



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

OCT 21 2011

Mr. Robert S. Bahnick
Senior Vice President
Operations and Technical Services
Southern Star Central Gas Pipeline, Inc.
4700 Highway 56
P.O. Box 20010
Owensboro, Kentucky 42301

RE: CPF No. 3-2008-1005

Dear Mr. Bahnick:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one allegation of violation and issues a warning to Southern Star Central Gas Pipeline, Inc., with respect to three other alleged violations. This case is now closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety
Mr. Dave Barrett, Central Region Director, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0075 9633]

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

_____)	
In the Matter of)	
)	
Southern Star Central Gas Pipeline, Inc.,)	CPF No. 3-2008-1005
)	
Respondent.)	
_____)	

FINAL ORDER

From June to August 2008, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of the Welda Unit, a natural gas pipeline system operated by Southern Star Central Gas Pipeline, Inc. (Southern Star or Respondent), a subsidiary of Southern Star Central Corporation, in the State of Kansas.¹

As a result of that inspection, the Director, Central Region, OPS (Director), issued to Southern Star, by letter dated December 12, 2008, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Southern Star had violated 49 C.F.R. § 192.625. The Notice also proposed ordering Respondent to take certain measures to correct one of the alleged violations, and warning Respondent to take appropriate corrective action or be subject to future enforcement action.

Southern Star responded to the Notice by letter dated January 5, 2009 (Response). Respondent contested one of the allegations, offered additional information in response to the Notice, and requested a hearing. A hearing was subsequently held on April 22, 2009, at the PHMSA Central Region Office in Kansas City, Missouri, with an attorney from the Office of Chief Counsel, PHMSA, presiding. After the hearing, Southern Star submitted a Post-Hearing Brief, dated April 30, 2009 (Brief), and additional evidence for the record.

¹ The Welda Unit is part of Southern Star's 6,000-mile network of natural gas pipelines and related facilities in the Midwest, including Wyoming, Nebraska, Kansas, Missouri, Kentucky, Colorado, Texas, and Oklahoma. <http://www.sscgp.com/aboutus> (last accessed August 5, 2010).

FINDINGS OF VIOLATION

Item 3: The Notice alleged that Southern Star violated 49 C.F.R. § 192.625, which states, in relevant part:

§ 192.625 Odorization of gas.

(a) A combustible gas . . . must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.

(b) After December 31, 1976, a combustible gas in a transmission line in a Class 3 or Class 4 location must comply with the requirements of paragraph (a) of this section unless:

(1) At least 50 percent of the length of the line downstream from that location is in a Class 1 or Class 2 location;

(2)

(3) In the case of a lateral line which transports gas to a distribution center, at least 50 percent of the length of that line is in a Class 1 or Class 2 location;

The Notice alleged that Southern Star violated § 192.625(b) by failing to odorize the natural gas in a transmission line in the Welda Unit. Specifically, the Notice alleged that Respondent had not injected any odorant into the DW-003 “lateral line,” a 1.83-mile pipeline segment in a Class 3 location. The Notice further stated that less than 50% of the length of that line was in a Class 1 or Class 2 location; therefore, the exception in § 192.625(b)(3) did not apply.

In its Response, Southern Star contested the alleged violation, arguing that the exception in § 192.625(b)(3) applied to the DW-003.

April 2009 Hearing

Two witnesses testified on Southern Star’s behalf at that hearing: Mr. David Sinclair, the company’s Manager of Pipeline Compliance, and Mr. John S. Zurcher, an independent consultant and the author of a report, entitled “Report on the Requirements to Conduct Odorization of Gas,” which Southern Star had used as foundation for its odorization program (Zurcher Report). OPS offered the testimony of Mr. Ivan Huntoon, the former Director of the Central Region, PHMSA, and Mr. Hans Shieh, the OPS employee who had performed the inspection of the Welda Unit.

Mr. Sinclair testified that, in his view, the DW-003 lateral line did not require odorant under § 192.625(b)(3). He noted that his position was consistent with the opinions rendered in the Zurcher Report, and bolstered by the fact that the DW-003 line connects with another pipeline not owned or operated by Southern Star, which transports natural gas for several more miles downstream before reaching a distribution center. Mr. Sinclair also stated that the sole reason for the odorization requirement was leak detection, and that this objective could be accomplished on transmission lines without using odorant, e.g., by performing periodic leak surveys and relying on the public’s ability to see and hear leaks.

Mr. Zurcher's testimony focused on several alleged inadequacies in the odorization regulation and OPS's application of that regulation to the DW-003 line. Specifically, he testified that (1) there was no definition for "lateral line" or "distribution center" in 49 C.F.R. Part 192; (2) the DW-003 line did not terminate at a distribution center; (3) OPS used the term "branch line" in the compliance order portion of the Notice, which was also not defined in 49 C.F.R. Part 192; (4) odorization was not the only means of detecting natural gas leaks on transmission lines; (5) PHMSA had never established a clear policy on applying the odorization requirement; (6) OPS's interpretation was impracticable and unduly expensive; and (7) PHMSA's various Regional Offices would not be capable of consistently applying such an interpretation.

Mr. Zurcher also discussed the methodology used in his report. He explained that he had defined a lateral line in that report as:

[A] transmission line that branches off a main line or another lateral line to connect a gathering system or source of supply; or which connects a main line or another lateral line to a distribution center, or a direct connect to an end user not connected to a distribution center. A lateral line does not have compression other than for peak shaving or other temporary purposes and in no case does the compression operate more than 45 days per year. A lateral line extends beyond the limits of a circle with a radius of 300 feet, from the point where it ties into a main line or other lateral line.²

Mr. Zurcher then described how his interpretation of the odorization requirement would apply to three hypothetical pipeline systems, concluding in each instance that odorant would not be required. He also sought to demonstrate the impracticability of OPS's position by applying it to five theoretical modifications of the pipelines in the Welda Unit.

Mr. Huntoon, the former Director of the Central Region, defended the violation as alleged in the Notice. He also questioned some of the assumptions in the Zurcher Report, particularly the author's conclusions that the odorization regulation should be applied at the farthest possible point upstream and that a lateral line should be defined so as to maximize the number of covered pipeline segments. The Director stated that, in his view, public safety required that the odorization regulation be applied to a natural gas pipeline system in a far more conservative matter, i.e., from the farthest possible point downstream, on a lateral-by-lateral basis. Counsel for OPS also noted that the Pipeline Glossary on PHMSA's website included a definition for the term lateral: "a segment of a pipeline that branches off the main or transmission line to a tank line or metering station."³

² Mr. Zurcher noted that his definition of lateral line sought to draw a distinction between the terms "main line" and "lateral line," both of which are considered "transmission lines" under Part 192. He also stated that he used the term "distribution system" instead of "distribution center," a term not defined in Part 192, to "add clarity of intent." Mr. Zurcher explained that his definition "helps to clarify the difference between main line and lateral line." Finally, he stated that he "added a measurable length" of 300 feet (the smallest distance used in 49 C.F.R. § 192.5 to determine a Class Location) to the last part of his definition to exclude taps from being considered as lateral lines.

³ PHMSA Pipeline Safety Program, Stakeholder Communications, Pipeline Glossary, <http://primis.phmsa.dot.gov/comm/glossary/index.htm?nocache=7616#Lateral> (last accessed July 30, 2009).

Post-Hearing Brief

In its Brief, Southern Star stated that its dispute with OPS was “much larger than that [of] one lateral.”⁴ According to Respondent, “[i]t [wa]s the very definition of lateral, or rather the LACK of definition in the regulations [sic] of lateral, that [wa]s the significant issue.”⁵

To prove its point, Southern Star criticized the Pipeline Glossary’s definition of a lateral, stating that it “seem[ed] to apply MORE to liquid lines than to natural gas lines,” that it “appear[ed] NOT in the regulations but in the [PHMSA] Glossary, [which was] generally adapted for the general public as informational,” and that it was on a website that is “generally [not] reviewed by the industry, particularly in these matters.”⁶ Accordingly, Southern Star argued that using the Pipeline Glossary definition as a point of reference would be “inequitable . . . given its less than public knowledge of availability.”⁷ Respondent further noted that the DW-003 line would not even qualify as a lateral under the Pipeline Glossary’s definition, because it did not terminate at a distribution center or metering station.

Southern Star also stated that the DW-003 line would not need to be odorized under the American Gas Association’s definition of a lateral, “a pipe in a . . . transmission system which branches away from the central and primary part of the system.”⁸ Southern Star further explained that its decision not to odorize the DW-003 was “consistent with the express intent of OPS” in adopting the (b)(3) lateral exception, namely, “to avoid odorization costs for certain segments of pipe.”⁹

In closing, Southern Star argued that “it ha[d] been painted as a probable violator when, in fact, it ha[d] gone above what many have done in attempting to garner outside help in interpreting the applicable regulations.”¹⁰ Respondent, therefore, requested that Item 3 of the Notice be withdrawn.¹¹

⁴ Post-Hearing Brief at 2.

⁵ *Id.*

⁶ *Id.* at 3.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ *Id.* at 6.

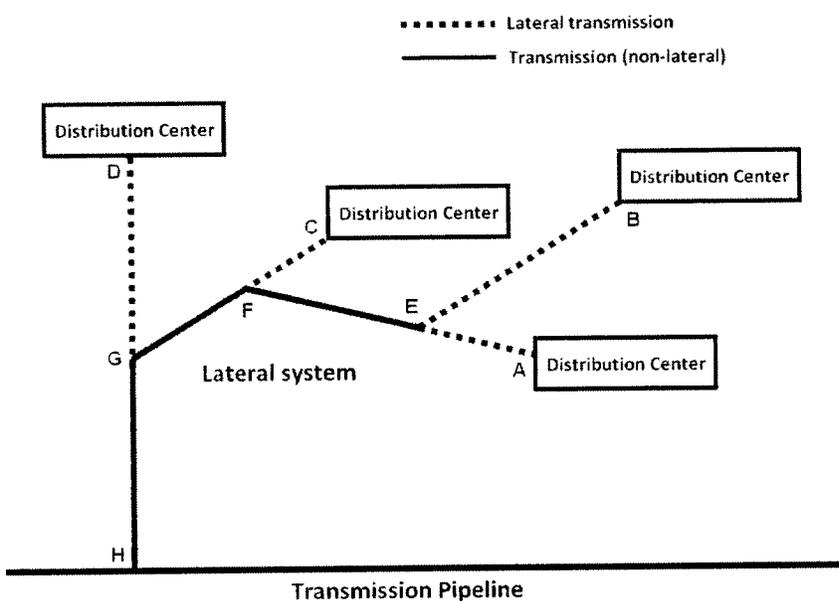
¹¹ Southern Star also requested that PHMSA initiate a new rulemaking proceeding to repeal and replace the current odorization regulation. If Southern Star wishes to obtain further action on that request, it must file a petition for rulemaking under 49 C.F.R. § 190.331.

Analysis

Because the release of a combustible gas is a risk to public safety, particularly in populated areas, § 192.625(b) requires that transmission lines in Class 3 or Class 4 locations contain a natural odorant or be odorized. However, odorant is not required if “[a]t least 50 percent of the length of the line downstream from that location is in a Class 1 or Class 2 location.” Odorant is also not required “in the case of a lateral line which transports gas to a distribution center,” if “at least 50 percent of the length of that line is in a Class 1 or Class 2 location.”

After the record closed in this case, I issued a decision that clarified the scope of the latter exception. Specifically, I found that a lateral line is a pipeline segment which terminates at a distribution center and originates at the first upstream connection with another transmission line.¹² I also provided the following illustration of that determination:

Figure 1: Identification of laterals for purposes of § 192.625(b)(3).



Consistent with that decision and contrary to Respondent’s contentions, § 192.625(b)(3) is not designed so that successive segments of pipeline can be operated without odorant. It is meant to ensure that certain “short” pipeline segments—i.e., those near the end of transmission lines in predominantly rural areas—are not subject to that requirement.¹³ It should also be noted that

¹² *In the Matter of ANR Pipeline Company (ANR)*, Final Order, CPF No. 3-2007-1006, p. 7 (Dec. 4, 2009), *aff’d* by Decision on Petition for Reconsideration, CPF No. 3-2007-1006, pp. 4-12 (Dec. 30, 2010) (available at www.phmsa.dot.gov/pipeline/enforcement).

¹³ In the preamble to the final rule that adopted the odorization regulation, PHMSA included the following relevant discussion on the intent of the lateral-line exception:

Another problem raised by commenters is that most lateral transmission lines serving distribution centers from interstate transmission lines are predominantly in Class 1 or Class 2 locations. In these cases, the terminal portion of a lateral line generally lies in a Class 3 or Class 4 location and

PHMSA's predecessor agency considered, and rejected, all of Southern Star's arguments about the need to use odorant as a leak detection measure in transmission lines more than 30 years ago,¹⁴ and that the Zurcher Report's definition of a lateral line also incorporates a number of factors and other criteria that are not listed in the odorization regulation, including the use of compression, number of operating days, and a minimum-length requirement.¹⁵

Nevertheless, the evidence of record is not sufficient to sustain the allegation of violation.¹⁶ To apply the lateral line exception in § 192.625(b)(3), the record must contain information about the distance and class location(s) from the distribution center to the first upstream connection. Only part of that information is available in this case. Specifically, the record indicates that the DW-003 is a 1.83-mile pipeline segment situated entirely in a Class 3 location. It also indicates that

under the proposed rule would be subject to the odorization requirement. Because in most cases the segment of line to be odorized is short, commenters argued that the cost of installing and operating odorizers would far exceed the safety benefit. OPS agrees with these comments. The final rule, therefore, in § 192.625(b)(3) exempts odorization of gas in a transmission line used in transporting gas to a distribution center if 50 percent or more of the line is in a Class 1 or Class 2 location.

Department of Transportation, Office of Pipeline Safety, Odorization of Gas in Transmission Lines, 40 Fed. Reg. 20279, 20281 (May 9, 1975).

¹⁴ In an August 1973 notice of proposed rulemaking, OPS cited the results of a recently-completed study and stated that:

In the transmission lines of those operators who odorize gas, a number of leaks have been located through odorization. The fact of such results refutes any contentions that odorization is appropriate only for distribution mains and service lines and that high pressure leaks are detectable only by other means. Odorization allows the early detection of leaks and does not limit detection to company employees. In a number of cases, odorization led to discovery of leaks that would not have been disclosed until later by the means normally used.

Office of Pipeline Safety, Gas in Transmission Lines, Odorization Requirements, 38 Fed. Reg. 22044 (Aug. 15, 1973). Similarly, in a May 1975 final rule, OPS noted that some "commenters restated conventional opinions that odorization does not enhance the detection of leaks in transmission lines and that normal odorization is ineffective in open air." Department of Transportation, Office of Pipeline Safety, Odorization of Gas in Transmission Lines, 40 Fed. Reg. 20279, 20280 (May 9, 1975). OPS responded by stating that "[o]n these latter points, . . . the record is clear—a large number of gas leaks, including leaks on transmission lines, have been detected by people smelling odorant in open air." *Id.*

¹⁵ Southern Star's lack of ownership or control over the downstream pipeline segment that actually terminates at the distribution center is not relevant to whether the DW-003 must be odorized. See *Ross Marsh Foster Myers & Quiggle*, #PI-91-038 (Dec. 26, 1991) (available at <http://www.phmsa.dot.gov/pipeline/regs/interps>) (noting that non-ownership of pressure control devices does not excuse a regulated pipeline operator's responsibility for complying with Parts 192 and 195).

¹⁶ OPS bears the burden of proof in an enforcement action and must prove, by a preponderance of the evidence, that all of the elements of a violation exist. *In the Matter of Alyeska Pipeline Service Co.*, Decision on Reconsideration, CPF No. 5-2005-5023, p. 4-5 (Dec. 16, 2009); *In the Matter of Butte Pipeline Co.*, Final Order, CPF No. 5-2007-5008, p. 2, n. 3 (Aug. 17, 2009) (http://primis.phmsa.dot.gov/comm/reports/enforce/documents/520075008/520075008_Final%20Order_08172009.pdf?nocache=1644; see *Schaeffer v. Weast*, 546 U.S. 49, 56-58 (2005).

the DW-003 connects with another pipeline that transports gas to a distribution center, but does not contain any specific information about length and class location(s) of that downstream line. Without such information, a determination cannot be made as to whether or not the DW-003 line is part of a "lateral line" and, if so, whether the DW-003 must be odorized under 49 C.F.R. § 192.625(b)(3). Accordingly, I am withdrawing Item 3 of the Notice and the Compliance Order without prejudice.

WARNING ITEMS

With respect to Items 1, 2, and 4, the Notice alleged probable violations of Part 192, but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 192.203 (**Item 1**) — Southern Star installed its fuel gas regulators at the Hugoton, Ottawa, and Americus compressor stations in a manner that permitted the control lines for the operator and monitor to be on the same pressure-sensing tap, thereby failing to protect each control line from anticipated causes of damage.

49 C.F.R. § 192.227 (**Item 2**) — In 2004, Southern Star failed to follow the requirements for properly testing and qualifying a welder under API 1104.

49 C.F.R. § 192.751 (**Item 4**) — Southern Star failed to properly remove a potential ignition source from the inside of a town border station.

Southern Star presented information in its Response indicating that it had taken certain actions to address these warning items. Having considered that information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of Part 192 occurred as of the date of the inspection, and that Respondent has corrected such conditions. If OPS finds a violation of any of these items in a subsequent inspection, Southern Star may be subject to future enforcement action.

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, contain a brief statement of the issue(s), and meet all other requirements of 49 C.F.R. § 190.215. The terms of the Final Order, including any required corrective action, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.



Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

OCT 21 2011

Date Issued