May 3, 2019

Mr. Robert Carone
Managing Member
Pacific Operators Offshore, LLC
1145 Eugenia Place, Suite 200
Carpinteria, CA 93013

Re: CPF No. 5-2017-7004

Dear Mr. Carone:

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 a civil penalty of $15,500, and specifies actions that need to be taken by Pacific Operators Offshore, LLC, 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, Western 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: Director, Western Region, Office of Pipeline Safety, PHMSA
Mr. Bruce E. Johnston, Vice President, Operations Superintendent, Pacific Operators Offshore, LLC
Mr. Clement Alberts, Environmental Coordinator, Pacific Operators Offshore, LLC

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

In the Matter of	)	
Pacific Operators Offshore, LLC,	)	**CPF No. 5-2017-7004**
Respondent.	)	

FINAL ORDER

From February 14 through April 14, 2017, 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 Pacific Operators Offshore, LLC (PACOPS or Respondent), in La Conchita, California. PACOPS operates two drilling platforms on the Outer Continental Shelf (OCS), an onshore oil and gas processing facility in Ventura County, California, and 6.44 miles of pipelines connecting the platforms with the processing facility.[1]

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated December 19, 2017, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that PACOPS had violated 49 C.F.R. §§ 195.9, 195.440(a), and 195.452(b)(5) and proposed assessing a civil penalty of $15,500 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning item required no further action, but warned the operator to correct the probable violation or face possible future enforcement action.

After requesting and receiving an extension of time to respond, PACOPS responded to the Notice by letter dated April 20, 2018 (Response). The company contested the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be eliminated. Respondent did not request a hearing and therefore has waived its right to one.

[1] Pacific Operators Offshore, LLC, 2018 Annual Report for Calendar Year 2017, Hazardous Liquid Pipeline Systems, Form PHMSA F 7000-1.1 (on file with PHMSA).

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. § 195.9, which states:

> **§ 195.9 Outer continental shelf pipelines.**
>
> Operators of transportation pipelines on the Outer Continental Shelf must identify on all their respective pipelines the specific points at which operating responsibility transfers to a producing operator. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have until September 15, 1998 to identify the transfer points. If it is not practicable to durably mark a transfer point and the transfer point is located above water, the operator must depict the transfer point on a schematic maintained near the transfer point. If a transfer point is located subsea, the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to PHMSA upon request. For those cases in which adjoining operators have not agreed on a transfer point by September 15, 1998 the Regional Director and the MMS Regional Supervisor will make a joint determination of the transfer point.

The Notice alleged that Respondent violated 49 C.F.R. § 195.9 by failing to identify the specific points at which operating responsibility for its transportation pipelines on the OCS transfers to a producing operator. Specifically, the Notice alleged that PACOPS did not have any visible marking on the pipe of Platform Hogan that identified the transfer point. Additionally, PACOPS allegedly did not maintain any schematics near the transfer point that depicted the transfer point.

In its Response, PACOPS did not dispute that it had no visible markings or schematics of the transfer point, but argued that no reasonable justification exists for a violation since the company is both the operator of the transportation pipeline and the operator of the producing operator. Respondent argued that it is not possible to delineate an "arbitrary" transfer point under 49 C.F.R. § 195.9 because "production and transportation are contiguous and under the responsibility of a single common operating entity." Additionally, Respondent argued that responsibility for determining the transfer point falls jointly upon PHMSA and the Department of the Interior's Bureau of Safety and Environmental Enforcement (BSEE), one of the successor agencies of the Minerals Management Service (MMS),[2] and not upon the operator. Respondent provided evidence of a March 2018 email exchange between a PACOPS employee and an employee of BSEE, in which they discussed where on this facility PHMSA and BSEE jurisdiction should be transferred and concluded that no designation or transfer point was needed.

Having considered PACOPS' Response and the arguments presented, I find them unpersuasive. First, the purpose of the pipeline safety requirement to designate a transfer point under § 195.9 is

[2] Bureau of Safety and Environmental Enforcement, website, available at https://www.bsee.gov/who-we-are/history/reorganization.

to indicate clearly, to *both regulators and operator personnel,* the precise point at which a pipeline must meet the safety regulations in 49 C.F.R. Part 195. This transfer point marks the point at which safety oversight transfers from BSEE to OPS. The depiction of this transfer point, either via a durable marking on the pipeline facility or in a schematic maintained near the transfer point, provides a practical and useful means of designating where OPS' oversight begins at the facility and ensuring that transportation pipelines comply with PHMSA regulations.[3] While 49 C.F.R. § 195.9 requires an operator to determine the point at which a production line becomes a transportation line, this determination is not arbitrary. In most cases, the transfer point will occur at a specific valve or flange where these adjoining operations interconnect.

Second, I find the opinions in the March 2018 email exchange provide no additional support for Respondent's argument. Section 195.9 controls when and where an operator must identify its transportation pipelines. A unilateral statement from a BSEE employee, made two decades after the transfer-point-designation deadline contained in § 195.9 expired, does not serve to absolve PACOPS' responsibility for designating a transfer point on its pipeline.

Third, a finding of violation in this case is consistent with past agency practice. PHMSA has previously enforced 49 C.F.R. § 195.9 against operators that operate interconnected production and transportation pipelines as in the instant case.[4] Such published enforcement actions provide the regulated community with fair notice that PHMSA expects operators of interconnected systems to demarcate a jurisdictional dividing line between the two portions of their systems.

Finally, Respondent's assertion that responsibility for marking the transfer point falls jointly upon PHMSA and BSEE is also unpersuasive. The joint agency-determination process noted in § 195.9 is applicable only where two adjoining operators cannot agree on a transfer point. In the instant case, PACOPS cannot avail itself of this provision since there is no disagreement with an adjoining operator on the location of a transfer point.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.9 by failing to identify the specific points at which operating responsibility for its transportation pipelines on the OCS transfers to a producing operator.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a), which states:

> **§ 195.440 Public awareness.**
> (a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* §195.3).

[3] Pipeline Safety: Regulations Implementing Memorandum of Understanding With the Department of the Interior 62 Fed. Reg. 61692, 61693 (Nov. 19, 1997).

[4] E.g., *In the Matter of Chevron USA, Inc.*, CPF No. 4-2011-9001, 2012 WL 3144497 (DOT June 14, 2012), *available at* https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_420119001.html?nocache=6360#_TP_1_tab_2.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a) by failing to implement its written continuing education program pursuant to API RP 1162. Specifically, the Notice alleged that PACOPS failed to comply with Section 7 of API RP 1162 and Section 12 of the company's Public Awareness Plan (PAP), which requires PACOPS to "collect and retain documentation of the public awareness program." Section 12.2 of the PAP lists examples of the documentation that must be retained, and Section 12.3 requires retention of said documentation for a minimum of five years. PACOPS did not provide any records of its PAP or otherwise demonstrate compliance with API RP 1162 and 49 C.F.R. § 195.440(a).

In its Response, PACOPS did not dispute that it failed to provide PHMSA records demonstrating compliance with § 195.440(a), but argued that no stakeholder audience exists with respect to the company's PAP, noting that the facility in question is surrounded by empty land on three sides and a freeway and ocean on the fourth. This argument is not persuasive; stakeholder audiences are not limited to potentially-affected members of the public. Under Section 3 of API RP 1162, stakeholder audiences include the affected public, emergency officials, local public officials, and excavators. Although the instant facility may be sited in a remote location, Respondent's PAP must, at the very least, inform emergency officials and local public officials whose jurisdictions encompass the facility of how to identify a potential hazard, to protect themselves, to notify emergency response personnel, and to notify the pipeline operator in the event of a pipeline emergency. This requirement is especially important given the facility's close proximity to the ocean.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.440(a) by failing to implement its written continuing education program pursuant to API RP 1162.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(b)(5), which states:

> **§ 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 . . . .
> (5) Implement and follow the program.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(b)(5) by failing to implement and follow its own written Integrity Management Program (IMP). Specifically, the Notice alleged that while PACOPS conservatively considered the onshore portion of its pipeline to be within a High Consequence Area (HCA), the company did not provide records demonstrating the methods, assumptions, or calculations used in determining that this facility was within an HCA, as required by Section 1.2 of PACOPS' IMP.

In its Response, PACOPS noted that it used a "reasonable common-sense assessment" to determine that the facility was located within an HCA, based on its proximity to the ocean. Respondent's choice to "conservatively define" the onshore portion of its pipeline as being

within an HCA is documented in the company's 2016 assessment records. In the instant case, I agree with Respondent that detailed analyses and calculations are not necessary to support the inclusion of PACOPS' pipe within an HCA. The onshore pipeline facility is located within 220 yards of the mean high-tide line, a fact sufficient to support Respondent's documented decision to "conservatively define" the facility as being within an HCA.

Accordingly, after considering all of the evidence, I find that Respondent did not commit a violation of 49 C.F.R. § 195.452(b)(5). Based upon the foregoing, I hereby order that Item 3 be withdrawn.

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.[5] 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; 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.

Item 2: The Notice proposed a civil penalty of $15,500 for Respondent's violation of 49 C.F.R. § 195.440(a), for failing to implement its written continuing education program pursuant to API RP 1162. Respondent's arguments relating to the allegations of violation, as outlined above, are without merit. Respondent did not otherwise submit information that warrants reducing the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **$15,500** for violation of 49 C.F.R. § 195.440(a).

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, 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 $15,500 civil penalty will result in accrual of interest at the current annual rate

[5] 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).

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 1, 2, and 3 in the Notice for violations of 49 C.F.R. §§ 195.9, 195.440(a), and 195.452(b)(5), 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.

Respondent argued that the proposed compliance terms should be withdrawn, along with the violations. With regard to Items 1 and 2, as discussed above, Respondent's arguments as to the allegation of violation are not persuasive. Accordingly, I find no reason to modify the compliance terms with respect to Items 1 and 2. With regard to Item 3, I agree with Respondent's arguments, and have ordered that Item 3 be withdrawn. Accordingly, I also withdraw the compliance terms with respect to Item 3.

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

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 § 195.9 (**Item 1**), Respondent must identify on all its Outer Continental Shelf pipelines the specific points at which operating responsibility transfers to a producing operator by durable marking. If it is not practicable to durably mark a transfer point and the transfer point is located above water, the operator must depict the transfer point on a schematic maintained near the transfer point. Pictures or any other documentation to show compliance with 49 C.F.R. § 195.9 must be submitted to PHMSA within 30 days after receipt of this Final Order.

2. With respect to the violation of § 195.440(a) (**Item 2**), Respondent must submit records such as stakeholder lists, brochures or pamphlets indicating message, documentation of sent messages, maps, procedures, plans, evaluation results, follow-up actions, and other relevant documentation that supports compliance with 49 C.F.R. § 195.440(a) to PHMSA within 180 days after receipt of this 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.

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 ITEM

With respect to Item 4, 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. § 195.583(a) **(Item 4) ─** Respondent's alleged failure to inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion.

PACOPS requested withdrawal of Item 4, alleging that the company's third-party contractors performed atmospheric corrosion checks during other physical inspections of the facility. Under § 190.205, PHMSA does not adjudicate warning items to determine whether or not a probable violation occurred. If OPS finds a violation of this provision 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, no later than 20 days after receipt of service of this 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.

May 3, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued