

Mr. John Raber
Vice President, Operations & Engineering
Transok, Inc.
P.O. Box 3008
Tulsa, OK 74101-3008

Re: CPF No. 44002

Dear Mr. Raber:

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 \$1,000. 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,

Gwendolyn M. Hill
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)
)
Transok, Inc.,) CPF No. 44002
)
Respondent.)

FINAL ORDER

On June 23, 1994, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) initiated an investigation of Respondent's telephonic report of an incident involving its pipeline system. As a result of the investigation, the Director, Southwest Region, OPS, issued to Respondent, by letter dated August 2, 1994, 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 had violated 49 C.F.R. § 191.5 and proposed assessing a civil penalty of \$5,000 for the alleged violation.

Respondent responded to the Notice by letter dated August 31, 1994 (Response). Respondent contested the allegations, offered information in explanation of the allegations, and requested a hearing, which was held in the Southwest Regional Office, OPS, on July 21, 1997.

FINDING OF VIOLATION

The Notice alleged that Respondent had violated 49 C.F.R. § 191.5. The regulation states that each operator must give notice to the National Response Center (NRC) of each incident "at the earliest practicable moment following discovery." "Incident" is defined at 49 C.F.R. § 191.3 as an event that involves a release of gas from a pipeline or other facility and results in (1) a death or injury requiring in-patient hospitalization, or (2) estimated property damage of the operator or others, including the cost of gas lost, of at least \$50,000.

The OPS investigation revealed that on June 22, 1994, at approximately 6:00 P.M. CDT, a section of Respondent's 12-inch natural gas gathering pipeline at the Greasy Creek Storage Field, located in Wetumka, Oklahoma, ruptured. The rupture allowed natural gas to escape to the atmosphere but, aside from damage to the pipeline and the loss of gas, no property damage occurred. According to Respondent's written incident report, the estimated pressure in the pipeline at the time of the rupture was 686 psig, and the leak lasted for approximately 38 minutes. Approximately sixteen hours elapsed before Respondent reported the incident to the NRC. These facts were confirmed by Respondent at the hearing.

Respondent attributed the delay in reporting to its initial uncertainty as to the amount of gas that was lost. In its Response and at the hearing, Respondent argued that on the evening of June 22, 1994, its on-site personnel initially estimated the value of the property damage, including gas loss, to be between \$5,000 and \$10,000. They arrived at this estimate, in part, by comparing this leak to a previous leak several months earlier at the same storage field. On the evening of June 22, Respondent reported the event to the Oklahoma Corporation Commission, which has a lower threshold reporting requirement, but not to the NRC. Respondent maintains that it did not report the rupture to the NRC that evening because it did not believe the rupture constituted a reportable incident as defined by 49 C.F.R. § 191.3.

On the morning of June 23, 1994, Respondent's safety coordinator arrived on the scene to investigate. Following the rupture, a large amount of mud had collapsed on top of the damaged pipeline, making it difficult for the safety coordinator to visually examine it. It was not until after the on-site personnel had excavated the site that the safety coordinator could see that a section of pipeline approximately nine feet long had completely ruptured. At that time, the safety coordinator sought and obtained an estimate of gas loss from the engineering and operations department. After reviewing the engineering figures, the safety coordinator concluded for the first time that the rupture qualified as a reportable incident. The safety coordinator then reported the incident to the NRC (Report #245668) at approximately 10:15 A.M. CDT on June 23. Unfortunately, due to a computer error,

the data for the first report was lost. At 11:13 A.M. CDT, the safety coordinator again reported the incident (Report #245689) this time successfully. Because the computer error is attributable to the NRC, for enforcement purposes Respondent is considered to have made its telephonic report to the NRC at 10:15 A.M. CDT on June 23, 1994 -- sixteen hours after the rupture.

Respondent's primary argument in its Response and at the hearing is that it complied with reporting requirements because it promptly notified NRC as soon as it discovered that the rupture likely met the incident reporting criteria. At the hearing, Respondent also presented an alternative argument. Respondent argued that reporting may not have been required because the value of the property damage, including the gas lost, may not have reached the threshold amount for mandatory reporting. The "remedial actions" section of the telephonic report indicates that 80,000,000 cbf of gas were reported released. (Telephonic report, p. 1). The same section lists the reported value of the gas lost as \$140,000. (Telephonic report, p. 1). Three weeks after the telephonic report, on July 7, 1994, Respondent submitted a written incident report, as required by 49 C.F.R. § 191.9. The written report lowered the estimate of the amount of gas lost to 20,271,000 cbf (incident report, part 3 attachment) and lowered the estimated value of the property damage, including gas loss, to \$63,500. (Incident report, part 1). At the hearing, Respondent confirmed that the amount of gas lost was 20,271,000 cbf and valued the gas loss at approximately \$37,000. Respondent also stated that the cost of repairing the pipeline was approximately \$75,000. Thus, total damages were approximately \$112,000. While there is some discrepancy among the damage estimates in the telephonic report, the written report, and the hearing, all three estimates -- \$140,000 in the telephonic report, \$63,500 in the incident report, and \$112,000 at the hearing -- exceed the threshold amount of \$50,000. Therefore, I find that the threshold reporting requirement was met.

Prompt reporting of a pipeline incident to the NRC is crucial to Federal investigators' ability to investigate and resolve pipeline safety concerns. Once a report is made, investigators must decide at the outset whether a full Federal investigation is necessary. Failure to report promptly hinders the decision-making process and could jeopardize the outcome of any subsequent investigation. Thus, OPS encourages pipeline operators to report incidents to the NRC at the earliest

practicable moment, even if at the time the telephone call is placed the operator is uncertain whether reporting is required. This policy of erring on the side of caution ensures that delays in reporting incidents, as defined by the regulations, will be avoided. This policy is not overly burdensome because only the most basic and essential information is collected during the telephone call. After a more thorough investigation, the operator can submit more detailed information in the written incident report. If an operator subsequently discovers that a telephonically reported incident did not meet the reporting criteria, the operator can cancel its report. Thus, an operator should not delay a telephonic report simply to increase the accuracy of the damage estimate.

The legal basis for the violation is the requirement set forth at 49 C.F.R. § 191.5 that operators report incidents "at the earliest practicable moment following discovery." OPS interprets the regulation to mean that an incident should generally be reported within one to two hours following its discovery. OPS has notified all pipeline operators of this interpretation through Alert Notice ALN-91-01, dated April 15, 1991. While the Alert Notice provides guidance about the regulation, it does not form the legal basis for violation.

Not all incidents must be reported within one to two hours. OPS recognizes that there will be occasions immediately following an incident where it is impossible for the operator either to gauge whether a report is necessary or to gather the reportable information. Thus, when OPS learns that an operator has not submitted a telephonic report within one to two hours, OPS makes a case-by-case determination whether the operator should have known that a report was likely to be required and, if so, whether the operator had adequate opportunity to collect the reportable information.

In this case, Respondent waited approximately sixteen hours before attempting to report the incident to the NRC. Respondent seeks to justify its initial decision not to report on its own underestimation of the amount of gas lost. At the hearing, Respondent stated that because another leak had previously occurred at this facility and the damage from that leak -- including the value of the gas lost -- was minimal, it assumed that this leak would also be too small to trigger the reporting requirements. It was not until the morning after the incident, after the safety coordinator had visually inspected the ruptured pipeline and an engineer had mathematically calculated the estimated amount of gas lost, that the Respondent reported the incident to the NRC.

While Respondent's reasoning may explain why it did not promptly report the incident, it does not excuse the delay. One of the key purposes of the early reporting requirement -- prompt notification of federal investigators -- is undermined when an operator allows a substantial amount of time to pass before placing the telephone call.

In this case, Respondent had enough information to conclude that the rupture would likely trigger the reporting requirements. First, the record states that Respondent received several telephone calls from private citizens who reported hearing a loud noise coming from the storage field. These reports should have tipped off Respondent that a full rupture, not just a small leak, had occurred. Second, the pipeline that ruptured was a twelve-inch storage line. When a rupture occurs at a storage facility, there is the potential for a significant amount of gas loss. Finally, monitors indicated that the leak persisted for over thirty minutes -- enough time for a significant amount of gas to be released.

The fact that there is a discrepancy between the amount of gas actually lost and the amount telephonically reported lost does not buttress Respondent's argument. Telephonic reporting should not be delayed in order to gather more accurate data. Respondent's inability to file an accurate report neither explains nor justifies why a telephonic report was not made the same evening that the incident occurred. Thus, despite Respondent's claims, I find that Respondent unjustifiably delayed its telephonic report.

Based on the information in the record, I find that Respondent violated 49 C.F.R. § 191.5 by not providing telephonic notice at the earliest practicable moment. When Respondent discovered that a leak had occurred at its twelve-inch storage pipeline at Greasy Creek, it should have been aware that the value of the lost gas and the cost of repair to the pipeline facility would likely exceed \$50,000. At that time, Respondent should have reported the incident to the NRC, which operates 24 hours a day. Once on-site the next morning, the safety coordinator could have clarified the actual damage estimates and submitted follow-up reports as needed.

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.

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.

OPS encourages prompt incident reporting based on the need to decide at the outset whether an incident warrants federal investigation. The safety bulletins which OPS issues to pipeline operators as well as decisions on whether follow-up corrective actions are required may be based on information gathered during a federal investigation. Thus, the prompt reporting of a pipeline incident constitutes the key element in the initial step of identifying and resolving pipeline safety issues.

The Notice proposed assessing a civil penalty of \$5,000. In this case, Respondent offered some evidence which, while not excusing the delay, justifies mitigating the penalty amount. Respondent demonstrated good faith by promptly reporting the leak to the appropriate state authorities. In addition, Respondent stated at the hearing that it has since revised its operational practices to report all likely incidents expeditiously.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$1,000. I find that Respondent is capable of paying this penalty amount and doing so will not affect Respondent's ability to continue in 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 Chief Counsel** (DCC-1), Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590-0001.

Questions concerning wire transfers should be directed to: **Valeria Dungee**, Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125; **(405) 954-4719**.

Failure to pay the \$1,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 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 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 the 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.

Richard B. Felder
Associate Administrator for
Pipeline Safety

Date Issued: 08/18/1997