

December 9, 2021

**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 please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$46,200. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of this decision by e-mail is effective upon the date of transmission 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

**CONFIRMATION OF RECEIPT REQUESTED**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

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**In the Matter of** )

**Southern Star Central Gas Pipeline, Inc.,** )

**Respondent.** )  
\_\_\_\_\_ )

**CPF No. 1-2021-037-NOPV**

**FINAL ORDER**

On July 1, 2020, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an investigation following the June 30, 2020, incident at Southern Star Central Gas Pipeline, Inc. (Southern Star or Respondent) in Blackwell, Oklahoma (Incident). Southern Star is a transporter of natural gas, with approximately 5,800 miles of transmission pipeline in Missouri, Kansas, Oklahoma, Wyoming, Colorado, Nebraska, and Texas.<sup>1</sup>

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated June 17, 2021, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Southern Star violated 49 C.F.R. §§ 191.5(a) and 199.225(a)(1) and proposed assessing a civil penalty of \$46,200 for the alleged violations.

Southern Star responded to the Notice by letter dated July 6, 2021 (Response). Respondent contested one of the allegations and offered additional information in response to the Notice. Respondent did not request a hearing and therefore has waived its right to one.

**FINDINGS OF VIOLATION**

The Notice alleged that Respondent violated 49 C.F.R. Part 191 and 199, as follows:

**Item 1:** The Notice alleged 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

<sup>1</sup> About Southern Star, <https://www.southernstar.com/about-us/> (last accessed November 16, 2021).

accordance with paragraph (b) of this section of each incident as defined in § 191.3.

The Notice alleged that Respondent 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. Specifically, the Notice alleged that on June 30, 2020, Respondent was in the process of relieving pressure at its Blackwell Storage Field when an employee was struck on the back of the head. The employee was administered first aid while an ambulance was dispatched, and the employee was later admitted to the hospital for head injuries. The Notice alleged that Southern Star did not give notice in accordance with paragraph (b) of § 191.5 until 4:45 PM CDT on June 30, 2020, despite the Incident occurring around 12:23 PM CDT on June 30, 2020.

In its Response, Southern Star asserted that at the time of the Incident around 12:23 PM CDT on June 30, 2020, the on-site personnel did not know the severity of the employee's injury and whether in-patient hospitalization would be required. Respondent argued that it complied with § 191.5 by giving notice after learning the hospital admitted the injured employee for observation at 4:09 PM CDT on June 30, 2020.

I find Southern Star's argument unpersuasive.

Pursuant to § 191.5, an operator must give notice no later than one hour after confirmed discovery of each incident as defined in § 191.3.<sup>2</sup> "Confirmed discovery" is defined as: "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."<sup>3</sup>

An operator's obligation to report under § 191.5 is not dependent upon its confirmation that the reporting criteria have been met.<sup>4</sup> Rather, the relevant criteria for when an operator must report are: whether an operator could know that a report is likely to be required after the event, and, if so, whether it is able to collect the reportable information mandated by §191.5(b).<sup>5</sup> This mandated reporting allows the National Response Center (NRC) to obtain potentially critical

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<sup>2</sup> An "incident" means an event that involves a release of gas and that results in, among other things, personal injury necessitating in-patient hospitalization. There is no dispute that the event in question meets the definition of an incident as defined in § 191.3. *See* 49 C.F.R. § 191.3(1)(i).

<sup>3</sup> 49 C.F.R. § 191.3.

<sup>4</sup> *See* The City of Richmond Virginia, CPF 1-2004-0006; 2006 WL 3825337, at \*2 (January 12, 2006) ("...OPS interprets 'discovery' to mean discovery of the incident itself, not discovery that the reporting criteria have been met. Therefore, OPS requires pipeline operators to report incidents to the NRC at the earliest practicable moment following discovery of the incident itself.").

<sup>5</sup> *See* Texas Eastern Transmission Corporation, CPF 4-2001-1003; 2005 WL 5010168, at \*4 (May 5, 2005) (finding that respondent's report of a gas release 27 hours after it occurred was non-compliant with the reporting requirements of § 191.5 because, less than two hours after it occurred, respondent could have estimated it would likely need to be reported, based on the amount and cost of gas released, and respondent was able to collect the minimal amount of information required to be reported).

information at the earliest practicable moment.<sup>6</sup> OPS realizes that this may result in the NRC receiving reports of events that are not required to be reported. If an operator determines through later investigation that an event initially reported as an “incident” was not required to be reported, it should, within 48 hours after the confirmed discovery of the incident, to the extent practicable, revise its initial telephonic notice pursuant to the report submission requirements of § 191.7.<sup>7</sup>

The evidence shows that, around the time of the employee’s injury, Southern Star could know it would likely need to make a report. The Incident occurred on June 30, 2020, around 12:23 PM CDT, when Respondent’s employees were relieving excess pressure in Well 30 at Blackwell Storage Field. During this work, one employee sustained blunt force trauma to the back of 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. It is reasonable that in-patient hospitalization would result therefrom. Southern Star was able to collect the reportable information at the time of the employee’s injury, that is: the location of the incident, time of the incident, number of injuries, the name of person reporting, and any other significant facts known by the operator relevant to the cause of the incident or extent of the damages.

Accordingly, after considering all of the evidence and the legal issue presented, I find that Respondent violated 49 C.F.R. § 191.5 by failing to give notice of the Incident at the earliest practicable moment following discovery, but no later than one hour after confirmed discovery.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 199.225(a)(1), which states:

**§ 199.225 Alcohol tests required.**

Each operator must conduct the following types of alcohol tests for the presence of alcohol.

(a) *Post accident.* (1) As soon as practicable following an accident, each operator must test each surviving covered employee for alcohol if that employee’s performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section must be based on specific information that the covered employee’s performance had no role in the cause(s) or severity of the accident.

The Notice alleged that Respondent violated 49 C.F.R. § 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 accident. Specifically, the Notice alleged that Southern Star did not test two of its employees associated with the Incident.

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<sup>6</sup> See Public Service Company of New Mexico, CPF 44003; 1998 WL 35166483, at \*2 (March 2, 1998) (stating that the policy of early reporting requirements of §191.5 “allow[] the NRC to gather potentially critical information at the earliest practicable moment,” even if it results in over-reporting).

<sup>7</sup> See 49 C.F.R. § 191.5(c).

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Southern Star violated 49 C.F.R. § 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 accident.

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 an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.<sup>8</sup>

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$46,200 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$22,400 for Respondent's violation of 49 C.F.R. § 191.5(a), for failing to give notice of the Incident at the earliest practicable moment following discovery, but no later than one hour after confirmed discovery. Respondent contested the allegation and the proposed penalty. For the reasons set forth above, I found Southern Star's argument for withdrawing the underlying item unpersuasive. Respondent did not set forth any additional arguments for reduction of the proposed civil penalty. Considering the penalty assessment factors, I find the proposed penalty appropriate for this violation. Specifically, the nature of the violation related to Respondent's failure to conduct an activity; the circumstances were that the violation was discovered by PHMSA; the gravity recognized that safety was minimally affected; culpability reflected Respondent failed to comply with an applicable requirement; Respondent had a single prior offense; and good faith reflected that the operator did not have a reasonable justification for the noncompliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$22,400 for violation of 49 C.F.R. § 191.5(a).

**Item 2:** The Notice proposed a civil penalty of \$23,800 for Respondent's violation of 49 C.F.R. § 199.225(a)(1), for failing to conduct required alcohol tests as soon as practicable following the Incident for employees performing tasks or those whose performance of a task cannot be

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<sup>8</sup> These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

completely discounted as a contributing factor to the accident. Southern Star neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$23,800 for violation of 49 C.F.R. § 199.225(a)(1).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$46,200**.

Payment of the civil penalty must be made within 20 days of service. 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 \$46,200 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 district court of the United States.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of the Final Order by Respondent. Any petition submitted must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

December 9, 2021

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued