

April 4, 2022

VIA ELECTRONIC MAIL TO: jimmy.staton@southernstar.com

Mr. Jimmy Staton
President and Chief Executive Officer
Southern Star Central Gas Pipeline, Inc.
4700 State Route 56
Box 20010
Owensboro, Kentucky 42301

Re: CPF No. 1-2021-037-NOPV

Dear Mr. Staton:

Enclosed is the Decision on the Petition for Reconsideration issued in the above-referenced case. For the reasons explained therein, the Decision grants your Petition. When the remaining civil penalty has been paid, this enforcement action will automatically be closed. This Decision constitutes the final administrative action in this proceeding. Service of this decision by electronic mail is effective upon the date of transmission and acknowledgment of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Mr. Shawn L. Patterson, Vice President and Chief Operations Officer, Southern Star
Central Gas Pipeline, Inc., shawn.patterson@southernstar.com
Mr. Craig Thomas, Manager, Integrity Management & PHMSA Compliance, Southern
Star Central Gas Pipeline, Inc., craig.thomas@southernstar.com

Mr. Mark Lockett, Lead Attorney, Southern Star Central Gas Pipeline, Inc.,
mark.lockett@southernstar.com

CONFIRMATION OF RECEIPT REQUESTED

On December 9, 2021, pursuant to 49 U.S.C. §§ 60117 and 60122 and 49 C.F.R. § 190.213, PHMSA issued a final order finding that Respondent violated 49 C.F.R. §§ 191.5(a) and 199.225(a)(1) (Final Order).⁶ Item 1 of the Final Order found that Southern Star violated § 191.5(a) by failing to give notice of the Incident at the earliest practicable moment following discovery, but no later than one hour after confirmed discovery.⁷ Item 2 of the Final Order found that Respondent violated § 199.225(a)(1) by failing to conduct required alcohol tests as soon as practicable following the Incident for employees performing tasks that contributed to the Incident or those whose performance of a task cannot be completely discounted as a contributing factor to the Incident.⁸ The Final Order assessed a civil penalty of \$46,200, pursuant to the authority of 49 U.S.C. § 60122 and 49 C.F.R. §190.223.

On December 23, 2021, Southern Star filed a Petition for Reconsideration pursuant to 49 C.F.R. § 190.243 (Petition).⁹ In its Petition, Respondent requested reconsideration of Item 1 of the Final Order.¹⁰ Respondent did not request reconsideration of Item 2 of the Final Order.

Standard of Review

Under 49 C.F.R. § 190.243, a respondent may petition the Associate Administrator for reconsideration of a final order that has been issued pursuant to §190.213. Reconsideration is not an appeal or a completely new review of the record.¹¹ A respondent may ask for correction of an error or, in limited circumstances, may present previously unavailable information. If a respondent requests consideration of additional facts or arguments, the respondent must submit the reasons they were not presented prior to the issuance of the final order. The Associate Administrator may grant or deny, in whole or in part, a petition for reconsideration without further proceedings.

Discussion

Item 1: The Final Order found that Respondent violated 49 C.F.R. § 191.5(a), which states:

§ 191.5 Immediate notice of certain incidents.

(a) At the earliest practicable moment following discovery, but no later than one hour after confirmed discovery, each operator must give notice in accordance with paragraph (b) of this section of each incident as defined in § 191.3.

⁶ *Southern Star Central Gas Pipeline, Inc.*, Final Order, CPF No. 1-2021-037-NOPV (Final Order) (December 9, 2021) (on file with PHMSA).

⁷ *Id.*, at 1-3.

⁸ *Id.*, at 3-4.

⁹ Petition for Reconsideration of Final Order, dated December 23, 2021 (Petition) (on file with PHMSA).

¹⁰ *Id.*, at 3.

¹¹ 49 C.F.R. § 190.243(a)-(d).

The Final Order found that Southern Star violated 49 C.F.R. § 191.5(a) by failing to give notice of the Incident at the earliest practicable moment following discovery, but no later than one hour after confirmed discovery. The event occurred on June 30, 2020, around 12:23 PM CT, when Respondent's employees were relieving excess pressure in Well 30 at Blackwell Storage Field. During this work, one employee sustained an injury to their head from equipment used to relieve the pressure. On-site personnel determined around the time of the injury that the employee necessitated transport to a hospital for medical attention. The employee was at the hospital for a period of time before being admitted as an inpatient at 4:09 PM CT. Respondent notified the National Response Center (NRC) at 4:45 PM CT, over four hours after the event occurred, but less than one hour after being admitted.

