



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S W
Washington, D C 20590

NOV 22 2005

Mr. Joe Sudholt
Vice President Crude/Products
Supply and Transportation
Countrymark Cooperative, LLP
1200 Refinery Road
Mt. Vernon, IN 47620

Re: CPF No. 3-2004-5024

Dear Mr. Sudholt:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, withdraws two of the allegations of violation, and assesses a civil penalty of \$16,000. It also specifies actions to be taken to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the compliance order completed, as determined by the Director, Central Region, 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
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

)	
In the Matter of)	
)	
Countrymark Cooperative, LLP,)	CPF No. 3-2004-5024
)	
Respondent)	
)	

FINAL ORDER

On April 6 - 8, 2004, pursuant to 49 U.S.C. § 60117, a multi-regional team representing the Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), conducted an on-site pipeline safety inspection of Respondent's operator qualification (OQ) records and procedures in Mt. Vernon, Indiana.¹ As a result of the inspection, the Director, Central Region, OPS, issued to Respondent, by letter dated August 25, 2004, 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 committed violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$50,000 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated September 7, 2004 (Response). Respondent contested several of the allegations, offered information to explain the allegations, and requested the proposed civil penalty be eliminated or reduced. Respondent did not request a hearing, and therefore has waived its right to one.

FINDINGS OF VIOLATION

Item 1(b) in the Notice alleged Respondent violated 49 C.F.R. § 195.505(b). This provision requires each operator ensure through evaluation that individuals performing covered tasks are qualified to perform those tasks. The Notice alleged Respondent qualified an individual to perform seventeen covered tasks, even though the individual had not completed training necessary for the qualifications. Respondent did not contest this allegation and explained the violation was due to an assignment error. Accordingly, I find Respondent violated § 195.505(b).

¹ The Norman Y Mineta Research and Special Programs Improvement Act, Pub L No 108-426, 118 Stat 2423 (2004), created the Pipeline and Hazardous Materials Safety Administration (PHMSA) and transferred the authority of RSPA exercised under chapter 601 of title 49, United States Code, to the Administrator of PHMSA. See also 70 Fed Reg 8299, 8301-8302 (2005) (delegating authority to the Administrator of PHMSA)

Item 1(c) in the Notice alleged Respondent violated 49 C.F.R. § 195.505(b). This provision requires each operator ensure that individuals performing covered tasks can recognize and react to abnormal operating conditions (AOCs). The Notice alleged Respondent failed to ensure thirty-one employees performing covered tasks were qualified to recognize and react to AOCs. The Notice also alleged Respondent failed to ensure eleven contractor personnel were qualified to recognize and react to AOCs.

In its Response, Respondent outlined the process it uses to ensure qualified individuals can recognize and respond to AOCs. The process includes written and verbal instructions given to supervisors. The process also requires evaluated employees, and their evaluators, sign a Certification Statement. The Certification Statement reads in part, "I can perform this task safely and can identify and respond to abnormal operating conditions that may occur during the performance of this task." (Response, p.2) Respondent asserted that this process ensures compliance with the qualification program and the regulations applicable to AOCs.

OPS inspectors found many of Respondent's evaluations properly documented the review of AOCs. However, inspectors also found approximately forty-two individual evaluations did not document the review of AOCs. These evaluations did not include the signed Certification Statement required by Respondent's procedures. There is no evidence in the record to show the forty-two evaluations identified by OPS inspectors included a required review of AOCs. Accordingly, I find Respondent violated § 195.505(b) as alleged in the Notice.

Item 2 in the Notice alleged Respondent violated 49 C.F.R. § 195.505(b), (c), and (e). These provisions require Respondent prepare and follow a qualification program to: (b) ensure through evaluation that individuals performing covered tasks are qualified; (c) allow individuals that are not qualified to perform a covered task if directed and observed by a qualified individual; and (e) evaluate an individual when there is reason to suspect the individual may no longer be qualified. Respondent places a responsibility with its supervisors and managers to ensure these three elements of the OQ program are followed. Respondent's qualification program also requires each qualified individual understand the OQ procedures applicable to their assigned tasks. The Notice alleged Respondent's Corrosion Supervisor—a qualified individual—did not know his responsibilities under Respondent's OQ program. The supervisor allegedly was unaware of his responsibilities to ensure contractor personnel are qualified and nonqualified personnel must be directed and observed by qualified individuals. The Notice also alleged the supervisor was unaware of his responsibility to determine when an individual is no longer qualified to perform a covered task.

Respondent stated in its Response that it "believe[s]" the supervisor was aware of his responsibilities under the OQ program. (Response, p.3) Respondent expressed the "opinion" that the supervisor knew covered tasks were to be performed by or under direct supervision of a qualified individual. (*Id*) Respondent explained the supervisor may have had trouble understanding some of the inspector's questions during the OPS inspection.

During the inspection, the OPS inspector asked the supervisor standard field inspection questions (Protocol 9) and documented the supervisor's responses. The supervisor failed to state that he had a responsibility to review contractor qualifications and ensure nonqualified personnel were appropriately directed and observed. The supervisor stated that it was the responsibility of the Pipeline Integrity Manager to verify contractor qualifications. The supervisor was also unable to communicate the factors to be considered when determining whether an individual is no longer able to perform a covered task.

The evidence gathered during the inspection shows Respondent's Corrosion Supervisor did not have the requisite knowledge of his responsibilities under Respondent's OQ program. Respondent's statement that it "believe[s]" the supervisor was aware of his responsibilities does not rebut this evidence. Respondent did not submit any documentation supporting its opinion that the supervisor knew his responsibilities under the OQ program. Accordingly, I find Respondent violated § 195.505(b), (c), and (e) as alleged in the Notice.

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

WITHDRAWAL OF ALLEGATIONS

Item 1(a) in the Notice alleged Respondent violated § 195.505(b). This provision requires each operator ensure through evaluation that individuals performing covered tasks are qualified. The Notice alleged Respondent failed to ensure contractor personnel were qualified to perform covered tasks. Respondent stated in its Response that contractor qualifications are verified and explained the process by which Respondent verifies these qualifications. Respondent reviews contractor qualifications and either accepts them under Respondent's OQ program or rejects them. If Respondent rejects a contractor's qualification, Respondent does not allow the contractor to perform a covered task unless the person is re-qualified under Respondent's qualification program or directed and observed by a qualified individual. Respondent submitted a "Contractor Qualification Log" which documents the verification of contractor qualifications. I find the evidence submitted by Respondent shows Respondent verified contractor qualifications in accordance with § 195.505(b). Accordingly, I am withdrawing this allegation of violation.

Item 3 in the Notice alleged Respondent violated § 195.509(a). This provision requires each operator to have a written qualification program by April 27, 2001. The Notice alleged Respondent established its qualification program on June 4, 2002, more than one year after the deadline. During the inspection, Respondent's Pipeline Integrity Manager confirmed Respondent's qualification program was established on June 4, 2002.

In its Response, Respondent maintained that it had developed a qualification program by January 26, 2001 (hereafter "original program"). Respondent submitted a copy of the original program. The cover to the original program reads: "DRAFT . . . revised 1/26/01." According to Respondent, sometime after the date on the cover, Respondent contracted with a qualification specialist to enhance the original program. A "revised program" was developed by the contractor and implemented by October 28, 2002. There is no reference in the revised program

to the original program or to the original program's development date. Respondent explained the Pipeline Integrity Manager was not aware of the original program at the time of the inspection, because he had started working with the company after the contractor began development of the revised program

Section 195.509(a) requires each operator have a written qualification program by April 27, 2001. Each qualification program developed under this regulation must comply with the minimum standards specified in § 195.505. If Respondent developed an OQ program that met the minimum standards of § 195.505 by April 21, 2001, I must find that Respondent complied with § 195.509(a). Section 195.505 states:

The [OQ] program shall include provisions to: (a) Identify covered tasks; (b) Ensure through evaluation that individuals performing covered tasks are qualified; (c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified; (d) Evaluate an individual if the operator has reason to believe that the individual's performance of a covered task contributed to an accident as defined in Part 195; (e) Evaluate an individual if the operator has reason to believe that the individual is no longer qualified to perform a covered task; (f) Communicate changes that affect covered tasks to individuals performing those covered tasks; and (g) Identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed.

After reviewing Respondent's original program, I find the program included each provision required by the minimum standards of § 195.505. The original program had provisions to address the identification of covered tasks, qualifications, evaluations and reevaluations, use of non-qualified individuals, use of contractors, administration of the program, modifications to covered tasks, modifications to the program, record keeping, and other related topics. Respondent's original program was developed prior to April 21, 2001. For these reasons, I find Respondent's original program complied with § 195.509(a).

It is important to note that § 195.509(a) did not require Respondent to implement the original program. Section § 195.509(a) required only that Respondent develop the program. A separate provision, § 195.509(b), required that the program be implemented (at a later date).² There were no restrictions prohibiting Respondent from revising the original program prior to its implementation. The label "DRAFT" on the cover of the program does not render the program noncompliant. For the reasons stated above, I find Respondent's original program met the minimum standards for an OQ program by April 27, 2001, complying with § 195.509(a). Accordingly, I am withdrawing this allegation of violation

² The Notice did not allege that Respondent violated § 195.509(b)

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 \$50,000 for the violations alleged in the Notice.

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.

Respondent requested elimination or mitigation of the proposed civil penalty based on Respondent's good faith efforts to comply with the applicable regulations.

Item 1(b) in the Notice proposed a civil penalty of \$2,000. Respondent qualified an individual to perform seventeen covered tasks without verifying the individual had completed training that was mandatory for the qualifications. Respondent's failure to verify training prior to issuing qualifications increases the risk of an accident caused by human error.

In its Response, Respondent explained certain training modules had not been assigned to the individual due to an administrator error. Respondent stated that it was an honest mistake made by a new assignment program put into effect to ensure compliance. The individual's supervisor determined the individual had fulfilled all necessary training because the individual's training list showed all "assigned" training had been completed.

It was not sufficient for the supervisor to determine qualification by looking only at the list of assigned training. The supervisor should have determined whether each of the required training modules had actually been completed by the individual. I do not find Respondent's explanation warrants a reduction in the civil penalty for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent the civil penalty of \$2,000.

Item 1(c) in the Notice proposed a civil penalty of \$10,000. Respondent qualified approximately forty-two individuals to perform covered tasks without ensuring they could recognize and react to abnormal operating conditions. Respondent's error could have jeopardized public safety in the event an abnormal condition occurred and could not be immediately recognized or properly responded to. Although Respondent submitted as evidence of good faith an explanation of its process for ensuring compliance, Respondent did not always use this process, which is evident from the record. For this reason, I do not find Respondent's explanation warrants a reduction in the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000.

Item 2 in the Notice proposed a civil penalty of \$4,000. Respondent's Corrosion Supervisor could not demonstrate requisite knowledge of his responsibilities under Respondent's OQ

program in response to standard field inspection questions. Since Respondent has placed OQ responsibilities with its supervisors and managers, a supervisor's lack of awareness of his or her responsibilities creates a risk that a covered task may be performed incorrectly by an unqualified individual. Improperly-performed covered tasks may lead to an accident. Respondent has not submitted information that warrants a reduction in the civil penalty for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$4,000.

Items 1(a) and 3 in the Notice proposed civil penalties of \$4,000 and \$30,000, respectively. Since these items are withdrawn, the proposed civil penalties are not assessed.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$16,000. 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. 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 \$16,000 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 Items 1(c) and 2. 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. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations. Respondent must—

1. Conduct a review and document whether each of the 42 individuals identified in Item 1(c) can recognize and react to abnormal operating conditions applicable to the covered task(s) each is qualified to perform. Conduct any training necessary to ensure each qualified individual can recognize and react to applicable abnormal operating conditions. Submit documentation of compliance within 30 days of receipt of this order.

2. Conduct a review and document whether each supervisor with responsibilities under Respondent's operator qualification program is fully aware of his or her responsibilities under the program. Conduct any training necessary to ensure that each supervisor with responsibilities under Respondent's qualification program understands his or her responsibilities. Submit documentation of compliance within 60 days of receipt of this order.

Submit documentation to the Director, Central Region, Office of Pipeline Safety, 901 Locust Street, Room 462, Kansas City, MO 64106. The Director, Central Region, OPS, may grant an extension of time to comply with any of the required items upon a written request by the Respondent demonstrating good cause for an extension.

Failure to comply with this 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.

The Notice also proposed a compliance order for Item 1(a). Since Item 1(a) is withdrawn, the proposed compliance terms are not included.

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. All other terms of the order, including any required corrective action, remain in full effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective on receipt.

for


Stacey Gerard
Associate Administrator
for Pipeline Safety

NOV 22 2005

Date Issued