



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

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

JAN 12 2006

Mr. Paul Holt  
Interim Director  
Department of Public Utilities  
City of Richmond  
600 E. Broad St., Room 831  
Richmond, Virginia 23219

Re: CPF No. 1-2004-0006

Dear Mr. Holt:

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 \$30,000, and specifies actions to be taken to comply with the pipeline safety regulations. It also withdraws two allegations of violation. 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, Eastern Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds  
Pipeline Compliance Registry  
Office of Pipeline Safety

Enclosure

cc: Joshua L. Menter, Esq.  
Miller, Balis & O'neil, P.C.  
1140 19th St. NW.  
Washington, DC 20036

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

**DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, DC 20590**

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In the Matter of )

The City of Richmond, Virginia, )

Respondent )  
\_\_\_\_\_

CPF No. 1-2004-0006

**FINAL ORDER**

On March 22, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), conducted a pipeline failure investigation at Respondent's offices in Richmond, Virginia.<sup>1</sup> As a result of the inspection, the Director, Eastern Region, OPS, issued to Respondent, by letter dated September 2, 2004, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice alleged Respondent committed violations of 49 C.F.R. Parts 191 and 192 and proposed assessing a civil penalty of \$80,000 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated October 7, 2004 (Response). Respondent contested the allegations, offered information to explain the allegations and requested a hearing. Respondent submitted a summary of its position in connection with the hearing on March 31, 2005. The hearing was held on April 5, 2005 in Washington, D.C. Respondent submitted a post-hearing brief on May 5, 2005.

**FINDINGS OF VIOLATION**

**Item 1** in the Notice alleged Respondent violated 49 C.F.R. § 191.5 when it failed to notify the National Response Center (NRC) at the earliest practicable moment following an incident that occurred on Respondent's natural gas pipeline system. On March 18, 2004 at 10:40 PM EST, a flash fire occurred when natural gas that had been vented into the air during an abandonment procedure ignited. Two workers were burned as a result of the fire. Respondent reported the

<sup>1</sup> The Norman Y. Mineta Research and Special Programs Improvement Act, Pub. L. No. 108-426, 118 Stat. 2423 (2004), created the Pipeline and Hazardous Materials Safety Administration (PHMSA) and transferred the authority of RSPA exercised under chapter 601 of title 49, United States Code, to the Administrator of PHMSA. *See also* 70 Fed. Reg. 8299, 8301-8302 (2005).

incident to the NRC on March 19, 2004 at 8:01 AM EST, over nine hours after the incident occurred.

Section 191.5 requires Respondent to notify the NRC of each incident at the earliest practicable moment following discovery. An incident is defined to include any event that involves a release of gas from a pipeline and personal injury necessitating in-patient hospitalization.<sup>2</sup> OPS considers "hospitalization" to be admittance into a hospital as a patient.<sup>3</sup>

In its response and at the hearing, Respondent maintained that it complied with § 191.5(a) by reporting the incident immediately after Respondent determined that the incident met the reporting criteria. Respondent explained that one of the injured individuals was taken to the emergency room after the incident occurred. The individual was treated in the emergency room, but was not immediately admitted into the hospital as an in-patient. Respondent's personnel were at the hospital for some time, but eventually they left while the injured individual was still in the emergency room. Respondent discovered at or around 7:30 AM EST the next morning that the individual had been hospitalized sometime the previous night or that morning.<sup>4</sup> Upon discovering that the individual had been hospitalized, Respondent determined that the reporting criteria had been met and reported the incident to the NRC within approximately thirty minutes. Respondent maintained that it complied with § 191.5, because the incident was reportable "only when [Respondent] became aware [of] the fact that [the individual] was hospitalized."<sup>5</sup>

Contrary to Respondent's contention, OPS interprets "discovery" to mean discovery of the incident itself, not discovery that the reporting criteria have been met.<sup>6</sup> Therefore, OPS requires pipeline operators to report incidents to the NRC at the earliest practicable moment following discovery of the incident itself. This gives OPS and other Federal and state agencies the ability to assess whether an immediate response to a pipeline incident is needed. Although Respondent was not required to report the incident prior the individual's hospitalization, Respondent was required to take reasonable efforts to learn at the earliest practicable moment if/when hospitalization occurred and to report the incident pursuant to § 191.5. As such, Respondent was required to keep abreast of the individual's condition after leaving the hospital in order to report the incident at the earliest practicable moment. The record does not show that Respondent took reasonable efforts after leaving the hospital to follow-up on the individual's condition until the next morning when Respondent "discovered" the individual had been hospitalized "sometime during the night or the following morning."<sup>7</sup> Accordingly, I find Respondent violated § 191.5(a).

**Item 2** in the Notice alleged that Respondent violated 49 C.F.R. § 192.751(a) by failing to take steps to minimize the danger of accidental ignition of gas in an area where the presence of gas constituted a hazard of fire or explosion. The Notice alleged that during the abandonment

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<sup>2</sup> 49 C.F.R. § 191.3.

<sup>3</sup> See Interpretation letter from Joseph Caldwell, Director, OPS to Frank Bahniuk, June 28, 1972.

<sup>4</sup> Response, March 31, 2005, p.2.

<sup>5</sup> Response, March 31, 2005, p.2.

<sup>6</sup> See e.g., In the Matter of Texas Eastern Transmission Corporation, CPF No. 4-2001-1003 (May 5, 2005).

<sup>7</sup> Response, March 31, 2005, p.2.

procedure, Respondent failed to remove a construction light (a potential source of ignition) from close proximity to the abandonment area where natural gas was being vented into open air. The Notice also alleged that the light cord was draped across the trench and there was not a wire guard over the glass lens. During the abandonment process, the construction light fell into the trench and the glass lens shattered. The natural gas in the air ignited causing a flash fire that injured two workers.

The Federal pipeline safety laws (49 U.S.C. § 60101 *et seq.*) require each operator of a natural gas pipeline system to comply with the pipeline safety standards applicable to its system. As the operator of a natural gas pipeline system, Respondent has a responsibility to ensure that its pipeline system complies with applicable safety standards at all times. In its response and at the hearing, Respondent stated that it was not liable for the violation, because the workers performing the abandonment process were contractors and Respondent had “properly delegated” the duty of compliance to them.<sup>8</sup> Contrary to Respondent’s contention, however, Respondent cannot delegate its statutory duty to ensure compliance. Respondent is liable for any violation that occurs with respect to its pipeline system, whether committed by an employee or contractor.

In its response and at the hearing, Respondent also contended that it complied with § 192.751(a) by placing provisions in its contract for service requiring the contractor to comply with applicable safety regulations and ensure that personnel performing work are qualified. The placement of contractual provisions alone, however, does not achieve compliance with the requirements in § 192.751(a). Accordingly, I find that Respondent violated § 192.751(a) when it failed to remove a potential source of ignition from the area where a hazardous amount of gas was being vented from its pipeline system.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

### **WITHDRAWAL OF ALLEGATIONS**

**Item 3** in the Notice alleged that Respondent violated 49 C.F.R. § 192.805(b) when it failed to ensure through evaluation that an individual performing a covered task was qualified. The Notice alleged that the contractor foreman who supervised the abandonment process was not qualified for the prevention of accidental ignition (POAI). Therefore, the Notice alleged that the foreman could not recognize and react to abnormal operating conditions at the work site.

Section 192.805(b) requires Respondent to ensure through evaluation that individuals performing covered tasks are qualified. An individual is qualified if that individual has been evaluated and can perform the assigned covered task and recognize and react to abnormal operating conditions.

In its responses and at the hearing, Respondent maintained that the individual was qualified to perform the abandonment procedure and to recognize and react to abnormal operating conditions. Respondent explained that the foreman was qualified in “Abandonment of Pipeline

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<sup>8</sup> Response, March 31, 2005, p.2.

Facilities,” among other tasks.<sup>9</sup> Those qualifications included training to recognize and react to abnormal operating conditions.<sup>10</sup> Respondent argued that the foreman was not required to be qualified in POAI to perform the abandonment process, because the foreman had already received that training as an element of his other qualifications. According to Respondent, “there is not one aspect of training or piece of information with respect to AOC that [the foreman] would have learned in POAI training that he did not learn—multiple times—through his other training.”<sup>11</sup>

In the record is a qualification report that demonstrates the foreman was qualified on August 19, 2002 for “Abandonment or Inactivation of Facilities.”<sup>12</sup> That qualification included abnormal operating conditions, such as escaping gas and uncontrolled ignition of gas.<sup>13</sup> The qualification was valid for five years.<sup>14</sup> Accordingly, Respondent has demonstrated that the foreman was qualified to perform the abandonment procedure on Respondent’s pipeline on March 18, 2004 and to recognize and respond to abnormal operating conditions. I do not find that the evidence in the record supports a finding that the foreman was also required to be qualified in POAI in order to perform the abandonment. Accordingly, I am withdrawing this violation.

**Item 4** in the Notice alleged that Respondent violated 49 C.F.R. § 192.805(c) when it failed to ensure that an unqualified individual performing a covered task was directed and observed by someone qualified. The Notice alleged that the contractor’s backhoe operator/laborer, who was not qualified for any covered task, was only partially observed while performing the abandonment process on Respondent’s pipeline system. The Notice alleged that the contractor’s foreman, who was qualified, provided direct observation only after he was informed that the laborer was having difficulties with the procedure. Interviews conducted by the OPS inspector served as the basis for the allegation of violation.

Section 192.805(c) requires Respondent to ensure that an individual performing a covered task is either qualified to perform that task, or directed and observed by an individual that is qualified. In its response and at the hearing, Respondent maintained that the unqualified individual performing the abandonment was not left unsupervised at any time during the covered task. At the hearing, Respondent presented a witness who was present at the OPS inspection interviews. The witness stated that his impression during the interviews was that the foreman may have been in and out of the pit during the hand-digging process, but was present at all times during the abandonment process. Respondent also submitted a signed statement by the foreman himself acknowledging that he was “in the hole the entire time the service tee was being removed.”<sup>15</sup>

At the hearing, OPS acknowledged that excavation and preparatory work does not fall within the scope of the covered task; therefore, the foreman was not required to be present during the

<sup>9</sup> Response, March 31, 2005, p.5.

<sup>10</sup> Response, March 31, 2005, Attachment #2, p.34.

<sup>11</sup> Post-hearing, May 5, 2005, p.3.

<sup>12</sup> OPS Gas Pipeline Safety Violation Report, Attachment #5.

<sup>13</sup> Response, March 31, 2005, Attachment #2, p.34.

<sup>14</sup> Response, March 31, 2005, Attachment #2, p.30.

<sup>15</sup> Response, March 31, 2005, Attachment #8, p.84.

excavation and preparatory work. Nevertheless, OPS maintained that the inspector's impression was that the foreman did not provide direct observation at the start of the abandonment. OPS also stated that the foreman's signed statement did not demonstrate compliance, because removal of the service tee is only one part of the entire abandonment process. The burden, however, is not with Respondent to prove compliance, but with OPS to prove the violation. I do not find the evidence in the record supports finding that Respondent violated 192.805(c). Accordingly, I am withdrawing this violation.

### 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. The Notice proposed a total civil penalty of \$80,000 for the 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.

**Item 1** in the Notice proposed a civil penalty of \$5,000 for violating 49 C.F.R. § 191.5. Prompt reporting of a pipeline incident is critical to the ability of OPS and other Federal and state agencies to investigate and resolve pipeline safety concerns. Failure to take reasonable efforts to determine and report an incident at the earliest practicable moment hinders the ability of OPS and other Federal and State agencies to decide when immediate response is necessary, which jeopardizes public safety and the OPS investigation. Respondent has not submitted information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for the violation of § 191.5.

**Item 2** in the Notice proposed a civil penalty of \$25,000 for violating 49 C.F.R. § 192.751(a). Respondent's failure to remove a construction light, which did not have a wire lens guard, and the light cord from an area where the presence of gas constituted a hazard of fire or explosion resulted in the accidental ignition of vented gas, which caused a flash fire and injured two workers. Accordingly, the gravity of this violation is significant. Respondent has not submitted information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$25,000 for the violation of § 192.751(a).

**Items 3 and 4** in the Notice proposed civil penalties of \$30,000 and \$20,000, respectively. Since these items are withdrawn, the proposed civil penalties are not assessed.

Having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of **\$30,000**. I find Respondent has the ability to pay this penalty without adversely affecting its ability to operate the pipeline facility.

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 \$30,000 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**

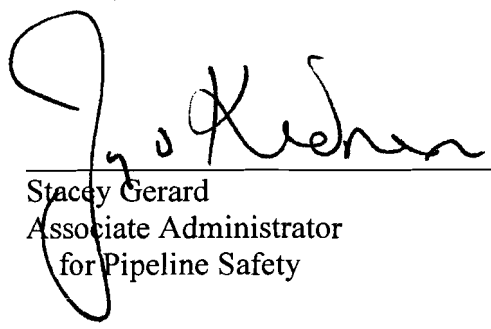
The Notice proposed a compliance order with respect to Item 2 in the Notice. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under Chapter 601. Pursuant 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—

1. Ensure that appropriate personnel, including contractors, are knowledgeable about Respondent's job site safety requirements for the prevention of accidental ignition under § 192.751;
2. Ensure that job site equipment that is a potential source of ignition is in proper working condition and operated in a safe manner; and
3. Establish an audit program to evaluate compliance with the job site safety requirements and operator qualification requirements.
4. Develop a plan to comply with the above items and submit the plan for approval to the Director, Eastern Region, Office of Pipeline Safety, 409 3rd Street SW, Suite 300, Washington, D.C. 20024, within 90 days of receipt of this order.

The Director, Eastern Region, OPS may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent demonstrating good cause for an extension.

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.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a 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. The terms and conditions of this Final Order are effective on receipt.

*for* 

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Stacey Gerard  
Associate Administrator  
for Pipeline Safety

JAN 12 2006

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Date Issued