OPS-26

U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

DEC 2 1987

Dean M. Hasseman, Esq.
General Counsel
Williams Pipe Line Company
One Williams Center
Tulsa, Oklahoma 74172

CPF No. 3545

Dear Mr. Hasseman:

Enclosed is the Final Order in the above-numbered case which was issued by the Director, Office of Pipeline Safety. The Order finds Williams in violation of various pipeline safety regulations, assesses a civil penalty of $209,000, directs specific corrective action with respect to Williams' pipeline facilities, and requires Williams to amend its operation and maintenance plans. Your receipt of the enclosed document constitutes service of that document under 49 CFR § 190.5.

Sincerely,

Gwendolyn M. Hill

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
WASHINGTON, D.C.

In the Matter of Williams Pipe Line Company, Respondent	CPF. No. 3545

FINAL ORDER

During August and September, 1986, representatives of the Office of Pipeline Safety (OPS), conducted on-site safety inspections of Respondent's pipeline facilities and records in all districts of Respondent's pipeline system to determine Respondent's system-wide compliance with safety regulations promulgated under the Hazardous Liquid Pipeline Safety Act, 49 App. U.S.C. § 2001 et seq. (HLPSA). As a result of that inspection, the Chief, Central Region, OPS, issued to the Respondent, by letter of July 7, 1987, a Notice of Probable Violation proposing the issuance of a compliance order and the assessment of civil penalties and a Notice of Amendment in accordance with 49 C.F.R. §§ 190.207 and 195.402 (July 7 Notice) (hereinafter §_____ refers to a section in Title 49, Code of Federal Regulations).

By letter of August 6, 1987, Respondent requested a hearing and identified issues to be raised in the hearing. On September 16, 1987, a hearing was conducted in accordance with § 190.211. At the hearing, Respondent received notice of two amendments to the July 7 Notice, one in writing and one orally. Respondent had no objection to consideration of matters contained in the amendments, including the proposed sanctions, in this proceeding.

The first amendment to the July 7 Notice incorporates possible noncompliances with respect to cathodic protection not previously noted by OPS which Respondent had discovered and voluntarily reported to OPS. (First Amendment) (Exhibit A)* Specifically, the First Amendment incorporates possible noncompliances identified by Respondent in Exhibit I to its report entitled "Pipeline Safety Issues" and proposes to mandate corrective action in accordance with Respondent's proposal.

* Unless otherwise identified, "Exhibit ___" refers to an exhibit submitted at the hearing.

The second amendment to the July 7 Notice incorporates certain noncompliances noted by representatives of the Central Region, OPS, during inspection of Respondent's lines in Minnesota conducted on September 1-4, 1987. (Second Amendment) Specifically included in this amendment are allegations that (i) aerial patrols were not conducted in June 1987 within the required period; (ii) patrols were not done as frequently as required in 1986; (iii) procedures for patrolling did not address areas for which aerial patrols were impossible; (iv) not all above-ground piping was coated or painted; and (v) adequate aerial patrolling was impossible because of uncleared right-of-way. Because the sanctions already proposed covered similar noncompliances, OPS did not propose new sanctions.

Subsequent to the hearing, by letter of October 5, 1987, Respondent filed additional material concerning major issues. OPS also submitted analysis with respect to the alleged violation on training and agency interpretation on the placement of markers.

DISCUSSION AND FINDINGS OF VIOLATIONS

The specific allegations are discussed below, identified as items of the July 7 Notice and, where applicable, of the First and Second Amendments.

Following established procedures - § 195.402

Item 1 of the July 7 Notice alleges that Respondent had failed to follow its own procedures by (a) failing to mark line pipe in storage and (b) failing to inspect overpressure safety devices within time intervals required. With respect to the former, Respondent admitted that line pipe was not marked as required, but argued that the pipe was marked in such a manner that the information about the pipe could be obtained from company records. This does not excuse the violation and is appropriately considered in determining the amount of penalty to be assessed. With respect to the alleged failure to inspect overpressure protection devices, Respondent presented evidence (Exhibit C) that one of the inspections had been performed. However, Respondent does not contest the allegation that the other inspections were not performed.

Accordingly, I find that Respondent failed to follow its own procedures substantially as alleged in the July 7 Notice in violation of § 195.402.

Training - § 195.403

Item 2 of the July 7 Notice alleges that Respondent had not established a continuing training program, did not conduct periodic reviews with personnel to assure the effectiveness of training, and did not verify supervisor knowledge of operating and maintenance procedures.

Respondent argues that it has established a training program consistent with § 195.403, it does conduct reviews with personnel, and does verify supervisor knowledge of procedures. In support of this, Respondent submitted numerous exhibits (Exhibits D through H). However, these exhibits are dated subsequent to the inspection in this case and are thus irrelevant to the issue of violation at that time. Furthermore, Respondent's own operation and maintenance manual in effect at the time of the inspection (effective date March 1984) provides for training as follows: "This section is currently being developed. Direct training questions to your location to the Area Supervisor." Respondent's explanation is that the training program was adequate, but that it was not formalized.

The difficulty with the lack of a written program for training is the uncertainty it creates. Any particular employee may be adequately trained, through a combination of prior experience and on-the-job training. However, in the absence of a procedure or policy on the extent, scope, and documentation of that training, it is impossible to determine whether employees are, as a whole, adequately trained. Section 195.403 clearly contemplates more than an uncoordinated and imprecise informal approach to training in the safe operation of a pipeline.

Respondent has presented information concerning its development of a training program, including information concerning its new Computerized Training Modules. Based on initial review, the Chief, Central Region, OPS, believes that Respondent has made substantial progress towards the development of an adequate training program. The Region notes that the program still seems lacking; for example, in the training on the handling of HVL lines.

Accordingly, I find that Respondent failed to establish a training program meeting the requirements of § 195.403 and, thus, violated that section.

Maps and Records - § 195.404

Item 3 of the July 7 Notice alleges that Respondent (a) did not have current records of all pipeline crossings and (b) did not have records verifying that an inspection (to determine whether corrosion was external or internal) was performed in connection with repairs in 1986 to its #2-6 inch Mason City - Lea line. Respondent did not contest these allegations, but presented information concerning its proposal to correct deficiencies with respect to (a). Respondent argued that the particular repairs, replacement of pipe following a pig survey which established corrosion, did not warrant further corrosion inspection. The requirement for performing the corrosion inspection is mandatory §§ 195.416(e), 418(d). Furthermore, the requirement is appropriate in this case because the instrumented pig survey does not reveal whether the corrosion is internal or external. Failure to explore causes of problems may result in a failure to discover early other similar problems with the line.

Accordingly, I find that Respondent failed to keep records as alleged in the July 7 Notice in violation of §§ 195.404(a)(2) and 404(c)(3).

Maximum allowable operating pressure - § 195.406

Item 4 of the Notice alleges that Respondent established an operating pressure for its #7-8 inch Olathe - Columbia line at 7 p.s.i.g. in excess of that allowed under the regulations. Respondent does not contest the violation, but argues that it promptly corrected the situation, that the establishment of the pressure in excess of allowable limits was inadvertent, that the line had been hydrostatically tested, and that the amount of excess pressure was miniscule. These facts do not excuse the violation, but will be considered in determining the amount of a penalty.

Accordingly, I find that Respondent established an operating pressure for its #7-8 inch Olathe - Columbia line in excess of that allowed as alleged in the July 7 Notice in violation of § 195.406.

