December 29, 2016

Mr. Gregory L. Ebel
Chairman, President and Chief Executive Officer
Spectra Energy Partners, LP
5400 Westheimer Court
Houston, TX77056-5310

Re: CPF No. 1-2015-1025

Dear Mr. Ebel:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Texas Eastern Transmission, LP. It makes findings of violation and assesses a civil penalty of $239,200. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Acting Regional Director, Eastern Region, PHMSA, OPS
Mr. William T. Yardley, President US Transmissions, Spectra Energy Corporation
Mr. Rick Kivela, Director, Operational Compliance, Spectra Energy Partners, LP

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	)	
Texas Eastern Transmission, LP, a subsidiary of Spectra Energy Partners, LP,	)	**CPF No. 1-2015-1025**
Respondent.	)	

FINAL ORDER

On May 22 and 23, 2014, 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 investigation into an incident that occurred on Texas Eastern Transmission, LP's (Texas Eastern) 30-inch-diameter natural gas transmission pipeline, known as Line 10 (located approximately two miles from Carmichael, Pennsylvania), on May 16, 2014, at 11:15 a.m. eastern daylight savings time (Incident). The Incident resulted in $186,437 worth of property damage.

Texas Eastern is a wholly-owned subsidiary of Spectra Energy Partners, LP (Spectra), a master limited partnership formed by Spectra Energy Corporation.[1] Texas Eastern operates 9,096 miles of natural gas pipelines connecting Texas and the Gulf with the Northeast.[2] For purposes of this Order, Texas Eastern and Spectra both refer to Respondent and are used interchangeably.

The Notice alleged that, based on the results of a 2011 in-line inspection, Spectra decided to excavate Line 10 following the Incident. On May 16, 2014, Spectra uncovered the casing of Line 10 and proceeded to cut it, using a cutting machine with an attached oxyacetylene torch. During the cutting process, the welder allegedly heard popping sounds and reversed direction of the torch, when a resulting hiss and significant flames were observed from the cut. The fire was immediately extinguished and no injuries, fatalities or supply issues were reported.[3]

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[1] *See* http://www.spectraenergy.com/About/Spectra-Energy-Partners/. Current as of 4/26/2016.

[2] *See* http://www.spectraenergy.com/Operations/US-Natural-Gas-Operations/US-Pipelines/. Current as of 4/26/2016.

[3] CPF 1-2015-1025 Pipeline Safety Violation Report, dated September 29, 2015 (Violation Report), at 1-6.

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated September 29, 2015, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Texas Eastern had violated 49 C.F.R. §§ 192.605(a), 199.202 and 199.225(a) and proposed assessing a civil penalty of $239,200 for the alleged violations.

Spectra responded to the Notice on behalf of Texas Eastern by letter dated November 12, 2015 (Response). The company did not contest the allegations of violation but provided an explanation of its actions and requested that the proposed civil penalties be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

Respondent did not contest the following allegations of violation of 49 C.F.R. Parts 192 and 199:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a), which states:

> **§ 192.605 Procedural manual for operations, maintenance, and emergencies.**
>
> (a) *General*. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least one each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow its own written procedures for conducting operations and maintenance activities while removing the casing on Line 10. Specifically, the Notice alleged that Spectra failed to follow its written procedure, *Standard Operating Procedures, Volume 7- Welding, Procedure number 7-2090, Procedure Name: Safety Requirements, Date: 05/12/2014, Subsection 4.8 Removal of Split Casings*. According to the Notice, that subsection states:

> "Welders shall take the following precautionary measures when using a cutting torch to remove split casing in an effort to minimize the risk of damaging or burning through the carrier pipe.
>
> 1. Prior to cutting, verify the gap between the carrier pipe and casing pipe. An oxy-acetylene torch may be used for cutting on casings with gaps 2 [inches] and greater. Consult the Metallurgical Services Department to determine the appropriate removal method for casings with gaps less than 2 [inches].

> 2. Use an oxy-acetylene gouging tip on the cutting torch to direct the blow of the torch at an angle to the carrier pipe rather than directly at the carrier pipe."

The Notice alleged that the precautionary measures enumerated in Subsection 4.8 of the company's procedure were not taken during removal of the casing. Spectra allegedly could not provide any documentation demonstrating that it had verified the distance between the casing and carrier pipe prior to cutting, and, after investigation, PHMSA could not confirm that Spectra personnel had performed the required consultation with the company's Metallurgical Services Department to determine the appropriate removal method.[4] In addition, Spectra allegedly could not provide any documentation that it had used an oxyacetylene gouging tip, and in fact, subsequent to a May 29, 2014 meeting with PHMSA, confirmed that it had used a standard torch tip to remove the casing, contrary to the company's own procedures.

In its Response, Spectra acknowledged that it did not follow its own standard written procedures while removing the casing pipe on Line 10. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 199.605(a) by failing to follow its own manual of written procedures for conducting operations and maintenance activities.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 199.202, which states:

> **§ 199.202 Alcohol misuse plan.**
> Each operator must maintain and follow a written alcohol misuse plan that conforms to the requirements of this part and DOT Procedures concerning alcohol testing programs. The plan shall contain methods and procedures for compliance with all the requirements of this subpart, including required testing, recordkeeping, reporting, education, and training elements.

The Notice alleged that Respondent violated 49 C.F.R. § 199.202 by failing to follow its own written alcohol misuse plan in accordance with § 199.202.[5] Specifically, the Notice alleged that Spectra failed to follow its own procedure setting a maximum time frame in which an employee must be tested for alcohol following an accident. According to the Notice, Spectra's written alcohol misuse plan, *Section VI. Alcohol Misuse Prevention Program*, states:

> "Post-Accident Testing:…A post-accident alcohol test shall be conducted on each employee as soon as possible but no later than 8 hours after the accident…"

In a series of emails with PHMSA, Spectra identified the employees involved in cutting the casing, and acknowledged that alcohol testing was done "outside the 8-hour window."

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[4] Violation Report, at 6.

[5] Violation Report, at 11.

In its Response, Spectra did not contest this allegation of violation.[6] Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 199.202 by failing to follow its own written alcohol misuse plan.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 199.225(a)(2)(i), which states:

> **§ 199.225 Alcohol tests required.**
> Each operator shall conduct the following types of alcohol tests for the presence of alcohol:
> *(a) Post-accident.* (1) …
> (2)(i) If a test required by this section is not administered within 2 hours following the accident, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by paragraph (a) is not administered within 8 hours following the accident, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

The Notice alleged that Respondent violated 49 C.F.R. § 199.225(a)(2)(i) by failing to prepare and maintain a record stating the reasons for not promptly administering an alcohol test within two hours following an accident. Specifically, the Notice alleged that Spectra only tested its employees for drugs and alcohol 26 hours after the Incident, and provided a June 18, 2014 email as its only record detailing why testing was not done within two hours of the Incident. PHMSA noted that both the testing (after 26 hours), and the late record (one month after the Incident) were contrary to § 199.225(a)(2)(i).

In its Response, Spectra did not contest the allegation of violation.[7] Accordingly, after considering all of the evidence I find that Respondent violated 49 C.F.R. § 199.225(a)(2)(i) by failing to prepare and maintain a record stating the reasons for not promptly administering a test within two hours following an accident.

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. 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; and any effect

[6] Response, at 4.

[7] Response, at 6-7.

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 $239,200 for the violations cited above.

Item 1: The Notice proposed a civil penalty of $172,800 for Respondent's violation of 49 C.F.R. § 192.605(a), for failing to follow its own written procedures regarding the removal of split casings to minimize the risk of damaging or burning through the carrier pipe. Spectra did not contest the allegation of violation but requested a reduction in the penalty, based upon its contention that assessment factor for "culpability" shown in Part E8 of the Violation Report should be reduced because the company took "appropriate and corrective actions" after "the pinhole leak was discovered and before PHMSA learned of the violation."[8]

I disagree. While the actions Spectra took prior to PHMSA discovering the violation were clearly appropriate to protect the safety of its employees and the public, there is no evidence that the company addressed the *cause* of the non-compliance (i.e., a failure to follow its own written procedures) before PHMSA learned of the non-compliance.[9] Spectra eventually addressed the non-compliance, following closely after PHMSA's investigation. In fact, this accident provides an example of how pipeline operators need to follow their own safety procedures in order to prevent accidents.

Given the importance of these procedures for the safety and integrity of Spectra's system, and the fact that process-control improvements and new or revised procedures were only introduced after PHMSA took note of the violation, I can find no justification for a penalty reduction. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $172,800 for violation of 49 C.F.R. § 192.605(a).

Item 2: The Notice proposed a civil penalty of $33,300 for Respondent's violation of 49 C.F.R. § 199.202, for failing to follow its own written alcohol misuses plan by neglecting to test employees involved in the accident within eight hours after the accident. Spectra did not contest the allegation of violation but requested a penalty reduction on two grounds.

First, the company argued that the "culpability" assessment factor should be reduced to: "*After the operator found the non-compliance, the operator took documented action to address the cause of the non-compliance, and corrected the non-compliance before PHMSA learned of the violation."* According to Spectra, containing the Incident took priority over its responsibility to test for alcohol misuse, which was eventually completed 26 hours later. Second, the company contended that it should receive a "good faith" penalty reduction because the failure to perform alcohol testing was due to a reasonable desire to avoid disrupting its response to the Incident.

Again, I see no reason for a penalty reduction. Spectra itself established its alcohol misuse

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[8] Response, at 3.

[9] If Spectra itself had discovered the non-compliance and took documented action to address the cause of the non-compliance before PHMSA discovered the violation, Respondant would potentially qualify for a reduced penalty.

policy, and there is nothing in the record to show that Spectra had any reasonable confusion about the clarity of the 8-hour testing requirement.[10] In addition, there is nothing in the record to show that Spectra was taking steps to correct its non-compliance before PHMSA discovered the violation. Operators are required and expected to manage multiple responsibilities during Incidents without ignoring certain basic regulatory requirements related to the accident. Finally, the clear mandates of the alcohol misuse testing are particularly important, given their relationship to the possible causes of accidents and the prevention of future incidents.

Given the importance of drug and alcohol testing to incident investigations and the clarity of the requirement, I can find no justification for reducing the penalty when Spectra could have allotted the necessary resources to perform timely alcohol testing. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $33,300 for violation of 49 C.F.R. § 199.202.

Item 3: The Notice proposed a civil penalty of $33,100 for Respondent's violation of 49 C.F.R. § 199.225(a), for failing to prepare and maintain a record stating the reasons for not promptly administering an alcohol test within two hours following the May 16 accident. Spectra did not contest this Item, but argued for mitigation of the penalty based upon its good-faith efforts to contain the accident, which allegedly caused its failure to prepare and maintain a proper record.

As noted above, the regulations contemplate that operators should be able to perform all of their safety responsibilities in the aftermath of an accident and do not allow for ad-hoc prioritizing. Drug and alcohol testing are a time-sensitive responsibility that the regulations address specifically in order to immediately test employees whose conduct could have led to an accident and thus prevent future accidents. Further, not only did Spectra fail to administer a timely alcohol test but the document or record providing the context for that failure was not created contemporaneously but was transmitted by email to PHMSA more than a month after the incident. Both the specific requirements of the regulations and the purpose behind them were both subverted. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $33,100 for violation of 49 C.F.R. § 199.225(a).

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 **$239,200**.

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, 6500 S MacArthur Blvd., Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the $239,200 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

[10] Violation Report at 14-16.

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.

Under 49 C.F.R. § 190.243, Respondent has the right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: 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. PHMSA will accept petitions received no later than 20 days after receipt of service of the Final Order by the Respondent, provided they 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 but does not stay any other provisions of the Final Order, including any required corrective actions. 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.

December 29, 2016

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued