

**MAY 02 2011**

Mr. Greg Smith  
President  
Shell Pipeline Company, LP  
One Shell Square  
701 Poydras  
Suite 1000  
New Orleans, LA 70139

**Re: CPF No. 4-2010-5006**

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a reduced civil penalty of \$6,300. It further finds that Shell Pipeline Company, LP, 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. 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. Rod M. Seeley, Director, Southwest Region, PHMSA

Mr. Brian Sitterly  
Shell Pipeline Company, LP  
Two Shell Plaza 1536  
777 Walker Street  
Houston, TX 77002

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 1160 0001 0075 9152]**

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

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<b>In the Matter of</b>	)	
	)	
<b>Shell Pipeline Company, LP,</b>	)	<b>CPF No. 4-2010-5006</b>
	)	
<b>Respondent.</b>	)	
_____	)	

**FINAL ORDER**

Between August 6, 2009, and September 2, 2009, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), investigated an accident that occurred on July 25, 2009, on Shell Pipeline Company, LP's 20-inch crude oil transmission pipeline in the Eugene Island pipeline system. Shell Pipeline Company, LP (Shell Pipeline or Respondent), is a wholly-owned subsidiary of Shell Oil Products US, a unit of Shell Oil Company, and transports over two billion barrels of crude oil and refined products annually, with pipelines in several states.<sup>1</sup>

The accident occurred on July 25, 2009, at approximately 5:54 p.m. C.S.T., on the Eugene Island pipeline system and resulted in the release of 1,500 barrels of crude oil into the Gulf of Mexico.<sup>2</sup> The Eugene Island pipeline system moves crude oil from offshore platforms through a 20-inch pipeline to Caillou Island, Louisiana, and through a 16-inch line to the Houma Tank Farm.<sup>3</sup>

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated February 11, 2010, a Notice of Probable Violation, Proposed Civil Penalty and Warning (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Shell Pipeline had violated 49 C.F.R. § 195.54 and proposed assessing a civil penalty of \$18,800 for the alleged violation. The Notice also proposed finding that Respondent had committed a probable violation of 49 C.F.R. § 195.52 and warning Respondent to take appropriate corrective action or be subject to future enforcement action.

Shell Pipeline responded to the Notice by letter dated March 11, 2010 (Response). The company contested the warning item (§ 195.52) but did not contest the alleged violation of § 195.54. Respondent asserted that the proposed penalty for Item 2 was excessive, but indicated that it

<sup>1</sup> <http://www.shellpipeline.com/home.asp> (last visited March 15, 2011).

<sup>2</sup> Pipeline Safety Violation Report (Violation Report) (August 6, 2009 – September 2, 2009), at 1.

<sup>3</sup> [http://www.shellpipeline.com/custinfo\\_crude\\_maps.asp](http://www.shellpipeline.com/custinfo_crude_maps.asp) (last visited March 16, 2011).

would pay the civil penalty in order to resolve the item.<sup>4</sup> Respondent did not request a hearing and therefore has waived its right to one.

### **FINDING OF VIOLATION**

In its Response, Shell Pipeline did not contest the allegation in the Notice that it violated 49 C.F.R. § 195.54, as follows:

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.54, which states:

**§ 195.54 -- Accident reports.**

(a) Each operator that experiences an accident that is required to be reported under § 195.50 shall as soon as practicable, but not later than 30 days after discovery of the accident, prepare and file an accident report on DOT Form 7000-1, or a facsimile.

(b) Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000-1, it shall file a supplemental report within 30 days.

The Notice alleged that Respondent violated 49 C.F.R. § 195.54(b) by failing to file a supplemental report within 30 days after it received changes in the information initially reported on DOT/PHMSA Form 7000-1. Shell Pipeline submitted the original and supplemental DOT/PHMSA 7000-1 reports on August 17, 2009, and September 28, 2009, respectively, listing the cause of the accident as unknown and designating the “root cause analysis and metallurgical investigation [as] ongoing.”<sup>5</sup> On October 27, 2009, Shell Pipeline received a final metallurgical failure analysis report (Metallurgical Report) from Stork Testing & Metallurgical Consulting, Inc. (Stork Testing).<sup>6</sup> In this report, Stork Testing stated that the rupture in the 20-inch pipeline was caused by “severe abrasion and gouging of the pipe, followed by fatigue cracking.”<sup>7</sup> In accordance with Section 195.54(b), Shell Pipeline should have submitted a supplemental DOT/PHMSA 7000-1 report within 30 days of its receipt of this Metallurgical Report. However, Shell Pipeline did not file the final supplemental DOT Form 7000-1 until after the Notice was issued.

In its Response, Shell Pipeline did not contest this allegation of violation. Instead, Shell Pipeline noted that company representatives met with PHMSA on November 13, 2009, sixteen days after its receipt of the Metallurgical Report, and delivered a copy of the supplemental DOT Form 7000-1 to OPS at that time. Shell Pipeline acknowledged that this action did not relieve the company of the requirements of § 195.54(b) and agreed to pay the proposed civil penalty.

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<sup>4</sup> Response, at 3.

<sup>5</sup> Pipeline Safety Violation Report (Violation Report) (August 6, 2009 – September 2, 2009), Exhibit B, Original accident report, DOT Form 7000-1, dated August 17, 2009 (Report ID 20090235) and Supplemental accident report, DOT Form 7000-1, dated September 28, 2009 (Report ID 20090235).

