



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

1200 New Jersey Ave., SE
Washington, DC 20590

JUN 27 2019

Mr. Donald R. Macpherson, Jr.
President and Chief Executive Officer
Macpherson Oil Company
100 Wilshire, Suite 800
Santa Monica, California 90401

Re: CPF No. 5-2016-0016

Dear Mr. Macpherson:

Enclosed please find my Decision on the Petition for Reconsideration filed by Macpherson Oil Company in the above-referenced case. For the reasons explained therein, the Decision grants, in part, and denies, in part, the Petition. The Decision modifies several terms of the Compliance Order contained in the Final Order that was issued by PHMSA on August 24, 2017. When the terms of the Compliance Order, as modified, have been completed, as determined by the Director, Western Region, this enforcement action will be closed. This Decision constitutes the final administrative action in this proceeding. Service of this Decision is made pursuant to 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: Mr. Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA
Mr. Tim Lovley, Director HSE, Macpherson Oil Company, PO Box 5368, Bakersfield,
California 93388

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)

Macpherson Oil Company,)

Petitioner.)
_____)

CPF No. 5-2016-0016

DECISION ON PETITION FOR RECONSIDERATION

From June 22 through 25, 2015, 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 Macpherson Oil Company (Macpherson or Petitioner) at its Kern County Gas Line facilities in Bakersfield, California.¹

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Petitioner, by letter dated September 7, 2016, 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 Macpherson had committed various violations of 49 C.F.R. Part 192 and proposed ordering Petitioner to take certain measures to correct the alleged violations. The warning items required no further action but warned the operator to correct the probable violations or face possible future enforcement action.

Macpherson responded to the Notice by letter dated October 7, 2016 (Response). It did not contest the allegations of violation, but provided information concerning the corrective actions it had taken, as well as the financial burdens that would result from compliance with the Proposed Compliance Order. Macpherson did not request a hearing and therefore waived its right to one. Pursuant to § 190.209(b)(7), the Director submitted a written evaluation of Petitioner's response material on January 31, 2017 (Recommendation).

On August 24, 2017, pursuant to 49 C.F.R. § 190.213, PHMSA issued a Final Order in this proceeding, finding that Macpherson had committed violations of Part 192, as alleged in the Notice. The Final Order included a Compliance Order (Compliance Order) that ordered Macpherson to take certain corrective actions, among others, related to violations of 49 C.F.R. § 192.13(c). The Final Order did not modify Item 1(a) of the Proposed Compliance Order based on the estimated costs raised by Macpherson because the information submitted by the company

¹ The Kern County Gas Line is a 6.8-mile, 6" gas transmission line. See, Pipeline Safety Violation Report (Violation Report), (Sept. 7, 2016) (on file with PHMSA), at 1.

did not provide sufficient detail to justify modification.

In accordance with § 190.243, Macpherson objected to this portion of the Compliance Order and filed a timely Petition for Reconsideration (Petition) of the Final Order on September 15, 2017, seeking reconsideration of Compliance Order Item 1(a) based on “the disproportionate financial burden relative to any risk reduction gained by such requirements.”²

Macpherson did not seek reconsideration of the finding that it had violated § 192.13(c) by failing to maintain the plans and programs that it was required to establish under Part 192 for the Kern County Gas Line. Specifically, the Final Order found that the company was unable to document that:

- (1) the pipeline was welded using a qualified welding procedure(s) per § 192.225(a);
- (2) each welding procedure was recorded in detail, including the results of the qualifying tests, and the record was retained and followed whenever the procedure was used per § 192.225(b);
- (3) welders were qualified in accordance with the appropriate referenced standard(s) per § 192.227(a);
- (4) pipeline welds were visually inspected by a qualified individual per § 192.241(a);
- (5) pipeline welds were nondestructively tested in accordance with § 192.243; or
- (6) the pipeline was initially installed with the minimum cover required by § 192.327.

In its Petition, Macpherson objected to the terms of the Compliance Order, Item 1(a), which required that Macpherson take certain corrective actions, including the development of a Fitness for Service (FFS) plan that would assess the condition of the pipeline system to demonstrate its safety and integrity. Under the terms of the Compliance Order, the FFS plan was required to include the following measures relating to girth welds on the pipeline:

- (1) Destructive Testing – Cut out at least one in-line girth weld and destructively test it in accordance with § 192.225;
- (2) Nondestructive Testing – Write a nondestructive testing (NDT) procedure in accordance with § 192.243 to NDT girth welds. Excavate and NDT: (a) at least 40 girth welds equally spaced along the entire pipeline, (b) all tie-in girth welds made after the post-construction pressure testing in 1998, and (c) all known fabricated and station girth welds;
- (3) Repair or replace all girth welds that fail the NDT. For every girth weld repaired or replaced, excavate and NDT one additional girth weld; and
- (4) Hydrotest the entire pipeline in accordance with the requirements in Part 192 if more than three girth welds fail the NDT.

In response to the Petition, on November 3, 2017, pursuant to § 190.243(d), I requested that Macpherson provide additional information to determine the proper disposition of the Petition. Specifically, I requested that Macpherson present any probative evidence demonstrating that the proposed compliance terms would impose a substantial financial burden on the company. I also

² Petition, at 1.

requested that the Director, Western Region, evaluate the information contained in the Petition and consult with Macpherson, if appropriate, on the issues raised in the Petition regarding the Compliance Order.

Petitioner provided additional information on December 1, 2017 (Petition Addendum No. 1) and on April 20, 2018 (Petition Addendum No. 2). As directed, on June 27, 2018, the Director, Western Region, submitted a Revised Region Recommendation regarding the disposition of the Petition (Revised Recommendation).

Legal Standard of Review

Pursuant to 49 C.F.R. § 190.243, an operator may petition the Associate Administrator for reconsideration of a final order issued under § 190.213. Reconsideration does not constitute an appeal or an opportunity to seek a *de novo* review of the record. It is, instead, an opportunity for a petitioner to request that errors in the final order be corrected or to present information that was not previously available, provided the petitioner submits a valid reason explaining why such information was not presented prior to issuance of the final order. PHMSA may grant or deny, in whole or in part, a petition for reconsideration without further proceedings, but may request additional information or comment if deemed appropriate. Under § 190.243(b), the petitioner must submit reasoning why any additional facts or arguments were not presented prior to issuance of the final order.

Analysis

As noted above, Petitioner requested relief from Item 1(a) of the Compliance Order, relating to violations of 49 C.F.R. § 192.13(c), on the grounds that the requirements would impose a “disproportionate financial burden relative to any risk reduction gained by such requirements.” Macpherson stated that the primary cost driver of its objections was related to the loss of production, i.e., lost revenue, by eliminating steam injection into the reservoir for a period of time to meet the compliance obligations in the Compliance Order.

The Western Region reviewed Macpherson’s additional financial documentation and explained that Macpherson’s system requires a continuous supply of natural gas for the production of oil in the Round Mountain oil field. It uses the gas to: (1) generate steam for injection into the Round Mountain oil field formation; (2) generate heat for oil dehydration; (3) pressurize oil measuring equipment; and (4) make up gas for Air Permitting Compliance.³ Macpherson produces oil from the Round Mountain field by injecting steam into the formation, heating the oil and enabling it to migrate to the production wells. The oil produced at the Round Mountain field is a heavy oil that requires extensive and continuous steam injection to heat the oil. Removing the steam injection has an adverse effect on oil production by allowing the oil-field formation to cool, thus slowing or stopping the migration of oil to the production wells.⁴ Shutting down the system in order to

³ Revised Recommendation (on file with PHMSA), at 2.

⁴ *Id.*

comply with the terms of the Compliance Order would introduce risks and negatively impact reservoir behavior and well productivity.⁵

Macpherson provided three sets of documents in support of this statement.⁶ Macpherson provided direct cost totals for such requirements, indirect costs, costs associated with performing the requested work, reduction in production, 10 days without heat for oil processing, and recovery time for the reservoir heat.⁷

In support of its Petition, Macpherson stated that its pipeline was low risk, decreasing the threat of eliminating or modifying Compliance Order, Item 1(a). Specifically, Macpherson stated that: (1) the gas pipeline passed a hydrostatic test prior to being placed into service in 1998; (2) a cathodic-protection system has been in use since the line's initial commissioning; (3) non-destructive testing performed on both buried and exposed piping indicate wall strength that meets design and operation conditions; and (4) the gas pipeline is in a remote location with no road crossing and a low population.⁸ Macpherson indicated that it relies exclusively on the pipeline to provide natural gas to fuel the steam generators that make oil production possible in the Round Mountain oil field, meaning that shutting down the gas pipeline would adversely affect oil production in the Round Mountain oil field and would place an unreasonable financial burden on Macpherson.⁹

I agree that the Compliance Order, as issued, would adversely affect oil production in the field and could place an unreasonable financial burden on the company. Therefore, based on the financial documents provided, the estimates of the cost of complying with the Compliance Order as written, and certain alternative actions proposed by Macpherson to ensure compliance with the pipeline safety regulations, I find that it is reasonable and prudent to order certain modifications to the Compliance Order. These modifications allow Macpherson to achieve compliance with pipeline safety regulations using less financially burdensome means than those originally required by the Compliance Order.¹⁰

Accordingly, pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, I order that Paragraph 1(a) of the Compliance Order be amended. Petitioner is ordered to develop, and submit for approval within 90 days of receipt of this Decision, a written FFS plan to assess the condition of the pipeline system to demonstrate its safety and integrity. The FFS plan must address those actions required in Paragraphs 1(a)(i) through 1(a)(iii) of the Compliance Order, as modified below:

⁵ Petition, at 1.

⁶ Petition; *See also* Petition Addendum No. 1, and Petition Addendum No. 2.

⁷ Petition at 1; *See also* Petition Addendum No. 1, at Att. A.

⁸ Petition, at 3-4; Revised Recommendation, at 2.

⁹ Petition, at 1 (stating that a total shut down of the Round Mountain field could result in the estimated losses of \$5.9M or potentially the loss of the entire field production); Revised Recommendation, at 3.

¹⁰ Petition Addendum No. 1 at Att. A, Petition Addendum No. 2, at Att. A.

- **Paragraph 1(a)(i): Destructive Testing** - Cut out at least one in-line girth weld and destructively test it in accordance with § 192.225 to establish the strength of the weld.

In its Petition, Macpherson stated that “given the location of the pipeline, original hydrotest, that exposure of the pipeline presents opportunities to damage the factory applied coating, and 20 years of safe operation, [paragraph 1(a)(i)] seems like an unnecessary and costly requirement.” Instead, it proposed that the terms of Item 1(a)(i) be modified to “if a girth weld is replaced, as outlined below, it shall be destructively tested in accordance with § 192.225 to establish the strength of the weld. Any other methods proposed for determining the strength of the girth weld shall be approved by the PHMSA.”

Based on the estimate of the direct costs associated with this item and Macpherson’s proposed alternative,¹¹ I find that compliance with this item as originally written constitutes an unreasonable financial burden on Macpherson, and that Macpherson’s alternative achieves compliance with the pipeline safety regulations. I therefore amend Item 1(a)(i) to require that if a girth weld is replaced, as required in Item 1(a)(iii), it shall be destructively tested in accordance with § 192.225 to establish the strength of the weld. Any other methods proposed for determining the strength of the girth weld shall be approved by the Director.

- **Paragraph 1(a)(ii): Nondestructive Testing** - Write an NDT procedure in accordance with § 192.243 to test girth welds. Excavate and NDT at least 40 girth welds equally spaced along the entire pipeline, all tie-in girth welds made after the post-construction pressure testing in 1998, and all known fabricated and station girth welds.

In its Petition, Macpherson proposed an alternative to “ensure that piping located at the tie in points have been NDT tested, further reducing the risk profile of the pipeline.”¹² It suggested removing the requirement to excavate and NDT at least 40 girth welds equally spaced along the entire pipeline, and added the sentence that “[a]ny other methods for determining acceptability of welds shall be approved by the PHMSA.”¹³

Based on the estimate of the direct costs associated with this item and Macpherson’s proposed alternative,¹⁴ I find the proposed alternative would not achieve an acceptable level of compliance with § 192.243 and that excavating and NDT of at least 40 girth welds equally spaced along the pipeline would not impose an unreasonable financial burden on Macpherson. Given that Macpherson has not produced documentation showing that the welds were visually and non-destructively tested, and NDT does not affect pipeline or oil production operations, I find that NDT of the required 40 welds is appropriate to demonstrate compliance with §§ 192.13(c), 192.241 and 192.243. I therefore decline to modify Item 1(a)(ii) of the Compliance Order.

¹¹ Petition, at 1; *See also* Petition Addendum No. 1, at Att. A.

¹² Petition, at 4-5.

¹³ Petition, at 4.

¹⁴ Petition, at 1; *See also* Petition Addendum No. 1, at Att. A.

- **Paragraph 1(a)(iii): Repair or replace all girth welds that fail the NDT. For every girth weld repaired or replaced, excavate and NDT one additional girth weld.**

In its Petition, Macpherson proposed modifying Item 1(a)(iii) of the Compliance Order from requiring that "for every girth weld repaired or replaced, excavate and NDT (x-ray radiograph) one additional girth weld," to excavating and NDT the closest girth weld to any girth weld that fails NDT.

I find that Macpherson's alternative achieves compliance with the pipeline safety regulations. I therefore amend Item 1(a)(iii) to require that Macpherson repair or replace all girth welds that fail the NDT and for every girth weld repaired or replaced, excavate and NDT one additional girth weld closest to the weld that failed the NDT.

- **Paragraph 1(a)(iv): Hydrotest the entire pipeline in accordance with the requirements in Part 192 if more than three girth welds fail the NDT.**

In its Petition, Macpherson requested removal of the requirement to hydrotest the entire pipeline, and proposed to hydrotest all segments of replacement pipe in the shop in accordance with Part 192. In support, Macpherson stated that removing the hydrotest requirement of the entire pipeline will "eliminate the need to fill the line with water and creating [sic] a potentially corrosive environment."¹⁵

I have considered both the financial documents provided by Petitioner, as well as its argument that the pipeline passed a hydrotest prior to operation, that the pipeline has a safe operational history, and that the line is in a Class 1 location.¹⁶ Based on this review, and at the recommendation of the Director, I find that Item 1(a)(iv) of the Compliance Order is not necessary to demonstrate compliance with the pipeline safety regulations. I therefore remove Item 1(a)(iv) from the Compliance Order.

Conclusion

Based on a review of the record and the information provided in the Petition, I hereby grant, in part, and deny, in part, the Petition and modify the Compliance Order, Item 1(a), for the reasons set forth above. Paragraph 1(a) of the Compliance Order is amended to read as follows:

- a. Girth Welds – Macpherson must develop a written Fitness for Service (FFS) plan for girth welds and submit the FFS to the Director, Western Region, OPS, for review and approval within 90 days of receipt of this Decision. The FFS for girth welds must include the following at a minimum:
 - i. If a girth weld is replaced, as outlined in paragraph 1(a)(iii), it shall be destructively tested in accordance with § 192.225 to establish the strength of the weld. Any other

¹⁵ Petition, at 5. Macpherson's recommended change is a restatement of the requirements of § 192.503(a).

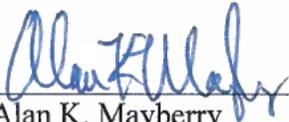
¹⁶ Petition, at 2.

methods proposed for determining the strength of the girth weld shall be approved by the Director.

- ii. Nondestructive Testing – write a nondestructive testing (NDT) procedure in accordance with § 192.243 for testing girth welds. Excavate and NDT at least 40 girth welds equally spaced along the entire pipeline, all tie-in girth welds made after the post-construction pressure testing in 1998, and all known fabricated and station girth welds.
- iii. Repair or replace all girth welds that fail the NDT. For every girth weld repaired or replaced, excavate and NDT one additional girth weld closest to the weld that failed the NDT.
- iv. [Removed]

All other terms of the Final Order remain in effect.

This Decision constitutes final agency action taken by PHMSA in the enforcement proceeding. The terms and conditions of this Decision are effective upon service in accordance with 49 C.F.R. § 190.5.



Alan K. Mayberry
Associate Administrator
for Pipeline Safety

JUN 27 2019

Date Issued