



US Department
of Transportation

**Research and
Special Programs
Administration**

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

OCT 18 2004

Mr. W.D. Scott
Senior Vice President, COO
Colonial Pipeline Company
P.O. Box 1627
Alpharetta, Georgia 30009-9934

RE: CPF No. 2-2004-5005

Dear Mr. Scott:

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 \$8,500. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Mr. John Godfrey, Asset Integrity Leader, Colonial Pipeline Co.
Ms. Linda Daugherty, Director, Southern Region, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

RECEIVED NOV 01 2004

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

In the Matter of

COLONIAL PIPELINE COMPANY,

Respondent.

CPF No. 2-2004-5005

FINAL ORDER

During September and November 2003, 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 facilities and records in Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. As a result of the inspection, the Director, Southern Region, OPS, issued to Respondent, by letter dated April 20, 2004, 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. §195.402 and proposed assessing a civil penalty of \$8,500 for the alleged violation. The Notice also warned Respondent to take appropriate corrective action.

Respondent responded to the Notice by letter dated May 19, 2004 (Response). Respondent contested the allegation of violation and provided information in mitigation of the proposed civil penalty. Respondent did not request a hearing, and therefore has waived the right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. §195.402 (a), by not following its manual of written procedures for establishing and maintaining liaison with fire, police and other appropriate public officials. The purpose of the manual is to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication. Respondent's manual of written procedures included an "Education Program for Emergency Response Agencies" which specified that an annual request to conduct emergency planning meetings will be made to public emergency response agencies located along the right-of-way and the county Local Emergency Planing Committee (LEPC) and that records of all written, telephone, and personal contacts to document the meetings, or denials of the requests to hold the meeting will be maintained. At the time of the inspection, Respondent could not show that it maintained a liaison with the following seventeen (17) counties in Georgia: Baker, Carroll, Chattooga, Crawford, Fayette, Haralson, Henry, Lamar, Lee, Macon, Mitchell, Monroe, Paulding, Peach, Spalding, Sumter, and Walker.

In its Response, Respondent contested the alleged violation, offered information to explain the allegations and requested that the proposed civil penalty be reduced. Respondent explained that at its Operations and Engineering Management meeting on May 25, 2004, the Public Affairs Senior Manager communicated the requirements defined in its Education Program. Respondent further explained that of the seventeen counties listed in the Notice according to Environmental Protection Agency's Local Emergency Planning Database only Carroll, Fayette, Haralson, Henry, and Macon counties were listed as established LEPCs. Respondent argued that it communicated with all of the listed counties by mailing Colonial Pamphlets to the local Fire, Police, and other local officials.

Federal regulations require that Respondent maintain and follow its manual of written procedures for liaison with fire, police and other appropriate public officials. Although Respondent argued that it communicated by mailing pamphlets, neither Respondent's response nor the records at the time of the inspection showed sufficient documentation that Respondent followed its "Education Program for Emergency Response Agencies" to liaison with LEPCs and public emergency response agencies as detailed in the Notice. The mere mailing of pamphlets does not indicate the establishment of a liaison with the appropriate emergency officials. Nor does the absence of an LEPC justify Respondent's failure to establish and maintain liaison with the appropriate local emergency officials along the right-of-way. Accordingly, I find that Respondent violated 49 C.F.R. §195.402 (a) by failing to establish and maintain a liaison in seventeen counties with public emergency response agencies located along the right-of-way, in accordance 49 C.F.R. §195.402(c)(12).

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 \$8,500 civil penalty for violation of 49 C.F.R. § 195.402(a).

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.

The Notice proposed a civil penalty of \$8,500, as Respondent failed to follow its manual of written procedures for establishing and maintaining liaison with fire, police and other appropriate public officials as detailed in its "Education Program for Emergency Response Agencies" and required by 49 C.F.R. §195.402(a) and (c)(12). Respondent argued that the civil penalty should be reduced because the alleged violation is for seventeen counties with LEPCs and that of the seventeen counties only five counties have established LEPC offices. The absence of a LEPC does not justify Respondent's failure to establish and maintain liaison with fire, police and other appropriate local officials along the pipeline right-of-way. Contrary to Respondent's assessment, the Notice alleges a violation because Respondent's documents failed to show that it provided liaison with both public emergency response agencies located along the right-of-way and with the LEPCs.

An objective of the regulation is to assure that responders who could be involved in an emergency are prepared to recognize and deal with the situation in an expeditious and safe manner. When an operator fails to follow its manual of written procedures for liaison, the proper procedures and techniques to follow may not be clear to those responsible for responding to a hazardous liquid or carbon dioxide pipeline emergency. Respondent has not provided any evidence that would justify mitigation of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$8,500, for violation of 49 C.F.R. §195.402(a).

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this 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 (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$8,500 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 an United States District Court.

WARNING ITEM

The Notice did not propose a civil penalty or corrective action for Item 1 in the Notice; therefore, this is considered warning item. Respondent is warned that if it does not take appropriate action to correct this item, enforcement action will be taken if a subsequent inspection reveals a violation. The warning was for -

49 C.F.R. §195.573 – failing to inspect rectifiers at the required intervals, as the inspection intervals were exceeded by more than 2 ½ months for Rectifier 302747 at Robert Moore Road, Station 7362 + 28 and Rectifier 303631 at US Highway 45 North, Station 8909+02.

Under 49 C.F.R. § 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 a petition automatically stays the

payment of any civil penalty assessed. However, if Respondent submits payment for 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 receipt.

William H Gulte
for

Stacey Gerard
Associate Administrator
for Pipeline Safety

OCT 18 2004

Date Issued