



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Avenue SE
Washington DC 20590

APR 12 2018

Mr. Wouter van Kempen
Chairman and CEO
DCP Midstream, LP
370 17th Street, Suite 2500
Denver, CO 80202

Re: CPF No. 4-2017-5032

Dear Mr. van Kempen:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$27,600. It further specifies actions that need to be taken by DCP Midstream, 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 satisfied, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by certified mail is effective upon the date of mailing, 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. Brent Backes, Group Vice President and General Counsel, DCP Midstream, LP

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

¹ DCP Midstream website, available at http://www.dcpmidstream.com/getattachment/Utility-Pages/Explore-Footprint/DCP_Mid_Corp_Glance_Fact_Sheet_Q32016_Enbridge_Consolidation.pdf.aspx (last accessed January 3, 2018).

FINDINGS OF VIOLATION

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

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(i)(4), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a)

(i) *What preventive and mitigative measures must an operator take to protect the high consequence area? - (1)*

(4) *Emergency Flow Restricting Devices (EFRD)*. If an operator determines that an EFRD is needed on a pipeline segment to protect a high consequence area in the event of a hazardous liquid pipeline release, an operator must install the EFRD. In making this determination, an operator must, at least, consider the following factors—the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline segment and the high consequence area, and benefits expected by reducing the spill size.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(i)(4) by failing to determine whether EFRDs were needed on two DCP pipeline segments running through high consequence areas (HCAs). Specifically, the Notice alleged that DCP failed to perform an initial evaluation on the company's Panova to Red River and Red River to Mount Belvieu segments. Both § 195.452(i)(4) and section IP 008 of DCP's own written *Integrity Procedure, IP 008 (version 3.1, dated December 2012)*, required that DCP consider whether EFRDs should be added as a preventive and mitigative measure on the listed pipeline segments.

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. § 195.452(i)(4) by failing to determine whether EFRDs were needed on two pipeline segments in order to protect HCAs.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.581, which states, in relevant part:

§ 195.581 Which pipelines must I protect against atmospheric corrosion and what coating material may I use?

(a) You must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

(b) Coating material must be suitable for the prevention of atmospheric corrosion.

The Notice alleged that Respondent violated 49 C.F.R. § 195.581(a) by failing to clean and coat each pipeline that is exposed to the atmosphere. Specifically, the Notice alleged that DCP

discovered numerous instances of deteriorated coating on its pipeline when conducting atmospheric pipe inspections. However, for 40 of the pipeline portions identified as having deteriorated coatings, DCP failed to remediate the deteriorated coatings by cleaning and coating 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. § 195.581(a) by failing to clean and coat numerous portions of its pipeline that were exposed to the atmosphere.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

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

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities. Specifically, the Notice alleged that DCP failed to follow Section 4 of its *Integrity Management Manual – Risk Management Manual, Subsection 4.4.5: Pipeline Facilities Risk Assessment*. Subsection 4.4.5 provides, in relevant part, that Respondent must use the checklist in DCP Form 50 to assist in “determining the most credible release scenario and impact on any affected HCAs.”

During its inspection, PHMSA noted that DCP had facilities in Teague, Lockwood, and Panova, all of which are in HCA or HCA-could-affect areas. When the PHMSA inspector asked DCP for copies of the Form 50 checklist generated for these three facilities, as required under Subsection 4.4.5, DCP was not able to provide them.

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. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities.

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with §195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1) by failing to conduct tests on one of its cathodically protected pipelines at least once each calendar year, but with intervals not exceeding 15 months. Specifically, the Notice alleged that DCP failed to conduct tests at five locations on its 16-inch Lockwood Station to Teague Station pipeline at least once each calendar year, but with intervals not exceeding 15 months. By failing to test at these five locations, DCP was unable to demonstrate adequate levels of cathodic protection under § 195.573(a)(1).

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. § 195.573(a)(1) by failing to conduct tests on one of its cathodically protected pipelines at least once per calendar year, but with intervals not exceeding 15 months.

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.²

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 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 \$27,600 for the violation in Item 8 above.

Item 8: The Notice proposed a civil penalty of \$27,600 for Respondent's violation of 49 C.F.R. § 195.573(a)(1), for failing to conduct tests on one of its cathodically protected pipelines at least once per calendar year, but with intervals not exceeding 15 months. DCP neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$27,600 for violation of 49 C.F.R. § 195.573(a)(1).

In summary, having reviewed the record and considered the assessment criteria for the Item cited above, I assess Respondent a total civil penalty of **\$27,600**.

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

² These amounts are adjusted annually for inflation. *See, e.g., Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties*, 82 Fed. Reg. 19325 (April 27, 2017).

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 \$27,600 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 4, 5, and 6** in the Notice for violations of 49 C.F.R. §§ 195.452(i)(4), 195.581(a), and 195.402(a), 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. 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 § 195.452(i)(4) (**Item 4**), Respondent must perform a study, based on a current high consequence area list, to determine whether EFRDs are needed on pipeline segments to protect high consequence areas in the event of a hazardous liquid pipeline release to enhance public safety. Respondent must complete this compliance item and submit documentation to the Director within 90 days of receipt of this Order.
2. With respect to the violation of § 195.581(a) (**Item 5**), Respondent must provide evidence that the 40 identified locations with deteriorated coating have been adequately cleaned and coated. Respondent must complete this compliance item and submit documentation to the Director within 180 days of receipt of this Order.
3. With respect to the violation of § 195.402(a) (**Item 6**), Respondent must conduct a thorough review using the Form 50 checklist to determine the most credible release scenario and impact on HCAs and HCA-could-affect areas to enhance public safety. Respondent must complete this compliance item and submit documentation to the Director within 90 days of receipt of this 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 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 ITEMS

With respect to Items 1, 2, 3, and 7, 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. § 195.64(c) **(Item 1)** — Respondent's alleged failure to notify PHMSA that DCP had divested a pipeline asset;

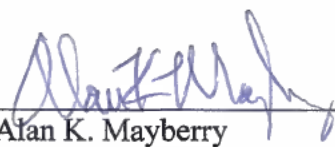
49 C.F.R. § 195.579(c) **(Item 2)** — Respondent's alleged failure to perform an inspection of the internal surface of a segment of pipeline removed during a "hot tap;"

49 C.F.R. § 195.402(a) **(Item 3)** — Respondent's alleged failure to follow its own manual of written procedures with respect to pipeline-assessment scheduling; and

49 C.F.R. § 195.567(c) **(Item 7)** — Respondent's alleged failure to maintain test lead wires in a condition that enabled DCP to determine whether cathodic protection complied with § 195.571.

DCP presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of any of these items 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.



Alan K. Mayberry
Associate Administrator
for Pipeline Safety

APR 12 2018

Date Issued