Line markers - § 195.410

Item 5 of the July 7 Notice alleges the following violations of requirements to maintain adequate line marking: (a) failure to maintain a marker (It was obscured by brush.); (b) failure to place markers at road crossing (no markers on one side of the road crossing and markers on the other side too far off to define the crossing); (c) use of line markers without product designation; and d) lack of markers on above-ground piping at locations "accessible to the public."

With respect to (a), Respondent does not contest that the marker was obscured, but argues that this does not amount to a violation of §195.410(a) as alleged. I find that a marker which is covered by brush so as to be unnoticed or illegible is not maintained as required and does not even serve as a marker required by § 195.410(a).

With respect to (b), Respondent argues that the road crossing was adequately marked by a marker placed 125 feet from the crossing. There is insufficient evidence in the record before me to determine whether, in this case, the marking by Respondent was adequate. I note that Respondent has indicated that it has now placed new markers on both sides of the crossing.

With respect to (c), Respondent argues that the pipeline was marked by markers which comply with § 195.410(a)(2), that is, identifying the product, and that the markers cited by OPS as non-complying were "redundant" older markers which pre-dated the regulations. Respondent further indicates that it has removed these "redundant" markers. There is insufficient evidence in the record before me to determine whether the line in question was adequately marked without these non-complying markers. The continued existence of non-complying older markers does not, in and of itself, constitute a violation so long as the line is adequately marked with markers meeting the requirements of § 195.410(a)(2).

With respect to (d), Respondent argues that the lines in questions were not "accessible to the public" since they were located on non-commercial private property. Respondent argues that its criteria for marking conforms with the industry standard set in API 1190, Section 2.8 (Exhibit J). The standard set by § 195.410(c) is accessibility to the public, not the API standard. The regulatory standard requires markers when, under the circumstances, the above-ground piping is not under the control of the operator or is otherwise in an location where the public is able to approach or interfere with the line. The fact that the piping is located on private, non-commercial property rather than public or commercial property may be a factor in a decision as to whether the location is truly accessible, but is not controlling. This decision is consistent with the interpretation found in the attached 1981 internal memorandum and the agency decision in the final order dated March 26, 1984 in CPF-2319 (Columbia Gas Transmission Company). That decision addressed the meaning of "accessible to the public" as used in § 192.707(c) (markers for gas pipelines). In the instant case, there is insufficient evidence upon which to base a finding that the above-ground piping at the particular locations is, in fact, accessible to the public.

Accordingly, I find that Respondent failed to maintain a required marker in violation of § 195.410(a) as alleged in Item 5(a) of the July 7 Notice, I make no findings of violation with respect to Items 5(b), (c), and (d).

Inspections of rights-of-way - § 195.412

Item 6 of the July 7 Notice and items (i), (ii), and (v) of the Second Amendment allege various failures with respect to Respondent's inspection of its rights-of-way. Specifically, Respondent allegedly failed (a) to inspect certain rights-of-way within the required time intervals, (b) to inspect certain rights-of-way the required 26 times per year and (c) to inspect rights-of-way which were obscured by vegetation. In the first two situations, the alleged violations involve several lines; in the last, two lines.

Respondent does not contest these allegations. However, with respect to (c) Respondent notes that it had initiated corrective action prior to the inspection in August and September 1986, but that it has encountered delays due to difficulty in obtaining access to the rights-of-way.

Accordingly, I find that Respondent has failed to inspect its rights-of-way in violation of § 195.412 substantially as alleged in the July 7 Notice and the Second Amendment.

Cathodic protection - § 195.414

Item 7 of the July 7 Notice and the First Amendment allege that, in multiple instances, Respondent has failed to maintain levels of cathodic protection adequate to prevent corrosion of its lines. Specifically, item 7 alleges low potential readings for the three year period 1983-1985 on the #6-10 inch Topeka to Kansas City line, the #1-8 inch Bateman to Wausau line, and the #2-8 inch Superior Junction-Superior line. Potentials were low for 1984-1985 on the #1-8 inch Newport to Bateman and the #7-16 inch Wathena to Des Moines lines. The First Amendment incorporated various noncompliances on other lines of one to two years duration.

Respondent does not contest these allegations, and indeed "turned itself in" with respect to the noncompliances identified in the First Amendment. Respondent notes that it established adequate cathodic protection with respect to those noncompliances identified in the July 7 Notice and that it will complete corrective action with respect to the noncompliances identified in the First Amendment by January 1988. Respondent indicates that it invested 3.4 million to upgrade cathodic protection from 1983 through 1986 and plans to invest an additional $4.7 million in 1987 and 1988 for the same purpose.

Respondent indicates staffing and organizational changes which will assure future compliance. These actions do not excuse the violations, but are appropriately considered in determining the amount of any penalty.

Accordingly, I find that Respondent failed to adequately protect its buried pipelines from corrosion in violation of § 195.414 substantially as alleged in the July 7 Notice and the First Amendment.

Corrosion control for above-ground pipeline facilities - § 195.416(h)

Item 8 of the July 7 Notice alleges several instances in which Respondent failed to maintain the painting or coating on above-ground facilities on three of its pipelines (specifically, the #7-12 inch line through Roland Pump Station and the #4-12 inch and #2-6 inch Des Moines - Minneapolis lines). Item (iv) of the Second Amendment makes similar allegations with respect to a fourth line (the #3-6 inch Albert Lea-Mankato line).

Respondent does not contest these allegations, has indicated completed corrective action with respect to Item 8, and promises corrective action system-wide.

Accordingly, I find that Respondent has failed to adequately protect its above-ground pipelines from corrosion in violation of § 195.416(h) substantially as alleged in the July 7 Notice and the Second Amendment.

Inspections of valves - § 195.420

Item 9 of the July 7 Notice alleges that Respondent failed to perform the required maintenance inspection of two valves, one on its #5-8 inch Rosemount-Rochester line and one on its #6-12 inch Rosemount-Willmar line.

Respondent admits that, because they were under ice or water, the valves were not "turned" to verify operation, but argues that they were "inspected." The purpose of a valve inspection is to verify operation of the valve; visual "inspection" without operating the valve is insufficient. Respondent indicated that valve extenders have been installed to allow future inspection.

Accordingly, I find that Respondent has failed to inspect valves in violation of § 195.420 substantially as alleged in the July 7 Notice.

Inspection of overpressure safety devices on HVL lines - § 195.428(a)

Item 10 of the July 7 Notice alleges that Respondent failed to inspect and test the high discharge pressure shutdown device on its #1-6 inch line at Latimer Station within the interval required for lines used in transporting highly volatile liquids (9 months instead of the required 7 1/2 months). Respondent does not contest the allegation.

Accordingly, I find that Respondent failed to inspect an overpressure protection device on a line carrying highly volatile liquids in violation of § 195.428(a) as alleged in the July 7 Notice.

Security of facilities - § 195.436

Item 11 of the July 7 Notice alleges that Respondent failed to secure a gate at its Chicago Terminal.

Respondent admits that a gate at its Chicago Terminal was open at the time of inspection, but argues that, because the facility is manned when the gate is open, the terminal area is protected from unlawful entry. Respondent further notes that it has refenced the area to enhance security when the gate is open. Although, the violation report indicates that an OPS representative found the terminal unattended with the gate open, there is insufficient evidence in the record upon which to base a finding that a violation of § 195.436 occurred.

SANCTIONS

Assessment of Civil Penalty. Under Section 208(a) of the HLPSA, Respondent is subject to a civil penalty not to exceed $1,000 for each violation for each day the violation persists up to a maximum of $200,000 for any related series of violations, such amount to be assessed by written notice. The July 7 Notice proposed the assessment of civil penalties in the total amount of $219,000: $1,000 per section for alleged violations of sections 195.402, 195.403, 195.404, 195.406, 195.410, 195.412, 195.420, 195.428, and 195.436; $200,000 for alleged violations of Section 195.414; and $10,000 for alleged violations of section 195.416.

Section 208(a) of the HLPSA and § 190.225 require that, in determining the amount of a civil penalty, I consider the following criteria: gravity of the violation, Respondent's culpability, history of prior offenses, ability to pay, good faith in attempting to achieve compliance, and the effect on Respondent's ability to achieve compliance.

With respect to Respondent's failure to adhere to established procedures (§ 195.402), I note that adherence to established procedures is central to the Part 195 concept of performance standards. In the case of failure to mark pipe in storage, I note that the information which was required to be placed on the pipe was available through other records and that it is unlikely that this violation would create any immediate safety risk. The other violations, for failure to inspect overpressure devices, are more serious since the failure of such a device could result in an accident. Furthermore, Respondent has been found in violation of both the requirement to adhere to internal procedures (CPF Nos. 3543, 3544) and requirements concerning periodic inspection of safety devices (CPF No. 3544). The widespread failures in this area indicate a serious problem with Respondent's compliance practices. I note the multiple nature of the violations here.

With respect to the violation of § 195.403, I have already discussed the need for having an established training program. There is nothing in the record that indicates the gross inadequacy of training of any particular individual. Further as already recognized, Respondent has made substantial progress and will be required by this order to establish an adequate training program.

With respect to the violation of § 195.404. I note the importance of accurate recording of data on pipeline maps since that data may be needed in an emergency or to identify potential reasons for difficulties incurred in achieving adequate cathodic protection. In discussing the second aspect of violation of § 195.404, I noted the importance for purposes of protection of the entire line of establishing whether corrosion is internal or external whenever a pipe segment is replaced because of corrosion. However, I also note that Respondent is making an effort as evidenced by its new form for reporting pipeline crossings (Exhibit I) to keep its maps updated. In neither case do these violations evidence a disregard for compliance with the recordkeeping requirements by Respondent.

With respect to the establishment of an operating pressure in excess of that allowable by the regulations (§ 195.406), I agree with Respondent that, in this case, the violation appears to be de minimis and inadvertent. Although strict adherence to allowable operating pressures is required, there is no evidence that the violation in this case greatly decreased safety. Furthermore, Respondent promptly corrected the situation.

With respect to the violation of § 195.410, I note that the violation is a single instance of failure to maintain a marker and that, although the violation had to exist for more than one day (to allow for growth of the obscuring vegetation), there is no evidence of long duration. I note that the totality of the original allegations with respect to § 195.410 (for which a penalty of $1,000 was proposed) was more serious than this single count.

With respect to the failure of Respondent to maintain rights-of-way (§ 195.412), I note the importance of adequate patrolling as one way to assure the continued safe operation of the line, e.g. by noting construction activities and the condition of the ground surface. Respondent has not offered excuse for the large number of failures in this regard discovered by OPS except with respect to its failure to keep the right-of-way clear of vegetation (for which Respondent indicates landowner objections).

With respect to Respondent's failure to adequately protect its buried pipe from external corrosive (§ 195.414), I note the importance of cathodic protection as a primary means of assuring the continued safe operation of buried high pressure steel pipelines and the numerous instances of violation in this case. I incorporate the discussion concerning inadequate cathodic protection in the final order in CPF No. 3543. In that case, Respondent was assessed a civil penalty of $115,000 for inadequate cathodic protection on the line through Mounds View, Minnesota on which a failure occurred on July 8, 1986. Some of the cathodic protection violations in the instant case involve lines containing the same type of pipe as in the Mounds View accident. Respondent has not offered any excuse for its failures with respect to cathodic protection. Respondent has made significant efforts to correct its deficiencies in this area including the commitment of resources including personnel, and the modification of internal responsibilities. Given the serious nature of the violations, their extent, and Respondent's widespread failures in this area, mitigation is unwarranted.

With respect to Respondent's failure to protect its above-ground facilities from corrosion (§ 195.416), I note that there are numerous instances of violation. Because the facilities involved are above-ground and corrosion is visible, corrosion protection is less critical to continued safe operation. In this case, however, the first instance noted by OPS involves actual corrosion on the facilities due to the failure to adequately protect. The latter instances of violation cited involve only inadequacies in protecting the facilities. There is nothing in the record to indicate the extent of these latter inadequacies such as their duration or the amount of chipping found in the coating. Without such information, it is possible

that, at least in some instances, the chipping occurred recently. Respondent has received a warning letter in the past for inadequacies noted with respect to § 195.416. However, that warning letter was not specific enough to allow a conclusion that the deficiencies noted were the same ones. I note Respondent's efforts to assure system-wide compliance.

With respect to Respondent's failure to inspect two valves (§ 195.420), I note that Respondent has made corrective action and that the violations do not appear to have greatly decreased the safe operation of the lines.

With respect to Respondent's failure to inspect an overpressure device on an HVL line (§ 195.428(a)), I note the importance of assuring that overpressure devices are effective and the fact that the line is used for transporting highly volatile liquids. I further note Respondent's previously noted failures in the inspection of overpressure protection devices (the first violation in this case and CPF No. 3544).

Respondent is able to pay the penalty assessed herein and payment will not affect Respondent's ability to achieve compliance. Respondent is making efforts, as already noted, to improve its compliance.

Having considered the assessment criteria, I hereby assess Respondent a total of $209,000 as a civil penalty for violations of the regulations as outlined herein and delineated as follows:

§ 195.402	**$ 1,000**
195.403	**$ 250**
195.404	**$ 500**
195.406	**$ 500**
195.410	**$ 250**
195.412	**$ 1,000**
195.414	**$200,000**
195.416	**$ 4,000**
195.420	**$ 500**
195.428	**$ 1,000**

Payment of this civil penalty must be made by certified check or money order, payable to the Department of Transportation within 20 days of service and sent to:

Office of the Chief Counsel
Research and Special Programs
Administration
400 Seventh Street, S.W., Rm. 8420
Washington, D.C. 20590

Failure to pay the penalty with this time frame will result in the accrual of interest, penalties, and administrative fees in accordance with 31 U.S.C. § 3717.

Imposition of Compliance Order

The July 7 Notice proposed the issuance of a compliance order to direct adequate corrective action with respect to certain deficiencies identified in Items 2 (training), 3 (specifically, failure to keep maps current), 6 (specifically, failure to keep the right-of-way clear), and 7 (specifically, inadequate cathodic protection of the #6-10 inch Topeka-Kansas City line.) The First Amendment proposed an additional item to be added to assure corrective action with respect to noncompliances identified in that amendment.

At the hearing, Respondent sought clarification of the proposed corrective action with respect to Item 3. Specifically, Respondent sought and obtained approval of its new form (Exhibit I) and its procedure which would keep updates to the maps in the tract file pending revisions.

With respect to proposed corrective action for Item 7, Respondent did not oppose the requirement for an instrumented pig study of the Topeka-Kansas City line, but requested twelve months in which to accomplish it. Respondent requests the additional time in order to fit the inspection into its "prioritized program". The line has been without adequate cathodic protection for a considerable length of time . However, pursuant to the Consent Order in CPF No. 3548-H, this line is restricted to operation at a reduced pressure. Accordingly, the length of time for completion of the testing required is extended to nine months.

Accordingly, pursuant to Section 207(b) of the HLPSA, 49 App. U.S.C. § 2008(b), Williams Pipe Line Company is hereby ordered to comply with the following requirements within the time period specified, such requirements being in addition to other applicable requirements of 49 C.F.R. Part 195:

1. **With respect to § 195.403, establish and submit for the approval of the Chief, Central Region, OPS, a training program which will ensure that all employees engaged in the pipeline transportation of hazardous liquids receive required training in a uniform manner and that such training is appropriately documented in records. This program shall contain, at a minimum, elements which address the requirements of § 195.403 including those referenced requirements of § 195.402. This program shall be submitted to the Chief for approval <u>within 180 days</u> following the issuance of this order.**

2. With respect to violation of § 195.404(a)(2), update your system-wide maps and records by including information pertaining to buried utilities and foreign pipelines. A map may be updated by inclusion of the update in tract files. This update shall be completed within one year from issuance of this order.

3. With respect to violation of § 195.412, do the following:

   (a) Complete the clearing of the right-of-way of the #1-8 inch Newport to Bateman line to allow effective aerial patrolling. This clearing shall be completed within one year of the issuance of this order.

   (b) Within 90 days of the issuance of this order, submit a program to the Chief, Central Region, OPS, for the evaluation of the surface condition of rights-of-way (with respect to the possible interference with adequate patrolling caused by vegetation.) The evaluation shall include Williams' plans and timetable for clearing any areas where vegetation renders patrolling ineffective.

4. With respect to violation of § 195.414, do the following:

   (a) Inspect the #6-10 inch Topeka to Kansas City line from MP 103 + 43 to MP 160 + 00 to determine the effects of inadequate cathodic protection on the wall thickness of the pipe. This inspection shall be performed using an instrumented internal device. Complete this testing within 9 months of the issuance of this order.

   (b) Notify the Chief, Counsel Region, OPS, in writing at least fifteen days in advance of the commencement of the testing called for in (a).

   (c) Submit a complete report of the results of the testing to the Chief, Central Region, within 60 days following completion of the testing called for in (a). This report shall include the severity and location of all anomolies and actions taken or proposed concerning these anomolies.

(d) Correct noncompliances identified in Exhibit I to the Williams' report "Pipeline Safety Issues" in accordance with the schedule provided therein. Notify the Chief, Central Region, OPS, of the correction and method of correction.

Amendment of operating procedures

The July 7 Notice and Item (iii) of the Second Amendment also notified Respondent of alleged deficiencies with respect to its operating and maintenance plan and of the possibility that OPS would require amendment of that plan pursuant to § 195.402(b). Respondent has agreed to make changes to its plan in response to the first and third deficiency noted in the July 7 Notice and Item (iii) of the Second Amendment and to submit them to review by OPS. Since this may obviate the need for an order directing amendment, no action is needed at this time with respect to these items.

The second deficiency identified in the July 7 Notice presents a different situation. The July 7 Notice indicates that Respondent's procedures do not identify the types of locations for which pipeline failures require immediate response. Respondent urges that its procedure which require immediate response for all credible reports of failures regardless of location is adequate. I disagree. Section 195.402(c)(4) clearly requires a location sensitive identification of pipeline facilities for emergency response. Respondent may routinely require some immediate response to all credible reports regardless of location. However, Respondent also must identify those locations in which the failure of pipeline facilities cause immediate hazard to the public in a manner which assures that reports of failures in those locations receive highlighted attention by personnel. If Respondent disagrees with this requirement, the appropriate action is a petition for a change in the regulation.

In making a determination as to the adequacy of Respondent's procedure, Section 210(b) of the HLPSA requires consideration of certain criteria: relevant available safety data, appropriateness of the plan for the particular type of pipeline, the reasonableness of the plan, and the extent to which the plan contributes to public safety. There is no relevant data available. Identification of the location of facilities most in need of adequate emergency response is appropriate for a liquid pipeline system, is reasonable, and will contribute to public safety. Failure to identify such locations in an effort to prioritize every incident may result in the routinization of all response to the disregard of special treatment for the situation truly calling for emergency response.

Accordingly, pursuant to Section 210(b) of the HLPSA, 49 App. U.S.C. § 2009(b) and § 195.402(b), Williams Pipe Line Company is hereby required:

(1) To amend its operation and maintenance plan to determine which pipeline facilities are located in areas which would require immediate response to prevent hazards to the public in case of failure.

(2) To submit the amendment required in (1) to the Chief, Central Region, OPS, for review within 120 days of the issuance of this order.

Respondent has a right under 49 C.F.R. § 190.215 to petition for reconsideration of this order within 20 days after service thereof. Stay of the order may be granted for good cause shown. Failure to pay the civil penalty assessed or failure to obey the terms of the compliance order may result in the assessment of additional penalties or in referral of this matter to the Attorney General for appropriate action in the United States District Court. The terms and conditions of this order are effective upon service.

Richard L. Beam

Richard L. Beam, Director
Office of Pipeline Safety

DATE ISSUED: DEC 2 1987

678

Y25

U-17-13
FEF
interpretation
192.707

INFORMATION: Section 192.707(c) Interpretations DMT-30

SIGNED
Melvin A. Judah MELVIN A. JUDAH
Acting Associate Director for
Pipeline Safety Regulation, DMT-30

Richard E. Sanders
Pipeline Safety Specialist, DPB-60

In your memorandum of February 27, 1981, you requested an interpretation of the term "accessible to the public" in section 192.707(c), and whether certain situations involving district regulator stations and other facilities would be subject to the rule.

Section 192.707(c) provides:

> "Pipelines aboveground. Line markers must be placed and maintained along each section of a main and transmission line that is located aboveground in an area accessible to the public."

Under the definitions in section 192.3, a "regulator station" and the other facilities to which you referred are included within the meaning of "pipeline" and the terms "transmission line" and "main." Thus, these facilities must be marked if they are located aboveground in an area accessible to the public. By letter dated July 15, 1976, we issued an interpretation to Cities Service Gas Company which provides that an area is "accessible to the public" if entrance into the area is not physically controlled by the operator or if the area may be entered without difficulty.

With regard to your question about how the term "accessible to the public" would apply to the five situations given in your memorandum, the descriptions of the situations are insufficient for us to make a determination of the application of the regulation. The application of the regulation depends upon all factors relevant to whether an operator exercises physical control or whether an area is difficult to enter. These factors can only be ascertained by examination of the site. Two factors to consider are whether the area is adequately fenced and locked or guarded, and if not fenced, the remoteness of a facility from areas frequented by the public. These and other relevant factors should be considered by enforcement personnel in applying section 192.707(c) to given situations.

cc:
DMT-30, 31(2), 13, 10
DCC-1, BRF

#

DMT-31/RSimmons:bas:x62392:3-13-81
FILE: 192.707

Control No. OPSR-24

DEC 2 1987

Dean M. Hasseman, Esq.
General Counsel
Williams Pipe Line Company
One Williams Center
Tulsa, Oklahoma 74172

CPF No. 3545

Dear Mr. Hasseman:

Enclosed is the Final Order in the above-numbered case which was issued by the Director, Office of Pipeline Safety. The Order finds Williams in violation of various pipeline safety regulations, assesses a civil penalty of $209,000, directs specific corrective action with respect to Williams' pipeline facilities, and requires Williams to amend its operation and maintenance plans. Your receipt of the enclosed document constitutes service of that document under 49 CFR § 190.5.

Sincerely,

/s/ G. Hill

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

DCC-1:betsock:lsb:12/1/87
cc:DCC-1/files/DPS-1
disk #1 - CPF-3545

CONCURRENCES	
RTG. SYMBOL	DCC-1
INITIALS/SIG.	BB
DATE	12/1/87
RTG. SYMBOL	DPS-2
INITIALS/SIG.	WBuck
DATE	12-2-87
RTG. SYMBOL	DPS-2
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DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
WASHINGTON, D.C.

CONCURRENCES	
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In the Matter of	)	
	)	
Williams Pipe Line Company,	)	CPF. No. 3545
	)	
Respondent	)	

FINAL ORDER

During August and September, 1986, representatives of the Office of Pipeline Safety (OPS), conducted on-site safety inspections of Respondent's pipeline facilities and records in all districts of Respondent's pipeline system to determine Respondent's system-wide compliance with safety regulations promulgated under the Hazardous Liquid Pipeline Safety Act, 49 App. U.S.C. § 2001 et seq. (HLPSA). As a result of that inspection, the Chief, Central Region, OPS, issued to the Respondent, by letter of July 7, 1987, a Notice of Probable Violation proposing the issuance of a compliance order and the assessment of civil penalties and a Notice of Amendment in accordance with 49 C.F.R. §§ 190.207 and 195.402 (July 7 Notice) (hereinafter §_____ refers to a section in Title 49, Code of Federal Regulations).

By letter of August 6, 1987, Respondent requested a hearing and identified issues to be raised in the hearing. On September 16, 1987, a hearing was conducted in accordance with § 190.211. At the hearing, Respondent received notice of two amendments to the July 7 Notice, one in writing and one orally. Respondent had no objection to consideration of matters contained in the amendments, including the proposed sanctions, in this proceeding.

The first amendment to the July 7 Notice incorporates possible noncompliances with respect to cathodic protection not previously noted by OPS which Respondent had discovered and voluntarily reported to OPS. (First Amendment) (Exhibit A)* Specifically, the First Amendment incorporates possible noncompliances identified by Respondent in Exhibit I to its report entitled "Pipeline Safety Issues" and proposes to mandate corrective action in accordance with Respondent's proposal.

* Unless otherwise identified, "Exhibit ___" refers to an exhibit submitted at the hearing.

The second amendment to the July 7 Notice incorporates certain noncompliances noted by representatives of the Central Region, OPS, during inspection of Respondent's lines in Minnesota conducted on September 1-4, 1987. (Second Amendment) Specifically included in this amendment are allegations that (i) aerial patrols were not conducted in June 1987 within the required period; (ii) patrols were not done as frequently as required in 1986; (iii) procedures for patrolling did not address areas for which aerial patrols were impossible; (iv) not all above-ground piping was coated or painted; and (v) adequate aerial patrolling was impossible because of uncleared right-of-way. Because the sanctions already proposed covered similar noncompliances, OPS did not propose new sanctions.

Subsequent to the hearing, by letter of October 5, 1987, Respondent filed additional material concerning major issues. OPS also submitted analysis with respect to the alleged violation on training and agency interpretation on the placement of markers.

DISCUSSION AND FINDINGS OF VIOLATIONS

The specific allegations are discussed below, identified as items of the July 7 Notice and, where applicable, of the First and Second Amendments.

Following established procedures - § 195.402

Item 1 of the July 7 Notice alleges that Respondent had failed to follow its own procedures by (a) failing to mark line pipe in storage and (b) failing to inspect overpressure safety devices within time intervals required. With respect to the former, Respondent admitted that line pipe was not marked as required, but argued that the pipe was marked in such a manner that the information about the pipe could be obtained from company records. This does not excuse the violation and is appropriately considered in determining the amount of penalty to be assessed. With respect to the alleged failure to inspect overpressure protection devices, Respondent presented evidence (Exhibit C) that one of the inspections had been performed. However, Respondent does not contest the allegation that the other inspections were not performed.

Accordingly, I find that Respondent failed to follow its own procedures substantially as alleged in the July 7 Notice in violation of § 195.402.

Training - § 195.403

Item 2 of the July 7 Notice alleges that Respondent had not established a continuing training program, did not conduct periodic reviews with personnel to assure the effectiveness of training, and did not verify supervisor knowledge of operating and maintenance procedures.

Respondent argues that it has established a training program consistent with § 195.403, it does conduct reviews with personnel, and does verify supervisor knowledge of procedures. In support of this, Respondent submitted numerous exhibits (Exhibits D through H). However, these exhibits are dated subsequent to the inspection in this case and are thus irrelevant to the issue of violation at that time. Furthermore, Respondent's own operation and maintenance manual in effect at the time of the inspection (effective date March 1984) provides for training as follows: "This section is currently being developed. Direct training questions to your location to the Area Supervisor." Respondent's explanation is that the training program was adequate, but that it was not formalized.

The difficulty with the lack of a written program for training is the uncertainty it creates. Any particular employee may be adequately trained, through a combination of prior experience and on-the-job training. However, in the absence of a procedure or policy on the extent, scope, and documentation of that training, it is impossible to determine whether employees are, as a whole, adequately trained. Section 195.403 clearly contemplates more than an uncoordinated and imprecise informal approach to training in the safe operation of a pipeline.

Respondent has presented information concerning its development of a training program, including information concerning its new Computerized Training Modules. Based on initial review, the Chief, Central Region, OPS, believes that Respondent has made substantial progress towards the development of an adequate training program. The Region notes that the program still seems lacking; for example, in the training on the handling of HVL lines.

Accordingly, I find that Respondent failed to establish a training program meeting the requirements of § 195.403 and, thus, violated that section.

Maps and Records - § 195.404

Item 3 of the July 7 Notice alleges that Respondent (a) did not have current records of all pipeline crossings and (b) did not have records verifying that an inspection (to determine whether corrosion was external or internal) was performed in connection with repairs in 1986 to its #2-6 inch Mason City - Lea line. Respondent did not contest these allegations, but presented information concerning its proposal to correct deficiencies with respect to (a). Respondent argued that the particular repairs, replacement of pipe following a pig survey which established corrosion, did not warrant further corrosion inspection. The requirement for performing the corrosion inspection is mandatory §§ 195.416(e), 418(d). Furthermore, the requirement is appropriate in this case because the instrumented pig survey does not reveal whether the corrosion is internal or external. Failure to explore causes of problems may result in a failure to discover early other similar problems with the line.

Accordingly, I find that Respondent failed to keep records as alleged in the July 7 Notice in violation of §§ 195.404(a)(2) and 404(c)(3).

Maximum allowable operating pressure - § 195.406

Item 4 of the Notice alleges that Respondent established an operating pressure for its #7-8 inch Olathe - Columbia line at 7 p.s.i.g. in excess of that allowed under the regulations. Respondent does not contest the violation, but argues that it promptly corrected the situation, that the establishment of the pressure in excess of allowable limits was inadvertent, that the line had been hydrostatically tested, and that the amount of excess pressure was miniscule. These facts do not excuse the violation, but will be considered in determining the amount of a penalty.

