CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Al Mueller
Vice President
Aera Energy, LLC
10000 Ming Avenue
PO Box 11164
Bakersfield, CA 93389-1164

Re: CPF No. 5-2004-5016

Dear Mr. Mueller:

Enclosed is the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes findings of violation and assesses a civil penalty of $15,000. The Final Order also finds that you have completed the actions specified in the Notice required to comply with the pipeline safety regulations, and that you have addressed the inadequacies in your procedures that were cited in the Notice of Amendment. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ron A. Symm, Esq.Assistant General Counsel
Aera Energy LLC 10000 Ming Avenue PO Box 11164
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U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

In the Matter of	)	
Aera Energy, LLC,	)	**CPF No. 5-2004-5016**
Respondent.	)	

FINAL ORDER

On February 26, 2004, pursuant to 49 U.S.C. § 60117, representatives of the Research and Special Programs Administration's Office of Pipeline Safety (OPS) and the California State Fire Marshal conducted an on-site pipeline safety inspection of the integrity management program of Aera Energy, LLC (Aera or Respondent) in Bakersfield, California.[1] At the time of the inspection, Aera operated an offshore crude oil pipeline, several onshore delivery lines, a breakout tank, and a highly volatile liquid pipeline. As a result of the inspection, the Director, Western Region, OPS (Director) issued to Respondent, by letter dated April 28, 2004, a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed violations of the pipeline integrity management regulations, 49 C.F.R. Part 195, proposed assessing a civil penalty of $40,000, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice further proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its integrity management program procedures. Finally, in accordance with 49 C.F.R. § 190.205, the Notice proposed finding that Respondent had committed another probable violation of 49 C.F.R. Part 195 and warned Respondent to take appropriate corrective action to address that item or be subject to future enforcement action.

Aera responded to the Notice by letters dated November 10 and November 11, 2004 (collectively, Response). Respondent indicated that although the Notice was dated April 28, 2004 company did not receive the document until October 12, 2004. In its Response, Aera contested the allegations and requested a hearing. The company renewed its request for a hearing by letter dated April 5, 2005 and submitted a Pre-hearing Brief dated June 10, 2005. In accordance with 49 C.F.R. § 190.211, a hearing was held on June 15, 2005 in Ontario,

[1] OPS is now part of the Pipeline and Hazardous Materials Safety Administration (PHMSA). The Norman Y. Mineta Research and Special Programs Improvement Act, Pub. L. No. 108-426, 118 Stat. 2423 (2004), created PHMSA and transferred the authority of the Research and Special Programs Administration exercised under chapter 601 of title 49, United States Code, to the Administrator of PHMSA. *See also* 70 Fed. Reg. 8299, 8301-8302 (2005) (delegating authority to the Administrator of PHMSA).

California, with an attorney from the Office of Chief Counsel, PHMSA, presiding. After the hearing, Respondent submitted additional information for the record on July 14, 2005. Due to a procedural irregularity after the hearing, Aera was offered an opportunity for a second hearing and a chance to submit additional information for the record. At Aera's request, a second hearing was held on February 28, 2007, with a different attorney from the Office of Chief Counsel, PHMSA, presiding. Aera then provided a Post-hearing Brief by letter dated April 2, 2007.

FINDINGS OF VIOLATION

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

Item 1(b) in the Notice alleged that Respondent violated 49 C.F.R. § 195.452(f)(1), which states:

> **§ 195.452 Pipeline integrity management in high consequence areas.**
>
> (a) *Which pipelines are covered by this section?* This section applies to each hazardous liquid pipeline and carbon dioxide pipeline that could affect a high consequence area . . . . Covered pipelines are categorized as follows . . .
>
> (3) Category 3 includes pipelines constructed or converted after May 29, 2001.
>
> (b) *What program and practices must operators use to manage pipeline integrity?* Each operator of a pipeline covered by this section must:
>
> (1) Develop a written integrity management program that addresses the risks on each segment of pipeline . . .
>
> (2) Include in the program an identification of each pipeline or pipeline segment in the first column of the following table not later than the date in the second column:

Pipeline . . .	Date . . .
Category 3	Date the pipeline begins operation

> (f) *What are the elements of an integrity management program?* An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program:
>
> (1) A process for identifying which pipeline segments could affect a high consequence area . . . .

The Notice alleged that Respondent failed to have and follow a process for determining that a pipeline segment could affect a high consequence area (HCA). Specifically, the Notice alleged Aera operated a Category 3 highly volatile liquid (HVL) pipeline that could affect an HCA, but the operator had not performed the required HCA segment identification pursuant to a process established under § 195.452(f)(1).

In its written submissions and at the rehearing, Respondent acknowledged it operated the HVL pipeline that could affect an HCA. Aera also explained the company used to operate five separate HVL pipelines, but after "evaluat[ing] the environmental and safety risks associated with its then-existing five HVL pipelines (as well as a proposed replacement line)," Aera decided to replace the five pipelines with a single new HVL pipeline.[2] According to Respondent, the company determined "as early as June 2001" that the new HVL pipeline was a "single segment that could affect all HCAs."[3] Respondent also maintained that "all the HCA elements (high population area, other populated area, unusually sensitive area, and commercially navigable water way) were covered in Aera's analysis."[4] Accordingly, Respondent reasoned, "[t]here is no basis for concluding that Aera did not consider all those elements in its segment identification."[5]

Respondent submitted various risk analyses and other documentation to support its position that it had identified the pipeline under its integrity management program. The evidence submitted by Respondent consisted of: a June 2001 risk assessment;[6] a subsequent risk analysis;[7] a series of environmental analyses;[8] records from a startup hydrotest;[9] and several studies that were performed after March 6, 2002.[10] Each of these analyses is addressed in turn.

The primary document Respondent relied upon was a document titled "Ventura Gas Plant 6 and LPG Pipeline Risk Assessment," dated June 2001.[11] The study evaluated the likelihood of a hazardous release from the HVL pipeline and the possible consequences of such a release. After evaluating the document, I find it lacked key elements necessary for compliance with § 195.452(f)(1). First, the document did not include a process for identifying HCAs or the criteria Respondent would use to determine whether pipelines could affect HCAs. The study also failed to identify any actual HCAs. Although one section of the study estimated the distance from the pipeline to several areas termed "nearest populations," there was no determination whether any of those areas were an HCA, or whether HCAs other than populated areas were near the pipeline.[12] Finally, the HVL pipeline was not identified as a segment covered by Respondent's integrity management program. All of these elements were necessary for Aera to make an informed and documented determination that the pipeline was covered by its integrity management program. Since these elements were missing from the June 2001 risk assessment, I find this evidence does not support Respondent's assertion that it complied with § 195.452(f)(1).

The second document Respondent cited was the "Pipeline Integrity Management Risk Assessment for Venture BP Mix Pipeline."[13] The date of this document is not entirely clear. While the title page of the document states the study was conducted on August 1, 2001, various

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[2] Post-hearing Brief (Brief) at 5.
[3] Id. at 7.
[4] Id. at 8-9.
[5] Id. at 9.
[6] Id. at 5 and Ex. II § E.
[7] Brief at 5 and Ex. II § B:21.
[8] Brief at 5 and Exhibit III §§ 4-3(13)-(15), 4-4(16)-(22), and Respondent's letter dated July 14, 2005 at 3-7.
[9] Brief at 5.
[10] Brief at 5-6.
[11] Brief Ex. II § E.
[12] Id. at 20.
[13] Brief Ex. II § B:21.

pages of the study are dated February 25, 2004 and June 24, 2004. Respondent did not offer an explanation for the discrepancy between the various dates of the study, but did claim the study demonstrates compliance with the deadline of March 6, 2002.

Notwithstanding the possibility the study was finalized *after* the deadline for compliance, I have reviewed the document. The purpose of the study was "to review the installation of one new HVL pipeline . . . to identify potential risks and to assure adequate safeguards are in place . . . ."[14] The bulk of the document was a series of worksheets with tables listing possible consequences of a failure, causes, safeguards, and recommendations. The only portion of the document I find could be relevant is a single-page appendix titled "Prioritized List of HCA Pipeline Segments," which listed a number of "hazard elements."[15] One of those elements was "Populated areas, unusually sensative [*sic*] environmental areas, Nat. Fish Hatcheries, Commercially navigable waters, areas where people congregate."[16] This group of area types, as a whole, was assigned a single hazard element and a "Risk Ranking" by Aera.[17]

While the appendix identified certain *categories* of areas, Aera failed to identify any actual areas in the vicinity of its pipeline. For example, the study did not identify any specific navigable waters or fish hatcheries. The study could not evaluate the extent to which the HVL pipeline could affect any HCAs because no specific HCAs were identified. Moreover, the study failed to set forth the criteria by which Respondent would determine whether the pipeline could affect an HCA. For these reasons, I find this evidence also does not support Respondent's assertion that it complied with § 195.452(f)(1).

With regard to the other documentation submitted by Aera, I do not find any of it supports Respondent's position. Included in the documentation are letters between Aera and an environmental agency of California regarding compliance with state regulations, documents pertaining to Aera's endangered species program, checklists and forms for permits and management of change, and a risk analysis dated October 2003.[18] I find such documentation is not relevant to the allegation that Respondent violated § 195.452(f)(1). Similarly, with regard to Respondent's startup hydrotest, such testing is not relevant to compliance with § 195.452(f)(1). Finally, any studies Respondent performed after March 6, 2002, by virtue of their date, do not demonstrate compliance.

It is evident from the documentation submitted by Respondent that the company did look at risks associated with its HVL pipeline. However, the evidence also shows that Respondent did not perform certain steps required under the integrity management regulations, including the requirement that it have and follow, no later than March 6, 2002, a process for determining that its HVL pipeline could affect an HCA. Accordingly, after considering all the evidence, I find Respondent violated 49 C.F.R. § 195.452(f)(1) as alleged in the Notice.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(b)(3), which states:

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[14] Id. (pages not numbered).
[15] Id.
[16] Id.
[17] Id.
[18] Brief Ex. III.

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . . .

(b) *What program and practices must operators use to manage pipeline integrity?* Each operator of a pipeline covered by this section must . . .

(1) Develop a written integrity management program that addresses the risks on each segment of pipeline in the first column of the following table not later than the date in the second column:

Pipeline	**Date**
Category 1	March 31, 2002.
Category 2	February 18, 2003.
Category 3	1 year after the date the pipeline begins operation.

(3) Include in the program a plan to carry out baseline assessments of line pipe as required by paragraph (c) of this section.

(c) *What must be in the baseline assessment plan?* (1) An operator must include each of the following elements in its written baseline assessment plan:

(i) The methods selected to assess the integrity of the line pipe . . .

(ii) A schedule for completing the integrity assessment;

(iii) An explanation of the assessment methods selected and evaluation of risk factors considered in establishing the assessment schedule . . . .

The Notice alleged that Respondent's integrity management program failed to include a baseline assessment plan by the required deadline in the regulation. Pursuant to § 195.452(b)(3), each operator of a pipeline that could affect an HCA must have an integrity management program that includes a plan to carry out baseline assessments of line pipe. Pursuant to § 195.452(b)(2), the baseline assessment plan must be developed for Category 2 pipelines by February 18, 2003 and for Category 3 pipelines within 1 year after the date the pipeline begins operation. In accordance with § 195.452(c), a baseline assessment plan must: identify the methods selected to assess pipe integrity (such as internal inspection tools or pressure test); explain the technical basis for the assessment method(s) selected; include a schedule for completing integrity assessments; and evaluate the risk factors considered in establishing the assessment schedule.

In its written submissions and at the rehearing, Respondent explained that it operates several different pipelines subject to the integrity management rule: a 17.3-mile pipeline from the outer Continental Shelf to the California shore (the San Pedro Bay pipeline); three 0.26-mile onshore delivery lines; and the above-referenced 1.583-mile HVL pipeline. The San Pedro Bay pipeline and the delivery lines are Category 2 pipelines and the HVL pipeline is a Category 3 pipeline.[19] Respondent also explained that since the vast majority of its pipeline mileage is offshore, including pipelines not regulated by PHMSA, the company initially prepared a baseline assessment plan under U.S. Department of Interior's Minerals Management Service (MMS)

[19] Pre-Hearing Brief 5-6

offshore pipeline regulations.[20] Respondent contended the assessment schedule it had under the MMS plan exceeded the requirements of OPS's integrity management rule. Respondent also argued the company performed baseline assessments well in advance of the OPS integrity management deadlines. For these reasons, Respondent contended that it had a baseline assessment plan that complied with § 195.452(b)(3).

With regard to the San Pedro Bay Pipeline, Respondent submitted a document titled "Elly to Shore Pipeline Smart Pig Plan," dated March 3, 2000, which "propos[ed] a three phased approach to accommodating the . . . 16-inch oil pipeline for smart pig internal inspections."[21] Also submitted were correspondence between Aera and MMS, which the company claimed "discuss[ed] various tools and selection criteria, and identif[ied] the location of the highest risk segment."[22] Aera also submitted a "reformatted" baseline assessment plan, dated May 18, 2005, for which Aera claimed the "basis for key threat and tool selection criteria were in existence at the time of the February 26, 2004 [OPS inspection]."[23]

After reviewing the documents submitted by Respondent for the San Pedro Bay Pipeline, I find the documents did not comply with § 195.452(b)(3) for several reasons. First, the documentation lacked an explanation of the technical basis for selecting smart pigging as the assessment method, as required under § 195.452(c). The evidence shows that Aera selected smart pigging because MMS had rescinded a waiver granted to the company and "set forth specific conditions that Aera must comply with," including the running of a smart pig.[24] Since the March 2000 document did not "explain the technical basis for the assessment method(s) selected" as required by § 195.452(c), the plan did not comply with § 195.452(b)(3).

Although Respondent was required to choose an assessment method and develop an assessment schedule based on consideration of the pipeline's risk factors, it appears Respondent only evaluated potential risks *caused by the chosen assessment method itself*. For example, Respondent identified "the pipeline's key threat to be the pipeline's ability to withstand the pressure required to clean it prior to running an in-line assessment tool."[25] There is no indication in the record that Respondent actually considered the risk factors of the pipeline and chose an appropriate assessment method based on those risks. In addition, despite Respondent's claim that it evaluated "various tools and selection criteria,"[26] I find no evidence in the record that the company considered other available integrity assessment methods. Furthermore, the schedule Respondent prepared for completing the pig run on the offshore pipeline did not prioritize between Respondent's other pipelines based on risk, as required by § 195.452(c).

With respect to the "reformatted" baseline assessment plan dated May 18, 2005, the document postdates the compliance deadline of February 18, 2003 by more than two years; therefore it does not demonstrate compliance. I reject Respondent's contention that the "basis" for this

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[20] MMS regulates certain production pipelines on the outer Continental Shelf that are not regulated by OPS under § 195.1

[21] Post-hearing Brief Ex. III § 2-1 at 1.

[22] Brief at 11.

[23] Id.

[24] Brief Ex. III § 2-1 (cover letter).

[25] Id.

[26] Brief at 11.

document was in existence prior to the deadline and so Respondent was in compliance. Section 195.452(b) requires that Respondent have a fully developed baseline assessment plan for the Category 2 San Pedro Bay Pipeline by February 18, 2003, not merely the "basis" for one.

Respondent argued it also had a baseline assessment plan for the three delivery lines. For one of the delivery lines, Respondent argued that a plan had been developed by a previous operator; but the record demonstrates Aera did not have a copy of that document prior to the deadline for compliance, and still did not have it at the time of the OPS inspection.[27] For the other delivery lines, Respondent submitted an "Integrity Evaluation,"[28] dated April 2005, and an "IMP for Hazardous Liquid Pipelines, Appendix B, Baseline & Subsequent Assessment Schedule, Category-2 Pipelines,"[29] dated May 2005. By virtue of the date of those documents, however, they do not demonstrate Respondent had a baseline assessment plan for the Category 2 pipelines by the regulatory deadline of February 18, 2003.

Finally, with respect to the Category 3 HVL pipeline, the deadline for Respondent to develop a baseline assessment plan was March 6, 2003, one year after the date the pipeline began operation. Respondent claimed it conducted a hazard analysis that "identified key threats such as third-party damage, earthquakes, and vandalism."[30] The actual document, which was titled "Pipe Hazard Analysis Checklist," dated September 25, 2001, only consisted of two pages of answers to yes and no questions prepared for the benefit of the state fire marshal.[31] The document included discussion of the manner in which Respondent would respond to certain types of issues on its pipeline. Respondent claimed its baseline assessment plan consisted of this document plus its June 2001 risk assessment. Neither of those documents met the specifications in § 195.452(c), however, because they failed to identify the selection of methods to assess pipe integrity and the technical basis for the methods selected. The documents also failed to include a schedule for completing integrity assessments and failed to evaluate the risk factors considered in establishing an assessment schedule.

In its written submissions and at the rehearing, Respondent claimed that it *performed* baseline assessments prior to the deadline in the integrity management regulations. The performance of baseline assessments, however, does not necessarily demonstrate compliance with § 195.452(b)(3), which is alleged to have been violated, because that regulation requires Respondent develop a baseline assessment *plan* that evaluates and justifies the method(s) of assessment chosen to assess line pipe and prioritizes the scheduling of all of its pipelines for assessment based on specified criteria.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.452(b)(3) by failing to include in its integrity management program a plan to carry out baseline assessments of line pipe as further specified in § 195.452(c).

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

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[27] Brief at 12.
[28] Brief Ex. II § D.
[29] Brief Ex. II § G.
[30] Brief at 11.
[31] Brief Ex. II § B:20.

WITHDRAWAL OF ALLEGATION

Item 4(a): The Notice alleged that Respondent violated 49 C.F.R. § 195.452(e)(1), which states:

> **§ 195.452 Pipeline integrity management in high consequence areas.**
>
> (a) . . . .
>
> (e) *What are the risk factors for establishing an assessment schedule (for both the baseline and continual integrity assessments)?* (1) An operator must establish an integrity assessment schedule that prioritizes pipeline segments for assessment (see paragraphs (d)(1) and (j)(3) of this section). An operator must base the assessment schedule on all risk factors that reflect the risk conditions on the pipeline segment. The factors an operator must consider include, but are not limited to:
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> (i) Results of the previous integrity assessment, defect type and size that the assessment method can detect, and defect growth rate;
>
> (ii) Pipe size, material, manufacturing information, coating type and condition, and seam type;
>
> (iii) Leak history, repair history and cathodic protection history;
>
> (iv) Product transported;
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> (v) Operating stress level;
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> (vi) Existing or projected activities in the area;
>
> (vii) Local environmental factors that could affect the pipeline (e.g., corrosivity of soil, subsidence, climatic);
>
> (viii) geo-technical hazards; and
>
> (ix) Physical support of the segment such as by a cable suspension bridge.

The Notice alleged Respondent failed to perform a risk analysis for the HVL pipeline, including an air dispersion analysis. The Notice further alleged the analysis must be performed for Respondent to properly rank its pipeline segments by highest to lowest risk as required by § 195.452(e)(1).

In its written responses and at the rehearing, Respondent asserted that it did perform a risk assessment, including an air dispersion analysis, for the HVL pipeline in June 2001. In its Post-hearing Brief, Respondent stated that it also performed an analysis in August 2001.

The two studies Respondent cited are the "Ventura Gas Plant 6 and LPG Pipeline Risk Assessment"[32] and the "Pipeline Integrity Management Risk Assessment for Ventura BP Mix Pipeline."[33] The former was dated June 2001 and appeared to be just as the title indicated—a risk assessment for the HVL pipeline. That study assessed pipeline risks by calculating the estimated "hazard distances" for different types of failure events.[34] The calculation was based on equipment inventories, flow rates, detection, likely isolation of equipment, and representative

[32] Brief Ex. II § E.
[33] Brief Ex. II § B:21.
[34] Brief Ex. II § E at 16.

weather conditions. In particular, the study documented Aera's use of a model to calculate flammable vapor dispersion.

The second study also appeared to evaluate various sources of harm, possible consequences, safeguards, and recommendations to reduce risk. The timeliness of this document, however, is questionable due to the fact that relevant pages in the document are dated 2004.

With respect to the allegation of violation in Item 4(a), based on a review of Respondent's June 2001 risk assessment, I find Aera performed a risk analysis for the HVL pipeline that included an air dispersion or "flammable vapor dispersion" analysis. Since that was the sole factual allegation upon which Item 4(a) rested, I order this Item be withdrawn.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122 and 49 C.F.R. §§ 190.221–190.227, Respondent is subject to a civil penalty not to exceed $100,000 per violation for each day of the violation up to a maximum of $1,000,000 for any related series of violations. The Notice proposed a civil penalty of $10,000 for the violation of § 195.452(f)(1) (Item 1(b)) and $25,000 for the violation of § 195.452(b)(3) (Item 2).[35]

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I 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; the Respondent's ability to pay the penalty 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.

In its Post-hearing Brief, Aera argued the above-referenced criteria weigh against levying civil penalties in this case for several reasons. First, Respondent asserted that the company is a small operator; though Respondent did not offer any information to suggest that Aera is not able to pay the penalties. Respondent also did not claim the penalties would affect its ability to continue in business. I find the level of the proposed civil penalties appropriate for the size of Respondent's operation and see no reason to reduce them solely because of Respondent's size.

Second, Aera claimed it has "less experience with OPS matters"; but Respondent's level of experience is not an excuse for violating the applicable safety regulations.[36] PHMSA has provided operators with ample guidance information concerning the integrity management regulations through public meetings, an extensive integrity management website (*http://primis.phmsa.dot.gov/iim/index.htm*), answers to frequently asked questions (FAQs), and

[35] Respondent argued the proposed civil penalty for Item 2 had been "reset" to $20,000 in accordance with the Regional Director's post-hearing recommendation. Brief at 6. While I review the post-hearing recommendations of the regional director and presiding official pursuant to § 190.213, I am not bound by the terms of those recommendations when issuing a final order.

[36] Brief at 14.

the very inspection protocols used by PHMSA in conducting compliance inspections.[37] Respondent's lack of experience is no reason to reduce the civil penalty.

Third, Respondent argued that it demonstrated a good faith attempt to achieve compliance and also a lack of culpability by: performing baseline assessments prior to the deadline; installing a new HVL pipeline; developing its integrity management program internally rather than hiring an outside consultant; performing risk assessments; and revising its BAP.

Many of these actions do not warrant a reduction to the civil penalties because they were not actions taken by Respondent in an attempt to achieve compliance with PHMSA's integrity management regulations. With regard the baseline assessments, the record demonstrates Respondent performed those assessments to comply with new pipeline startup requirements and another agency's regulatory requirements. There is also no evidence to suggest that the new HVL pipeline was installed in an attempt to comply with any PHMSA integrity management regulations. Respondent's *internal* development of an integrity management program does not necessarily demonstrate a good faith effort any more than it would if Respondent had hired an outside consultant. Respondent's risk assessments do not demonstrate good faith efforts to achieve compliance with the cited regulations--§§ 195.452(f)(1) and 195.452(b)(3)—because those regulations require conduct other than the mere performance of risk assessments. Respondent's baseline assessment plan revisions were performed *after* PHMSA's inspection of Respondent's integrity management program; and post-inspection remedial actions do not demonstrate good faith efforts to achieve compliance when the violations had occurred. Furthermore, I find unpersuasive Respondent's claim that these actions demonstrate a lack of culpability, because Aera is responsible for compliance with the pipeline safety regulations and is accountable for the company's actions that do not comply with those regulations.

Fourth, Respondent maintained that it did not attain any economic benefit from the violations, but instead experienced "significant additional costs."[38] Further details about the nature of those additional costs were missing from Respondent's Brief. Notwithstanding Respondent's assertion, I did not consider economic benefit in the assessment of the civil penalties in this case.

Fifth, Respondent claimed the nature, circumstances and gravity of the violations were not significant and there was no adverse impact on the environment. The basis for Respondent's position was that Aera performed baseline assessments on all of its covered segments and has taken remedial measures as a result of those assessments.

With regard to Item 1(b), I found Respondent violated § 195.452(f)(1) by failing to have and follow a process to identify an HVL pipeline as being covered by the company's integrity management program. Failure to identify when a pipeline is subject to the integrity management program rules presents a risk to the safety of the public and environment in the most critical areas, because the operator may not adhere to the more stringent standards imposed by the integrity management regulations for that pipeline. In this case, however, Respondent was clearly aware through various studies that its HVL pipeline was located in a sensitive area and

[37] These guidance materials do not constitute rules themselves but provide informal information to the regulated community about how to implement their integrity management programs in accordance with the applicable requirements of the pipeline safety regulations.
[38] Brief at 14.

the company took certain measures to reduce risk by replacing several older pipelines with one new pipeline, routing the new pipeline to reduce risks where possible, and performing integrity assessments and remedial measures. For this reason, I find the nature, circumstances and gravity of the violation in Item 1(b) warrant a reduction in the civil penalty.

With regard to Item 2, I found that Respondent did not have a baseline assessment plan to guide the performance of assessments in violation of § 195.452(b)(3). I recognize, however, that Aera did perform certain integrity assessments and took remedial measures that assured a greater level of safety than if the company had completely neglected to do so. Accordingly, I find the nature, circumstances and gravity of the violation in Item 2 also warrant a reduction in the civil penalty.

Finally, Aera contended the penalties proposed in this case are higher than penalties imposed in other cases. Respondent cited several cases in which PHMSA issued Notices of Amendment (NOAs) rather than civil penalties for deficiencies in an operator's integrity management program.[39] Pursuant to 49 C.F.R. Part 190, PHMSA has a broad range of enforcement tools available for addressing deficiencies and matters of noncompliance. NOAs are generally issued under § 190.237 when the agency considers an operator's plans or procedures "inadequate." When an NOA is issued, no allegations of violation are involved. By comparison, where the agency finds an actual violation of a regulatory requirement, PHMSA generally issues a Notice of Probable Violation. I find Respondent's argument unpersuasive that the proposed penalty should be reduced or eliminated merely because NOAs were more appropriate in other cases (and for certain items in this case). I have also reviewed the NOA cases cited by Respondent and find none of them present the exact set of circumstances involved in this case.

For the reasons discussed above, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of $5,000 for Item 1 and a reduced civil penalty of $10,000 for Item 2.

Payment of the $15,000 total civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the $15,000 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 United States District Court.

[39] Brief at 15-16.

The Notice also proposed a civil penalty of $5,000 for the violation of § 195.452(e)(1) (Item 4(a)). Since Item 4(a) is withdrawn, the corresponding proposed civil penalty will not be assessed.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1(b) and 2 in the Notice for violations of §§ 195.452(f)(1) and (b)(3), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids by pipeline or who owns or operates a hazardous liquid pipeline facility is required to comply with the applicable safety standards established under chapter 601. Respondent has submitted documentation concerning its efforts to achieve compliance, which the Director has reviewed. Based on the results of that review, it appears Aera has satisfied the Proposed Compliance Order portion of the Notice. Accordingly, since compliance has been achieved with respect to the violations of §§ 195.452(f)(1) and (b)(3), the compliance terms are not included in this Order.

The Notice also proposed a compliance order for Item 4(a) in the Notice for violation of § 195.452(e)(1). Since Item 4(a) is withdrawn, the terms of the proposed compliance order associated with that allegation are not included in this order.

AMENDMENT OF PROCEDURES

Items 1(a) and 3 in the Notice alleged inadequacies in Respondent's integrity management program procedures and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. §§ 195.452(f)(1) and (f)(8), respectively. In response to the Notice, Respondent submitted copies of its amended procedures, which the Director has reviewed. Accordingly, based on the results of that review, I find Respondent's original procedures as described in the Notice were inadequate to ensure safe operation of its pipeline system, but that Respondent has corrected the identified inadequacies. No need exists to issue an order directing amendment.

WARNING ITEM

With respect to **Item 4(b)**, the Notice alleged a probable violation of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

> 49 C.F.R. § 195.452(e) (Notice Item 4(b)) – Respondent's alleged failure to establish an integrity assessment schedule that prioritizes pipeline segments for assessment based on, among other things, evaluation of the likelihood of a pipeline release occurring and how a release could affect the HCA.

Respondent did not object to this allegation. Accordingly, pursuant to 49 C.F.R. § 190.205, I find a probable violation of 49 C.F.R. § 195.452(e) (Notice Item 4(b)) has occurred and

Respondent is hereby advised to correct such condition. If PHMSA finds a violation for this item in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. However, if Respondent submits payment for 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 shall be effective upon receipt.

_____ _____

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued