



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

MAR 10 2005

Mr. Bob T. Howard
Vice President
Gas Transmission Northwest
1400 SW Fifth Avenue, Suite 900
Portland, OR 97201

RE: CPF No. 5-2004-1007

Dear Mr. Howard:

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 \$12,500. The penalty payment and 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: Mr. Kevin Cowan, Gas Transmission Northwest
Mr. Alan Rathbun, Washington Utilities and Transportation Commission
Mr. Chris Hoidal, Director, OPS, Western Region

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of

**GAS TRANSMISSION NORTHWEST
CORPORATION**

Respondent.

CPF No. 5-2004-1007

FINAL ORDER

During May 19 and 23 and between May 28 and 29, 2003, pursuant to 49 U.S.C. § 60117, representatives of Washington Utilities and Transportation Commission (WUTC), as agent for the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's natural gas pipeline facilities and records in the State of Washington. As a result of the inspection, the Director, Western Region, OPS, issued to Respondent, by letter dated February 24, 2004, 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. §§ 192.13 and 192.481 and proposed assessing a civil penalty of \$20,000 for the alleged violations.

Respondent responded to the Notice by letter dated March 19, 2004 (Response). Respondent contested the allegations of violation, offered information to explain the allegations and requested that the proposed civil penalty be eliminated. Respondent submitted a request for a hearing by e-mail on July 21, 2004. In accordance with §190.209, Respondent's hearing request was denied, as the request was made more than 30 days after receipt of the Notice.

FINDINGS OF VIOLATION

Item 1 of the Notice alleged that Respondent violated 49 C.F.R. §192.13 (c) by not maintaining, modifying as appropriate, and following the plans, procedures, and programs that it is required to establish under this part. The OPS inspection revealed that Respondent did not follow written procedures detailing the use of a plasma arc cutting torch to remove a 42-inch road casing during a highway project. According to the procedures, the welder simulates the conditions to test the cutting method and other details of the procedure prior to conducting the actual operation. The procedures provided for the use of a heat shield.

However, Respondent did not perform the simulation test nor was a heat shield used during the operation. The plasma arc made contact with the wall of the pipeline and caused three "divot" like defects. Respondent repaired the damage to the pipeline in accordance with its procedures.

The Notice also alleged that Respondent did not provide documentation to demonstrate that it followed procedures to conduct pre-job briefings, as required by Respondent's OMI KK-71 Pre-Job Briefing dated 5/17/01. Respondent's procedures require pre-job briefing be conducted every day to provide instructions to employees when conducting non-routine tasks until the job is complete.

In its response to Item 1, Respondent contended that OPS lacked jurisdiction regarding the removal of the 42-inch road crossing casing because the removal of road casings is not explicitly covered by 49 C.F.R. Part 192 nor is it included in Respondent's IO&M Plan. Alternatively, it is Respondent's position that it should not be found in violation because of one employee's choice not to follow the company's written procedures for removal of a road crossing casing. Respondent contended that a briefing was held the first day of the job.

As for Respondent's jurisdictional argument, the alleged violation stemmed from Respondent's failure to follow its own written procedure for removing casings in a manner that protected the pipe from damage and in conducting and documenting pre-job briefings with respect to the casing activity. It is irrelevant the Respondent had not included the procedures in its IO&M Plan since the activity in connection with a highway project is not a routine one. However, it is an excavation activity for which 49 C.F.R. § 192.614 requires written procedures to protect the pipeline from damage. In this case, following the procedure might have prevented the damage that occurred here. It is also irrelevant that removal of casing is not explicitly mentioned in Part 192. Most of the regulations in Part 192, including 49 C.F.R. § 192.614, are performance regulations that allow an operator to craft regulations appropriate to the operations of its pipeline. With respect to the pre-job briefings, Respondent has adopted the procedure for pre-job briefings to be applied whenever the safety of some maintenance activity would be improved by it. Respondent recognized the importance of a pre-job briefing on this project by conducting one and cannot then fail to follow the procedure.

As for Respondent's argument that the incident would not have occurred but for the actions of one employee, an employer is ultimately responsible for the actions of its employees. This is a well-settled rule of law that comes into play when the employer has the right and ability to control or supervise the activities of an employee. An employer's responsibility is not diminished or affected by the fact that an individual failed to follow Respondent's procedures and failed to consult with management or the engineer who developed the road casing removal procedures.

Ultimately, Respondent is responsible for compliance with the pipeline safety regulations. The Notice identified instances in which Respondent failed to follow the plans, procedures, and programs established under §192.13. Respondent failed to demonstrate that pre-job briefings were conducted. Assuming *arguendo*, that a first day pre-job briefing was held, the procedures required daily briefing. Also, Respondent's internal investigation revealed that some individuals that worked on the job did not attend the alleged first day briefing. Respondent's failure to follow the written plans and procedures for removal of the road casing and failure to provide daily instructions to employees conducting this non-routine task resulted in damage to the pipeline. Accordingly, I find that Respondent violated 49 C.F.R. §192.13 by failing to follow the plans, procedures, and programs as required.

Item 2 of the Notice alleged that Respondent violated 49 C.F.R. §192.481 by not inspecting Mainline Valve 6-2 and Mainline Valve 6-3 for atmospheric corrosion at least once every 3 calendar years, but with intervals not exceeding 39 months. The defects on Mainline Valve 6-2 included disbonded coating on mainline blowdown stacks #13 and #14 with an indication of some visible rust but no corrosion. The defects identified on Mainline Valve 6-3 included coating defects and indications of corrosion at the air-to-soil interface on mainline blowdown stacks #13 and #14. The Notice also alleged that similar air-to-soil interface conditions were observed on miscellaneous piping at Compressor Stations 6 (Rosalia) and 8 (Wallula). However, no remedial action had been taken to correct the condition until initiation of the OPS inspection on May 19, 2003.

In its initial response to Item 2, Respondent argued that effective inspection and remediation procedures were in place at the time of the inspection. In support of its position, Respondent further argued that it conducted inspections during and after the OPS inspection and no coating was found with severe damage, that at no time in its 40 years of operations has any above ground piping needed to be replaced due to atmospheric corrosion and that during the OPS inspection it initiated remediation. With respect to the allegation that similar air-to-soil interface conditions were observed on miscellaneous piping at Compressor Station 6 (Rosalia) and 8 (Wallula), Respondent suggested that closer observation was needed to assess the vent line for possible coating deficiencies at Station 8 and the blow-down stack at Station 6 to assess the condition of the coating. Respondent argued that while its subsequent assessment found that the coating at both locations had some deterioration at the surface due to the effects of ultraviolet light, the coating was bonded to the pipe above the soil line and there was no deteriorated coating below the soil line. Respondent stated that both locations had been inspected for atmospheric corrosion within the past three years and both sites were found to be free from deterioration requiring remediation.

Although Respondent argued that effective inspection and remediation procedures were in place, a review of Respondent's exposed pipe reports revealed defects on Mainline valve 6-2 and Mainline 6-3 that were originally identified on April 16, 2001. In fact, Respondent acknowledged the poor performance of a supervisory employee in addressing this matter during 2001 and 2002. The evidence showed that no remedial action had been taken to correct the condition until initiation of the OPS inspection on May 19, 2003. Accordingly, I find that Respondent violated 49 C.F.R. §192.481.

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. The Notice proposed a total civil penalty of \$20,000 for violation of 49 C.F.R. §§192.13 and 192.481.

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 proposed penalty for **Item 1** is \$5,000 for violation of 49 C.F.R. § 192.13, as Respondent failed to follow the written plans and procedures for removal of the road casing and failed to provide daily instructions to employees conducting this non-routine task resulted in damage to the pipeline.

Respondent argued that the proposed civil penalty is inappropriate, as Respondent's investigation revealed that the incident occurred because of an individual who failed to follow procedures and failed to consult with management or the engineer who developed the road casing removal procedure. Respondent contended that a briefing was held the first day of the job. Respondent advised that because it takes the circumstances surrounding the casing removal seriously, an investigation was initiated to identify safety concerns, resolutions to those concerns and any necessary program improvements. Respondent argued that the immediate disciplinary actions that resulted in termination of the individual's employment and the implementation of program improvements which resulted from the internal investigation are mitigating factors that support elimination of the proposed civil penalty. Respondent advised that it did not take the occurrence lightly and that the resulting actions substantiate that stance as well as its overall commitment to pipeline safety and integrity. Respondent argued that the incident would not have occurred but for the actions of one employee who made an individual choice not to follow the procedures. Respondent further advised that the results of the investigation were shared with OPS, WUTC and Respondent's employees.

When an employee acts within the scope of his authority, as the employer's representative, and fails to take appropriate action, that failure is attributable to the employer. The primary objective of the Federal gas pipeline safety standards is public safety and failure to follow procedures could adversely affect public safety. Respondent failed to follow its manual of written procedures for conducting operations, maintenance activities and emergency response. Operators are ultimately responsible for their own compliance with pipeline safety laws and regulations even in the face of mistakes, omissions or commissions that occur within its employee's scope of duties. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000. Accordingly, I find Respondent violated 49 C.F.R. § 192.13(c).

The proposed penalty for **Item 2** is \$15,000 for violation of 49 C.F.R. § 192.481, as Respondent failed to inspect for atmospheric corrosion at least once every 3 calendar years, but with intervals not exceeding 39 months. Respondent requested reconsideration of the proposed civil penalty. Although Respondent argued that it has effective inspection and remediation procedures, Respondent's exposed pipe reports revealed defects on the subject areas that were originally identified on April 16, 2001. The pipe was cleaned and re-coated on May 22, 2003. Documentation is essential to provide the Operator a useful review tool for operating practices and procedures.

A determination is made that Respondent took remedial action prior to the conclusion of the OPS inspection to comply with the regulations, which justifies mitigation of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$7,500.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this payment to be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. 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 \$5,000 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 a petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, remain in full effect unless the Associate Administrator, upon written request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

for 

Stacey Gerard
Associate Administrator
for Pipeline Safety

MAR 10 2005

Date Issued