

July 27, 2020

**VIA ELECTRONIC MAIL TO: [fboutin@transmontaigne.com](mailto:fboutin@transmontaigne.com)**

Mr. Fred Boutin  
Chief Executive Officer  
TransMontaigne Operating Company, LP  
200 Mansell Court East, Suite 600  
Roswell, Georgia 30076

**Re: CPF No. 4-2019-5024**

Dear Mr. Boutin:

Enclosed please find the Final Order issued in the above-referenced case. It makes one finding of violation and assesses a civil penalty of \$46,600, and specifies actions that need to be taken by TransMontaigne Operating Company, LP, to comply with the pipeline safety regulations. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by electronic mail is effective upon the date of transmission 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: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA  
Mr. James F. Dugan, Executive Vice President, TransMontaigne Operating Company,  
LP, [jdugan@transmontaigne.com](mailto:jdugan@transmontaigne.com)  
Mr. Edward J. Luebke, Vice President of Pipeline Operations, TransMontaigne Operating  
Company, LP, [eluebke@transmontaigne.com](mailto:eluebke@transmontaigne.com)

**CONFIRMATION OF 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                      | ) |                     |
| TransMontaigne Operating Company, LP, | ) |                     |
| Respondent.                           | ) |                     |
|                                       | ) | CPF No. 4-2019-5024 |

**FINAL ORDER**

From January 7 through June 21, 2019, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection TransMontaigne Operating Company, LP's (TransMontaigne or Respondent) Diamondback Pipeline system in Brownsville, Texas. The Diamondback Pipeline system consists of 16.3 miles of 6-inch and 16.3 miles of 8-inch pipeline running parallel to each other in Brownsville, Texas, from the Mexico-U.S. Border to the Port of Brownsville.<sup>1</sup>

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated December 30, 2019, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that TransMontaigne had violated 40 C.F.R. § 194.452(j)(2) and proposed assessing a civil penalty of \$46,600 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation. The warning item required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

TransMontaigne responded to the Notice by letter dated January 30, 2020 (Response). The company did not contest the allegation of violation in Item 1, agreed to complete the proposed compliance actions, and requested that the proposed civil penalty be reduced based on actions it had taken and proposed to take in the future. The company also requested the removal of the warning associated with Item 1. Respondent did not request a hearing and therefore has waived its right to one.

**FINDING OF VIOLATION**

In its Response, TransMontaigne did not contest the allegation in the Notice that it violated 49 C.F.R. Part 195, as follows:

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<sup>1</sup> See Pipeline Safety Violation Report, dated December 30, 2019 (Violation Report), at 1 (on file with PHMSA).

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.452(j)(2), which states:

**§ 195.452 Pipeline integrity management in high consequence areas.**

(j) *What is a continual process of evaluation and assessment to maintain a pipeline's integrity?*

(1) . . .

(2) *Evaluation.* An operator must conduct a periodic evaluation as frequently as needed to assure pipeline integrity. An operator must base the frequency of evaluation on risk factors specific to its pipeline, including the factors specified in paragraph (e) of this section. The evaluation must consider the results of the baseline and periodic integrity assessments, information analysis (paragraph (g) of this section), and decisions about remediation, and preventive and mitigative actions (paragraphs (h) and (i) of this section).

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(j)(2) by failing to conduct a periodic evaluation as frequently as needed to ensure the integrity of each pipeline segment that could affect a high consequence area (HCA). Specifically, the Notice alleged that TransMontaigne failed to conduct its periodic Emergency Flow Restriction Device (EFRD) studies in accordance with its own Pipeline Integrity Assessment and Management Manual, *Section 6.06: EFRD Need Evaluation Factors (Section 6.06)*. According to the Notice, *Section 6.06* states that the company's Integrity Manager will re-evaluate the need for additional EFRDs on each pipeline segment at least every five years, beginning in 2011. TransMontaigne allegedly failed to provide any records to show that the required EFRD evaluations were in fact performed in 2011 and 2016, as required.

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. § 195.452(j)(2) by failing to conduct a periodic evaluation as frequently as needed to ensure the integrity of each pipeline segment that could affect an HCA.

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.<sup>2</sup> 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; 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

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<sup>2</sup> These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

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 \$46,600 for the violation cited above.

**Item 1:** The Notice proposed a civil penalty of \$46,600 for Respondent's violation of 49 C.F.R. § 195.452(j)(2), for failing to conduct its EFRD studies in accordance with its Pipeline Integrity Assessment and Management Manual, *Section 6.06*, as frequently as needed to ensure the integrity of each covered segment.

In its Response, TransMontaigne did not contest the findings with regard to each assessment criterion used to calculate the proposed civil penalty amount, but requested that the proposed civil penalty be reduced or waived based on the company's historical commitment to integrity management and safe operations, as well as future process improvements. According to its Response, TransMontaigne stated that it has taken the necessary actions to improve leak detection and mitigation for the Diamondback Pipeline by installing a mainline block valve and relocating another block valve to improve accessibility, thus automating the location. TransMontaigne indicated that it has already conducted a High Consequence Area and EFRD Analysis of the Diamondback system and will re-evaluate the need for additional EFRDs.

Notwithstanding the stated improvements to its approach to integrity management for the Diamondback Pipeline system, which are commendable, there is no evidence in the record that would support a reduction or elimination of the proposed civil penalty. Past history and commitment to integrity management do not excuse failing to comply with federal regulatory responsibilities in a timely manner. Likewise, potential future actions taken to come into compliance are those that PHMSA would expect of any prudent operator and do not serve as the basis for a penalty reduction.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$46,600 for violation of 49 C.F.R. § 195.452(j)(2).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$46,600**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (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 \$46,600 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.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Item 1 in the Notice for violations of 49 C.F.R. § 195.452(j)(2). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids 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 § 195.452(j)(2) (**Item 1**), Respondent must:
  - a. Re-evaluate the need for additional EFRDs for the Diamondback Pipeline system by conducting a study on each pipeline segment to ensure the integrity of each covered segment.
  - b. Within 60 days following receipt of this Final Order, TransMontaigne must provide PHMSA Southwest Region with documentation that verifies completion of the requirements of this compliance order.

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.

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), 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.

### **WARNING ITEM**

With respect to Item 1, the Notice alleged probable violation of Part 195, but identified it as a warning item pursuant to § 190.205. The warning was for:

49 C.F.R. § 195.452(h)(4)(iii)(E) (**Item 1**) — Respondent's alleged failure to schedule evaluation and remediation within 180 days of discovery of an area of general corrosion with a predicted metal loss greater than 50 percent of nominal wall.

TransMontaigne requested withdrawal of Item 1 because the anomaly that was called out as showing 43 percent external metal loss in 2011 and 59 percent metal loss in 2016, was mischaracterized in the latter survey, which resulted in the grading of the condition in 2016 as a 180-day condition. Upon subsequent confirmation, TransMontaigne maintains that, upon subsequent confirmation, the company determined that the anomaly had been conservatively graded by the ILI service providers and did not meet the 180-day condition threshold for remediation.

PHMSA appreciates the explanation provided by TransMontaigne in response to this warning item. However, under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred or not. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

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, 2<sup>nd</sup> 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.

July 27, 2020

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued