



U S Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Ave S E
Washington DC 20590

FEB 27 2008

Ms. Patty Walker
Senior Vice President
Ohio and Kentucky Gas Operations
Duke Energy Corporation
139 East Fourth Street
Cincinnati, OH 45202

Re: CPF No. 3-2007-5019

Dear Ms. Walker:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions to be taken to comply with the pipeline safety regulations. When the terms of the compliance order are completed, as determined by the Director, Central Region, PHMSA this enforcement action will be closed. Your receipt of this Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeffrey D. Wiese".

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ivan Huntoon, Director
Central Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

_____))
In the Matter of))
))
Duke Energy Corporation,))
))
Respondent))
_____)

CPF No. 3-2007-5019

FINAL ORDER

On October 30 through November 3, 2006, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety and the Kentucky Public Service Commission conducted an on-site pipeline safety inspection of Respondent's 6-inch propane pipeline facilities near Monroe, Ohio. As a result of the inspection, the Director, Central Region, PHMSA, issued to Respondent, by letter dated May 21, 2007, a Notice of Probable Violation 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 ordering Respondent to take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated June 25, 2007 (Response). Respondent did not contest the allegations of violation and expressed its intent to take the steps outlined in the proposed compliance order. 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 allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a), which states:

§ 195.410 Line markers.

(a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:

(1) Markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known.

(2) The marker must state at least the following on a background of sharply contrasting color:

(i) The word "Warning," "Caution," or "Danger" followed by the words "Petroleum (or the name of the hazardous liquid transported) Pipeline", or "Carbon Dioxide Pipeline," all of which, except for markers in heavily developed urban areas, must be in letters at least 1 inch (25 millimeters) high with an approximate stroke of 1/4 inch (6.4 millimeters).

(ii) The name of the operator and a telephone number (including area code) where the operator can be reached at all times.

The Notice alleged that some of Respondent's line markers displayed incorrect information. Specifically, the Notice alleged that some line markers in Ohio were found displaying the words "Gas Pipeline" along with the words "Propane Pipeline" and that two markers were found to display an emergency telephone number that was disconnected. Respondent did not contest the allegation in its Response. Accordingly, I find that Respondent violated 49 C.F.R. § 195.410(a) as more fully described in the Notice.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.440, which states:

§ 195.440 Public education.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see §195.3).¹

Specifically, the Notice alleged that Respondent failed to implement a public education program for years 2003, 2004, and 2005 directed at the public in the vicinity of its propane pipelines in Ohio. Respondent did not contest the allegation in its Response. Accordingly, I find that Respondent violated 49 C.F.R. § 195.440 (2005), as more fully described in the Notice.

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

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to the inaccurate line marker violation in Item 1 and the public education program violation in Item 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,

¹ This regulation was amended in 2005 to include additional requirements for public awareness programs (70 FR 28843) Operators were required to comply with the amended regulation as of June 20, 2006. Because the allegations involved the 2003-2005 time period, the Notice cited the regulation as it existed prior to this amendment.

Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. In regard to Item 1 of the Notice pertaining to inaccurate line markers, Duke Energy shall update all line markers to display a current telephone number. Additionally, Duke Energy shall remove the reference to "Natural Gas" from the line markers placed over propane lines;
2. In regard to Item 2 of the Notice pertaining to implementation of a public education program, Duke Energy shall provide an additional notification of the affected public in the vicinity of its propane pipelines in Ohio with relevant propane pipeline information. This additional public notification shall be in addition to implementing the provisions of its new public awareness plan which follows the guidance provided in API 1162 in accordance with 49 C.F.R. § 195.440 (2007), as amended;
3. Items 1 and 2 above shall be completed within 120 days following receipt of this Order; and
4. Duke Energy shall maintain documentation of the costs associated with fulfilling this Order and submit copies of the documentation to Ivan A. Huntoon, Director, Central Region, Pipeline and Hazardous Materials Safety Administration, 901 Locust Street, Suite 462, Kansas City, MO 64106-2641. Costs shall be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline facilities and equipment.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

The terms and conditions of this Final Order shall be effective upon receipt.

William H. Guntz
for

FEB 27 2008

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued