

Mr. W.M. Hicks
President
Yellowstone/Continental Pipe Line Company
600 North Dairy Ashford
Houston, Texas 77252

Re: CPF No. 56501

Dear Mr. Hicks:

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 \$5,000, already paid by Respondent (wire transfer confirmation dated March 25, 1996). Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

This case is now closed and no further enforcement action is contemplated with respect to the matters involved in the case. Thank you for your cooperation in our joint effort to ensure pipeline safety.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)	
)	
)	
Yellowstone/Continental Pipe Line Company,)	CPF No. 56501
)	
Respondent)	
)	

FINAL ORDER

On July 24, 1995, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Respondent's Moses Lake Pipeline Company facilities and records near Spokane, Washington. The Moses Lake facilities are owned by Yellowstone Pipe Line Company, and operated by Continental Pipe Line Company. For the purposes of this Final Order, both Yellowstone and Continental will be referred to collectively as Respondent. As a result of the inspection, the Director, Western Region, OPS, issued to Respondent, by letter dated February 22, 1996, 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. § 195.412, and proposed assessing a civil penalty of \$5,000 for the alleged violation.

Respondent responded to the Notice by letter dated March 22, 1996 (Response). Respondent submitted payment in the amount of the proposed civil penalty, stated that the penalty was being remitted pursuant to a "negotiated settlement" between Respondent and the Department of Transportation, and stated that payment of the civil penalty "should not be construed as an admission of liability or responsibility. . ." Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

The Notice alleged a violation of 49 C.F.R. § 195.412 which requires each operator to inspect all rights-of-way and crossings under navigable waters at least 26 times each calendar year at intervals not exceeding three weeks. Respondent could not produce records to indicate that it performed the required 26 right-of-way inspections during the period August 1993 to August 1994. Respondent's records indicated that it had performed 21 inspections.

Although Respondent alleged in its Response that a "negotiated settlement" took place, and that the "settlement and payment of the civil penalty should not be construed as an admission of liability or responsibility," there is no evidence in OPS' records to indicate that settlement

discussions took place. In addition, Respondent has failed to specify the terms of the alleged settlement. Therefore, based on the information contained in the record and 49 C.F.R. § 190.209(a)(1), I find that Respondent violated 49 C.F.R. § 195.412 by failing to inspect its rights-of-way and crossings under navigable waters the required 26 times during one calendar year.

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 U.S.C. § 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 assessing a civil penalty of \$5,000. Accordingly, having reviewed the record and considered the assessment criteria, I assess a civil penalty of \$5,000, already paid by Respondent. I find that Respondent has the ability to pay the proposed penalty and it will not affect its ability to remain in business.

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.

/s/Richard B. Felder

Richard B. Felder

Associate Administrator for Pipeline Safety

Date Issued: 03/02/98