In its Petition, Southern Star asserted that its staff at the time of the event could not immediately know the extent of the employee's "internal injuries," took reasonable steps to monitor the employee's care at the hospital, and notified the NRC within one hour of the employee being admitted to the hospital as an inpatient.¹²

Background

Pursuant to 49 C.F.R. § 191.5(a), an operator must provide notice of certain incidents "at the earliest practicable moment following discovery, but no later than one hour after confirmed discovery."¹³ Confirmed discovery means "when it can be reasonably determined, based on information available to the operator at the time a reportable event has occurred, even if only based on a preliminary evaluation."¹⁴ Read together, § 191.5(a) requires operators to report incidents at the earliest practicable moment, but no later than one hour after it can be reasonably determined, based on the information available, that a reportable event has occurred, even if only based on a preliminary evaluation.

This reporting requirement was adopted in 2017 at the direction of Congress. In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Public Law 112-90), Congress directed PHMSA to "establish time limits for telephonic or electronic notification of an accident or incident to require such notification at the earliest practicable moment following confirmed discovery of an accident or incident and not later than 1 hour following the time of such confirmed discovery."

On January 23, 2017, PHMSA published the rule "Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes."¹⁵ In the rule, PHMSA explained that the purpose of the revised notification requirement is to alert local, state,

¹² Petition, *supra*, at 2-3.

¹³ As it pertains to the facts of this case, a reportable "incident" means an event that involves a release of gas from a pipeline and results in personal injury necessitating inpatient hospitalization.

¹⁴ 49 C.F.R. § 191.3.

¹⁵ 82 FR 7972.

and federal agencies at the earliest practicable moment so that emergency personnel or investigators can be dispatched quickly. Without this requirement, and under alternatives proposed by commenters, each operator could have a different methodology that would potentially take hours or days before an operator completed its evaluation and determined that an accident or incident had in fact occurred. PHMSA noted that if an operator were allowed to wait for a definitive confirmation, even where the operator already has sufficient evidence, the intent of the Congressional mandate would be defeated. Accordingly, PHMSA explained that it was adopting this reporting requirement, including the one-hour time limit and the definition of “confirmed discovery,” to abide by the Congressional mandate requiring operators to report incidents and accidents despite not having a complete assessment.

Analysis

In the present case, the Final Order found that on-site personnel determined around the time of the injury that the employee necessitated transport to a hospital for medical attention. It was therefore reasonable, the Final Order concluded, that inpatient hospitalization would result. Accordingly, the Final Order determined Respondent was required to report the incident no later than one hour after the injury occurred.

On reconsideration, I review whether Respondent should have determined, based on the information available, that a reportable event had occurred, even if only based on a preliminary evaluation. While Respondent decided the employee necessitated transport to the hospital for medical attention, that decision alone may not necessarily provide enough information to determine a reportable event has occurred. In some situations, it may be prudent to transport an individual to a hospital for outpatient treatment of injuries that would not be expected to result in inpatient hospitalization.

With that in mind, and recognizing Respondent’s staff at the time of the event could not ascertain the extent of the employee’s internal injuries, I find reason to exercise enforcement discretion in this matter and reduce the violation to a warning. Accordingly, the finding of violation is withdrawn. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

The decision to exercise enforcement discretion in this matter is specific to the facts of this incident. Unlike in the present case where Respondent’s staff could not ascertain the extent of the injuries, there could be situations where an injury is so severe that the operator has enough information to reasonably determine the necessity of inpatient hospitalization. In those situations, the text of the regulation confirms the operator would be required to report such an incident as soon as practicable but no later than one hour after it can be reasonably determined that a reportable event has occurred, regardless of when admittance to the hospital actually occurs.

Southern Star also made additional arguments for withdrawing the violation, including that PHMSA’s interpretation creates ambiguity and that it would be inconsistent with a prior final

order, *In the Matter of the City of Richmond, Virginia*.¹⁶ Since the violation is withdrawn, it is not necessary to address Respondent's additional arguments for withdrawal.

Conclusion

After reconsidering the evidence of record, I find it appropriate to withdraw the finding of violation in Item 1 of the Final Order. As such, the civil penalty assessed for Item 1 is also withdrawn.

The Final Order also assessed a civil penalty of \$23,800 for Item 2. Respondent did not seek reconsideration of Item 2. Therefore, the civil penalty of \$23,800 for Item 2 is now due. Payment of the civil penalty must be made within 20 days after receipt of this Decision. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such 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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$23,800 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.

This Decision on Reconsideration is the final administrative action in this proceeding.

April 4, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

¹⁶ Petition, *supra*, at 2 (citing *In the Matter of the City of Richmond, Virginia*, CPF 1-2004-0006; 2006 WL 3825337 (January 12, 2006)). PHMSA notes *City of Richmond* was issued before PHMSA adopted the more stringent reporting requirement and definition of "confirmed discovery" that exist today.