

January 18, 2018

Mr. Greg Smith
President
Shell Pipeline Company, LP
Two Shell Plaza
777 Walker Street
Houston, TX 77022

Re: CPF No. 4-2016-5023

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes one 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 effective upon the date of mailing as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Director, Southwest Region, Office of Pipeline Safety, PHMSA
Ms. Deborah Price, Integrity & Regulatory Services Manager, Shell Pipeline Company
LP, One Shell Plaza, 910 Louisiana Street, 42nd Floor, Houston, TX, 77022

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)	
Shell Pipeline Company, LP,)	
Respondent.)	CPF No. 4-2016-5023

FINAL ORDER

From April 14 through June 28, 2016, 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 inspection of the records of Shell Pipeline Company, LP (SPLC or Respondent), in Houston, Texas. SPLC owns and operates seven tank farms across the United States, and transports more than 1.5 billion barrels of crude oil and refined products annually through 3,800 pipeline miles across the Gulf of Mexico and five states.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated July 7, 2016, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that SPLC had violated 49 C.F.R. § 195.64(c) and proposed assessing a civil penalty of \$25,900 for the alleged violation.

SPLC responded to the Notice by letter dated August 8, 2016 (Response). The company contested the allegation, offered additional information in response to the Notice, and requested that the proposed civil penalty be reviewed in light of the additional information presented. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.64(c)(1), which states:

§ 195.64 National Registry of Pipeline and LNG Operators.

(a) ...

(c) Changes. Each operator must notify PHMSA electronically through

¹ Shell Pipeline Company, LP website, *available at* <http://www.shell.us/business-customers/shell-pipeline/about-shell-pipeline.html> (last accessed August 16, 2017).

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;...²

The Notice alleged that Respondent violated 49 C.F.R. § 195.64(c)(1) by failing to notify PHMSA of the construction of 10 or more miles of new hazardous liquid pipeline at least 60 days before such event occurred. Specifically, the Notice alleged that SPLC failed to provide PHMSA with proper notification of SPLC's "Amberjack Debottleneck" construction project, which consisted of more than 30 miles of pipeline in the Gulf of Mexico. According to the Notice, on August 12, 2015, SPLC submitted a notification for construction of 10 or more miles of new or replacement hazardous liquid pipeline, with an anticipated start date for construction activities of September 1, 2015.³ However, based on information provided by SPLC following submittal of the notification, OPS alleged that the Amberjack Debottleneck construction project had actually started construction on February 20, 2015, approximately six months before the notification date. Consequently, PHMSA alleged that "the notification should have been submitted no later than December 22, 2014 in order to provide PHMSA the required 60 day notice prior to construction."

In its Response, SPLC admitted that it had submitted its construction notification only 19 days prior to its anticipated construction start date of September 1, 2015.⁴ However, Respondent challenged the February 20, 2015 date that PHMSA stated should have been used by Shell as the start of construction activities. SPLC noted that this date was "based on the dates that some of the purchase orders for the pipe were issued."⁵ Referring to PHMSA's Advisory Bulletin *PHMSA-2014-0017* (Advisory Bulletin), SPLC argued that the date of purchasing pipe does not necessarily constitute a construction-related activity that would trigger a notification to

² The Notice mistakenly included subparagraph (iii) of § 195.64(c)(1): "Construction of a new hazardous liquid pipeline facility." This subparagraph was not a provision of 49 C.F.R. § 195.64(c)(1) in effect at the time SPLC submitted its notification on August 12, 2015, or when PHMSA either conducted its inspection from April to June 2016, or issued the Notice on July 7, 2016. Since this subparagraph is not at issue in this Item, any error is harmless.

³ Operator Registry Notification G-20150812-8307.

⁴ Although SPLC stated that field construction activities were delayed and did not begin until December 17, 2015, the notification submitted by SPLC on August 12, 2015, noted that the anticipated start date for field construction activities was September 1, 2015. See Pipeline Safety Violation Report (Violation Report), (July 7, 2016) (on file with PHMSA), at 20-23.

⁵ Response, at 1. See also Violation Report, Exhibit A.

PHMSA.⁶ According to SPLC, the following language from the Advisory Bulletin confirmed that the list of construction-related activities cited in the bulletin was only suggestive and not required:

While the notification prior to the first occurring construction-related activity is strongly encouraged and will benefit both PHMSA and the operator, these activities may not necessarily represent the commencement of construction for purposes of triggering the minimum 60-day notice period in the regulations subject to enforcement by PHMSA.

According to Shell, the date that it purchased the pipe did not necessarily constitute the commencement of construction in this case and that a “definition presented through an advisory bulletin should not be used in an enforcement action.”⁷

Shell is correct that the Advisory Bulletin is merely guidance, used by PHMSA as an opportunity to inform the industry and the public of the benefits of early construction notifications and to “strongly encourage” operators to use certain milestones, such as the purchasing and manufacturing of line pipe, to alert PHMSA of a company’s construction plans. While I find nothing in the record of this case that would justify the conclusion that “construction” began when Shell ordered line pipe in February 2015, the company, by its own admission, did file the 60-day notification only 19 days in advance of the company’s own reported start date of September 1, 2015.⁸

Therefore, on this basis alone, there is sufficient evidence to find that Respondent failed to provide at least 60 days’ notice of the company’s own reported construction start date. Accordingly, after considering the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.64(c)(1) by failing to notify PHMSA of the construction of 10 or more miles of new hazardous liquid pipeline at least 60 days before the event occurred.

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

⁶ See Advisory Bulletin, *Pipeline Safety: Construction Notification*, 79 FR 54777 (September 9, 2014). In that notice, PHMSA provided guidance to operators on the agency’s need for advance notice of certain construction-related activities so that it could schedule its own inspections and reviews and so operators could avoid costly modifications or repairs in order to achieve compliance. The advisory notice states:

Accordingly, PHMSA **strongly encourages** operators to provide the required construction-related notification(s) not later than 60 days prior to whichever of the following events occurs first: Material purchasing and manufacturing; right-of-way acquisition; construction equipment move-in activities; onsite or offsite fabrications; or right-of-way clearing, grading and ditching” (emphasis added)

⁷ Response, at 1.

⁸ *Id.*

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.⁹ 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; 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 notify PHMSA of the construction of 10 or more miles of hazardous liquid pipeline at least 60 days before such event occurred. As previously mentioned, the Notice alleged that SPLC failed to inform PHMSA of the Amberjack Debottleneck construction project at least 60 days prior to the anticipated construction start date.

In its Response, SPLC disputed that the alleged violation was discovered by PHMSA, as stated in Section E6 of the Violation Report.¹⁰ Specifically, SPLC argued that by submitting the notification, it "went on record that the construction was planned to start less than 60 days from the submittal."¹¹

I disagree. While SPLC argued that it self-reported the violation when it went "on record" with its submission of an untimely notification, such a filing is not the same as self-reporting. There is no evidence that SPLC proactively informed PHMSA that it had failed to comply with the 60-day notice requirement, but, rather, the record shows that SPLC filed a routine construction notice without mentioning that it constituted a violation or affirmatively bringing the violation to the agency's attention. As discussed above, PHMSA discovered Respondent's violation of the 60-day notice requirement during an inspection of SPLC's construction records. Accordingly, I find that a penalty reduction is not warranted because SPLC did not self-report the violation to PHMSA. Furthermore, I have reviewed the record and can find no evidence to suggest that Shell discovered its non-compliance and took documented action to address the cause of the violation before PHMSA learned of it. If it had, then it is possible a penalty reduction might be in order. In conclusion, 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).

Payment of the civil penalty must be made within 20 days of service. Federal regulations

⁹ These amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

¹⁰ Violation Report, at 7.

¹¹ Response, at 2.

(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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. 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 may submit a Petition for Reconsideration of this Final Order to the 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, no later than 20 days after receipt of service of the Final Order by Respondent. Any petition submitted must 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. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. 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.

January 18, 2018

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued