

July 27, 2020

VIA ELECTRONIC MAIL TO: scornelius@freeporlng.com

Mr. Sigmund Cornelius
President and Chief Operating Officer
Freeport LNG Development, LP
333 Clay Street, Suite 5050
Houston, Texas 77002

Re: CPF No. 4-2020-1002

Dear Mr. Cornelius:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$22,800, and specifies actions that need to be taken by Freeport LNG Development, LP, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. 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. 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. Mark W. Mallett, P.E., Vice President of Operations and Engineering, Freeport LNG Development, LP, mmallett@freeporlng.com
Mr. Michael Stephenson, Regulatory Compliance Manager, Freeport LNG Development, LP, mstephenson@freeporlng.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)	
)	
Freeport LNG Development, LP,)	CPF No. 4-2020-1002
)	
Respondent.)	

FINAL ORDER

From June 25, 2019, through September 26, 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 of the facilities and records of Freeport LNG Development, LP (FLNG or Respondent) in Freeport, Texas. FLNG operates a 42-inch diameter natural gas transmission line located at the Freeport LNG facility in Freeport (Quintana), Texas.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated January 27, 2020, 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 FLNG had committed three violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$22,800 for one of the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning item required no further action, but warned the operator to correct the probable violation or face possible future enforcement action.

FLNG responded to the Notice by letter dated February 18, 2020 (Response). The company contested one of the allegations of violation and requested that the proposed civil penalty be reduced. Respondent also submitted additional information regarding the proposed remedial measures set forth in the Proposed Compliance Order. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

¹ Pipeline Safety Violation Report (Violation Report), at 1 (Jan. 28, 2020) (on file with PHMSA).

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.605(b)(8), which states:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) *General . . .*

(b) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

(1) . . .

(8) Periodically reviewing the work done by operator personnel to determine the effectiveness, and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found.

The Notice alleged that Respondent violated 49 C.F.R. § 192.605(b)(8) by failing to establish written procedures to periodically review work done by its personnel to determine the effectiveness and adequacy of the procedures used in normal operation and maintenance, and to modify the procedures when deficiencies are found. Specifically, the Notice alleged that FLNG's *Gas Pipeline Operations and Maintenance Manual (FLNG-GOM-100)* did not include written procedures for the periodic review of the work performed by its personnel to evaluate the effectiveness and adequacy of its procedures.

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. § 192.605(b)(8) by failing to have written procedures for the periodic review of work performed by its personnel to determine the effectiveness and adequacy of the company's procedures, and to modify them when deficiencies are found.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.614(c)(1), which states:

§ 192.614 Damage prevention program.

(a) . . .

(c) The damage prevention program required by paragraph (a) of this section must, at a minimum:

(1) Include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located.

The Notice alleged that Respondent violated 49 C.F.R. § 192.614(c)(1) by failing to have a damage prevention program that included the current identity of persons who normally engage in excavation activities in the area in which the pipeline is located. Specifically, the Notice alleged that FLNG did not include the names of contractors or excavators from its "Third-Party Activity Reports" into its damage prevention program.²

² During the PHMSA inspection, it was noted that several excavators called in to locate tickets, but were not placed on the next mailing list to receive information about FLNG's damage prevention program. Notice, at 3.

In its Response, FLNG correctly noted that operators may comply with any of the requirements of § 192.614(c) through participation in a public service program, such as a one-call system.³ Such participation, however, does not relieve the operator of responsibility to comply with § 192.614 requirements.⁴ Therefore, although FLNG participates in the Texas 811 program, a qualified one-call system, this does not relieve the company of its obligation under § 192.614(c)(1) to identify persons who normally engage in excavation activities near its line in its damage prevention program.

FLNG further stated in its Response that one of the excavators who was not identified in its damage prevention program was also not identified by Texas 811 or its third-party public awareness contractor.⁵ Therefore, the company argued, this excavator may not be *normally* engaged in excavation activities in the area in which the pipeline is located.

I disagree. All excavators perform critical safety work that carries the inherent risk of physical damage to underground facilities. A single dig, performed in an unsafe manner, could result in property damage, personal injury, or even loss of life. Therefore, any time an individual is identified as engaging in excavation activity, it is imperative that operators include them in their damage prevention programs so that they can learn important safety information about excavation damage and prevention. There is no threshold or minimum number of digs that excavators must meet in order to be considered “normally engage[d] in excavation activities” under § 192.614(c)(1). If excavators call in to locate dig tickets, like they did in this case, these individuals are normally engaged in excavation activities near the pipeline for purposes of the regulation. Furthermore, FLNG did not provide any evidence showing that the excavator in question was *not* normally engaged in excavation activities in the area. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.614(c)(1) by failing to have a damage prevention program that included the current identities of all persons who normally engage in excavation activities near the pipeline.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 192.805(b), which states:

§ 192.805 Qualification program.

Each operator should have and follow a written qualification program.

The program shall include provisions to:

- (a)...
- (b) Ensure through evaluation that individuals performing covered tasks are qualified.

The Notice alleged that Respondent violated 49 C.F.R. § 192.805(b) by failing to have a written qualification program to ensure through evaluation that individuals performing covered tasks are qualified. Specifically, the Notice alleged that FLNG’s written qualification program failed to ensure through evaluation that employees were qualified to perform valve inspections. During

³ See Response, at 3 (citing § 192.614(b)).

⁴ *Id.*

⁵ *Id.*

the inspection, PHMSA discovered two FLNG employees with expired qualifications performed valve inspections on regulated valves (BV-116, V20A08, and XV4345) a total of eight times from 2018-2019.⁶

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. § 192.805(b) by failing to have a written qualification program to ensure through evaluation that individuals performing covered tasks are qualified.

These findings of violation will be considered prior offenses 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.⁷ 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 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 \$22,800 for the violations cited above.

Item 4: The Notice proposed a civil penalty of \$22,800 for Respondent's violation of 49 C.F.R. § 192.805(b), for failing to have a written qualification program to ensure through evaluation that individuals performing covered tasks are qualified. In its Response, FLNG noted that it promptly rectified the violation after it was discovered by PHMSA. Although this may be true, the company's post-inspection remedial measures do not negate the underlying violation and do not serve as a basis to reduce a penalty under the Violation Report. Therefore, I see no reason to reduce the civil penalty amount based on the corrective measures FLNG enacted after the PHMSA inspection.

The company also stated that this was the first offense of this nature, and therefore the penalty should be reduced. Again, the company's enforcement record has already been taken into consideration in calculating the proposed penalty. The Pipeline Safety Violation Report, which was relied upon in this case to calculate the proposed civil penalty, accounts for enforcement history, and accurately noted that FLNG had no prior enforcement history over the past five

⁶ The Notice alleged that FLNG failed to produce qualification records for these individuals. Notice, at 4.

⁷ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

years, nor had it previously violated this particular regulation during the same time period.⁸ Therefore, based upon all of the relevant circumstances, I find no reason to reduce the penalty based on the fact that this is Respondent's first violation.

Based upon the foregoing, I assess Respondent a civil penalty of **\$22,800** for violation of 49 C.F.R. § 192.805(b).

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 \$22,800 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 Items 2 and 3 in the Notice for violations of 49 C.F.R. §§ 192.805(b) and 192.614(c), respectively. 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.

With regard to the violation of § 192.805(b) (Item 2), Respondent submitted revised procedures for the periodic review of work performed by its personnel to determine the effectiveness and adequacy of its procedures, and to modify them when deficiencies are found.⁹ In her Region Recommendation, the Director noted that FLNG would only initiate an effectiveness review *if* an employee's performance did not meet expectations. The requirement for periodic reviews, however, does not condition the review on employee performance. Therefore, I find that FLNG's revised procedures do not sufficiently follow the requirements set forth in § 192.805(b).

⁸ Violation Report, at 3, 29. PHMSA's statute of limitations is five years pursuant to 28 U.S.C. § 2462.

⁹ See Response, at 2-3 (including proposed revised procedures that state: "Work done by FLNG personnel shall be monitored on a 'management-by-exception' basis by supervisors to confirm the effectiveness and adequacy of the procedures used in normal operation and maintenance. 'Management-by-exception' means that if an employee's performance does not meet expectations, the underlying procedures should be evaluated as a possible cause of substandard employee performance. Procedures shall be modified when deficiencies are found. Such changes shall be documented using the Management of Change (MOC) process.").

With regard to the violation of § 192.614(c) (Item 3), Respondent submitted additional information to PHMSA regarding actions it had taken to correct the noncompliance.¹⁰ The company, however, did not submit revised procedures as set forth in the Proposed Compliance Order.

For the above reasons, the Compliance Order is not modified as set forth below.

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 § 192.805(b) (**Item 2**), Respondent must develop a written procedure for periodic review that is not conditioned upon employee performance and submit the revised procedure to the Director within 60 days of issuance of the Final Order; and
2. With respect to the violation of § 192.614(c) (**Item 3**), Respondent must develop a written procedure to ensure that the current identity of persons who normally engage in excavation activities in the area in which its pipeline is located are identified as required and submit that procedure to the Director within 60 days of issuance of the Final 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 a probable violation of Part 192, but identified it as a warning item pursuant to § 190.205. The warning was for:

¹⁰ See Response, at 3 (noting that FLNG provided its third-party public awareness contractor with excavator name(s) and requested that it review the last three calendar years of dig tickets and perform a cross-check of identified entities to identify any potential gaps).

49 C.F.R. § 192.605(b) (**Item 1**) — Respondent’s alleged failure to conduct annual reviews of its manual as required by FLNG’s *Gas Pipeline Operations and Maintenance Manual (FLNG-GOM-100)*.

FLNG presented information in its Response showing it had complied with the requirement, as well as information showing that it had taken certain actions to address the cited item. Under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred. 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, 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 this Final Order by Respondent. Any petition submitted must contain a 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 corrective action, remain in effect 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.

July 27, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued