



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

JAN - 3 2006

Mr. Leonard Mallett
Vice President of Operations
Texas Eastern Petroleum products Company
2929 Allen Parkway
Houston, TX 77252-2521

Re: CPF No. 3-2004-5027

Dear Mr. Mallett:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$3,600. The Order also finds that you have addressed the inadequacies in your procedures that were cited in the Notice of Amendment. When the civil penalty is paid, this enforcement action will be closed. The penalty payment terms are set forth in the Final Order. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Mr. Ivan Huntoon
Director, Central Region, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)	
)	
Texas Eastern Petroleum)	CPF No. 3-2004-5027
Products Company,)	
)	
Respondent.)	
)	

FINAL ORDER

On April 12-30, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Missouri, Illinois, Indiana, and Ohio. As a result of the inspection, the Director, Central Region, PHMSA, issued to Respondent, by letter dated August 27, 2004, a Notice of Probable Violation, Proposed Civil Penalty, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$3,600 for the alleged violations. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its procedures for operations, maintenance and emergencies.

Respondent responded to the Notice by letter dated December 21, 2004 (Response). Respondent did not contest the allegations of violation, but provided information concerning the corrective actions it has taken with respect to the inadequacies in its procedures that were identified in Item 1 of the Notice. Respondent did not request a hearing, and therefore has waived its right to one.

FINDING OF VIOLATION

In its Response, Respondent did not contest the alleged violations in the Notice. Accordingly, I find that Respondent violated the following section of 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. § 195.420(b) (Notice Item 2) – failing to inspect and test the nine specified mainline valves on the P-35 line during the April 2003 maintenance.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, 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.

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: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

With respect to Item 2, the Notice proposed a civil penalty of \$3,600 for failing to inspect and test the nine specified mainline valves on the P-35 line during the April 2003 maintenance. Pipeline operators are required to inspect and test each mainline valve at least twice each calendar year at an interval not to exceed 7 1/2 months. Timely inspection and testing of mainline valves is an important part of pipeline safety because their proper operation can be critical in responding to failure incidents and mitigating releases that could threaten the public, property, or the environment. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$3,600 for violating 49 C.F.R. § 195.420(b).

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this 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 (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$3,600 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

AMENDMENT OF PROCEDURES

The Notice alleged inadequacies in Respondent's procedures for operations, maintenance and emergencies and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. Part 195. In its response, Respondent submitted copies of its amended procedures, which the Director, Central Region, PHMSA reviewed. Based on the results of this review, I find that 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. Accordingly, it is unnecessary to issue an order directing amendment.

WARNING ITEM

The Notice did not propose a civil penalty or compliance order for Item 3 in the Notice. Therefore, this is considered to be a warning item. The warning was for Respondent's failure to inspect and test three thermal relief valves at the Lick Creek Station in accordance with § 195.428(a). Respondent is warned that if this item is not addressed, enforcement action will be taken if a subsequent inspection reveals a violation.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, 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 a 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 are effective on receipt.

for


Stacey Gerard
Associate Administrator
for Pipeline Safety

JAN - 3 2006

Date Issued