

December 1, 2016

Mr. Greg Smith, President
Shell Pipeline Company, LP
Two Shell Plaza
777 Walker Street
Houston, TX 77002

Re: CPF No. 4-2016-5010

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$25,900. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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,

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. R.M. Seeley, Director, Southwest Region, OPS, PHMSA
Ms. Deborah Price, Integrity & Regulatory Services Manager, Shell Pipeline Company
LP, One Shell Plaza, 910 Louisiana Street, 42nd Floor, Houston, TX 77002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

§ 195.64 National Registry of Pipeline and LNG Operators.²

(a)

(c) Changes. Each operator must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at <http://opsweb.phmsa.dot.gov>, of certain events.

(1) An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs:

(i) Construction or any planned rehabilitation, replacement, modification, upgrade, uprate, or update of a facility, other than a section of line pipe, that costs \$10 million or more. If 60 day notice is not feasible because of an emergency, an operator must notify PHMSA as soon as practicable;

(ii) Construction of 10 or more miles of a new hazardous liquid pipeline;
or . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.64(c)(1)(i) by failing to timely notify PHMSA of its construction project that cost \$10 million or more. Specifically, the Notice alleged that SPLC failed to inform PHMSA of the Nederland Reactivation construction project, totaling \$21 million, sixty days prior to the construction project start date. Instead, SPLC submitted a construction notification to PHMSA (F-20140415-4643) on April 15, 2014, stating that it planned to begin work on the project on May 1, 2014. By filing its Nederland Reactivation construction notification with PHMSA only sixteen days in advance of the reported start date, SPLC violated the sixty day notice requirement set forth in 49 C.F.R. § 195.64(c)(1)(i). Respondent did not contest this allegation of violation.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.64(c)(1)(i) by failing to notify PHMSA of the start of the Nederland Reactivation construction project, costing a total of \$21 million, no later than sixty days before construction began. 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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.³ 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

² 49 C.F.R. § 195.64 was amended to exclude subsection (c)(1)(iii). *See* Amdt. 195-100, 80 FR 12762-01, Mar. 11, 2015.

³ On June 30, 2016, PHMSA adjusted the maximum penalties for inflation (81 Fed. Reg. 42564). Pursuant to § 190.223, any person found to have committed a violation on or after August 1, 2016, is subject to an administrative civil penalty not to exceed \$205,638 for each violation for each day the violation continues, with the maximum administrative civil penalty not to exceed \$2,056,380 for any related series of violations.

culpability; the history of Respondent's prior offenses; 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 \$25,900 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$25,900 for Respondent's violation of 49 C.F.R. § 195.64(c)(1), for failing to timely notify PHMSA of its Nederland Reactivation construction project, totaling \$21 million, within sixty days of the construction project start date. In its Response, SPLC sets forth three reasons why it believes the penalty should be reduced.

First, SPLC argues that because it submitted the late construction notice to PHMSA, it self-reported the violation. Therefore, this should change the circumstances of the violation set forth in the Violation Report and reduce the penalty amount.⁴ However, SPLC did not proactively inform PHMSA that it failed to comply with the sixty-day notice requirement set forth in 49 C.F.R. § 195.64(c)(1)(i). Instead, it filed a routine construction notice with PHMSA, taking no affirmative steps to alert PHMSA of its late filing and sixty-day notice violation. PHMSA staff had to review the notice and calculate the duration between the filing date and the construction start date to discover that SPLC had violated its sixty day notice requirement. This does not constitute self-reporting. Further, PHMSA later discovered that the construction project did not begin on May 1, 2014 as reported by SPLC. Instead, it began one month earlier on April 1, 2014—fourteen days *before* SPLC filed its construction notice with PHMSA. Not only did the notice not accurately reflect the status of the Nederland Reactivation construction project, but SPLC had begun construction at the time of the filing and still did not proactively self-report the violation. Therefore, I find that the penalty should not be reduced because SPLC did not self-report the violation to PHMSA.

Second, SPLC argues that the description of the violation in the Violation Report does not reflect SPLC's intention not to misrepresent the scope of its Nederland Reactivation construction project to PHMSA.⁵ The Violation Report states that the description of work on the notification submitted by SPLC did not adequately represent the work that was actually performed.⁶ Specifically, the notification did not identify the installation of two new pumping units at a cost of approximately \$13 million. The Violation Report does not state that this was an intentional misrepresentation. In its Response, SPLC alleges that it did not fully understand that it was to provide a complete description of the construction project, including the installation of new pumps.⁷ SPLC also argues that this work could be construed as part of the overall "modifications to the pump station" that was listed on the notice. This argument is without merit. SPLC is an established operator that has been constructing pipeline facilities for many years. It should know the difference between modifying existing facilities and constructing new ones. By excluding the

⁴ Violation Report, at 7.

⁵ *Id.* at 4-5.

⁶ *Id.* at 4.

⁷ Respondent's Response to the Notice (Response), at 1-2.

construction of two new pump stations in the description of the Nederland Reactivation construction project, SPLC misrepresented the scope of its project to PHMSA, even if not intentional.

Third, SPLC argues that the civil penalty should be reduced because there is little precedent for issuing a fine under this part of the code.⁸ Section 195.64 is located within Subpart B-Annual, Accident, and Safety-Related Condition Reporting of Part 195 governing the transportation of hazardous liquids by pipeline. According to 49 C.F.R. § 190.221, “[w]hen a Regional Director has reason to believe that a person has committed an act violating 49 U.S.C. 60101 *et seq.*, 33 U.S.C. 1321(j), or any regulation or order issued thereunder, the Regional Director may initiate proceedings under §§ 190.207 through 190.213 to determine the nature and extent of the violations and appropriate civil penalties.” In determining the amount of a civil penalty, the Associate Administrator considers several factors,⁹ but when there is a clear violation of a regulatory standard, I do not find grounds to reduce the penalty merely because PHMSA has not had to issue many violations of this standard in the past. Consequently, I do not find a lack of prior violations of this standard by other operators is a compelling reason for not issuing a civil penalty, or reducing the penalty amount, in this case.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$25,900** for violation of 49 C.F.R. § 195.64(c)(1)(i).

Payment of the civil penalty must be made within 20 days of service of this Final Order. Federal regulations (49 C.F.R. § 89.21(b)(3)) require the 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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S Macarthur Blvd, Oklahoma City, OK 73169. The Financial Operations Division telephone number is (405) 954-8845. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$25,900 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 district court of the United States.

Under 49 C.F.R. § 190.243, 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, 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 the Final Order by the Respondent,

⁸ Response, at 2.

⁹ See 49 C.F.R. § 190.225 (listing out civil penalty assessment considerations the Associate Administrator will consider and other additional considerations he/she may consider).

provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. 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.

December 1, 2016

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Date Issued