September 11, 2024

VIA ELECTRONIC MAIL TO: tom.long@energytransfer.com

Thomas Long
Chief Executive Officer
Energy Transfer, LP
1300 Main Street
Houston, Texas 77002

Re: CPF No. 4-2023-034-NOPV

Dear Mr. Long:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes other findings of violation, assesses an adjusted civil penalty of $118,300, and specifies actions that need to be taken by Mid Valley Pipeline Company LLC, a subsidiary of Energy Transfer, 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 completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt 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: Mr. Bryan Lethcoe, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Gregory McIlwain, Executive Vice President of Operations, Energy Transfer, LP, gregory.mcilwain@energytransfer.com

Mr. Eric Amundsen, Senior Vice President of Operations, Energy Transfer, LP, eric.amundsen@energytransfer.com
Mr. Todd Stamm, Senior Vice President of Operations, Energy Transfer, LP, todd.stamm@energytransfer.com
Ms. Jennifer Street, Senior Vice President of Operations, Energy Transfer, LP., jennifer.street@energytransfer.com
Mr. Matthew Stork, Vice President of Technical Services, Energy Transfer, LP, matthew.stork@energytransfer.com
Mr. Todd Nardozzi, Director of Regulatory Compliance, Energy Transfer, LP, todd.nardozzi@energytransfer.com
Ms. Susie Sjulin, Director of DOT Compliance, Energy Transfer, LP, susie.sjulin@energytransfer.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	)	
Mid Valley Pipeline Company LLC, a subsidiary of Energy Transfer, LP,	)	**CPF No. 4-2023-034-NOPV**
Respondent.	)	

FINAL ORDER

From June 6 through December 1, 2022, 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 Mid Valley Pipeline Company LLC's (MVPL or Respondent) Mid-Valley Pipeline in Michigan, Ohio, Kentucky, Tennessee, Mississippi, Louisiana, Arkansas, and Texas. Mid Valley Pipeline Company LLC is a subsidiary of Energy Transfer, LP. The Mid-Valley Pipeline is approximately 1,040 miles long, originating in Longview, Texas, and terminating in Samaria, Michigan.[1]

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated May 8, 2023, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that MVPL had committed five violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of $119,000 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional two warning items pursuant to 49 C.F.R. § 190.205, which warned the operator to correct the probable violations or face possible future enforcement action.

After requesting and receiving an extension of time to respond, MVPL responded to the Notice by letter dated June 15, 2023 (Response). Respondent contested several of the allegations, offered additional information in response to the Notice, requested that the proposed civil penalty (PCP) be reduced and or eliminated, and requested that the proposed compliance order (PCO) terms be modified. Respondent did not request a hearing and therefore has waived its right to one.

[1] Energy Transfer, LP website, *available at* https://www.energytransfer.com/crude-oil/ (last accessed August 20, 2024).

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.52(a)(3), which states:

> **§ 195.52 Immediate notice of certain accidents.**
>
> (a) *Notice requirements.* At the earliest practicable moment following discovery, of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in § 195.50, but no later than one hour after confirmed discovery, the operator of the system must give notice, in accordance with paragraph (b) of this section of any failure that:
>
> (1)….
>
> (3) Caused estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $50,000.

The Notice alleged that Respondent violated 49 C.F.R. § 195.52(a)(3) by failing to give notice, at the earliest practicable moment but no later than one hour after confirmed discovery, following discovery of a release of a hazardous liquid resulting in an event where estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to property of the operator or others, or both, exceeded $50,000. Specifically, the Notice alleged that there were three occasions in 2021 and 2022 when MVPL experienced reportable accidents but failed to give notice within the required time frame to the National Response Center (NRC). Those occasions were on February 22, 2021, June 10, 2021, and June 29, 2022.

In its Response, MVPL did not contest the allegation of violation with respect to the June 29, 2022, occasion. However, it contested the allegation of violation with respect to the February 22, 2021, and June 10, 2021 occasions.

With respect to the first contested occasion, the Notice alleged that an accident resulting in estimated property damage of $81,512 occurred on February 22, 2021, but Respondent did not notify the NRC until March 12, 2021. In its Response, MVPL stated that the February 22, 2021 accident involved a release of 15 barrels of crude oil, which was "totally contained on Company property." Respondent stated that of the $81,512 of estimated property damage, $63,170 was related to environmental remediation. MVPL further stated that at the time of release, it did not expect the total environmental costs related to a 15-barrel release would drive the total costs of the event beyond the $50,000 threshold for immediate notification required by §195.52(a)(3). Respondent asserted that when it determined this threshold would be exceeded on March 12, 2021, it promptly notified the NRC.

With respect to the second contested occasion, the Notice alleged that an accident resulting in estimated property damage of $79,229 occurred on June 10, 2021, but Respondent did not notify the NRC until June 11, 2021. In its Response, MVPL stated that the June 10, 2021 accident involved a release of 16.70 barrels of cruel oil, which was "totally contained on Company property." Respondent stated that of the $79,229 of estimated property damage, $60,000 was

related to repair costs. MVPL further stated that these repair costs were elevated due to difficulties experienced during excavation of the failure point overnight, and that, at the time of discovery of the release, it did not immediately expect that the total repair costs would drive the total costs for the event beyond the $50,000 threshold for immediate notification required by §195.52(a)(3). Respondent asserted that when it determined this threshold would be exceeded on the morning of June 11, 2021, it promptly notified the NRC.

Pursuant to 49 C.F.R. § 195.52(a), an operator must provide notice of certain accidents[2] "[a]t the earliest practicable moment following discovery…but no later than one hour after confirmed discovery." "Confirmed discovery" means "when it can be reasonably determined, based on information available to the operator at the time a reportable event has occurred, even if only based on a preliminary evaluation."[3] Read together, § 195.52(a) requires operators to report accidents at the earliest practicable moment, but no later than one hour after it can be reasonably determined, based on the information available, that a reportable event has occurred, even if only based on a preliminary evaluation.

This reporting requirement was adopted in 2017 at the direction of Congress. In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Public Law 112-90), Congress directed PHMSA to "establish time limits for telephonic or electronic notification of an accident or incident to require such notification at the earliest practicable moment following confirmed discovery of an accident or incident and not later than 1 hour following the time of such confirmed discovery."

On January 23, 2017, PHMSA published the rule "Pipeline Safety: Operator Qualifications, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes."[4] In the rule, PHMSA explained that the purpose of the revised notification requirement is to alert local, state, and federal agencies at the earliest practicable moment so that emergency personnel or investigators can be dispatched quickly. Without this requirement, and under alternatives proposed by commenters, each operator could have a different methodology that would potentially take hours or days before an operator completed its evaluation and determined that an accident or incident had in fact occurred. PHMSA noted that if an operator were allowed to wait for a definitive confirmation, even where the operator already has sufficient evidence, the intent of the Congressional mandate would be defeated. Accordingly, PHMSA explained that it was adopting this reporting requirement, including the one-hour time limit and the definition of "confirmed discovery," to abide by the Congressional mandate requiring operators to report incidents and accidents despite not having a complete assessment.

In this case, the Notice alleged that MVPL violated § 195.52(a)(3) by not reporting the February 22, 2021, June 10, 2021, and June 29, 2022 accidents within the required timeframe when the

---

[2] As it pertains to the facts of this case, a reportable "accident" means a pipeline failure in which there is a release of hazardous liquid resulting in estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $50,000. *See* 49 C.F.R. § 195.50(e).

[3] 49 C.F.R. § 195.2.

[4] 82 FR 7972.

estimated property damage was $81,512, $79,229, and $4,651,397, respectively. In its Response, MVPL stated that given the small amount of product released on its own property, it did not immediately expect that the environmental costs for the February 22, 2021 accident and total repair costs for the June 10, 2021 accident would drive the total costs for the events beyond the $50,000 threshold for immediate notification required by §195.52(a)(3). Respondent did not contest the violation with respect to the June 29, 2022 accident.

I reviewed whether the Notice and the evidence in the record form a sufficient evidentiary basis to support the allegation that Respondent should have determined, at an earlier date or time, that a reportable event had occurred, based on the information available, even if only based on a preliminary evaluation. I find that they did not. First, the Notice did not indicate when MVPL should have determined, based on the information available, that a reportable event occurred and when it should have notified the NRC. Second, the Notice did not indicate what evidence shows MVPL should have determined that the estimated property damage would exceed $50,000 at an earlier date or time.[5] Rather, the Notice merely lists the later-determined estimated property damage and indicates that Respondent should have known it earlier. In other words, the Notice failed to articulate a sufficient evidentiary basis to support the allegation of violation for these two instances.

