



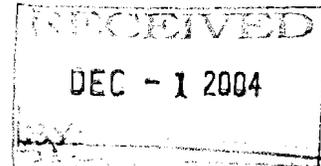
U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

NOV - 3 2004

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



Re: CPF No. 4-2002-5014

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 \$70,000. It further finds that you have completed the actions specified in the Notice required to comply with the pipeline safety regulations. When the civil penalty is paid, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
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)
)
Texas Eastern Products)
Pipeline Company, LLC,)
)
Respondent.)
_____)

CPF No. 4-2002-5014

FINAL ORDER

On July 16 through July 20, 2001, pursuant to 49 U.S.C. § 60117, representatives of the Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Respondent's records and procedural manual for operations, maintenance, and emergencies (OM&E manual) in Houston, Texas. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated November 15, 2002, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 195.302 and 195.402(a) and proposed assessing a civil penalty of \$70,000 for the alleged violation of § 195.302. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

Respondent requested and was granted a 20-day extension to respond to the Notice. Respondent responded to the Notice by letter dated January 10, 2003 (Response) and submitted additional information regarding its compliance actions by letters dated January 20 and February 3, 2003. Respondent did not contest the allegations of violation but provided information concerning the corrective actions it had taken and would take. 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. Part 195, as more fully described in the Notice:

49 C.F.R. § 195.302 -- failing to schedule and pressure test approximately 14 miles of pipeline containing more than 50 percent of pre-1970 electric resistance welded pipe before the December 7, 2000 deadline;

49 C.F.R. § 195.402(a) -- failing to review and update, as necessary, the OM&E manual at intervals not exceeding 15 months, but at least once each year. Inspectors discovered two procedures that had been revised in an addendum to the OM&E manual on January 21, 2001, but had last been updated in the actual OM&E manual on December 19, 1996 and January 29, 1997.

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 \$70,000 for violation of 49 C.F.R. § 195.302.

Pressure testing of the steel pipeline at issue in this Order is fundamental to establishing the integrity and safety of the pipeline. Failing to pressure test a pipeline results in uncertainty as to the pipeline's ability to withstand pressures that the pipe may be subjected to during operations, and thus may pose a risk to the public, personnel, and the environment.

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

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$70,000.

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) 954-8893.

Failure to pay the \$70,000 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to the items in the Notice for violations of 49 C.F.R. §§ 195.302 and 195.402(a). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under Chapter 601. The Director, Southwest Region, OPS has indicated that Respondent has taken the following actions specified in the proposed compliance order:

1. Fulfilled the requirements of 49 C.F.R. § 195.302 by performing required pressure tests and submitting satisfactory records of the tests to the Regional Director.
2. Met the requirements of 49 C.F.R. § 195.402(a), as determined by the Regional Director, by submitting an addendum verifying revisions to its OM&E manual as well as two procedural changes.

Accordingly, since compliance has been achieved with respect to these violations, the compliance terms are not included in this Order.

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.

William H Gate
per

 Stacey Gerard
 Associate Administrator
 for Pipeline Safety

NOV - 3 2004

 Date Issued