<sup>6</sup> Violation Report, Exhibit B, Stork Metallurgical Failure Report #0608-09-19272 (Metallurgical Report).

<sup>7</sup> *Id.*, at 2.

I have reviewed all of the evidence and note that the supplemental report was formally filed with PHMSA outside of the 30-day requirement. PHMSA has a defined process for collecting and analyzing this information. Pursuant to the instructions for DOT Form 7000-1, operators are required to submit accident reports to the Information Resources Manager at PHMSA's headquarters building in Washington, D.C.<sup>8</sup> Although Shell Pipeline may have distributed copies of this form at a meeting with Southwest Region representatives in November 2009, Respondent should have also filed it with the Information Resources Manager. Accordingly, I find that Shell Pipeline violated 49 C.F.R. § 195.54(b) by failing to file a supplemental report within 30 days after it received changes in the information initially reported.

### **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 \$18,800 for the violations cited above.

**Item 2:** The Notice proposed a civil penalty of \$18,800 for Respondent's violation of 49 C.F.R. § 195.54(b), for failing to file a supplemental report within 30 days after it received changes in the information initially reported. In its Response, Shell Pipeline argued that the proposed penalty was excessive and noted that it had provided the supplemental report to PHMSA at an in-person meeting prior to the expiration of the 30-day deadline. Regardless, Shell Pipeline indicated that it would pay the civil penalty in order to resolve the item.<sup>9</sup> I have reviewed the evidence and considered the assessment criteria including § 190.225(a)(5) and find that the operator acted in good faith by delivering a copy of the supplemental report to region personnel before the deadline. Accordingly, having reviewed the record and considered the assessment criteria, I find that a reduced civil penalty is appropriate and assess Respondent a civil penalty of \$6,300 for violation of 49 C.F.R. § 195.54(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 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.

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<sup>8</sup> The new instructions applicable to all accidents occurring after January 1, 2010 permit operators to file accident reports online, by mail, or by facsimile.

<sup>9</sup> Response, at 3.

## COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 2 in the Notice for violation of 49 C.F.R. § 195.54(b). 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. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 195.54(b) (**Item 2**), Respondent filed a final supplemental DOT/PHMSA Form 7000-1 report on February 18, 2010, which included the information from the Metallurgical Report related to the cause of the July 25, 2009 accident.

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice are not included in this Order.

## WARNING ITEM

With respect to Item 1, the Notice alleged a probable violation of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this item is considered to be a warning item. The warning was for:

- 49 C.F.R. § 195.52 (**Item 1**) — Respondent's alleged failure to provide a telephonic notice to the National Response Center (NRC) that included the most accurate release volume estimate available at the time of the notification.

On July 25, 2009, at 8:09 p.m. C.S.T., Shell Pipeline conducted a fly-over of the accident site and telephonically notified the NRC of a release of crude oil.<sup>10</sup> In incident report # 912739, Shell Pipeline indicated the quantity released was "0 unknown amount." However, in the Notice, PHMSA alleged that during this July 25, 2009 fly-over, Respondent should have calculated the estimated quantity release using industry applications from the information gathered from the fly-over. Namely, Respondent should have considered the coloration and size of the oil sheen on the water and used SCADA data to estimate the volume of the spill.

PHMSA further alleged that Respondent failed to provide prompt follow-up reports during the emergency phase of the response, when a revised estimate indicated that the release quantity was significantly greater than the amount originally reported.

In its Response, Shell Pipeline argued that it reported the release volume as "unknown" during the initial call to NRC because the July 25, 2009 fly-over was conducted at dusk and visibility was poor. Respondent also stated that the NRC erred in reporting the release volume as unknown, when it should have entered a default spill estimate of "1000 barrels."<sup>11</sup> Finally, Shell Pipeline argued that it had used SCADA data later in the

<sup>10</sup> Violation Report, Exhibit A, Telephonic notice to the NRC on July 25, 2009 (Incident Report #912739).

<sup>11</sup> "Pipeline Safety: Required Notification of National Response Center", 67 Fed. Reg. 57060-01 (September 6, 2002).

evening on July 25, 2009, that it conducted a fly-over on the morning of July 26, 2009, and calculated a visual estimate. On July 29, 2009, PHMSA staff informed Shell Pipeline that the initial NRC report contained '0' as the estimated spill volume. Shell Pipeline then provided an update to the NRC (report # 913179) indicating that the quantity released was 1,500 barrels.<sup>12</sup> Shell Pipeline also explained in its Response that it communicated these estimates directly to Coast Guard personnel on July 26, 2009, and later to PHMSA and MMS (now Bureau of Ocean of Energy Management, Regulation and Enforcement).

Since Item 1 is a warning item, no finding of violation is made as to the validity of these arguments or whether the evidence of the alleged conduct supports a warning of probable violation. Accordingly, having considered such information, I have determined, pursuant to 49 C.F.R. § 190.205, that a probable violation of 49 C.F.R. § 195.52 (Notice Item 1) has occurred. In the event that OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, 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, 2<sup>nd</sup> 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.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued

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<sup>12</sup> Violation Report, Exhibit A, Telephonic notice to the NRC on July 25, 2009 (Incident Report #913179).