Mr. H.A. True, Jr.
President
Belle Fourche Pipeline Company
895 West River Cross Road
Casper, Wyoming 82602

Re: CPF 52514

Dear Mr. True:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws the allegation of violation and closes the case. 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

cc: Manual A. Lojo, Esq.
Law Department
P.O. Drawer 2360

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of	)	
Belle Fourche Pipeline Company,	)	CPF No. 52514
Respondent.	)	

FINAL ORDER

On or about October 14, 1992, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) initiated an investigation of Respondent's report of an accident involving its pipeline system. The accident occurred at approximately 12:30 p.m. (Eastern time) on October 12, 1992. As a result of the investigation, the Director, Western Region, OPS, issued to Respondent, by letter dated October 26, 1992, 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. § 195.52, and proposed assessing a civil penalty of $5,000 for the alleged violation.

Respondent responded to the Notice by letter dated November 10, 1992 (Response). Respondent contested the allegation and requested a hearing. By agreement of the parties, a hearing was held via telephone conference on April 13, 1993.

WITHDRAWAL OF ALLEGATION

According to Respondent's telephonic report, the accident occurred on October 12, 1992 at approximately 12:30 p.m. (Eastern time) in Niobrara County, Wyoming. The Notice alleged this accident was required by 49 C.F.R. § 195.52 to be reported telephonically to the National Response Center (NRC) because it involved a release of more than 50 barrels. The Notice further alleged that the accident was not reported until October 13, 1992 at 11:05 a.m.

(Eastern time), which was not "at the earliest practicable moment following discovery" as required by the regulation.

There are two issues here-- whether the accident was required to be reported and whether the report was filed timely. We address the latter issue first -- whether the telephonic report that Respondent ultimately made was made "as soon as practicable" after discovery.

OPS believes that in most cases an operator will almost immediately have access to the type of information necessary to file a telephonic report. In two Alert Notices dated January 29, 1971 and April 15, 1991, OPS stated that telephonically reportable accidents can and should be reported within one to two hours following their discovery. Upon discovery of an accident, the operator should provide all available information and submit, as required, any follow-up reports. If an operator's subsequent investigation reveals that an event, which was reported initially as an accident is actually a nonreportable event, the operator should, in writing, retract its accident report at the address provided in 49 C.F.R. § 195.58. Although Respondent claimed at the hearing to be unaware of this policy, OPS records indicate that a copy of the second Alert Notice was mailed to Respondent upon its issuance in 1991.

When an operator has failed to submit a telephonic report within one to two hours following discovery of an accident, it does not always follow that there is a violation. The next step is to determine whether the operator had time to gather the essential information and whether the telephonic report was subsequently filed within a reasonable amount of time.

In this case, Respondent noted the remote location of the failure and the difficulty in getting to the site and determining how much had actually spilled. Respondent clearly had the opportunity to gather information about the spill and its consequences when it reported the accident to the Environmental Protection Agency at approximately 9:00 p.m. (Eastern time) after a site visit. It is reasonable to assume that Respondent had sufficient information by then to report the accident to OPS at the same time. Although this is clearly more than the one to two hours in which OPS normally expects telephonic reports to be filed, there is no evidence here that Respondent could have reasonably obtained information about the spill any earlier. On the other hand, there appears to be no justification to have delayed reporting until the following day as actually occurred.

The next issue -- whether the accident was required to be reported telephonically -- requires an examination of the allegation in the Notice. The Notice alleged that the release of more than 50 barrels required the telephonic report. That allegation was erroneous and the matter was clarified at the hearing. A release of more than 50 barrels is a factor in defining an accident that are required to be reported in writing within 30 days. 49 C.F.R. § 195.50. There is no dispute that more than 50 barrels were released (the written accident report indicates that about 6,000 barrels were released).

A telephonic report is required only of a subset of the accidents defined by 49 C.F.R. § 195.50. 49 C.F.R. § 195.52 provides that an accident must be reported *telephonically* if the

accident results in death or personal injury requiring hospitalization, fire or explosion, estimated property damage exceeding a certain amount, or pollution of water, or if, in the judgement of the operator, the accident is otherwise significant. The latter criterion allows an operator to voluntarily report such safety-sensitive accidents as third party damage even if no other criteria requires reporting. Respondent claimed that the telephonic report it made the day following the accident (which was caused by third party damage) was a voluntary report filed under this latter criterion, rather than a mandatory report. As clarified in the hearing, the criteria that required a *telephonic* report in this case was damage exceeding the specified dollar amount. Furthermore, the available evidence indicates that the accident is one which resulted in damage exceeding the specified dollar amount both at the time of the violation ($5,000) and as amended in 1994 ($50,000).

Respondent indicated at the hearing that it was unaware of the need to include the value of the lost product and the cost of cleanup in the damage estimate triggering required telephonic reporting. At the time of the accident, the regulations required telephonic reporting of accidents resulting in "estimated damage to the property of the operator or others, or both" exceeding $5,000 without explaining the types of damage to be included in the estimate. 49 C.F.R. § 195.52(a)(3)(1991). The damage criterion for written accident reports was the same. 49 C.F.R. § 195.50(f) (1991). However, the instructions for the form used to file the written reports explained what was to be included in the estimate. Respondent had filed a written report of an accident in 1987 and, therefore, presumably had knowledge of these instructions.[1] However, instructions on what to include in the estimate for a *written* report are not clearly applicable to a telephonic report. Furthermore, the written report for the 1987 accident was based on the spill exceeding 50 barrels rather than on estimated damage (reported as $4,500). No telephonic report was required and Respondent would not have had reason to consider whether the instructions for written reporting of estimated damages should have been applied to the telephonic reporting criterion. There is no other indication in the record that Respondent was aware of OPS's position on damage estimates.

On November 27, 1992, just one month after the Notice in this case was issued, OPS initiated rulemaking to clarify the regulatory text on damage estimates for both written and telephonic accident reporting. The preamble to the notice of proposed rulemaking noted the agency's experience that "there is a significant amount of confusion among pipeline operators as to which cost estimates must be included in calculating the estimated property damage." 57 Fed. Reg. 56304, 563__. This proposal resulted in a final rule issued on June 28, 1994 that adopted the current language on estimated damage. This language clearly requires inclusion of the value of lost product and the cost of cleanup.

I note that if the same circumstances had arisen under the current regulatory language, there would be sufficient evidence to have found a violation of the telephonic reporting

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[1] Reference Report ID #870253, reporting an accident in Niobrara, Wyoming in which 100 barrels were spilled.

requirements. However, the clarity of the current language would have provided sufficient direction to Respondent to make violation unlikely. In the absence of that clarity and based on the discussion above, the allegation of violation of 49 C.F.R. § 195.52 is withdrawn.

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

_/s/Richard B. Felder_____
Richard B. Felder
Associate Administrator for Pipeline Safety

Date Issued:04/28/98