



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

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

MAY 10 2001

Mr. Larry E. Thomas  
President - Energy Delivery  
Cincinnati Gas & Electric Company  
139 East Fourth Street  
Room ATII - 30<sup>th</sup> Floor  
Cincinnati, Ohio 45202

RE: CPF No. 3-2000-0002

Dear Mr. Thomas:

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 \$5,000. The penalty payment terms are set forth in the Final Order. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. §190.5.

Sincerely,

A handwritten signature in cursive script that reads "Gwendolyn M. Hill".

Gwendolyn M. Hill  
Pipeline Compliance Registry  
Office of Pipeline Safety

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

In the Matter of )

Cincinnati Gas & Electric )

Respondent. )

CPF No. 3-2000-0002

**FINAL ORDER**

On April 1, 2000, pursuant to 49 U.S.C. § 60117, a representative of the Central Region, Office of Pipeline Safety (OPS) initiated an investigation of an incident involving a pipeline operated by Cincinnati Gas & Electric (Respondent). Respondent failed to give timely telephonic notification to the National Response Center of an explosion and fire that occurred in the 1200 block of McGuffey Lane, Batavia, Ohio at 4:50 a.m. on April 1, 2000. The Director, Central Region, OPS, issued to Respondent, by letter dated June 30, 2000, 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 violated 49 C.F.R. § 191.5 and proposed assessing a civil penalty of \$5,000 for the alleged violation.

In a letter dated July 27, 2000, Respondent submitted a Response to the Notice. Respondent did not contest the allegations of violation but offered an explanation and provided information in mitigation of the proposed civil penalty. Respondent did not request a hearing and therefore, has waived its right to one.

**FINDINGS OF VIOLATION**

The Notice alleges that CGE violated 49 C.F.R. § 191.5, as Respondent failed to give telephonic notification to the National Response Center (NRC), at the earliest practicable moment, of an incident that occurred on April 1, 2000 on their system in Batavia, Ohio. The incident, an explosion and fire, occurred in the 1200 block of McGuffey Lane, Batavia, Ohio at 4:50 a.m. on April 1, 2000. Respondent did not notify NRC until 10:25 a.m. on April 6, 2000, approximately 124 hours after the accident occurred.

Respondent did not contest the alleged violation but explained that it was revising its internal procedure for notification of reportable incidents in order to ensure compliance. Respondent requested that the revised procedures, which would be delivered to the Central Region, Office of Pipeline Safety by August 15, 2000, be reviewed and considered in mitigation of the proposed civil penalty. However, as of January 25, 2001, no new procedures were received. In any case, a change

in procedures does not exclude the failure to report in a timely manner. Accordingly, I find Respondent violated 49 C.F.R. §191.5 by failing to give telephonic notification to the National Response Center, at the earliest practicable moment, following discovery of an incident.

This finding of violation will be considered a prior offense 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 \$25,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations. The Notice proposed assessing a penalty of \$5,000 for violation of 49 C.F.R. § 191.5.

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.

As for the violation of 49 C.F.R. § 191.5, Respondent did not contest the alleged violation and was aware of the requirement to provide telephonic notice to the NRC. OPS's ability to take corrective action and/or mitigate potential safety problems is severely hampered by untimely telephonic notification of an incident. Respondent has not shown any circumstance that would have prevented or justified it not taking prompt action to give telephonic notification to the NRC. After being notified of the incident, the Public Utilities Commission of Ohio recommended that Respondent telephonically report to the NRC. However, Respondent did not notify NRC until approximately 124 hours after the accident occurred. Respondent is aware of the reporting requirement since it made six telephonic notices to the NRC since December, 1992. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000. A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue business.

**Payment of the civil penalty must be made within 20 days of service.** Payment can 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-320), P.O. Box 25770, 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.** 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: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.

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 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.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$25,000 per violation per day, or in the referral of the case for judicial enforcement.

  
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Stacey Gerard  
Associate Administrator  
for Pipeline Safety

MAY 10 2001

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Date Issued