

Mr. Tom McCaleb
President
Koch Gathering, Inc.
P.O. Box 2256
Wichita, Kansas 67201

Re: CPF No. 54515

Dear Mr. McCaleb:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$25,000. The penalty payment 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

cc: Alan D. Hallock, Esq.
Koch Gathering Systems, Inc.

Debra G. Haifleigh, Esq.
Koch Agriculture Company, Inc.

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

_____)	
In the Matter of)	
)	
Koch Gathering, Inc.,)	CPF No. 54515
)	
Respondent.)	
_____)	

FINAL ORDER

On August 22, 1994, pursuant to 49 U.S.C. § 60117, a representative of the Western Region, Office of Pipeline Safety (OPS), was notified of an incident involving a pipeline operated by Respondent. Following investigation of the incident, the Director, Western Region, OPS, issued to Respondent by letter dated October 13, 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. §§ 195.402(a) and 195.408 and proposed assessing a civil penalty of \$25,000 for the alleged violations.

Respondent answered the Notice by letters dated November 10, 1994 and January 12, 1995. Respondent did not contest the allegations of violation but offered an explanation and requested mitigation of the proposed civil penalty. Respondent has not requested a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. §§ 195.402(a) and 195.408 by failing to contact and dispatch personnel to monitor the Baker Station delivery point, and by failing to monitor operational data, respectively. Section 195.402(a) requires operators to follow written procedures for handling abnormal operations and emergencies, including loss of SCADA communications. Section 195.408 requires operators to have a communication system which at a minimum includes means for monitoring operational data, as required by § 195.402(c)(9). The Notice alleged, and Respondent confirmed in its response of November 10, 1994, that Respondent neglected to follow its own procedures to contact personnel to monitor the Baker station delivery point after its SCADA system failed to continue monitoring operational data.

Respondent explained that the failure to cover the Baker station delivery point was not intentional, but rather an oversight. Respondent explained that it contacted local operators at all other pipeline systems where the failure of the SCADA system had occurred. All other locations were turned over to manual operation, according to the Respondent. The fact that all other locations were accounted for, Respondent argued, indicates that it accidentally and unintentionally overlooked this particular location.

While Respondent's assertion that the violation was unintentional may be accurate, it does not negate the fact that two violations clearly took place with respect to the Baker station location. Following the lapse in communications, the Baker station remained unmonitored for a period of more than 24 hours. As a result, an overflow of a receiving tank occurred at the location, resulting in an accumulation of several feet of oil in the containment dike surrounding the receiving tank. Therefore, I find that the Respondent violated 49 C.F.R. §§ 195.402(a) and 195.408, as alleged.

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 \$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.

These violations resulted in a pipeline failure which occurred as a result of the Respondent's failure to follow its own procedures. Two irregular occurrences at the Baker station should have alerted the central dispatch personnel in Watford City, ND of the need for careful communication with personnel at the Baker station. On the same evening as the breakdown of the SCADA system, a major leak alarm notified central dispatch that there was a problem on the Rhame to Baker line. (It was subsequently determined that an open meter bypass valve, and not a leak, had triggered the alarm.) Although the alarm was in no way connected with the SCADA breakdown later in the evening, the incident should have put the central dispatch personnel on notice to closely monitor the Baker station. The incident apparently did not result in heightened observation of the line and no communication followed when the SCADA system failed.

The following day, while the system remained down and the Rhame to Baker line remained unmonitored, a second opportunity arose for central dispatch personnel to detect the problem. A Koch Service truck driver arrived at the Baker station, noticed that the Baker tank was at 16 feet, and alerted central dispatch. Central dispatch took no action "since it was believed that the Rhame to Baker pipeline was being operated in a manual mode." (See Letter of Specific Information dated September 26, 1994) It is noteworthy that no follow-up communication was initiated with Baker station personnel even though the truck driver was unable to run the system on manual mode. These two incidents occurred immediately prior to, and during, the breakdown in the SCADA system, yet resulted in no additional communications between central dispatch and Baker station personnel.

The failure to communicate when the breakdown first occurred, combined with the fact that two events occurred closely in time which should have heightened central dispatch personnel's awareness, indicates that there was a complete lapse in Respondent's communications system. The length of the lapse in communications is also noteworthy. The communications lapse began on the evening of Friday August 19, 1994 and continued until the morning of Sunday August 21, 1994. Some time after the Koch Service truck driver left the premises on Saturday, the tank at Baker station overflowed.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$25,000.

Payment of the civil penalty **must be made within 20 days of service**. Federal regulation (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**. After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel** (DCC-1), Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh St., 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 \$25,000 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 an United States District Court.

Under 49 U.S.C. § 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, 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: 05/09/1997