



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

SEP 16 2002

Mike L. Johnson
Vice President of Conoco Gas and Power
Conoco, Inc.
600 North Dairy Ashford
Houston, Texas 77079

Re: CPF No. 4-2001-5005

Dear Mr. Johnson:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$20,000. 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)
Conoco, Inc.) CPF No. 4-2001-5005
Respondent.)
_____)

FINAL ORDER

On April 10-11, 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 between Westlake, Louisiana and Mont Belvieu, Texas. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated October 19, 2001, 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 violated 49 C.F.R. §195.401 and proposed assessing a civil penalty of \$25,000 for the alleged violation.

By letter dated November 6, 2001, Respondent requested a 45-day extension of the deadline to file its response. By letter dated November 19, 2001, OPS granted Respondent an extension to January 15, 2002. By letter dated January 11, 2001 [sic] (Response), which OPS received January 14, 2002, Respondent contested the allegations, offered information in explanation of the allegations, and requested a hearing that was held on February 26, 2002.

FINDING OF VIOLATION

The Notice alleged Respondent violated 49 C.F.R. §195.401(b), which states that when an operator discovers any condition that could adversely affect the safe operation of its pipeline system, the operator shall correct it within a reasonable time. If the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.

The Notice alleged that Respondent failed to correct within a reasonable time three conditions, involving cathodic protection test leads, bypass valves, and a mainline block valve, that could adversely affect the safe operation of its pipeline system.

First, the Notice alleged that Respondent failed to repair six broken cathodic protection test leads over the course of two successive inspections, one in April of 1999 and one in May of 2000. The test leads involved were: #23 at FM 1410, #30 at League Road, #68 at East fence on FM 408, #72 at Hoo Hoo Road, #88 at Childress Road, and #129 at Renaud Road. OPS observed that the #30 test lead at League Road was still in disrepair at the time of OPS' inspection on April 11, 2001. In its Response and at the hearing, Respondent acknowledged that these cathodic protection test leads were not repaired on consecutive annual surveys. Respondent contended, however, that "their close proximity to upstream and downstream test stations made them redundant. Because of their redundancy, pipeline integrity was in no way compromised when they became broken. . ."

Respondent stated in its Response that it planned to eliminate the test lead at Hoo Hoo Road and had repaired the others between January and November of 2001. Respondent provided the locations of the test leads and stations, and the distances between them (which varied between 590' and 7978'; the Hoo Hoo Road test lead was listed as 174' from the West Station #71).

According to 49 C.F.R. § 195.416(a), a hazardous liquid pipeline operator is required to conduct tests on each buried, in contact with the ground, or submerged pipeline facility in its system that is under cathodic protection at least once each calendar year, at intervals not exceeding 15 months, to determine whether the protection is adequate. This testing includes an electrical survey of the pipeline facilities that are under cathodic protection. In performing an electrical survey, an operator would discover broken test leads. A reasonable time to repair those test leads would be by the time of the next electrical survey, which would be in one year, but in no case more than 15 months.

Section 195.416(b) requires an operator to maintain test leads required for cathodic protection in such a condition that electrical measurements can be obtained to ensure adequate protection from external corrosion.

Cathodic protection is intended to limit external corrosion of the pipe. As OPS stated in its violation report, when a corrosion technician is unable to obtain critical cathodic protection information from electrical test leads, the technician cannot effectively evaluate the level of cathodic protection provided by the impressed current corrosion control system.

At the hearing Conoco suggested that in the southern United States "the recommended distance between test leads is two miles." OPS disagreed, stating that the spacing of test leads depends on the circumstances, and that OPS does not recommend any particular offset distance.

The records associated with the test leads in question, as well as records concerning other components of Respondent's system, formed part of OPS' inspection. Despite Respondent's characterization of the test leads as "redundant," Respondent apparently considered those test leads necessary parts of its hazardous liquid pipeline system and was inspecting them annually. If the test leads were truly redundant, Respondent should have eliminated them. Once the test leads were discovered to be broken, they should have been repaired or replaced by the next inspection cycle, which is within 15 months of the time they were first discovered to be broken. None of the test leads involved were repaired in that time frame.

The second condition identified in the Notice involved bypass valves. The Notice alleged that between June of 1999 and December of 2000, two East bypass valves at Valve Site 16, FM 563, remained stuck during four successive inspections, and that one bypass valve (number three) at Valve Site 19, Winzer Road, remained stuck during three successive inspections from December 1999 to December of 2000.

In its Response and at the hearing, Respondent acknowledged that two of the three inoperable valves were not repaired between inspections. Respondent stated in its Response that on its Vista 6" ethane pipeline, all mainline 6" valves have a 2" bypass assembly. "The bypass assembly consists of four or five 2" valves. . . [and] serves two purposes. The first is to facilitate inspection of the mainline valve. If the mainline valve is fully closed during inspection, flow can be directed through the bypass if needed. . ."

According to the Response, if an inside valve becomes inoperable, "the bypass is depressured and the valve is replaced or repaired. If it is one of the outside valves directly tied to [the] 6" pipeline, [it is] not repaired or replaced immediately because of the redundancy of the design. . . [O]ne inoperable valve does not affect the safe operation of the pipeline. As long as one of the four bypass valves is closed, the mainline block valve will perform its function. . ." Respondent brought a diagram typical of its valve assembly to the hearing. Respondent stated that because of the configuration of the valve assembly, the inoperable bypass valves could not be repaired without shutting down the pipeline system and evacuating the pipeline.

According to 49 C.F.R. § 195.420(a) a hazardous liquid pipeline operator is required to maintain each valve that is necessary for the safe operation of its pipeline system in good working order at all times. Subsection (b) of that section requires the operator to inspect each mainline valve to verify that it is functioning properly twice each calendar year at intervals not exceeding 7 ½ months.

As was the case with the broken electrical test leads, Respondent's characterization of the valves as "redundant" does not justify Respondent's failure to repair the non-functioning valves within a reasonable time, that is, by the next inspection cycle. According to OPS, Respondent's records, entitled "Vista 6" Ethane Pipeline Valve Maintenance," indicate that the bypass valves are necessary for the safe operation of the system and are to be lubricated and operated twice each calendar year not to exceed 7 ½ months. Because these valves are part of Respondent's pipeline system, and formed part of OPS' inspection, they should have been repaired or replaced by the next inspection cycle.

The third condition that the Notice alleged was that the mainline block valve at Valve Site 29, Kim Street, did not work either remotely or manually, and was not repaired on two successive inspections between June 1999 and December 1999. Respondent brought records to the hearing, however, showing that the valve was repaired on August 18, 1999 after it was reported to have malfunctioned on June 28, 1999, and repaired again on February 1, 2000 after it was reported to have malfunctioned on January 5, 2000.

correcting within a reasonable time conditions, involving its cathodic protection test leads and bypass valves, that could adversely affect the safe operation of Respondent's pipeline system as more fully described in the Notice. I further find that the third allegation of violation of 49 C.F.R. §195.401(b), involving the mainline block valve, Valve Site 29 at Kim Street, has not been proved.

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

ASSESSMENT OF PENALTIES

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 violations, 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 penalty of \$25,000 for violation of 49 C.F.R. §195.401(b). Non-functioning bypass valves and broken cathodic protection test leads are both conditions that can adversely affect the safe operation of a pipeline. Respondent did not correct these conditions within a reasonable time. This is a serious violation. The primary objective of the Federal hazardous liquid pipeline safety standards is public safety and failure to take prompt remedial action to correct any deficiencies could adversely affect public safety.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$20,000. A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business.

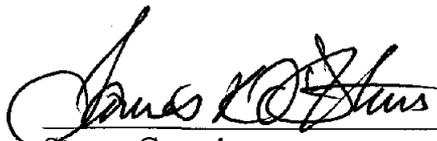
Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this **payment be made by wire transfer**, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. **Detailed instructions are contained 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: Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25770, Oklahoma City, OK 73125; **(405) 954-4719**.

Failure to pay the \$20,000 civil penalty will result in accrual of interest at the current annual rate in

Failure to pay the \$20,000 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.

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.



for Stacey Gerard
Associate Administrator
for Pipeline Safety

SEP 16 2002

Date