



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

June 26, 2020

VIA ELECTRONIC MAIL TO: everard@marksexplorer.com

Mr. Everard W. Marks III
Chief Executive Officer
Empire Pipeline, LLC
601 Poydras Street, Suite 1725
New Orleans, Louisiana 70130

Re: CPF No. 4-2020-7002

Dear Mr. Marks:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and specifies actions that need to be taken to comply with the pipeline safety regulations. When the terms of the compliance order are 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 KRAMER
MAYBERRY

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KRAMER MAYBERRY
Date: 2020.06.23 13:53:04
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Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosures (Final Order and NOPV)

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Ms. Maryanne Ward, Compliance and Regulatory Manager, Empire Pipeline, LLC,
maryanne@empirepipelinellc.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)	
)	
Empire Pipeline, LLC,)	CPF No. 4-2020-7002
a subsidiary of Marks Holding Corp.,)	
)	
Respondent.)	
)	

FINAL ORDER

On February 11, 2020, pursuant to 49 C.F.R. § 190.207, the Director, Southwest Region, Office of Pipeline Safety (OPS), issued a Notice of Probable Violation and Proposed Compliance Order (Notice) to Empire Pipeline, LLC (Respondent), a subsidiary of Marks Holding Corporation.¹ The Notice proposed finding that Respondent had violated the pipeline safety regulations in 49 C.F.R. Part 195. The Notice also proposed certain measures to correct the violation. Respondent did not contest the allegation of violation or corrective measures.

Based upon a review of all of the evidence, pursuant to § 190.213, I find Respondent violated the pipeline safety regulations listed below, as more fully described in the enclosed Notice, which is incorporated by reference:

49 C.F.R. § 195.402(c)(13) (**Item 1**) — Respondent failed to have a written procedure to periodically review the work done by its personnel to determine the effectiveness of its procedures used in normal operation and maintenance activities.

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

COMPLIANCE ACTIONS

Pursuant to 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the actions proposed in the enclosed Notice to correct the violation. 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. Upon completion

¹ Marks Holding Corporation website, *Affiliates/Subsidiaries*, available at <https://www.marksholding.com/subsidiaries> (last accessed June 17, 2020)

of ordered actions, Respondent may request that the Director close the case. Failure to comply with this Order may result in the assessment of civil penalties under 49 C.F.R. § 190.223 or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEM

With respect to Item 2, the Notice alleged a probable violation of 49 C.F.R. § 195.420(b), but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

The terms and conditions of this order are effective upon service in accordance with 49 C.F.R. § 190.5.

ALAN KRAMER Digitally signed by ALAN
MAYBERRY KRAMER MAYBERRY
Date: 2020.06.23 13:55:30
-04'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

June 26, 2020

Date Issued



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

8701 S. Gessner, Suite 630
Houston, TX 77074

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

February 11, 2020

Everard W. Marks III
Chief Executive Officer
Empire Pipeline, LLC
601 Poydras St., Suite 1725
New Orleans, Louisiana 70130

CPF 4-2020-7002

Dear Mr. Marks:

From July 29, 2019 to August 2, 2019, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected your East Cameron Gathering, Empire Deepwater, and Breton Sound Crude Gathering systems in the Gulf of Mexico.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. §195.402 Procedural manual for operations, maintenance, and emergencies.

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

(13) Periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

Empire Pipeline, LLC's (Empire) does not have a written procedure to periodically review the work done by its personnel to determine the effectiveness of its procedures used in normal operation and maintenance activities as required by 195.402(c)(13).

During the inspection, PHMSA reviewed Empire's written procedure "Core Operations & Maintenance Manual, Version 1 07/25/18" and was unable to identify a process for conducting effectiveness reviews as required. While Empire's compliance manager stated that they review every procedure before performing a specific job that uses that procedure and confirm it via email, there was no written procedures to support the review described or any documentation of any reviews conducted.

2. §195.420 Valve maintenance.

(b) Each operator shall, at intervals not exceeding 7½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

Empire failed to inspect two mainline valves at intervals not exceeding 7½ months, but at least twice each calendar year to determine that it was functioning properly.

During the inspection, PHMSA reviewed Empire's main line valve inspection records. The records indicate that mainline valves VLV02/SDV-160 at platform GI-115, and VLV08/SDV-9500 at platform GI-116 have not been inspected to determine that it was functioning properly at the required intervals for 2 inspection cycles between 11/17/2017 and 9/8/2018, and 9/1/2016 and 11/17/2017. Empire failed to provide any records to indicate that the two mainline valves have been inspected during the periods indicated above.

Proposed Compliance Order

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations.

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

With respect to item 1 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Empire Pipeline, LLC. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Warning Items

With respect to item 2 we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these item(s). Failure to do so may result in additional enforcement action.

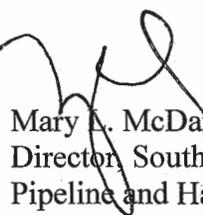
Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 4-2020-7002** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



Mary A. McDaniel, P.E.
Director, Southwest Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety

Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Empire Pipeline, LLC Empire a Compliance Order incorporating the following remedial requirements to ensure the compliance of Empire with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to Empire's failure to have a written procedure to periodically review the work performed by operating personnel to evaluate the effectiveness of the O&M procedures in accordance with the standards required within § 195.402 (c)(13), Empire must:
 - a. Develop procedure to review the work done by operating personnel to determine the effectiveness and adequacy of those procedures within the O&M manual and meet the requirement of § 195.402 (c)(13).
 - b. Conduct a review for work done by operating personnel to determine the effectiveness and adequacy of those procedures within the O&M manual.
 - c. All documentation demonstrating compliance a and b above must be submitted to the Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration, 8701 South Gessner, Suite 630 Houston, Texas 77074 for review within 120 days of receipt of the Final Order.
2. It is requested (not mandated) that Empire Pipeline, LLC maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Mary McDaniel, Director, Southwest Region, 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.