



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

MAR 15 2004

Mr. Jerome B. Richter
President
Penn Octane Corporation
77-530-Enfield Lane, Building D
Palm Desert, California 92211

RE: CPF No. 4-2002-5001

Dear Mr. Richter:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$10,000, and requires certain corrective action. 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, Southwest 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
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of)
)
)

Penn Octane Corporation,)

CPF No. 4-2002-5001

Respondent.)
_____)

FINAL ORDER

On September 26-27, 2001, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Brownsville, Texas. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent by letter dated March 25, 2002, 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 violated 49 C.F.R. §§ 195.402, 195.416, 195.436, 195.505, and 195.509, and proposed assessing a civil penalty of \$10,000 for the alleged violations.

Respondent requested and was granted an extension to respond until May 26, 2002. Respondent responded to the Notice by letter dated May 23, 2002 (Response). Respondent did not contest the allegations of violation but provided information concerning the corrective actions it has taken. 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 alleged violations contained in the Notice. Accordingly I find that Respondent violated the following sections of 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. § 195.402(a) (Item 1 in the Notice) for failing to include in its manual for operations, maintenance, and emergencies, procedures for performing an annual review of the manual, including a requirement that a record of the review be maintained for two years;

49 C.F.R. § 195.402(c)(2) (Item 2) for failing to include in its manual procedures for reporting accidents, as required by §§ 195.50, 195.52, and 195.4;

49 C.F.R. § 195.402(c)(3) (Item 3), which requires operators to operate, maintain, and repair their systems in accordance with each requirement of subpart F of Part 195, for failing to have procedures in its manual for:

- (A) determining that none of its pipeline casings under roads, highways and railroads are shorted and for failing to have procedures for remedial actions in the event a shorted casing is discovered, as required by § 195.401(b);
- (B) instructing its operating and maintenance personnel on the proper use of firefighting procedures and equipment, fire suits, and breathing apparatus by utilizing, where feasible, a simulated pipeline emergency condition, as required by §195.403(a)(5);
- (C) establishing the maximum operating pressure (MOP) on its pipeline, and controlling or limiting the pressure so it does not exceed the MOP, in accordance with §195.406;
- (D) determining the strength of generally corroded pipe, and repairing or replacing generally corroded pipe, or reducing the operating pressure of the pipe commensurate with the strength of the pipe based on the remaining wall thickness, in accordance with § 195.416(f)-(h);
- (E) maintaining adequate firefighting equipment around its pump station, plainly marking the equipment so it is clearly identified as firefighting equipment, and locating the equipment so that it is easily accessible during a fire, in accordance with § 195.430;
- (F) prohibiting smoking or open flames in the pump station area where there is a possibility of the leakage of a flammable hazardous liquid or of the presence of flammable vapors and designating those areas where or when smoking or open flames are permitted, in accordance with § 195.438;
- (G) establishing a continuing educational program that enables the public, appropriate government organizations and persons engaged in excavation-related activities to recognize a hazardous liquid or a carbon dioxide pipeline emergency and to report it to the operator or the fire, police, or other appropriate public officials, in accordance with §195.440; and
- (H) notifying excavators of the type of markings to be provided and how to identify the markings, providing for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins, providing for the inspection of pipelines that the operator has reason to believe could be damaged by excavation activities to verify the integrity of the pipeline, and, in the case of blasting, any inspection must include leakage surveys, in accordance with § 195.442(c)(4)-(6).

49 C.F.R. § 195.416 (Item 5) for failing to clean and coat above-ground piping associated with two valve locations that were covered with surface corrosion;

49 C.F.R. § 195.436 (Item 6) for failing to adequately protect from vandalism and unauthorized entry the valve facilities on the Titan Tire Company property and on the south side of U.S. Highway 281;

49 C.F.R. § 195.505 (Items 7 and 8) for failing to include in its operator qualification program:

- (a) provisions to identify covered tasks;
- (b) methods Respondent intends to use to evaluate individuals performing covered tasks;
and

49 C.F.R. § 195.509 (Item 9) for failing to include in its operator qualification program a statement of when qualification of individuals performing covered tasks must be completed.

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.

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 Notice proposed a penalty of \$4,000 for violation of § 195.505(a), \$3,000 for violation of § 195.505(b) and \$3,000 for violation of § 195.509. In its Response, Respondent referred to sections in its manual that it alleged satisfy § 195.505(a). The sections are part of Respondent's written operator qualification plan. However, Respondent did not submit those sections to OPS for review, and OPS is therefore unable to review these provisions to ensure compliance with the regulations.

Respondent identified the sections in its manual that purported to satisfy § 195.505(b) and stated its procedure to evaluate whether the individuals performing the covered tasks are qualified: "Each Operator is to answer the written questions and review answers with their supervisor and then must pass a separate written examination." Respondent attached a Memo from its Corporate Regulatory Compliance and Safety Manager which set forth deadlines for completing "qualification tests" on emergency procedures, normal and abnormal operations, and maintenance. Respondent did not submit these sections of its manual to OPS for its review. Again, OPS is therefore unable to review these provisions in Respondent's manual to ensure compliance.

Section § 195.509 required Respondent to complete the qualification of individuals performing covered tasks by October 28, 2002. The Notice alleged that Respondent's operator qualification program did not contain a statement indicating when qualification of individuals performing covered tasks was to be completed. In its Response, Respondent stated: "Qualification test completion deadline was reconfirmed as August 31, 2002." Respondent did not submit this section of its manual to OPS for review.

It is very important that operators maintain comprehensive, fully compliant operator qualification programs. The safety of a pipeline system depends in large part on the competence of the personnel operating it. When covered tasks are not properly identified, the qualification process becomes compromised. An operator cannot verify that its employees can correctly and safely perform tasks if its procedures are not thoroughly documented. Respondent has not provided documentation to substantiate that its procedures are adequate. It is also important that Respondent be held liable for failing to note in its manual that all individuals performing work on its pipelines were required to be qualified by October 28, 2002. Therefore, the civil penalty must remain as proposed.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000. 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) 954-4719.

Failure to pay the \$10,000 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 for violations of 49 C.F.R. §§ 195.402, 195.416, 195.436, 195.505, and 195.509.

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 establish written procedures to:

1. Ensure that an annual review of its operations and maintenance manual is performed, and a record of that review is retained for two years, in accordance with § 195.402(a);
2. Identify reportable accidents and ensure the proper data is provided within two hours of discovery, as required by §§ 195.50, 195.52, and 195.4;
3. Test casings under roads, highway and railroads to determine that none are shorted. The procedures must include remedial actions to address shorted casing(s), in accordance with § 195.401(b);
4. Instruct operating and maintenance personnel on the proper use of firefighting equipment, fire suits, and breathing apparatus by utilizing, where feasible, a simulated pipeline emergency condition, in accordance with § 195.403(a);
5. Determine maximum operating pressure (MOP) on the pipeline and control or limit the pressure so that it does not exceed the MOP in accordance with the restrictions found in § 195.406;
6. Determine the strength of generally corroded pipe and repair or replace generally corroded pipe, or reduce the operating pressure of the pipe commensurate with the strength of the pipe based on the remaining wall thickness, in accordance with § 195.416;
7. Maintain adequate firefighting equipment around the pump station. The manual should also specify that the equipment be clearly identified and located in an accessible location in accordance with § 195.430;
8. Prohibit smoking or open flames in the pump station area and designate those areas where smoking or open flames are permitted, in accordance with § 195.438;
9. Create a continuing educational program that enables the public, appropriate government organizations and persons engaged in excavation-related activities to recognize a hazardous liquid or a carbon dioxide pipeline emergency and to report it to the operator or the fire, police, or other appropriate public officials, in accordance with § 195.440;
10. Notify excavators of the type of markings to be provided and how to identify the markings, provide for temporary marking of buried pipelines in the area of excavation activity before the activity begins, and provide for the inspection of pipelines that the operator has reason to believe could be damaged by excavation activities, in accordance with § 195.442(c)(4)-(6);
11. Identify covered tasks that are performed on the pipeline facility, in accordance with § 195.505(a);

12. Identify the methods used to evaluate individuals performing covered tasks, in accordance with §195.505(b); and
13. Include in your operator qualification plan the date by which individuals performing covered tasks were qualified, in accordance with §195.509.

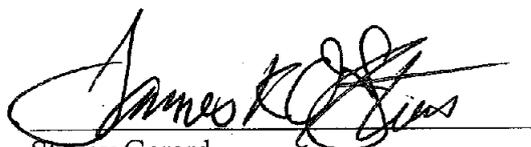
Items 1 through 13 must be completed within 90 days following receipt of the Final Order. Upon completion, submit them to the Director, Southwest Region, OPS, for his review and approval, at 2320 La Branch, Suite 2100, Houston, TX 77004. The Regional Director will consider granting an extension of time if a written request containing the reasons for the request is submitted within a reasonable period of time.

The Notice proposed a compliance order with respect to items 5 and 6 for violations of 49 C.F.R. §§ 195.416 and 195.436, respectively. Respondent has demonstrated corrective action addressing the items in the proposed compliance order. With respect to § 195.416, Respondent has submitted photos to demonstrate that the valves referred to in the Notice have been cleaned and coated. With respect to § 195.436, Respondent submitted photos to demonstrate that the valves have been chained and locked. Because Respondent's actions satisfied the proposed compliance terms, no need exists to issue a compliance order with respect to these items.

WARNING ITEM

The Notice did not propose a civil penalty or corrective action with respect to Item 4 in the Notice. Respondent is warned that if it does not take appropriate corrective action and OPS finds a violation in a subsequent inspection, enforcement action will be taken with respect to that item.

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, remain in full effect unless the Associate Administrator, upon request, grants a stay. 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. The terms and conditions of this Final Order are effective on receipt.


Stacey Gerard
Associate Administrator
for Pipeline Safety

MAR 15 2004

Date Issued