

October 8, 2015

Mr. Terrance McGill
President
CCPS Transportation, LLC
1100 Louisiana, Suite 3300
Houston, TX 77002

Re: CPF No. 4-2014-5005

Dear Mr. McGill:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions that need to be taken by CCPS Transportation, LLC, to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Southwest Region, 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. Rodrick M. Seeley, Southwest Region Director, OPS
Mr. Michael D. Goman, P.E., Senior Manager, U.S. Pipeline Compliance, Enbridge
Pipelines (Lakehead), LLC

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

_____)	
In the Matter of)	
)	
CCPS Transportation, LLC,)	CPF No. 4-2014-5005
a subsidiary of Enbridge Energy Company, Inc.,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On multiple occasions between March 25, 2013, and December 13, 2013, 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 on-site pipeline safety inspection of the construction plans, procedures, specifications and records for construction of the Flanagan South Pipeline, a 36-inch diameter interstate crude-oil pipeline that originates in Pontiac, Illinois, and terminates in Cushing, Oklahoma.¹ The written plans and procedures of the pipeline included those of CCPS Transportation, LLC (CCPS or Respondent), the primary operator of the pipeline and a subsidiary of Enbridge Energy Company (Enbridge).

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated April 21, 2014, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that CCPS had violated 49 C.F.R. Part 195 and proposed ordering the company to take certain measures to correct the alleged violation.

Enbridge responded to the Notice on behalf of CCPS by letter dated May 9, 2014 (Response), and May 16, 2014 (Supplemental Response). The company contested the allegation and offered additional information in response to the Notice. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

¹ <http://www.enbridge.com/FlanaganSouthPipeline.aspx> (last visited March 6, 2015). CCPS is the parent of Enbridge Pipelines (FSP), LLC, the current owner of the Flanagan South Pipeline.

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.202, which states:

§ 195.202 Compliance with specifications or standards

Each pipeline system must be constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.202 by failing to construct the Flanagan South Pipeline (Project) in accordance with comprehensive written specifications or standards that were consistent with the requirements of Part 195. Specifically, the Notice alleged that CCPS did not follow its own specifications for manufacture of the pipe used to construct the Project.

During a construction inspection of the Project, PHMSA became aware that CCPS had waived several of its written specifications for the manufacture of the pipe used in the construction. The Notice alleged that PHMSA had requested justification for the waivers and issued a Request for Specific Information (RSI) to Respondent, seeking additional information. According to the Notice, CCPS provided a copy of the company's *Enbridge Engineering Standard (EES-103)*, created as the standard for the manufacture of pipe for the company's pipeline construction projects, along with a document that summarized the specification, the requested waivers and an explanation for each waiver. PHMSA alleged, however, that the documents failed to include any written specifications describing how waiver requests were handled or decided. Furthermore, PHMSA alleged that the company's response to the RSI did not include technical justification for the waivers that had been granted on the Project. As an example, PHMSA alleged that EVRAZ, the pipe manufacturer, had provided an "Inspection and Test Checklist" for each step of the manufacturing process, indicating that EVRAZ had manufactured the pipe using certain requested waivers.

In its Response, Enbridge contested the allegation of violation, stating that the pipe used in the Project had indeed been manufactured in accordance with the company's own specification, *EES-103, Submerged Arc Welded Steel Pipeline Specification*, with approved deviations. According to the company, it used *EES-103* to specify the requirements for the manufacture of steel line pipe and that the standard augmented [American Petroleum Institute (API)] Specification 5L, "Specification for Line Pipe," the industry specification incorporated by reference in PHMSA's regulation.²

Enbridge explained that when a difference existed between the company's requirements for the Project and the level of rigor prescribed in the EES, a Technical Standards Deviation Request (TSDR) process was utilized to resolve the difference. According to CCPS,

That process utilizes subject matter expert review to rationalize a request to change the specification, and requests were either approved or declined based upon technical justification. The TSDR process

² Response, at 2.

could be used on a one-off basis for a specific project or could result in a wholesale change to the EES.³

Enbridge asserted that in the case of the Flanagan South Project, the company's TSDR process was followed and resulted in the amended specifications used to manufacture the pipe. In its Supplemental Response, Enbridge asserted that it was providing the requested justification supplemental to the information provided in the RFSI and that it had demonstrated the pipe used on the Flanagan South Project was "fit for service and does not pose an integrity threat to the public or the environment."⁴

Despite the submissions by Enbridge related to the deviations, the crux of the issue is not whether technical justifications requested by PHMSA were or were not adequate but whether CCPS had and followed a written process for waiving its own specifications. According to Section 1 of the company's own procedure, *EES-103*: "Any and all deviations from this Specification shall be brought to the attention of the Company in writing for resolution prior to final acceptance."⁵ Such statement, however, does not itself constitute a written standard or process for granting deviations or waivers from *EES-103* or any other Enbridge construction requirement. Though it may be true that CCPS did in fact have a process for approving deviations from its written construction specifications, there was no reference to it in the *EES-103, Submerged Arc Welded Steel Pipeline Specification* nor did CCPS have a written set of criteria by which to evaluate or justify any deviation from the company's own specifications.

Under 49 C.F.R. § 195.202, every pipeline operator constructing a hazardous liquid pipeline must build it in accordance with comprehensive written specifications or standards that are consistent with Part 195. This means that operators have the flexibility to develop their own construction specifications and standards that meet their own peculiar needs for individual construction projects such as the Flanagan South Pipeline, so long as they are consistent with Part 195. However, the written standards and specifications used must be "comprehensive," meaning that they need to generally cover all aspects of construction, including those situations where an operator issues change orders or waivers from its own written specifications. This means that the process the operator uses for approving waivers must also be properly documented and justified in some fashion so that it is clear to company personnel and PHMSA, both at the time of construction and later during operation, that the changes were technically sound and consistent with Part 195. In this case, by not having a rigorous, written waiver process that shows how and why each waiver was granted, CCPS suffered a major gap in its construction specifications and standards that allowed the company to potentially circumvent or ignore the requirements of Part 195.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.202 by failing to construct the Project in accordance with comprehensive written specifications or standards that are consistent with the requirements of Part 195.

³ *Id.*

⁴ Supplemental Response, at 1.

⁵ PHMSA Pipeline Safety Violation Report (April 9, 2014) (Violation Report), Exhibit A, at 1.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 195.202. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.202 (**Item 1**), Respondent must:
 - a. Provide technical justification for the waivers granted on the Project and show that the waivers did not result in the pipeline being constructed with pipe that would pose an integrity threat to the public or the environment. Also, if CCPS wants to allow waivers from its specifications, the company must modify its procedure or specification to define a process for waivers or variances from its specifications.
 - b. This action for Item 1 should be completed within 30 days of issuance of the Final Order.
 - c. It is requested (not mandated) that CCPS maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to R.M. Seeley, Director, Southwest, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent has a 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 this 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. § 190.243.

Unless the Associate Administrator, upon request, grants a stay, 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