



Southern Star Central Gas Pipeline, Inc.
4700 State Route 56
P.O. Box 20010
Owensboro, Kentucky 42304-0010
Phone 270/852-5000

LEGAL DEPARTMENT

December 23, 2021

Mr. Alan K. Mayberry, Associate Administrator
Office of Pipeline Safety, PHMSA
1200 New Jersey Avenue SE
East Building, 2nd Floor
Washington, DC 20590

Re: Petition for Reconsideration of Final Order (CPF 1-2021-037-NOPV)

Dear Mr. Mayberry:

On December 9, 2021, you issued a Final Order to Southern Star Central Gas Pipeline, Inc (Southern Star) related to a Notice of Probably Violation (NOPV) and Proposed Civil Penalty after an investigation. In the Final Order, PHMSA states that Southern Star has committed the following violations of the Pipeline Safety Regulations:

- Item 1 – Violation of §191.5 Immediate notice of certain incidents – Southern Star failed to give notice of the Incident at the earliest practicable moment following discovery, but no later than one hour after confirmed discovery.
- Item 2 – Violation of §199.225 Alcohol tests required – Southern Star failed 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 completely discounted as a contributing factor to the accident.

Southern Star hereby submits a Petition for Reconsideration of this Final Order related to Item 1 – Violation of §191.5 Immediate notice of certain incidents. Regarding Item 2, Southern Star is not requesting reconsideration.

Sincerely,

A handwritten signature in blue ink that reads "Mark Lockett". The signature is written in a cursive, flowing style.

Mark Lockett
Lead Attorney
Southern Star Central Gas Pipeline, Inc.

cc: Office of Chief Counsel, PHMSA

Enclosure:

**UNITED STATE 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. |) | CPF No. 1-2021-037-NOPV |
| Respondent |) | |
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PETITION FOR RECONSIDERATION

On December 9, 2021, a Final Order was issued by PHMSA to Respondent, Southern Star Central Gas Pipeline, Inc. (“Southern Star”), assessing civil penalties for violations of 49 C.F.R. §§ 191.5(a) and 199.255(a)(1). For the reasons set forth below, Southern Star respectfully requests reconsideration of the finding that it violated 49 CFR §191.5(a) regarding notification of certain incidents.

I. Brief Factual Background:

In the Southern Star event related to CPF-1-2021-037-NOPV, the injured employee was under observation at the hospital. Other Southern Star personnel went to the hospital to monitor the situation with the injured employee and remained there until the patient was admitted as an in-patient at 04:09 PM CST given the extent of his *internal injuries* to his head. Southern Star notified the NRC at 04:45PM CST, within one (1) hour of in-patient hospitalization.

II. Statement of the Issue: Interpretation of the incident reporting requirements of 49 CFR §191.5 is unclear.

The Final Order issued in this case cites The City of Richmond Virginia, CPF 1-2004-0006 (“City of Richmond”) Final Order as a foundational basis for the finding that Southern Star violated 49 C.F.R. §191.5.¹ Specifically, PHMSA cites the following language in City of Richmond:

¹ See Final Order, In the Matter of Southern Star Central Gas Pipeline, Inc., CPF No. 1-2021-037-NOPV at *2 (December 9, 2021).

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 practical moment following discovery of the incident itself.²

Just two sentences later in the very same paragraph in the City of Richmond Final Order, PHMSA states as follows:

Although Respondent was not required to report the incident prior [to] the individual’s hospitalization, Respondent was required to make reasonable efforts to learn at the earliest practical moment when hospitalization occurred and to report the incident pursuant to §191.5. [Emphasis added].³

In the City of Richmond case, Respondent did not make notification within one (1) hour of in-patient hospitalization resulting from an incident. In this case, Southern Star made notification well within one (1) hour of in-patient admittance to the hospital of its injured employee unlike City of Richmond.

Of course, “hospitalization” within the context of the definition of an “incident” is defined in 49 C.F.R. §191.(3) as “in-patient hospitalization.” The term “hospitalization” also is interpreted in City of Richmond where it is explicitly stated that “OPS considers ‘hospitalization’ to be admittance into a hospital as a patient.”⁴

The emphasized language above from the City of Richmond Final Order is set out as PHMSA’s interpretation of the incident reporting requirement. That is, **the “Respondent was not required to report the incident prior [to] the individual’s hospitalization.** It is clear that “PHMSA can and does develop . . . interpretations in its enforcement decisions.⁵ Therefore, it follows that pipelines should be able to rely on such interpretations by PHMSA. As a result, PHMSA’s interpretation in City of Richmond creates ambiguity concerning the timing of the 49 C.F.R. §191.5 reporting requirement as

² See In the Matter of Southern Star Central Gas Pipeline, Inc., CPF No. 1-2021-037-NOPV, Final Order at *2, Footnote 4, (December 9, 2021).

³ See The City of Richmond Virginia, CPF 1-2004-0006; 2006 WL 3825337, at *2 (January 12, 2006)

⁴ See The City of Richmond Virginia, CPF 1-2004-0006; 2006 WL 3825337, at *1 (January 12, 2006) referencing Interpretation letter from Joseph Caldwell, Director, OPS, to Frank Bahniuk, June 28, 1972.

⁵ See Buckeye Partners, LP, CPF No. 3-2010-5006, Decision on Petition For Reconsideration, at *2, (August 1, 2013)

well as the meaning of discovery of incident even in light of the regulatory definitions of “confirmed discovery” of an “incident.”

III. Conclusion

Southern Star’s intention in this case was to timely report the incident to the NRC. It did so within the timeframe it understood it was required to do so under the circumstances of this incident. Again, Southern Star personnel did not immediately know the extent of the internal injury to its employee, took reasonable steps to monitor the employee’s care at the hospital, and made notification within one (1) hour of in-patient hospitalization. For all of the reasons stated herein, Southern Star requests reconsideration of the Item 1 finding that it violated the reporting requirement of 49 C.F.R. §191.5(a) and the associated penalty.

Submitted on the 23rd day of December, 2021.

Respectfully,



Mark Lockett
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cc: Office of Chief Counsel, PHMSA