

NOV 8 2011

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

In the Matter of)
)
Occidental Chemical Corporation,) CPF No. 4-2011-5009S
)
Respondent)
)

CONSENT AGREEMENT

On June 28, 2011, the Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation, issued a Notice of Proposed Safety Order (Notice) to Occidental Chemical Corporation (Occidental or Respondent). The Notice alleges that Respondent's Lake Charles/Orange Ethylene Pipeline has a condition or conditions that, without corrective measures, would pose a pipeline integrity risk to public safety, property, or the environment. Specifically, the Notice alleges that resuming transportation of hazardous liquids in the pipeline without corrective measures would pose a pipeline integrity risk. The pipeline extends approximately 32.7 miles from the Glenn Springs Holding Plant site in Sulphur, Louisiana to the Chevron Plant in West Orange, Texas.

In connection with the issuance of the Notice, Respondent requested an informal conference. Respondent and PHMSA engaged in good faith settlement discussions resulting in this Consent Agreement (the "Agreement").

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving the Notice, pursuant to 49 C.F.R. Part 190, without adjudication of any issue of fact or law, and upon consent and agreement of Respondent and PHMSA ("the Parties"), the Parties agree as follows:

I. General Provisions

1. Respondent acknowledges that as operator of the Lake Charles/Orange Ethylene Pipeline, Respondent and the subject pipeline are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. 60101 *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Consent Agreement, Respondent

acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. 60101 *et seq.* and the regulations and orders issued thereunder.

2. Respondent does not admit or deny any allegation or conclusion in the Notice but agrees, for purposes of this proceeding, that the integrity risk identified in the Notice exists as described in the Notice and agrees to address it by completing the actions specified in Section II of this Consent Agreement ("Work to be Performed"), including the actions set forth in any work plans and schedules each of which shall automatically be incorporated into this agreement upon approval. Respondent's participation in this Consent Agreement does not constitute an admission of liability for any purpose except in a proceeding to enforce the provisions of this Agreement.

3. After Respondent returns this signed Consent Agreement, PHMSA's representative will present it to the Associate Administrator for Pipeline Safety recommending that the Associate Administrator adopt the terms of this Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Consent Agreement. The terms of this Consent Agreement constitute an offer of settlement until accepted by the Associate Administrator. Upon the effective date of this Agreement, any request for a hearing submitted by Respondent shall be automatically withdrawn.

4. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Except as provided in Item 18 and Section IV of this Agreement, Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Consent Agreement, including all rights to administrative or judicial hearings or appeals.

5. This Consent Agreement shall apply to and be binding upon PHMSA, and upon Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Consent Agreement and any incorporated work plans and schedules to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this Agreement.

6. For all transfers of ownership or operating responsibility of the Lake Charles/Orange Ethylene Pipeline, Respondent shall provide a copy of this Consent Agreement to the prospective transferee at least 30 days prior to such transfer and simultaneously provide written notice of the prospective transfer to the PHMSA Southwest Region Director (Director).

7. This Consent Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement, and the Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

8. Nothing in this Consent Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101 *et seq.*, and the regulations and orders issued thereunder. Nothing in this Consent Agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

9. This Consent Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Consent Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

10. This Consent Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Consent Agreement. Respondent agrees to indemnify and hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out the work required by this Agreement.

II. Work to be Performed

11. Within 60 days of receipt of the Consent Order, Occidental must develop all applicable written procedures required by 49 C.F.R. Part 195, such as operating and maintenance procedures, emergency procedures and spill response plans, and operator qualifications procedures for the pipeline and submit the procedures to the Director, Southwest Region (Director) for compliance review.

12. Within 60 days of receipt of the Consent Order, Occidental must develop and submit to the Director for prior approval a pipeline reactivation work plan that includes evaluations of anomalies and coating deficiencies, repair plans, and corrective measures to ensure the long term integrity of the pipeline and the safe restart of operations on the pipeline. The work plan must include:

- (A) Repair of the 33 dents and anomalies already identified by the in-line inspection; and performance of additional field testing, inspections, and evaluations necessary to determine the extent to which anomalies, coating deficiencies, corrosion control deficiencies, other conditions described in the Notice, or any other integrity risk conditions, are present elsewhere on the pipeline. Make the results of the inspections, field excavations, and evaluations available to PHMSA or its representative;

- (B) The performance of repairs or other corrective measures that fully remediate the additional risk conditions identified in the course of the field testing, inspections, and evaluations;
- (C) A plan for final integrity validation testing and the submission of supporting documentation for the establishment of the maximum operating pressure (MOP) for the pipeline;
- (D) Provisions for mitigating measures for any remaining risks and continuing long-term periodic inspection and monitoring to ensure the ongoing safe and environmentally sound operation of the pipeline considering the results of the analyses, inspections, and corrective measures undertaken pursuant to this Agreement and all available information about the pipeline; and
- (E) A proposed schedule for completion of the actions and plans required by this Item.

13. Upon approval by the Director, the reactivation work plan automatically becomes incorporated into the Agreement and must be revised by Occidental as necessary to incorporate the results of actions undertaken pursuant to the Agreement and whenever necessary to incorporate new information obtained during the failure investigations and remedial activities. Occidental must submit any such plan revisions to the Director for prior approval and such revisions automatically become incorporated into the Agreement upon approval. The Director may approve plan elements incrementally.

14. Occidental must implement the reactivation work plan as approved by the Director, including any revisions to the plan, as scheduled and make the results of all actions taken in accordance with the approved plan available for review by PHMSA or its representative.

15. Occidental must submit quarterly reports to the Director that: (1) include available data and results of the testing and evaluations required by the Agreement and plans; and (2) describe the progress of the repairs and other actions being undertaken as a result of the Agreement. The first quarterly report is due on the last day of the third month following receipt of the Order. The Director may adjust the regular intervals for submitting reports.

16. The Director may grant an extension of time for compliance with any of the terms of the Agreement upon a written request timely submitted demonstrating good cause for an extension.

17. Occidental may appeal any decision of the Director to the Associate Administrator for Pipeline Safety. Decisions of the Associate Administrator shall be final.

III. Review and Approval Process

18. With respect to any submission under Section II of this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission, (b) approve the submission on specified conditions, (c) disapprove, in whole or in part, the submission, or (d) any combination of the foregoing. In the event of approval, approval in part, or approval upon conditions, Respondent will proceed to take all action required by the submission as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures in Section IV with respect to any conditions identified by the Director. In the event that the Director disapproves all or any portion of the submission, the Director will provide Respondent with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval, subject to Respondent's right to invoke the dispute resolution procedures in Section IV with respect to any conditions identified by the Director.

IV. Dispute Resolution

19. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement. If Respondent and the Director are unable to informally resolve the dispute within 15 days, Respondent may request in writing, within 10 days, a written determination resolving the dispute from the Associate Administrator for Pipeline Safety providing all information that Respondent believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a determination in writing which shall be final. The existence of a dispute and PHMSA's consideration of matters placed in dispute shall not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Consent Agreement during the pendency of the dispute resolution process except as agreed by the Director or the Associate Administrator in writing.

V. Enforcement

20. This Agreement, as adopted by the Consent Order, is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101 *et seq.* and 49 C.F.R. Part 190, including administrative civil penalties under § 60122 of up to \$100,000 per violation for each day the non-compliance continues, if PHMSA determines that Respondent is not materially proceeding in accordance with terms of this Agreement, with determinations made by the Director, or if such determinations are appealed with decisions of the Associate Administrator. All work plans and associated schedules set forth or referenced in Section II shall be automatically incorporated into this Agreement and are enforceable in the same manner.

VI. Record Keeping and Information Disclosure

21. Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five years following completion of

all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 C.F.R. Part 7. The claim of confidentiality shall be marked in writing on each page, and shall include a statement specifying the grounds for each claim of confidentiality. PHMSA shall determine release of any information submitted pursuant to this Consent Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and/or PHMSA policies, and other applicable regulations and Executive Orders.

VII. Effective Date

22. The “Effective Date” as used herein is the date on which this Agreement has been signed by both Respondent and PHMSA. Unless specified to the contrary, all deadlines for actions required by this Agreement run from the date of issuance of the Consent Order adopting this Agreement.

VIII. Modification

23. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications shall be in writing and shall be signed by both Parties.

IX. Termination

24. This Agreement shall terminate upon the completion of all terms set forth in Section II (Work to Be Performed). Respondent may request written confirmation from PHMSA when this Agreement is terminated. To the extent ongoing monitoring is required, PHMSA may terminate this Agreement with respect to all other requirements with the exception of such monitoring. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for herein.

X. Ratification

25. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

26. The Parties hereby agree to all conditions and terms of this Consent Agreement:

For PHMSA:

For Respondent:

Mr. Rod M. Seeley
Director, Southwest Region
Pipeline and Hazardous Materials
Safety Administration

Mr. Michael G. Anderson
Vice-President
Occidental Chemical Corporation

Date

Date