Accordingly, I find that Respondent established an operating pressure for its #7-8 inch Olathe - Columbia line in excess of that allowed as alleged in the July 7 Notice in violation of § 195.406.

Line markers - § 195.410

Item 5 of the July 7 Notice alleges the following violations of requirements to maintain adequate line marking: (a) failure to maintain a marker (It was obscured by brush.); (b) failure to place markers at road crossing (no markers on one side of the road crossing and markers on the other side too far off to define the crossing); (c) use of line markers without product designation; and d) lack of markers on above-ground piping at locations "accessible to the public."

With respect to (a), Respondent does not contest that the marker was obscured, but argues that this does not amount to a violation of §195.410(a) as alleged. I find that a marker which is covered by brush so as to be unnoticed or illegible is not maintained as required and does not even serve as a marker required by § 195.410(a).

With respect to (b), Respondent argues that the road crossing was adequately marked by a marker placed 125 feet from the crossing. There is insufficient evidence in the record before me to determine whether, in this case, the marking by Respondent was adequate. I note that Respondent has indicated that it has now placed new markers on both sides of the crossing.

With respect to (c), Respondent argues that the pipeline was marked by markers which comply with § 195.410(a)(2), that is, identifying the product, and that the markers cited by OPS as non-complying were "redundant" older markers which pre-dated the regulations. Respondent further indicates that it has removed these "redundant" markers. There is insufficient evidence in the record before me to determine whether the line in question was adequately marked without these non-complying markers. The continued existence of non-complying older markers does not, in and of itself, constitute a violation so long as the line is adequately marked with markers meeting the requirements of § 195.410(a)(2).

With respect to (d), Respondent argues that the lines in questions were not "accessible to the public" since they were located on non-commercial private property. Respondent argues that its criteria for marking conforms with the industry standard set in API 1190, Section 2.8 (Exhibit J). The standard set by § 195.410(c) is accessibility to the public, not the API standard. The regulatory standard requires markers when, under the circumstances, the above-ground piping is not under the control of the operator or is otherwise in an location where the public is able to approach or interfere with the line. The fact that the piping is located on private, non-commercial property rather than public or commercial property may be a factor in a decision as to whether the location is truly accessible, but is not controlling. This decision is consistent with the interpretation found in the attached 1981 internal memorandum and the agency decision in the final order dated March 26, 1984 in CPF-2319 (Columbia Gas Transmission Company). That decision addressed the meaning of "accessible to the public" as used in § 192.707(c) (markers for gas pipelines). In the instant case, there is insufficient evidence upon which to base a finding that the above-ground piping at the particular locations is, in fact, accessible to the public.

Accordingly, I find that Respondent failed to maintain a required marker in violation of § 195.410(a) as alleged in Item 5(a) of the July 7 Notice, I make no findings of violation with respect to Items 5(b), (c), and (d).

Inspections of rights-of-way - § 195.412

Item 6 of the July 7 Notice and items (i), (ii), and (v) of the Second Amendment allege various failures with respect to Respondent's inspection of its rights-of-way. Specifically, Respondent allegedly failed (a) to inspect certain rights-of-way within the required time intervals, (b) to inspect certain rights-of-way the required 26 times per year and (c) to inspect rights-of-way which were obscured by vegetation. In the first two situations, the alleged violations involve several lines; in the last, two lines.

Respondent does not contest these allegations. However, with respect to (c) Respondent notes that it had initiated corrective action prior to the inspection in August and September 1986, but that it has encountered delays due to difficulty in obtaining access to the rights-of-way.

Accordingly, I find that Respondent has failed to inspect its rights-of-way in violation of § 195.412 substantially as alleged in the July 7 Notice and the Second Amendment.

Cathodic protection - § 195.414

Item 7 of the July 7 Notice and the First Amendment allege that, in multiple instances, Respondent has failed to maintain levels of cathodic protection adequate to prevent corrosion of its lines. Specifically, item 7 alleges low potential readings for the three year period 1983-1985 on the #6-10 inch Topeka to Kansas City line, the #1-8 inch Bateman to Wausau line, and the #2-8 inch Superior Junction-Superior line. Potentials were low for 1984-1985 on the #1-8 inch Newport to Bateman and the #7-16 inch Wathena to Des Moines lines. The First Amendment incorporated various noncompliances on other lines of one to two years duration.

Respondent does not contest these allegations, and indeed "turned itself in" with respect to the noncompliances identified in the First Amendment. Respondent notes that it established adequate cathodic protection with respect to those noncompliances identified in the July 7 Notice and that it will complete corrective action with respect to the noncompliances identified in the First Amendment by January 1988. Respondent indicates that it invested 3.4 million to upgrade cathodic protection from 1983 through 1986 and plans to invest an additional $4.7 million in 1987 and 1988 for the same purpose.

Respondent indicates staffing and organizational changes which will assure future compliance. These actions do not excuse the violations, but are appropriately considered in determining the amount of any penalty.

Accordingly, I find that Respondent failed to adequately protect its buried pipelines from corrosion in violation of § 195.414 substantially as alleged in the July 7 Notice and the First Amendment.

Corrosion control for above-ground pipeline facilities - § 195.416(h)

Item 8 of the July 7 Notice alleges several instances in which Respondent failed to maintain the painting or coating on above-ground facilities on three of its pipelines (specifically, the #7-12 inch line through Roland Pump Station and the #4-12 inch and #2-6 inch Des Moines - Minneapolis lines). Item (iv) of the Second Amendment makes similar allegations with respect to a fourth line (the #3-6 inch Albert Lea-Mankato line).

Respondent does not contest these allegations, has indicated completed corrective action with respect to Item 8, and promises corrective action system-wide.

Accordingly, I find that Respondent has failed to adequately protect its above-ground pipelines from corrosion in violation of § 195.416(h) substantially as alleged in the July 7 Notice and the Second Amendment.

Inspections of valves - § 195.420

Item 9 of the July 7 Notice alleges that Respondent failed to perform the required maintenance inspection of two valves, one on its #5-8 inch Rosemount-Rochester line and one on its #6-12 inch Rosemount-Willmar line.

Respondent admits that, because they were under ice or water, the valves were not "turned" to verify operation, but argues that they were "inspected." The purpose of a valve inspection is to verify operation of the valve; visual "inspection" without operating the valve is insufficient. Respondent indicated that valve extenders have been installed to allow future inspection.

Accordingly, I find that Respondent has failed to inspect valves in violation of § 195.420 substantially as alleged in the July 7 Notice.

Inspection of overpressure safety devices on HVL lines - § 195.428(a)

Item 10 of the July 7 Notice alleges that Respondent failed to inspect and test the high discharge pressure shutdown device on its #1-6 inch line at Latimer Station within the interval required for lines used in transporting highly volatile liquids (9 months instead of the required 7 1/2 months). Respondent does not contest the allegation.

Accordingly, I find that Respondent failed to inspect an overpressure protection device on a line carrying highly volatile liquids in violation of § 195.428(a) as alleged in the July 7 Notice.

Security of facilities - § 195.436

Item 11 of the July 7 Notice alleges that Respondent failed to secure a gate at its Chicago Terminal.

Respondent admits that a gate at its Chicago Terminal was open at the time of inspection, but argues that, because the facility is manned when the gate is open, the terminal area is protected from unlawful entry. Respondent further notes that it has refenced the area to enhance security when the gate is open. Although, the violation report indicates that an OPS representative found the terminal unattended with the gate open, there is insufficient evidence in the record upon which to base a finding that a violation of § 195.436 occurred.

SANCTIONS

Assessment of Civil Penalty. Under Section 208(a) of the HLPSA, Respondent is subject to a civil penalty not to exceed $1,000 for each violation for each day the violation persists up to a maximum of $200,000 for any related series of violations, such amount to be assessed by written notice. The July 7 Notice proposed the assessment of civil penalties in the total amount of $219,000: $1,000 per section for alleged violations of sections 195.402, 195.403, 195.404, 195.406, 195.410, 195.412, 195.420, 195.428, and 195.436; $200,000 for alleged violations of Section 195.414; and $10,000 for alleged violations of section 195.416.

Section 208(a) of the HLPSA and § 190.225 require that, in determining the amount of a civil penalty, I consider the following criteria: gravity of the violation, Respondent's culpability, history of prior offenses, ability to pay, good faith in attempting to achieve compliance, and the effect on Respondent's ability to achieve compliance.

With respect to Respondent's failure to adhere to established procedures (§ 195.402), I note that adherence to established procedures is central to the Part 195 concept of performance standards. In the case of failure to mark pipe in storage, I note that the information which was required to be placed on the pipe was available through other records and that it is unlikely that this violation would create any immediate safety risk. The other violations, for failure to inspect overpressure devices, are more serious since the failure of such a device could result in an accident. Furthermore, Respondent has been found in violation of both the requirement to adhere to internal procedures (CPF Nos. 3543, 3544) and requirements concerning periodic inspection of safety devices (CPF No. 3544). The widespread failures in this area indicate a serious problem with Respondent's compliance practices. I note the multiple nature of the violations here.

With respect to the violation of § 195.403, I have already discussed the need for having an established training program. There is nothing in the record that indicates the gross inadequacy of training of any particular individual. Further as already recognized, Respondent has made substantial progress and will be required by this order to establish an adequate training program.

With respect to the violation of § 195.404. I note the importance of accurate recording of data on pipeline maps since that data may be needed in an emergency or to identify potential reasons for difficulties incurred in achieving adequate cathodic protection. In discussing the second aspect of violation of § 195.404, I noted the importance for purposes of protection of the entire line of establishing whether corrosion is internal or external whenever a pipe segment is replaced because of corrosion. However, I also note that Respondent is making an effort as evidenced by its new form for reporting pipeline crossings (Exhibit I) to keep its maps updated. In neither case do these violations evidence a disregard for compliance with the recordkeeping requirements by Respondent.

With respect to the establishment of an operating pressure in excess of that allowable by the regulations (§ 195.406), I agree with Respondent that, in this case, the violation appears to be de minimis and inadvertent. Although strict adherence to allowable operating pressures is required, there is no evidence that the violation in this case greatly decreased safety. Furthermore, Respondent promptly corrected the situation.

With respect to the violation of § 195.410, I note that the violation is a single instance of failure to maintain a marker and that, although the violation had to exist for more than one day (to allow for growth of the obscuring vegetation), there is no evidence of long duration. I note that the totality of the original allegations with respect to § 195.410 (for which a penalty of $1,000 was proposed) was more serious than this single count.

With respect to the failure of Respondent to maintain rights-of-way (§ 195.412), I note the importance of adequate patrolling as one way to assure the continued safe operation of the line, e.g. by noting construction activities and the condition of the ground surface. Respondent has not offered excuse for the large number of failures in this regard discovered by OPS except with respect to its failure to keep the right-of-way clear of vegetation (for which Respondent indicates landowner objections).

With respect to Respondent's failure to adequately protect its buried pipe from external corrosive (§ 195.414), I note the importance of cathodic protection as a primary means of assuring the continued safe operation of buried high pressure steel pipelines and the numerous instances of violation in this case. I incorporate the discussion concerning inadequate cathodic protection in the final order in CPF No. 3543. In that case, Respondent was assessed a civil penalty of $115,000 for inadequate cathodic protection on the line through Mounds View, Minnesota on which a failure occurred on July 8, 1986. Some of the cathodic protection violations in the instant case involve lines containing the same type of pipe as in the Mounds View accident. Respondent has not offered any excuse for its failures with respect to cathodic protection. Respondent has made significant efforts to correct its deficiencies in this area including the commitment of resources including personnel, and the modification of internal responsibilities. Given the serious nature of the violations, their extent, and Respondent's widespread failures in this area, mitigation is unwarranted.

With respect to Respondent's failure to protect its above-ground facilities from corrosion (§ 195.416), I note that there are numerous instances of violation. Because the facilities involved are above-ground and corrosion is visible, corrosion protection is less critical to continued safe operation. In this case, however, the first instance noted by OPS involves actual corrosion on the facilities due to the failure to adequately protect. The latter instances of violation cited involve only inadequacies in protecting the facilities. There is nothing in the record to indicate the extent of these latter inadequacies such as their duration or the amount of chipping found in the coating. Without such information, it is possible

that, at least in some instances, the chipping occurred recently. Respondent has received a warning letter in the past for inadequacies noted with respect to § 195.416. However, that warning letter was not specific enough to allow a conclusion that the deficiencies noted were the same ones. I note Respondent's efforts to assure system-wide compliance.

With respect to Respondent's failure to inspect two valves (§ 195.420), I note that Respondent has made corrective action and that the violations do not appear to have greatly decreased the safe operation of the lines.

With respect to Respondent's failure to inspect an overpressure device on an HVL line (§ 195.428(a)), I note the importance of assuring that overpressure devices are effective and the fact that the line is used for transporting highly volatile liquids. I further note Respondent's previously noted failures in the inspection of overpressure protection devices (the first violation in this case and CPF No. 3544).

Respondent is able to pay the penalty assessed herein and payment will not affect Respondent's ability to achieve compliance. Respondent is making efforts, as already noted, to improve its compliance.

Having considered the assessment criteria, I hereby assess Respondent a total of $209,000 as a civil penalty for violations of the regulations as outlined herein and delineated as follows:

§ 195.402	**$ 1,000**
195.403	**$ 250**
195.404	**$ 500**
195.406	**$ 500**
195.410	**$ 250**
195.412	**$ 1,000**
195.414	**$200,000**
195.416	**$ 4,000**
195.420	**$ 500**
195.428	**$ 1,000**

Payment of this civil penalty must be made by certified check or money order, payable to the Department of Transportation within 20 days of service and sent to:

Office of the Chief Counsel
Research and Special Programs
Administration
400 Seventh Street, S.W., Rm. 8420
Washington, D.C. 20590

Failure to pay the penalty with this time frame will result in the accrual of interest, penalties, and administrative fees in accordance with 31 U.S.C. § 3717.

Imposition of Compliance Order

The July 7 Notice proposed the issuance of a compliance order to direct adequate corrective action with respect to certain deficiencies identified in Items 2 (training), 3 (specifically, failure to keep maps current), 6 (specifically, failure to keep the right-of-way clear), and 7 (specifically, inadequate cathodic protection of the #6-10 inch Topeka-Kansas City line.) The First Amendment proposed an additional item to be added to assure corrective action with respect to noncompliances identified in that amendment.

At the hearing, Respondent sought clarification of the proposed corrective action with respect to Item 3. Specifically, Respondent sought and obtained approval of its new form (Exhibit I) and its procedure which would keep updates to the maps in the tract file pending revisions.

With respect to proposed corrective action for Item 7, Respondent did not oppose the requirement for an instrumented pig study of the Topeka-Kansas City line, but requested twelve months in which to accomplish it. Respondent requests the additional time in order to fit the inspection into its "prioritized program". The line has been without adequate cathodic protection for a considerable length of time . However, pursuant to the Consent Order in CPF No. 3548-H, this line is restricted to operation at a reduced pressure. Accordingly, the length of time for completion of the testing required is extended to nine months.

Accordingly, pursuant to Section 207(b) of the HLPSA, 49 App. U.S.C. § 2008(b), Williams Pipe Line Company is hereby ordered to comply with the following requirements within the time period specified, such requirements being in addition to other applicable requirements of 49 C.F.R. Part 195:

1. **With respect to § 195.403, establish and submit for the approval of the Chief, Central Region, OPS, a training program which will ensure that all employees engaged in the pipeline transportation of hazardous liquids receive required training in a uniform manner and that such training is appropriately documented in records. This program shall contain, at a minimum, elements which address the requirements of § 195.403 including those referenced requirements of § 195.402. This program shall be submitted to the Chief for approval <u>within 180 days</u> following the issuance of this order.**

2. With respect to violation of § 195.404(a)(2), update your system-wide maps and records by including information pertaining to buried utilities and foreign pipelines. A map may be updated by inclusion of the update in tract files. This update shall be completed within one year from issuance of this order.

3. With respect to violation of § 195.412, do the following:

   (a) Complete the clearing of the right-of-way of the #1-8 inch Newport to Bateman line to allow effective aerial patrolling. This clearing shall be completed within one year of the issuance of this order.

   (b) Within 90 days of the issuance of this order, submit a program to the Chief, Central Region, OPS, for the evaluation of the surface condition of rights-of-way (with respect to the possible interference with adequate patrolling caused by vegetation.) The evaluation shall include Williams' plans and timetable for clearing any areas where vegetation renders patrolling ineffective.

4. With respect to violation of § 195.414, do the following:

   (a) Inspect the #6-10 inch Topeka to Kansas City line from MP 103 + 43 to MP 160 + 00 to determine the effects of inadequate cathodic protection on the wall thickness of the pipe. This inspection shall be performed using an instrumented internal device. Complete this testing within 9 months of the issuance of this order.

   (b) Notify the Chief, Counsel Region, OPS, in writing at least fifteen days in advance of the commencement of the testing called for in (a).

   (c) Submit a complete report of the results of the testing to the Chief, Central Region, within 60 days following completion of the testing called for in (a). This report shall include the severity and location of all anomolies and actions taken or proposed concerning these anomolies.

(d) Correct noncompliances identified in Exhibit I to the Williams' report "Pipeline Safety Issues" in accordance with the schedule provided therein. Notify the Chief, Central Region, OPS, of the correction and method of correction.

Amendment of operating procedures

The July 7 Notice and Item (iii) of the Second Amendment also notified Respondent of alleged deficiencies with respect to its operating and maintenance plan and of the possibility that OPS would require amendment of that plan pursuant to § 195.402(b). Respondent has agreed to make changes to its plan in response to the first and third deficiency noted in the July 7 Notice and Item (iii) of the Second Amendment and to submit them to review by OPS. Since this may obviate the need for an order directing amendment, no action is needed at this time with respect to these items.

The second deficiency identified in the July 7 Notice presents a different situation. The July 7 Notice indicates that Respondent's procedures do not identify the types of locations for which pipeline failures require immediate response. Respondent urges that its procedure which require immediate response for all credible reports of failures regardless of location is adequate. I disagree. Section 195.402(c)(4) clearly requires a location sensitive identification of pipeline facilities for emergency response. Respondent may routinely require some immediate response to all credible reports regardless of location. However, Respondent also must identify those locations in which the failure of pipeline facilities cause immediate hazard to the public in a manner which assures that reports of failures in those locations receive highlighted attention by personnel. If Respondent disagrees with this requirement, the appropriate action is a petition for a change in the regulation.

In making a determination as to the adequacy of Respondent's procedure, Section 210(b) of the HLPSA requires consideration of certain criteria: relevant available safety data, appropriateness of the plan for the particular type of pipeline, the reasonableness of the plan, and the extent to which the plan contributes to public safety. There is no relevant data available. Identification of the location of facilities most in need of adequate emergency response is appropriate for a liquid pipeline system, is reasonable, and will contribute to public safety. Failure to identify such locations in an effort to prioritize every incident may result in the routinization of all response to the disregard of special treatment for the situation truly calling for emergency response.

Accordingly, pursuant to Section 210(b) of the HLPSA, 49 App. U.S.C. § 2009(b) and § 195.402(b), Williams Pipe Line Company is hereby required:

> **(1) To amend its operation and maintenance plan to determine which pipeline facilities are located in areas which would require immediate response to prevent hazards to the public in case of failure.**
>
> **(2) To submit the amendment required in (1) to the Chief, Central Region, OPS, for review <u>within 120 days</u> of the issuance of this order.**

Respondent has a right under 49 C.F.R. § 190.215 to petition for reconsideration of this order within 20 days after service thereof. Stay of the order may be granted for good cause shown. Failure to pay the civil penalty assessed or failure to obey the terms of the compliance order may result in the assessment of additional penalties or in referral of this matter to the Attorney General for appropriate action in the United States District Court. The terms and conditions of this order are effective upon service.

Richard L. Beam

Richard L. Beam, Director
Office of Pipeline Safety

DATE ISSUED: DEC 2 1987

678

Yes

U-117-12
FEF
interpretation
192.707

INFORMATION: Section 192.707(c) Interpretations DMT-30

SIGNED
Melvin A. Judah MELVIN A. JUDAH
Acting Associate Director for
Pipeline Safety Regulation, DMT-30

Richard E. Sanders
Pipeline Safety Specialist, DPB-60

In your memorandum of February 27, 1981, you requested an interpretation of the term "accessible to the public" in section 192.707(c), and whether certain situations involving district regulator stations and other facilities would be subject to the rule.

Section 192.707(c) provides:

> "Pipelines aboveground. Line markers must be placed and maintained along each section of a main and transmission line that is located aboveground in an area accessible to the public."

Under the definitions in section 192.3, a "regulator station" and the other facilities to which you referred are included within the meaning of "pipeline" and the terms "transmission line" and "main." Thus, these facilities must be marked if they are located aboveground in an area accessible to the public. By letter dated July 15, 1976, we issued an interpretation to Cities Service Gas Company which provides that an area is "accessible to the public" if entrance into the area is not physically controlled by the operator or if the area may be entered without difficulty.

With regard to your question about how the term "accessible to the public" would apply to the five situations given in your memorandum, the descriptions of the situations are insufficient for us to make a determination of the application of the regulation. The application of the regulation depends upon all factors relevant to whether an operator exercises physical control or whether an area is difficult to enter. These factors can only be ascertained by examination of the site. Two factors to consider are whether the area is adequately fenced and locked or guarded, and if not fenced, the remoteness of a facility from areas frequented by the public. These and other relevant factors should be considered by enforcement personnel in applying section 192.707(c) to given situations.

cc:
DMT-30, 31(2), 13, 10
DCC-1, BRP

#

DMT-31/RSimmons:bas:x62392:3-13-81
FILE: 192.707

Control No. OPSR-24