



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

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

JUL 12 2004

Barry R. Pearl
President
Texas Eastern Products Pipeline Company, LLC
2929 Allen Parkway
Houston, TX 77019

Re: CPF No. 4-2002-5010

Dear Mr. Pearl:

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 \$45,000. 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,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Leonard Mallett
Vice President, Operations

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)
)
Texas Eastern Products)
Pipeline Company, LLC)
)
Respondent.)
_____)

CPF No. 4-2002-5010

FINAL ORDER

Pursuant to 49 U.S.C. § 60117, representatives of the Office of Pipeline Safety (OPS) conducted an investigation of the November 17, 2000 accident resulting in the release of crude oil at Respondent's tank farm near Texas City, Texas. As a result of the investigation, the Director, Southwest Region, OPS, issued to Respondent, by letter dated May 30, 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 violated 49 C.F.R. §§ 195.406(b), 199.105(b),¹ and 199.225(a)(1) and proposed assessing a civil penalty of \$45,000 for the alleged violations.

Respondent responded to the Notice by letter dated June 27, 2002 (Response). Respondent did not contest the allegations of violation but provided information concerning the corrective actions it has taken and requested that the proposed civil penalty be reduced. Respondent did not request a hearing, and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Respondent did not contest the alleged violations in the Notice. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Parts 195 and 199, as more fully described in the Notice:

49 C.F.R. § 195.406(b) -- failing to provide adequate controls and protective equipment to control pipeline pressure within 110 percent of the established maximum operating pressure (MOP) when the improper closure of an inlet valve (#15) to Tank No. 3 caused pressure to increase above MOP;

¹ The requirements previously imposed by 49 C.F.R. § 199.11(b) can now be found at § 199.105(b), as redesignated by Final Rule dated September 11, 2001 (66 Fed. Reg. 47114).

49 C.F.R. § 199.105(b) -- failing to drug test, within 32 hours after the accident, the employee responsible for closing the tank valve that caused the system pressure to exceed MOP; and

49 C.F.R. § 199.225(a)(1) -- failing to test for alcohol, as soon as practicable following the accident, the employee responsible for closing the tank valve that caused the system pressure to exceed MOP.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 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.

The Notice proposed a total civil penalty of \$45,000 for the violations.

I have determined that Respondent has no financial circumstances that would prevent it from paying on the assessed amounts and that Respondent's ability to continue in business will not be significantly affected.

OPS staff took Respondent's good faith into account when proposing civil penalties in the Notice. I have also considered Respondent's good faith in determining the assessed penalty amounts.

In its Response, Respondent provided information on actions it has taken to ensure compliance with the pipeline safety regulations subsequent to the accident at its Texas City Tank Farm. The actions described in the Response, including incorporation of a new SCADA interlock and revisions to Respondent's drug and alcohol procedures and training, are commendable, but are also necessary to ensure compliance with the pipeline safety regulations. Therefore, I find that these actions do not mitigate the proposed civil penalties.

The Notice proposed a civil penalty of \$25,000 for violation of 49 C.F.R. § 195.406(b). Respondent failed to provide adequate controls and protective equipment to control the pressure within 110 percent of the established MOP at its Texas City Tank Farm. Having controls and equipment in place to limit pressure in the event of a surge or other abnormal operating condition is critical to reducing the likelihood of a release and the risk posed to persons and the environment in the event of an accident. The nature and gravity of the violation justify the proposed civil penalty amount. Therefore, I assess a civil penalty of \$25,000.

The Notice proposed a civil penalty of \$10,000 for violation of 49 C.F.R. § 199.105(b). Respondent failed to drug test its employee in a timely manner after the Texas City Tank Farm accident. Drug testing an employee whose performance either contributed to the accident or could not be completely discounted as a contributing factor to the accident is a necessary part of establishing accident causation. Accordingly, failure to perform drug testing can deprive the operator and OPS of necessary safety information to prevent future accidents. Therefore, I assess a civil penalty of \$10,000.

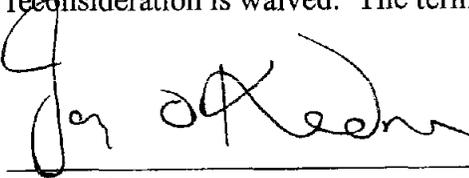
The Notice proposed a civil penalty of \$10,000 for violation of 49 C.F.R. § 199.225(a)(1). Respondent failed to test its employee for alcohol in a timely manner after the Texas City Tank Farm accident. Testing an employee for alcohol whose performance either contributed to the accident or could not be completely discounted as a contributing factor to the accident is a necessary part of establishing accident causation. Accordingly, failure to perform testing for alcohol can deprive the operator and OPS of necessary safety information to prevent future accidents. Therefore, I assess a civil penalty of \$10,000.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$45,000.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$45,000 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 a United States District Court.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a 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. However if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.



 Stacey Gerard
 Associate Administrator
 for Pipeline Safety

JUL 12 2001

 Date Issued

for