



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

DEC - 3 2002

Mr. Charles Stevens
Vice President Transmission Operations
Arkansas Western Gas Company
1001 Sain Street
Fayetteville, AR 72703

Re: CPF No. 2-2002-3001

Dear Mr. Stevens:

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 \$6,000. 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.

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)

Arkansas Western Gas Company,)

Respondent.)

CPF No. 2-2002-3001

FINAL ORDER

On November 13 through 15, 2001, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records near Blytheville, Arkansas. As a result of the inspection, the Director, Southern Region, OPS, issued to Respondent, by letter dated February 14, 2002, a Notice of Probable Violation and Proposed Civil Penalty (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 193 and proposed assessing a civil penalty of \$6,000 for the alleged violations.

Respondent responded to the Notice by letter dated March 7, 2002 (Response). Respondent did not contest the allegations of violation but provided information concerning the corrective actions it has taken and requested mitigation of the proposed civil penalty. Respondent did not request a hearing; consequently, Respondent waived its right to one.

FINDINGS OF VIOLATION

Uncontested Item

Respondent did not contest the alleged violation of Item 3b in the Notice. Accordingly, I find that Respondent violated the following section of 49 C.F.R. Part 193, as more fully described in the Notice:

49 C.F.R. § 193.2619 -- failing to inspect and test control systems intended for fire protection at regular intervals not to exceed 6 months. Respondent exceeded the 6 month interval by 2 months and 23 days.

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 \$25,000 per violation for each day of the violation up to a maximum of \$500,000 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.

In response to Item 3b, Respondent requested reduction or elimination of the proposed \$6,000 civil penalty for violation of 49 C.F.R. § 193.2619(c)(2). Although Respondent agrees that the 6 month maximum time interval between fire protection control system tests had been exceeded, Respondent contends that the system was "found to be in good working order" when tested, has historically performed normally during testing, and no risk to persons or property actually existed, and thus, the \$6000 penalty should be eliminated or reduced.

The fact that no risk to person or property *actually* existed is not a basis for reduction of the penalty. It is altogether possible that the late testing would have shown that a risk did exist. The purpose of § 193.2619(c)(2) is to ensure that fire control systems will be fully functional and effective in the event that a fire does occur. Where testing is not performed at regular intervals, as was the case here, there is no way to verify that fire control systems will function adequately. While eventual testing revealed that the fire control systems were adequately functional, there was no way outside of actual testing of the system to determine whether the fire control system would work. Demonstrating the historical functionality of the fire control system assures neither Respondent nor OPS that the system is currently functional. Testing of the system occurred 2 months and 23 days past the expiration of the 6 month interval, in violation of § 193.2619(c)(2). Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$6,000.

Payment of the civil penalty must be made within 20 days of service. Payment can be made by sending a certified check or money order (containing CPF No. 2-2002-3001) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, 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. 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 \$6,000 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.

WARNING ITEMS

The Notice did not propose a civil penalty or corrective action for Items 1, 2, 3a, 4 and 5, but warned Respondent that it should take appropriate corrective action to correct the items. Respondent presented information in its response showing that it has addressed the cited items. Respondent is again warned that if OPS finds a violation in a subsequent inspection, enforcement action will be taken.

Item 1 in the Notice alleges that Respondent failed to follow its manual of written procedures for fire prevention (49 C.F.R. § 193.2503).

Item 2 in the Notice alleges that Respondent failed to perform electric and diesel fire water pump start-up testing on a monthly basis, in accordance with 49 C.F.R. § 193.2605.

Item 3a in the Notice alleges that Respondent failed to timely inspect its alarm and fire detections control systems, exceeding the 6 month interval by 25 days (49 C.F.R. § 193.2619(c)).

Item 4 in the Notice alleges that Respondent failed to provide a written initial training plan for operation and maintenance instruction of applicable new personnel (49 C.F.R. § 193.2713).

Item 5 in the Notice alleges that Respondent failed to keep a system of records showing that personnel have undergone and satisfactorily completed continuing instruction in operations and maintenance for the years 1999, 2000, and 2001 through November 14, 2001. Respondent also failed to keep records of continuing instruction in plant security for the years 1999 and 2000 (49 C.F.R. § 193.2719).

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. However, upon payment of the civil penalty, the case closes automatically and Respondent waives the right to petition for reconsideration. The filing of the petition automatically stays the

payment of any civil penalty assessed. 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 terms and conditions of this Final Order are effective on receipt.



for Stacey Gerard
Associate Administrator
for Pipeline Safety

DEC - 3 2002

Date Issued