

DEC 01 2009

Mr. Joseph M. Pietrantonio
Vice President, Global Operations
Air Products and Chemicals, Inc.
7201 Hamilton Blvd
Allentown, PA 18195

Re: CPF No. 4-2009-1008

Dear Mr. Pietrantonio:

Enclosed is the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$20,000. It further finds that Air Products and Chemicals, Inc. has completed the actions specified in the Notice to comply with the pipeline safety regulations. When the civil penalty has been paid, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document 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, Southwest Region, PHMSA

Mr. Kevin Kosh
Global Pipeline Operations Manager
Air Products and Chemicals, Inc.
7201 Hamilton Blvd
Allentown, PA 18195

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5166]

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

_____)	
In the Matter of)	
)	
Air Products and Chemicals, Inc.,)	CPF No. 4-2009-1008
)	
Respondent.)	
_____)	

FINAL ORDER

Between August 6-10 and August 13-16, 2007, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site inspection of the Integrity Management Program of Air Products and Chemicals, Inc., (Air Products or Respondent) in La Porte, Texas. Respondent operates approximately 500 miles of gas pipelines in Texas, Louisiana, California, and Ohio.

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated March 13, 2009, 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 violated 49 C.F.R. § 192.937, and proposed assessing a civil penalty of \$20,000 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

Respondent responded to the Notice by letters dated April 9 and August 7, 2009 (collectively, Response). Air Products did not contest the allegation of violation but offered an explanation and requested that the proposed civil penalty be reduced. The company also provided documentation of the corrective actions it has taken. Air Products did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

Item 1 in the Notice alleged that Respondent violated 49 C.F.R. § 192.937 which states:

§ 192.937 What is a continual process of evaluation and assessment to maintain a pipeline's integrity?

(a) *General.* After completing the baseline integrity assessment of a covered segment, an operator must continue to assess the line pipe of that

segment at the intervals specified in § 192.939 and periodically evaluate the integrity of each covered pipeline segment as provided in paragraph (b) of this section. An operator must reassess a covered segment on which a prior assessment is credited as a baseline under § 192.921(e) by no later than December 17, 2009. An operator must reassess a covered segment on which a baseline assessment is conducted during the baseline period specified in § 192.921(d) by no later than seven years after the baseline assessment of that covered segment unless the evaluation under paragraph (b) of this section indicates earlier reassessment.

(b) *Evaluation.* An operator must conduct a periodic evaluation as frequently as needed to assure the integrity of each covered segment. The periodic evaluation must be based on a data integration and risk assessment of the entire pipeline as specified in § 192.917. For plastic transmission pipelines, the periodic evaluation is based on the threat analysis specified in [§] 192.917(d). For all other transmission pipelines, the evaluation must consider the past and present integrity assessment results, data integration and risk assessment information (§ 192.917), and decisions about remediation (§ 192.933) and additional preventive and mitigative actions (§ 192.935). An operator must use the results from this evaluation to identify the threats specific to each covered segment and the risk represented by these threats.

The Notice alleged that Respondent violated 49 C.F.R. § 192.937(b) by failing to perform periodic evaluations as frequently as needed to assure the integrity of each covered segment.¹ Specifically, the Notice alleged Respondent could not provide any documentation during the PHMSA inspection to demonstrate that the company had performed periodic evaluations. The Notice alleged the violation included Respondent's failure to confirm the adequacy of pipeline data, verify the appropriate reassessment interval, and determine if changes to assessment methods were needed since the inception of Respondent's Integrity Management Program (IMP).

In its Response, Respondent did not contest the allegation. Accordingly, after considering all the evidence, I find Respondent violated 49 C.F.R. § 192.937(b) by failing to perform periodic evaluations to assure the integrity of each covered segment. 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. The Notice proposed a civil penalty of \$20,000 for Respondent's violation of 49 C.F.R. § 192.937(b).

¹ A covered segment is defined in § 192.903 as a segment of gas transmission pipeline located in a high consequence area.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of a civil penalty, I 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.

In its Response, Air Products requested that the civil penalty for this violation be reduced based upon mitigating circumstances. Respondent explained that in February 2007, prior to the PHMSA inspection, the company had completed integrity management risk assessments for each of the high consequence areas (HCAs) identified at the time of the inspection. The evaluations, according to Respondent, included reviews of pipeline data, risk assessments, assessment methodology relative to individual HCA segment threats, and appropriate preventative and mitigative measures based upon the results of this evaluation. Respondent also contended that since the PHMSA inspection, the company reviewed and revised its IMP procedures by providing additional process description, and transitioned to an enhanced pipeline data management application and an enhanced pipeline risk model in order to address the issues presented in the Notice.

Air Products also stated that it has a new risk assessment process, which will assure its IMP remains up to date as the company's pipeline system grows and changes. The company indicated that it has performed preliminary risk assessments for its regulated pipeline segments and is presently reviewing the data to confirm the accuracy of the assessment and to adjust, if necessary, its baseline assessment schedule.

Respondent's efforts to implement an IMP in accordance with applicable safety regulations are acknowledged. The efforts taken prior to the PHMSA inspection in August 2007 are noted, and while they may achieve compliance with other requirements in the pipeline integrity management regulations (49 C.F.R. §§ 192.901–192.951), the integrity assessments were not by themselves an acceptable substitute for performing periodic evaluations as required by § 192.937(b). An operator's failure to perform periodic evaluations *after* completing baseline assessments presents a risk to high consequence areas, particularly where integrity reassessments may not have been conducted at the proper intervals (based on the results of periodic evaluations) necessary to assure public safety. Furthermore, the record demonstrates Respondent's IMP included provisions about performing periodic evaluations and specified a frequency in which Respondent would conduct them, yet Respondent still failed to perform periodic evaluations.

Respondent's efforts to come into compliance following the company's receipt of the Notice are also acknowledged, but do not warrant reducing the civil penalty because the company has an affirmative obligation to comply with the pipeline safety regulations applicable to its pipeline system, particularly after PHMSA has already notified the operator of a deficiency. Therefore, I do not find Respondent has submitted information that warrants a reduction in the civil penalty proposed for the violation.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$20,000 for the violation of 49 C.F.R. § 192.937(b).

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 \$20,000 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 Item 1 in the Notice for violation of 49 C.F.R. § 192.937(b). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas, hazardous liquids, or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601.

The Director has indicated that Respondent submitted documentation substantiating that it has revised its IMP and that periodic evaluations are now being performed in accordance with § 192.937(b). Accordingly, since compliance has been achieved with respect to the violation, it is not necessary to include compliance terms in this Order.

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 received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. However, if Respondent submits payment for 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 receipt.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued