

DEC 19 2011

Mr. Steve Fly
Vice President of Land
Nippon Oil Exploration USA, Ltd.
5847 San Felipe Road, Suite 2800
Houston, Texas 77057

Re: CPF No. 4-2011-7001

Dear Mr. Fly:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$17,800. This letter acknowledges receipt of payment of the full penalty amount, by wire transfer, dated March 28, 2011. This enforcement action is now 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. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety,
PHMSA
Mr. Rod M. Seeley, Director, Southwest Region, PHMSA

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164202979405]

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

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In the Matter of)	
)	
Nippon Oil Exploration USA, Ltd.,)	CPF No. 4-2011-7001
)	
Respondent.)	
)	

FINAL ORDER

On April 12-15, 2010, December 31, 2010, and January 26, 2011, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected Nippon Oil Exploration USA, Ltd.'s (Nippon) offshore liquid pipeline system located in Cameron, LA. Nippon operates three pipelines regulated by PHMSA in the Gulf of Mexico, Jefferson County, Texas and Cameron Parish, Louisiana.¹

As a result of these inspections, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated March 2, 2011, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Nippon had violated 49 C.F.R. § 195.406 and assessing a civil penalty of \$17,800 for the alleged violation. The Notice also proposed two warning items that required no further action, but warned the operator to correct the probable violations.

Nippon responded to the Notice by letter dated March 30, 2011 (Response). Nippon did not contest the probable violation and paid the proposed civil penalty of \$17,800, as provided in 49 C.F.R. § 190.227. Payment of the penalty serves to close the case with prejudice to Respondent.

FINDING OF VIOLATION

In its Response, Nippon did not contest the allegation in the Notice that it violated 49 C.F.R. § 195.406, as follows:

¹ OPS Pipeline Safety Violation Report (March 2, 2011), at 1.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.406, which states in relevant part:

§ 195.406 Maximum operating pressure.

(a) Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following:

(3) Eighty percent of the test pressure for any part of the pipeline which has been pressure tested under subpart E of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406 by operating the WC20 8-inch pipeline on six separate occasions in April 2010 at pressures exceeding the established Maximum Operating Pressure (MOP). Respondent conducted a hydrotest on this line on May 29, 2009, as part of the conversion to service requirements under Part 195. The test confirmed that the MOP for the 8-inch line was 960 psig. However, Respondent operated the line as if it had a MOP of 999 psig. On December 17, 2010, OPS issued a Request for Specific Information seeking Respondent's pressure records. In response, Nippon provided the West Cameron 20 Daily Operating Records between October 1, 2009 (the start of the operation) and April 30, 2010. The documents indicated that Nippon exceeded the 960 psig MOP on six separate occasions in April 2010. Specifically, Nippon operated the line above the MOP on April 11, April 12, April 13, April 29, and twice on April 28th. The pressure recorded ranged from 961 to 972 psig.

In its Response, Nippon did not contest the violations and paid the proposed civil penalty. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.406 by operating its 8-inch pipeline at pressures exceeding the established MOP.

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.

Item 3: The Notice proposed a civil penalty of \$17,800 for operating a pipeline above its MOP. Nippon did not contest the violation and paid the proposed civil penalty in full. Although Nippon sold this line to Black Elk Energy Offshore Operations, LLC on October 4, 2010, Nippon was the operator of record at the time of the violation and is therefore liable for the proposed civil penalty.

The civil penalty amount is based on the civil penalty assessment factors listed in 49 C.F.R. § 190.225, including but not limited to, culpability, gravity, the duration of the violation, and the prior enforcement history of the operator. Gravity was particularly relevant to this proposed civil penalty as a violation of § 195.406 poses a significant threat to pipeline integrity. The proposed civil penalty amount is lower than other civil penalties assessed for this violation due to the fact that Nippon has not had any prior enforcement history for the last five years. Having reviewed the penalty factors and the facts of this case, I find that the proposed civil penalty of \$17,800 is justified. Accordingly, I assess Respondent a civil penalty of \$17,800, which has already been remitted.

WARNING ITEMS

The Notice alleged probable violations of Part 195 specifically considered to be warning items. The warnings were for:

49 C.F.R. § 195.402 (**Item 1**) — Respondent's alleged failure to review its Operations, Maintenance and Emergency Manual at intervals not exceeding 15 months, as required in § 195.402. Nineteen months elapsed between the February 2008 review and the implementation of a new manual on September 29, 2009.

49 C.F.R. § 195.404 (**Item 2**) — Respondent's alleged failure to maintain current maps and records for its pipeline systems that include the maximum operating pressure of each pipeline. Nippon listed an incorrect MOP for its 6-inch and 8-inch lines on the MMS Compliance Inspection Report dated March 7, 2010. Although the MOP established by a hydrostatic test in May 2009 was 788 psig and 960 psig for the 6-inch and 8-inch lines, respectively, Nippon listed the MOP as 800 psig and 999 psig.

If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

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