manual requires that personnel be present to watch, "verify" and "perform visual inspection" not be available in a truck.

With respect to the second accident on April 7, 2008, which occurred during excavation for irrigation lines near Hobbs, New Mexico, the Notice alleged that Respondent failed to follow CPL's O&M Manual Section 5: Damage Prevention, procedure 5.4, which states, "Company

¹ CPL O&M Manual, page 206-6; Revised 5/07; Section 6.1 "All CPL Employees involved in Foreign Line Crossings are responsible for: locating and identifying possible foreign line crossing locations; informing the Field Team of any possible line crossings; providing the name and phone number of the appropriate Field Team to any individual who may wish to or who is currently crossing a CPL pipeline; and acting within his/her delegated authority to consummate the Acknowledgment of Line Crossing Procedure; stop work having the potential to damage CPL's pipeline and/or facilities".

² CPL's O&M Manual Section 5: Damage Prevention, procedure 5.7.

pipelines located in close proximity must be individually marked and identified.³ Specifically, the Notice alleged that CPL failed to locate and mark the pipeline after a One-Call ticket accurately located the trenching in the proximity of the pipeline, violating CPL's O&M Manual.

PHMSA asserted that a statement by Respondent's locator that he cleared the One-Call ticket after he determined that the pipeline did not require locating markers demonstrated that the Company failed to follow its procedures. As evidence that CPL failed to locate and mark the pipeline after a One Call ticket was made, the agency described its interview with the excavator/spotter, who stated that there were no location markers to indicate the presence of CPL's pipeline at the time of the incident.⁴ PHMSA asserted that CPL should have located and marked the pipeline since there was trenching activity in the vicinity of the pipeline.

In Response, Respondent maintained that the accident was the fault of the excavator and that it was impossible for CPL to accurately identify the work site based on the One Call ticket. Respondent explained that the description in the One Call ticket was inaccurate and did not describe the second portion of the excavation. Respondent referenced the One-Call ticket, which stated:⁵ "From Hobbs N on Denver City Hwy to Stiles Rd. W approx 6 mi to K and B Dairy on S Side of Rd==Spot 25 ft-wide along marked path along marked area from Stiles Rd. along W fence approx 3000 ft to 4000ft." Respondent contended that the description was inaccurate as the K&B Dairy property is not marked along Stiles Road so there was no means of identifying it; there was no "marked path along marked area" and Pinson Road is six miles west on Stiles Road, while the work site was about 52 miles further west of Pinson Road.⁶

CPL also argued that the One-Call ticket described a trench to be dug along the west fence where it did not encounter the CPL pipeline but that the trench was actually dug from the northwest portion of the property at a 45 degree angle from the fence in a southeasterly direction to a center pivot. Respondent contended that the One-Call ticket did not describe the second portion of the excavation that actually struck CPL's pipeline at a point approximately 200 yards from the west fence. The Company argued that the CPL representative responding to the One-Call ticket sought

³ CPL O&M Manual, page 5-3; Revised 10/07; Section 5.4, Pipeline identification states "Company pipelines located in close proximity must be individually marked and identified: a) Locate and field mark the approximate location of Company pipelines through the use of Standard locating techniques. Approximate location means within 24" on either side of the exterior surface of the pipeline. If an excavator needs exact depth and location of a Company pipeline, the excavator must expose the line and confirm the location. Excavation within 24" of Company pipelines must be performed by hand digging or other means such as vacuum excavation; b) If there is information indicating an abandoned Company pipeline within an excavation site, an attempt shall be made to locate and mark the abandoned facility; c) If practical, locate and mark pipelines when a requester's representative is present. A pre-excavation meeting may be necessary for large or unusual excavations; d) Use temporary flags or other more permanent markers if the type and duration of activity so dictates; e) Mark bend area and other changes of direction so that the pipe's location is clearly delineated. Set markers on straight pipeline sections at intervals required by conditions of the site and job, but not to exceed 100 feet (closer in areas of heavy congestion or when there are multiple bends along a pipeline route). Facility marking should extend a reasonable distance beyond the bounds of the requested (whitelined) area; f) If practical, remove markers when the work has been completed.

⁴ Violation Report, page 4 of 9.

⁵ CPL Response dated November 5, 2008, Tab 3.

⁶ *Id.*

clarification of the location of the excavation by making a phone call to the excavator and cleared the ticket when told that the digging would occur north of the Stiles Road, where there is no CPL pipeline in close proximity.⁷

After considering all of the evidence for the April 7, 2008 accident, I find that CPL's O&M Manual, page 5-3; Revised 10/07; Section 5.4, Pipeline identification requires that the approximate location of the Company pipelines must be located and field marked. I also find that the record substantiates that the Respondent cleared the One-Call ticket without visiting the trenching site. Although the One-Call ticket may have created some confusion about the excavation location, I find that had the CPL representative actually visited the trenching site to locate and mark the pipeline any confusion about the location of the excavation and trenching activity in the vicinity of the pipeline could have been resolved and the accident may have been avoided. Accordingly, I find that Respondent violated 49 C.F.R. §§ 195.442(c) by failing to locate and field mark the approximate location of CPL's pipeline.

This finding of violation will be considered a prior offense 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 \$100,000 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 195.442(c), for failing to follow its O&M Manual to prevent damage to its pipeline from excavation activities. The company disputed whether CPL's conduct was commensurate with the level of the fine. This regulation provides safety precautions to minimize the risk of accident or injury to human life, the environment, and property. Respondent is fully culpable for its failure to follow its O&M Manual, which resulted in an accident. Following each step of the procedures may have prevented the accident and the release of liquefied petroleum gas.

In terms of the nature, circumstances and gravity of the offenses, mitigation is not warranted because no injuries, fatalities, or evacuations occurred. Safety is compromised when an unintended release of gas occurs, as it increases the risk of harm to the public and the environment. Liquefied petroleum gas is a highly volatile liquid and the accident could have

⁷ CPL Response dated November 5, 2008.

caused an explosion resulting in fatalities and damaging other nearby pipelines. Respondent provided no certified documentation to demonstrate that the proposed penalty would affect its ability to continue in business. Respondent has not provided information about the accidents that would warrant a reduction in the civil penalty amount proposed in the Notice. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.442(c).

Payment of the civil penalty must be made within 20 days of service. 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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$100,000 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.

Under 49 C.F.R. § 190.215, Respondent has the 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, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of the Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued