



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

MAR 23 2012

Mr. Terry Gottberg
President
Merit Energy Company, LLC
1327 Noel Road, Suite 500
Dallas, TX 75240

Re: CPF No. 5-2011-6001

Dear Mr. Gottberg:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and finds that Merit Energy Company, LLC, has completed the actions specified in the Notice to comply with the pipeline safety regulations. Therefore, this case is now closed. 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,

for 
Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Jay Prudhomme, Vice President Northern Rockies, Merit Energy Company, LLC
Mr. Bill Ellsworth, PSM/DOT Coordinator, Merit Energy Company, LLC
Mr. Chris Hoidal, Director, Western Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164203363333]

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of)

Merit Energy Company, LLC,)

Respondent.)

CPF No. 5-2011-6001

FINAL ORDER

On May 4-5, 2010, 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 on-site pipeline safety inspection of the facilities and records of Merit Energy Company, LLC's (Merit Energy or Respondent) Bairoil CO₂ pipeline between Bairoil, Wyoming, and Jeffrey City Wyoming. Merit Energy operates the 19.8-mile Bairoil CO₂ Pipeline (Bairoil Pipeline) in the high plains of Central Wyoming.¹

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated January 6, 2011, a Notice of Probable Violation 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 Merit Energy had committed various violations of 49 C.F.R. Part 195 and proposed ordering the company to take certain measures to correct the alleged violations. The warning items required no further action, but warned the operator to correct the probable violation or face possible enforcement action.

Merit Energy responded to the Notice by letter dated February 16, 2011 (Response). The company did not contest the allegations of violation but provided information concerning the corrective actions it had taken. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

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

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.310(b)(9), which states:

¹ www.meritenergy.com (last accessed 9/30/2011)

§ 195.310 Records.

(a) A record must be made of each pressure test required by this subpart, and the record of the latest test must be retained as long as the facility is in use.

(b) The record required by paragraph (a) of this section must include:

(1) ...

(9) Where elevation differences in the section under test exceed 100 feet (30 meters), a profile of the pipeline that shows the elevation and test sites over the entire length of the test section;....

The Notice alleged that Respondent violated 49 C.F.R. § 195.310(b)(9) by failing to retain complete records of each pressure test required under Subpart E of 49 C.F.R. Part 195 for the Bairoil Pipeline. Specifically, the Notice alleged that Merit Energy's September 9, 1986 pressure test records did not include a profile of the pipeline showing the elevation and test sites over the entire length of the test section, where elevation differences in the section under test exceeded 100 feet.

Although the elevation differences along the pipeline range between 6985 feet above mean sea level (MSL) to 7575 feet MSL, the company's hydrostatic test records did not include a profile of the pipeline showing such elevation differences. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Merit Energy violated 49 C.F.R. § 195.310(b)(9) by failing to include on its latest pressure test record a profile of the Bairoil Pipeline showing the elevation and test sites over the entire length of the test section, where elevation differences in the section under test exceeded 100 feet.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(4), which states:

§ 195.404 Maps and records.

(a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information,

(1) ...

(4) The diameter, grade, type and nominal wall thickness of all pipe.

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(4) by failing to maintain current maps of the Bairoil Pipeline showing the various wall thicknesses along the pipeline. According to the Notice, Respondent's Operations and Maintenance Manual showed that the wall thickness varied from 0.420 to 0.64 inches, but that the company's maps did not show the location of each variance in wall thickness along the pipeline.

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. § 195.404(a)(4) by failing to maintain current maps of its pipeline showing the nominal wall thickness of all pipe along the pipeline.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a)(3), which states:

§ 195.406 Maximum operating pressure.

(a) Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following:

- (1) ...
- (3) Eighty percent of the test pressure for any part of the pipeline which has been pressure tested under subpart E of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a)(3) by operating the Bairoil Pipeline at a pressure exceeding 80% of the lowest test pressure for any part of the pipeline that had been pressure tested under Subpart E. Specifically, the Notice alleged that the company's test pressure devices were located at an elevation of 6985 feet MSL and that Merit Energy had determined that the maximum operating pressure (MOP) was 3550 psig for the entire length of the pipeline without factoring in elevation differences along the pipeline.

PHMSA's review of Respondent's test pressure documentation revealed that the highest elevation point along the pipeline was 7575 feet MSL, with a pressure of 3294 psig.² After considering the elevation differences between 6985 feet MSL and 7575 feet MSL, the minimum test pressure on the line should have been 3294 psig,³ with a correct MOP of 2635 psig (80% of 3294 psig).

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. § 195.406(a)(3) by operating the Bairoil Pipeline at a pressure exceeding 80% of the lowest test pressure for any part of the pipeline that had been pressure tested under Subpart E.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.555, which states:

§ 195.555 What are the qualifications for supervisors?

You must require and verify that supervisors maintain a thorough knowledge of that portion of the corrosion control procedures established under § 195.402(c)(3) for which they are responsible for insuring compliance.

The Notice alleged that Respondent violated 49 C.F.R. § 195.555 by failing to require and verify that supervisors maintained a thorough knowledge of that portion of the corrosion control procedures for which they were responsible for insuring compliance. Specifically, the Notice alleged that a review of Merit Energy's personnel records and interviews revealed that the company's supervisory personnel had relied solely on a contractor for all of its cathodic protection (CP) monitoring tasks and the reading of rectifiers and bonds. During the OPS inspection, Respondent's personnel acknowledged a lack of CP but argued that a working

² Pipeline Safety Violation Report (January 5, 2011) (Violation Report): Attachment A - Hydrostatic pressure tests records; Attachment B - alignment sheets with high and low points along the line, and Attachment D - Merit Energy Company's O&M Manual.

³ Test pressure of 3350 psig at the Bairoil plant station – [(7575 feet – 6985 feet) x .433 psig/foot] = minimum test pressure of 3294 psig.

knowledge of external corrosion control was not required because CP services were the responsibility of its contractor.⁴ Respondent did not contest this allegation of violation.

Although Respondent's contractor may have been responsible for all CP monitoring services, Merit Energy, as operator of the pipeline, is still responsible for the company's compliance with the pipeline safety regulations. Respondent's reliance on a contractor does not negate this responsibility.⁵ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.555 by failing to require and verify that supervisors maintained a thorough knowledge of cathodic protection procedures for which they were responsible for insuring compliance.

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 195.589(a), which states:

§ 195.589 What corrosion control information do I have to maintain?

(a) You must maintain current records or maps to show the location of—

- (1) Cathodically protected pipelines;
- (2) Cathodic protection facilities, including galvanic anodes, installed after January 28, 2002; and
- (3) Neighboring structures bonded to cathodic protection systems.

The Notice alleged that Respondent violated 49 C.F.R. § 195.589(a) by failing to maintain current records or maps showing the location and details of its cathodic protection facilities that had been installed on the Bairoil Pipeline after 2002. Specifically, the Notice alleged that Merit Energy had failed to provide documentation showing the location of such cathodic protection facilities, including test stations, bonds, rectifiers, ground beds, and galvanic anodes.

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. § 195.589(a) by failing to maintain current records or maps to show the location of its cathodic protection facilities, installed on the Bairoil Pipeline.

Item 9: The Notice alleged that Respondent violated 49 C.F.R. § 195.589(a)-(b), which states:

§ 195.589 What corrosion control information do I have to maintain?

(a) You must maintain current records or maps to show the location of-

- (1) Cathodically protect pipelines;
- (2) Cathodic protection facilities, including galvanic anodes, installed after January 28, 2002; and
- (3) Neighboring structures bonded to cathodic protection systems.

(b) Records or maps showing a stated number of anodes, installed in a stated manner or spacing, need not show specific distances to each buried anode.

⁴ Violation Report, at 14-17.

⁵ See, e.g., *In the Matter of Williams Gas Pipeline-Transco*, Final Order at 4, CPF No. 1-2005-1007 (July 30, 2007), 2007 WL 2475903; *In the Matter of Koch Pipelines, Inc.*, Final Order at 7, CPF No. 32506 (April 28, 1998), 1998 WL 35166464.

The Notice alleged that Respondent violated 49 C.F.R. § 195.589(a)-(b) by failing to maintain records or maps showing the company's cathodic protection facilities, including the number of galvanic anodes installed in a stated manner or spacing, on the Bairoil Pipeline. During the inspection, Merit Energy did not have maps or records to demonstrate compliance with the regulation. 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. § 195.589(a)-(b) by failing to maintain records or maps showing the number of galvanic anodes installed in a stated manner or spacing on its pipeline.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, 5, 7, 8, and 9 in the Notice for violations of 49 C.F.R. §§ 195.310(b)(9), 195.404 (a)(4), 195.406 (a)(3), 195.555, 195.589(a), and 195.589(a)-(b), respectively. 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. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 195. 310(b)(9) (**Item 1**), Respondent has developed a profile of the Bairoil Pipeline that shows the elevation over the entire length of the test section and the location of the test apparatus site. Merit Energy has submitted a copy of this profile to PHMSA.
2. With respect to the violation of § 195. 404 (a)(4) (**Item 2**), Respondent has developed maps showing the locations of the diameter, grade, type and nominal wall thickness of all pipe sections on the Bairoil Pipeline. Merit Energy has submitted to PHMSA a copy of its Bairoil CO₂ Pipeline Construction Plan and alignment sheets that reflect wall thickness changes along the pipeline.
3. With respect to the violation of § 195. 406 (a)(3) (**Item 5**), Respondent has established the correct MOP for the Bairoil Pipeline by using the test pressure at the highest elevation point at which the pipeline was tested during the 1986 pressure test. Merit Energy has submitted a copy of its MOP re-calculations to PHMSA.
4. With respect to the violation of § 195. 555 (**Item 7**), Respondent has conducted corrosion control training for its supervisory employees who are responsible for pipeline operations on the Bairoil Pipeline. The training included § 195. 402(c)(3) qualifications for supervisors, evaluation and mitigation of external and internal corrosion, use of inhibitors & coupons, sulfate reducing bacteria, atmospheric corrosion, external coatings, cathodic protection systems and inspection and repair techniques. Merit Energy has submitted copies of its supervisors' certificates of completion.
5. With respect to the violation of § 195.589(a) (**Item 8**), Respondent has developed maps and records that accurately reflect the location of the Bairoil Pipeline cathodic protection facilities, including test stations, bonds, rectifiers, ground beds, and galvanic anodes installed after 2002.

6. With respect to the violation of § 195.589(a)-(b) (**Item 9**), Respondent has updated its Bairoil Operations and Maintenance Manual, Section 1.3.1, detailing the installation technique of the new deep-well ground bed installed on the Bairoil Pipeline in March 2010. Merit Energy has also updated its alignment sheets to depict the location of the ground bed.

Accordingly, I find that compliance has been achieved with respect to these violations. Therefore, the compliance terms proposed in the Notice are not included in this Order.

WARNING ITEMS

With respect to Items 3, 4, and 6, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.403(b)(1) (**Item 3**) — Respondent's alleged failure to review with its personnel their performance in meeting the objectives of the company's emergency response training program;

49 C.F.R. § 195.403(c) (**Item 4**) — Respondent's alleged failure to verify that its supervisors maintained a thorough knowledge of that portion of the company's emergency response procedures for which they were responsible to ensure compliance under 49 C.F.R. § 195.402; and

49 C.F.R. § 195.440(c) (**Item 6**) — Respondent's alleged failure to follow the baseline and supplemental emergency official communications recommendations listed in Table 2.3 of the American Petroleum Institute's Recommended Practice 1162.

Merit Energy presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of these provisions in a subsequent inspection, Respondent may be subject to future enforcement action.

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

Jeffrey D. Wiese

 Jeffrey D. Wiese
 Associate Administrator
 for Pipeline Safety

MAR 23 2012

 Date Issued