



Region 7

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Magellan Pipeline Company, L.P., Valley Center, KS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In accordance with Section 311(b)(6)(C) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. Part 22 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), the U.S. Environmental Protection Agency ("EPA") is providing notice of a proposed Administrative Penalty Assessment against Magellan Pipeline Company, L.P. ("Respondent") for two violations of the federal Clean Water Act ("CWA").

First, Respondent failed to properly conduct a Facility Response Plan ("FRP") drill at its oil products storage and distribution facility located at 1120 S. Meridian, Valley Center, Kansas. Respondent's facility is approximately ½ mile from the Little Arkansas River. Under the authority of Section 311(j)(5) of the Act, Subparts A and D of 40 C.F.R. Part 112 ("the Facility Response Plan" or "FRP regulations") require FRP-regulated facilities to prepare a Facility Response Plan as specified in 40 C.F.R. § 112.20(h), and to develop and implement a facility response training program and a drill/exercise program that satisfies the requirements of the regulations (40 C.F.R. § 112.21(a)). Pursuant to Section 311(j)(1)(C) of the CWA, Executive Order 12777, and 40 C.F.R. Sec. 112.1, Respondent, as the owner of an FRP-regulated facility, is subject to the FRP regulations. Specifically, 40 C.F.R. 112.20(h)(8) requires a facility to have and maintain a FRP and to maintain a checklist and record of inspections for tanks, secondary containment, and response equipment. 40 C.F.R. 112.21 requires a facility to be able effectively deploy a containment boom within one hour of the required response time.

Second, on March 14, 2010, Respondent released an estimated 5,000 gallons #2 diesel oil from its pipeline terminal near 2451 Highway 71, Milford, Iowa. This release flowed into a nearby unnamed creek that is a tributary to the Little Sioux River. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and the regulations set forth in 40 C.F.R. Part 110, prohibit the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare of the United States.

Under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), EPA is authorized to issue orders assessing civil penalties for various violations of the CWA. EPA provides notice of the proposed assessment of a Class II penalty of \$46,200 pursuant to 33 U.S.C. § 1321(b)(6)(C)(i). Class II proceedings are conducted under EPA's Consolidated Rules, 40 C.F.R. Part 22. This action is being simultaneously commenced and concluded in a Consent Agreement and Final Order (CAFO) pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits

(Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

The FRP violations cited in the Consent Agreement stem from an EPA inspection of the Respondent's facility on May 7, 2009. The purpose of EPA's inspection was to require Magellan to perform a field deployment drill of its FRP. The May 2009 field deployment exercise initiated by EPA consisted of a response designed to contain a simulated small product spill (2,100 gallons) that had exited from the storm sewer culvert into the Little Arkansas River until tanker trucks could arrive. EPA's inspector observed that the Respondent's facility personnel were unable to implement its FRP plan and failed to effectively deploy a containment boom at the designated response location within the one hour response time, as required by 40 C.F.R. 112.21. The facility was also unable to provide required documentation of periodic inspections of response equipment, as required by 40 C.F.R. 112.20(h)(8). The March 14, 2010, Milford Iowa spill was self reported by Respondent, and the subsequent cleanup of the release was overseen by the Iowa Department of Natural Resources.

EPA will receive written comments on the proposed Administrative Penalty Assessment for a period of thirty (30) days from the date of publication of this notice. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. Persons wishing to receive a copy of EPA's Consolidated Rules, review the CAFO, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, 913-551-7567. Please reference Docket No. CWA-07-2010-0076. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to forty (40) days from the date of this notice.

5-14-2010
Date

/s/ Becky Weber
Becky Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7