The evidence cited also does not set out a sufficient evidentiary basis to support the allegation as described in the Notice. The PHMSA Form 7000-1 completed for the February 22, 2021 accident, was submitted on March 22, 2021. The form lists February 22, 2021, 08:30 AM, as the date and time an accident-reporting criteria was met. This is the same date and time that the operator listed for identification of the failure. The time of confirmed discovery was blank, and March 12, 2021, was identified as the date of the initial report to the NRC. In the narrative section of the form, Respondent described that following the accident a clean-up crew was brought in. Respondent explained that on March 12, 2021, it determined that the criteria for immediate telephonic notification were met. This explanation is in-line with the argument advanced by Respondent in its Response.

Similarly, the PHMSA Form 7000-1 completed for the June 10, 2021 accident, was submitted on July 7, 2021. The form lists June 10, 2021, 12:30 PM, as the date and time an accident-reporting criteria was met. This is the same date and time that the operator listed for identification of the failure. The time of confirmed discovery was left blank, and June 11, 2021, was identified as the date of the initial report to the NRC. In the narrative section of the form, Respondent described that following the accident a clean-up crew was brought in. Respondent explained that on June 11, 2021, it determined that the criteria for immediate NRC notification were met. This explanation is in-line with the argument advanced by Respondent in its Response.

Neither form provides an evidentiary basis to conclude that Respondent should have determined at an earlier date and time that a reportable event had occurred, based on the information available, even if only based on a preliminary evaluation. The evidence does show that a clean-up crew was called, but it does not provide a sufficient evidentiary foundation to conclude that

[5] *See In Re Bell Fourche Pipeline Company*, CPF 5-1992-2514 (April 28, 1998) (noting that the Notice failed to provide an evidentiary basis that the respondent could have reasonably obtained information about the spill and its consequences any earlier).

the operator should have known the estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to property of the operator or others, or both, would exceed $50,000 at an earlier point in time.

With this in mind, I withdraw the two instances of violation for the February 22, 2021 and June 10, 2021 releases. This decision is specific to the facts of this case and the allegation of violation as set out in the Notice. Unlike here, there have been situations where sufficient evidence is presented to support a conclusion that an operator had enough information at the time of the release for it to reasonably determine that the estimated property damage would exceed $50,000.[6] In those situations, the text of the regulation confirms the operator would be required to report such an accident as soon as practicable but no later than one hour after it can be reasonably determined that a reportable event has occurred.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.52(a)(3) by failing to give notice, at the earliest practicable moment but no later than one hour after confirmed discovery of an accident that occurred on June 29, 2022. The remaining two alleged instances of violation are withdrawn.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.420(a), which states:

> **§ 195.420 Valve maintenance.**
> (a) Each operator shall maintain each valve that is necessary of the safe operation of its pipeline system in good working order at all times.

The Notice alleged that Respondent violated 49 C.F.R. § 195.420(a) by failing to maintain each valve that is necessary for the safe operation of its pipeline systems in good working order at all times. Specifically, the Notice alleged that PHMSA found two leaking valves and a remote operated valve (ROV) that did not respond to open or closed signals from the control room.

In its Response, MVPL did not contest the allegation of violation. Instead, it provided additional information regarding the valves and requested modification of the PCO terms for this item.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.420(a) by failing to maintain each valve that is necessary for the safe operation of its pipeline systems in good working order at all times.

MVPL's request for modification of the PCO terms is addressed below in the Compliance Order section below.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), which states:

---

[6] *See In Re Centurion Pipeline, LP,* CPF 4-2011-5013 (April 30, 2012) (wherein it was determined that a release of approximately 10,000 barrels of crude oil caused estimated clean-up costs of $64,130); *In Re Texas Eastern Transmission Corporation*, CPF 4-2001-1003 (May 5, 2005) (noting that the evidence showed the respondent was capable of estimating that the incident would likely need to be reported shortly after the incident – the respondent was able to estimate the amount of gas released and the cost of gas at the time).

§ 195.432 Inspection of in-service breakout tanks.

(a) ….

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks according to API Std 653 (except section 6.4.3, *Alternative Internal Inspection Interval*) (incorporated by reference, *see* § 195.3). However, if structural conditions prevent access to the tank bottom, its integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3). The risk-based internal inspection procedures in API Std 653, section 6.4.3 cannot be used to determine the internal inspection interval.

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of its in-service atmospheric breakout tanks pursuant to the regulation and its manual of written procedures for conducting normal operations and maintenance activities. Specifically, the Notice alleged that MVPL failed to conduct monthly in-service visual inspections on several breakout tanks in the Hebron and Oxford areas as required by API Std 653 and Respondent's procedure HLT.05.

In its Response, Respondent did not contest the allegation of violation. Rather, it requested a reduction of the civil penalty associated with this item.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of its in-service atmospheric breakout tanks pursuant to the regulation and its manual of written procedures for conducting normal operations and maintenance activities.

MVPL's request for a reduction of the civil penalty associated with this item is addressed below in the Civil Penalty section below.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(i), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(a) ….

(i) After December 16, 2004, notify the Administrator or a state agency participating under 49 U.S.C. Chapter 601 if the operator significantly modifies the program after the administrator or state agency has verified that it complies with this section. Notifications to PHMSA may be submitted by electronic mail to *InformationResourcesManager@dot.gov*, or by mail to ATTN: Information Resources Manager DOT/PHMSA/OPS, East Building, 2nd Floor, E22-321, New Jersey Avenue SE., Washington, DC 20590.

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(i) by failing to notify the

Administrator after it made significant modifications to its Operator Qualification (OQ) Program, pursuant to the regulation and its *Standard Operating Procedure HLA.18 Operator Qualification Plan*, dated 12/15/2021. Specifically, the Notice alleged that MVPL failed to timely notify PHMSA of three significant modifications to its OQ Program.

In its Response, MVPL did not contest the allegation of violation. Rather, it provided documentation of remediation and requested that the PCO associated with this item be deemed satisfied.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(i) by failing to notify the Administrator after it made significant modifications to its OQ Program, pursuant to the regulation and its *Standard Operating Procedure HLA.18 Operator Qualification Plan*, dated 12/15/2021.

MVPL's request regarding the PCO terms associated with this item is addressed below in the Compliance Order section below.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

WITHDRAWAL OF ALLEGATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.581(a), which states:

> **§ 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.

The Notice alleged that Respondent violated 49 C.F.R. § 195.581(a) by failing to protect aboveground pipe from atmospheric corrosion by cleaning and coating each pipeline or portion of pipeline that is exposed to the atmosphere. Specifically, the Notice alleged that PHMSA observed three locations where coating material had deteriorated and showed bare pipe at the soil-to-air interfaces: at the Toledo Terminal Station, the Denver Station, and Block Valve (BV) 220.

In its Response, MVPL disagreed with the allegation of violation and the associated proposed compliance order. MVPL stated the atmospheric corrosion control inspections for these locations were conducted on October 15, 2021, September 7, 2021, and August 8, 2021, respectively. MVPL respectively designated the corrosion condition at these locations as Case 1, Case 4, and Case 2.[7] MVPL's procedure SOP HLD.44, "Atmospheric Corrosion Inspection,"

[7] Respondent provided copies of the inspection reports with its Response. *See* Response Attachment C.

stated that conditions up to Case 4 do not require remedial action because integrity or safety of the metallic asset will not be affected before the next inspection.[8] Remedial action is required for Case 5 through Case 7. Per Respondent's procedure SOP HLD.40, "Corrosion Control Remedial Action," onshore atmospheric corrosion protection must be restored within three calendar years following discovery, not to exceed 39 months from the date the deficiencies are discovered.[9] Notwithstanding, MVPL, with its Response, provided documentation showing that all three locations have been remediated.

In a recommendation for final action submitted pursuant to § 190.209(b)(7), the Director recommended withdrawing the alleged violation of § 195.581(a).

Accordingly, based upon the foregoing, I hereby order that Item 6 be withdrawn. Respondent is reminded that pursuant to § 195.581(a), an operator must clean and coat each pipeline or portion of pipeline exposed to the atmosphere and while certain pipelines may be excepted from this requirement under § 195.581(c), that exception is not applicable for portions of pipelines in offshore splash zones or soil-to-air interfaces.

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.[10]

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; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 $119,000 for the violations cited above.

Item 1: The Notice proposed a civil penalty of $39,800 for Respondent's violation of 49 C.F.R. § 195.52(a)(3), for failing to give notice, at the earliest practicable moment but no later than one hour after confirmed discovery, following discovery of a release of a hazardous liquid resulting in an event where estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to property of the operator or others, or both, exceeded $50,000. The $39,800 PCP was based upon three instances of violation. For the reasons set out above in the

---

[8] PHMSA Violation Report, Exhibit F-4.

[9] Operator Response, Attachment C.

[10] These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223 for adjusted amounts.

Findings of Violation section, I withdrew two instances of violation. Accordingly, an adjustment to the civil penalty is warranted. Accordingly, having reviewed the record and considered the assessment criteria, I assess MVPL a reduced civil penalty of $39,100 for one instance of violation of 49 C.F.R. § 195.52(a)(3).

Item 4: The Notice proposed a civil penalty of $39,400 for Respondent's violation of 49 C.F.R. § 195.432(b), for failing to inspect the physical integrity of its in-service atmospheric breakout tanks pursuant to the regulation and its manual of written procedures for conducting normal operations and maintenance activities.

In its Response, MVPL requested that the civil penalty for Item 4 be recalculated and reduced on the basis of "PHMSA erroneously utilizing a multiplier of ten (10) for the 'History of Prior Offenses' component in the calculation embedded in the Proposed Civil Penalty Worksheet." A multiplier of ten indicates six or more prior offenses within five years prior to issuance of the Notice. PHMSA listed a total of eight prior offenses, which included five findings of violation against Energy Transfer, LP (OPID 32099) when calculating the number of prior violations within the last five years. Respondent asserted that it was erroneous to include these findings of violation because Respondent has a different OPID (12470) and is a separate operator from Energy Transfer, LP. Respondent asserted that only prior findings of violation directly attributed to Mid-Valley Pipeline should have been included.

Having considered Respondent's argument, I note PHMSA's Enforcement Procedures, section 4.1.3.1, state that multiple OPIDs may be used to determine the history of prior offenses "where appropriate."[11] In this case, it is appropriate to include the OPID for both Energy Transfer Company (OPID 32099) – a subsidiary of Energy Transfer, LP – and Mid Valley Pipeline Company LLC (OPID 12470) – a subsidiary of Energy Transfer, LP – because both share a Safety Program Relationship under Energy Transfer Company (OPID 32099). Furthermore, Respondent uses Energy Transfer's procedures.[12] In addition, Respondent responded to the Notice using "Energy Transfer" letterhead and copied only Energy Transfer personnel. Taken together, these facts indicate a close, if not indistinguishable, relationship between the parent company and subsidiary as it concerns its program for compliance with the federal pipeline safety regulations. Therefore, in this case, it is appropriate to include prior offenses from both OPIDs in the history of prior offenses.

Respondent did not provide any additional argument to justify a reduction of the civil penalty for this Item. Accordingly, having reviewed the record and considered the assessment criteria, I assess MVPL a civil penalty of $39,400 for violation of 49 C.F.R. § 195.432(b).

---

[11] PHMSA Enforcement Procedures, Section 4: Administrative Enforcement Processes, at 27 (December 9, 2022), *available at* https://www.phmsa.dot.gov/regulatory-compliance/pipeline/enforcement/section-4-administrative-enforcement-processes.

[12] See, for example, PHMSA Violation Report, Exhibits A-5, B-5, B-6, C-4, D-3, F-4, G-3.

Item 5: The Notice proposed a civil penalty of $39,800 for Respondent's violation of 49 C.F.R. § 195.505(i), for failing to notify the Administrator after it made significant modifications to its OQ Program, pursuant to the regulation and its *Standard Operating Procedure HLA.18 Operator Qualification Plan*, dated 12/15/2021.

In its Response, MVPL requested that the civil penalty for Item 5 be recalculated and reduced. Respondent's basis for this request was identical to the argument it advanced for Item 4, above. For the reasons discussed above, I find that a reduction to the civil penalty for Item 5 is not warranted. Accordingly, having reviewed the record and considered the assessment criteria, I assess MVPL a civil penalty of $39,800 for violation of 49 C.F.R. § 195.505(i).

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 **$118,300**.

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. 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, 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 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 3, 5, and 6 in the Notice for violations of 49 C.F.R. §§ 195.420(a), 195.505(i), and 195.581(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. As discussed above, Item 6 has been withdrawn. Therefore, the compliance terms proposed in the Notice for that Item are not included in this Order.

With regard to the violation of § 195.420(a) (Item 3), Respondent requested the compliance terms be modified. The proposed compliance order terms for this item would require MVPL to inspect all valves on the Mid-Valley Pipeline Stems and repair or replace any valves that are not in good working order, including testing communications with the control room for ROVs. In its Response, MVPL provided additional information regarding the Toledo Terminal and Lima Station valves identified in the Notice. Respondent stated that the valves were not mainline valves, were on a preventative maintenance schedule and inspected on July 29, 2021, and July

14, 2021, respectively, and that neither was leaking or weeping to a degree that would constitute an immediate hazard at the time of the PHMSA inspection. MVPL also stated that BV 400 ROV communications link was exercised during the August 16, 2022 inspection and found to be in good working order. It also provided documentation showing that it remediated the conditions associated with the valves PHSMA identified in the Notice.[13] Respondent requested that the terms of the PCO be modified to only require inspection of the three valves identified in the Notice, and that the modified PCO terms be deemed satisfied based on the remedial actions taken.

In a recommendation for final action submitted pursuant to § 190.209(b)(7), the Director recommended modification of the compliance order terms to allow for submission of the most recent inspection records for all valves that are necessary for the safe operation of the Mid-Valley Pipeline System, so that if they have already been retested they do not have to be re-tested to satisfy the compliance order.

In light of the preceding, I agree to modify the terms of the PCO for Item 3 so that the most recent inspection records for all valves that are necessary for the safe operation of the Mid-Valley Pipeline System can be provided to satisfy the Compliance Order. However, I do not adopt Respondent's suggested modification to further limit the compliance order to just the three valves identified in the Notice (i.e., the Toledo Terminal Station (valve #15), Lima Pump Station (Unit 4 discharge valve) and BV 400). Section 195.420(b) requires operators to inspect each valve that is necessary for the safe operation of its pipeline systems at least twice each calendar year, at intervals not to exceed 7.5 months. Thus, between the June 2022 inspection and now, MVPL should have performed at least two inspections of each valve that is necessary for the safe operation of its pipeline system and identified valves that are not in good working order. Regardless of whether a valve is leaking or weeping to a degree that constitutes an immediate hazard, they must be maintained in good working order at all times to comport with § 195.420. Therefore, I do not find the compliance term to provide documentation that all valves are in good working order, which is required by the regulation, to be an overly broad or unwarranted remedial action for a violation of § 195.420(a), as argued by Respondent.

Consequently, I do not find the terms of the compliance satisfied, despite MVPL's submission of the documentation accompanying its response for the three valves identified in the Notice. Rather, MVPL must submit the required records to the Director for review, as detailed below.

With regard to the violation of § 195.505(i) (Item 5), Respondent argued the PCO terms should be deemed satisfied based on its submission of documentation of its April 28, 2023, notification to the PHMSA Administrator of significant changes to its OQ Program. In a recommendation for final action submitted pursuant to § 190.209(b)(7), the Director recommended finding the terms of the PCO satisfied. I agree with this recommendation. Accordingly, the terms of the PCO for this Item have been satisfied and the compliance terms proposed in the Notice for this Item are not included in this Order.

For the above reasons, the Compliance Order is modified as set forth below.

---

[13] Operator Response, Attachment A.

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 § 195.420(a) (**Item 3**), Respondent must provide the most recent inspection records for all valves that are necessary for the safe operation of its Mid-Valley Pipeline System and provide work order documentation to repair or replace any valves that are not in good working order, including testing communications with the control room for ROVs, and provide the detailed associated inspection records and work order to the Director, Southwest Region, within **180** days of issuance of the Final 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.

PHMSA requests 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 (*see* 49 C.F.R. § 190.223 for adjusted amounts), 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 2 and 7, the Notice alleged probable violations of Part 195, but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 195.412(a) **(Item 2) ─** Respondent's alleged failure to inspect the surface conditions on or adjacent to each pipeline right-of-way using an appropriate method of inspection; and

49 C.F.R. § 195.583(a) **(Item 7) ─** Respondent's alleged failure to inspect each pipeline or portion of its pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every three calendar years, but with intervals not exceeding 39 months.

MVPL 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.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a 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. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

September 11, 2024

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued