



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

JUL - 8 2003

Mr. Jefferson C. Burke
Vice President and General Manager
Kentucky West Virginia Gas Company
748 North Lake Drive
Prestonburg, Kentucky 41153

RE: CPF No. 2-2001-1018

Dear Mr. Burke:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$15,000. The Final Order also requires certain corrective action and revision of certain operating and maintenance procedures. The penalty payment terms are set forth in the Final Order. At such time that the terms of the compliance order are completed, as determined by the Director, Southern Region, and the civil penalty is paid, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

In the Matter of)	
Kentucky West Virginia Gas Company)	CPF No. 2-2001-1018
Respondent)	
)	

FINAL ORDER

Between October 29-31, 2001, pursuant to 49 U.S.C. § 60117, a representative of the Southern Region, Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Respondent's pipeline facilities and records in Prestonsburg, Kentucky. As a result of the inspection, the Director, Southern Region, OPS, issued to Respondent, by letter dated December 6, 2001, 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 Respondent committed violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$20,000 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

In a letter dated December 28, 2001, Respondent submitted a Response to the Notice (Response). Respondent contested the allegations of violation and provided information concerning the corrective actions it has taken. Respondent did not request a hearing and therefore, has waived its right to one.

FINDINGS OF VIOLATION

Item 1 of the Notice alleges that Respondent violated 49 C.F.R. §192.179, as a number of valves were unprotected from tampering and damage at the Prestonsburg facility.

In response to Item 1, Respondent argued that the cited valves are on non-jurisdictional gathering lines and that pipeline No. 55F has never been used for transporting gas. Respondent submitted documents and maps of production wells and crossover lines relative to its Tomahawk and Maytown Compressor Stations in Kentucky. In furtherance, Respondent advised that all transmission valves have been inspected and are in compliance with §192.179 as of December 28, 2001.

Based on Respondent's maps and representation that pipeline 55F has never been used in its operations and that the cited valves on pipeline 18-1 are located on suction line 18-B, we consider these valves to be on gathering lines and not subject to regulations found in 49 C.F.R. Part 192 regulation at this time. Rural gathering lines are subject to Chap 601 of Title 49 U.S.C. but are not subject to the Code of Federal Regulations (C.F.R.). Therefore, a valve located on such a line would not be subject to citation for violation. However, the introduction of discharge pressure into the line at any time will make these lines subject to regulation under Part 192. Accordingly, this allegation of violation is withdrawn.

Item 2 of the Notice alleges that Respondent violated 49 C.F.R. §192.225, as the Respondent's welding procedures are inadequate since they simply restate API 1104. In response to Item 2, Respondent submitted weld test guidelines given to qualified welders and Equitable Resources' Standard No. 4.01 "Welding Procedures, Welder Qualification Requirements, and Testing of Welds." Respondent argued that it is a subsidiary to Equitable Resources, Inc., and uses corporate operating standards.

Operators must have operating and maintenance procedures that do more than repeat the Code of Federal Regulations. Procedures should give employees adequate instructions to accomplish their tasks without jeopardizing their safety or that of the pipeline system. Not only is the welding documentation submitted by Respondent in conflict with its parent corporation, Equitable Resources, Inc., the welding procedures are inadequate in a number of areas. For instance, *The Electrical Characteristics are listed as: D.C. negative or positive polarity as required by wall thickness.* Both electrical characteristics and wall thickness are essential variables and must be clearly stated in detail. Respondent's welding procedures failed to adequately describe in sufficient detail the method and procedures necessary to meet the regulatory requirements. Accordingly, I find that Respondent violated 49 C.F.R. §192.225(b).

Item 3 of the Notice alleges that Respondent violated 49 C.F.R. §192.736, as the gas detectors, which have an estimated life of two years, were not calibrated for approximately five (5) years, from 1996 to September 2001.

In response to Item 3, Respondent explained that it was unable to locate the estimated life of the gas detectors in its O&M Manual. Respondent admits being unable to provide documentation that it tested the detectors periodically between 1996 and September 2001.

Inspection and testing of equipment at the required intervals are essential for an operator to know whether the equipment is functioning properly and to protect against risk of harm to its personnel and the public. Failure to maintain records and documents associated with performance testing and maintenance creates an uncertainty about the reliability of the detectors and any possible safety-related conditions. Unreliable or malfunctioning gas detectors could lead to a build up of gas and result in an explosion. Respondent has not shown any circumstance that would have prevented or justified it not properly maintaining its gas detectors. Accordingly, I find that Respondent violated 49 C.F.R. §192.736(c).

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 a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$100,000,000 for any related series of violations. The Notice proposed a total civil penalty of \$20,000.

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.

The Notice proposed a civil penalty of \$5,000 for violation of §192.179(b). Based on Respondent's maps and representation that pipeline 55F has never been used in its operations and that the cited valve on pipeline 18-1 is located on suction line 18-B, the determination has been made that the cited valves are on gathering lines and are not subject to the regulations found in 49 CFR Part 192 at this time. Accordingly the proposed violation is withdrawn. No penalty will be assessed.

As for Item 3, the Notice proposed a civil penalty of \$15,000 for violation of §192.736(c). Respondent acknowledges that it was unable to provide documentation that it tested its gas detectors between 1996 and September 2001. Without the required documentation it is difficult for an operator to ensure that it has inspected the gas detectors within the specified intervals. Documentation is essential not only to show that the performance testing was conducted, but to show that the detectors are functioning properly. Without this history, an operator increases the risk of harm to its personnel and the public. Accordingly, having reviewed the record and considered the assessment criteria, I assessed Respondent a civil penalty of \$15,000.

Payment of the 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.** After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel (DCC-1)**, Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001.

Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.

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 an United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is hereby ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to Respondent's operations.

- (1) With respect to Item 2 of the Notice, 49 C.F.R. § 192.225, Welding:

Within thirty (30) days of receipt of this Order, revise your Operating and Maintenance Plan to ensure compliance with §192.225 by developing written detailed welding procedures customized to your operations for each type of pipe used by Kentucky West Virginia that is listed in API 1104 18th edition and by specifying the methods and procedures to be used. Submit the revised procedures to the Director, Southern Region, Office of Pipeline Safety, 61 Forsyth Street, SW, Suite 16T15, Atlanta, GA 30303.

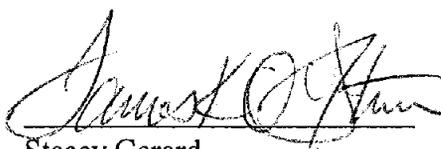
- (3) With respect to Item 3 of the Notice, 49 C.F.R. § 192.736, Gas detection:

Within thirty (30) days of receipt of this Order, perform tests on all gas detectors in each Kentucky West compressor station in Kentucky. Submit confirmation and documentation of the test results and calibrations to the Director, Southern Region, OPS.

- (4) The Director, Southern Region may grant an extension of time for compliance with any of the terms of this order for good cause. A request for an extension must be in writing.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

Under 49 C.F.R. § 190.215, Respondent has a right to 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. All other terms of the order, including any required corrective action, shall remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.



Stacey Gerard
Associate Administrator
for Pipeline Safety

JUL - 8 2003

Date Issued