



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

NOV 30 2004

Mr. Pat McCann
President
Koch Pipeline Company
P.O. Box 2913
Wichita, KS 67201-2913

RE: CPF No. 39503

Dear Mr. McCann:

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 \$5,000. This letter acknowledges receipt of, and accepts your cashier's check number 5010147285 in the amount of \$5,000 as payment in full of the civil penalty assessed in the Final Order. This case is now closed and no further enforcement action is contemplated with the respect to the matters involved in this case. Thank you for your cooperation in our joint effort to ensure pipeline safety.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Mr. Dave Stecher, Operations Manager, Minnesota Pipeline Co.
Mr. Ivan Huntoon, Director, Central Region, OPS
Mr. Charles Kenow, Administrator, Minnesota Office of Pipeline Safety

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)	
)	
KOCH-MINNESOTA PIPELINE COMPANY,)	CPF No. 39503
)	
Respondent.)	
)	

FINAL ORDER

On July 18, 1997, pursuant to 49 U.S.C. § 60117, representatives of the Minnesota Office of Pipeline Safety (MnOPS), as agent for the Office of Pipeline Safety (OPS), conducted an investigation of the July 18, 1997 accident involving Respondent's Clearbrook Terminal, operated by Minnesota Pipeline Company. As a result of the inspection, the Director, Central Region, OPS, issued to Respondent, by letter dated March 15, 1999, 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 \$5,000 for the alleged violation. The Notice also warned Respondent to take appropriate corrective action.

Respondent responded to the Notice by letter dated April 5, 1999 (Response). Respondent did not contest the allegation of violation. Respondent submitted payment in the amount of the proposed civil penalty (\$5,000), waiving further right to appeal and authorizing entry of this Final Order.

FINDINGS OF VIOLATION

Respondent did not contest the alleged violation of §195.402(a), (b) and (d)(1)(v) in the Notice. Accordingly, I find that Respondent violated 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. §195.402 – failing to follow procedures for abnormal operations for “Failure of Tank Level Devices Detection.” Respondent’s failure to respond within a reasonable time to high level alarms for Clearbrook Tank #11 resulted in an overflow of crude oil.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

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.

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 total civil penalty of \$5,000 for violation of §195.402(a), (b) and (d)(1)(v).

There is no disagreement on the facts underlying the allegation that Respondent failed to follow its procedures for abnormal operations for "Failure of Tank Level Devices Detection." Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000, already paid by the Respondent.

WARNING ITEMS

The Notice did not propose a civil penalty or corrective action for Item 2 in the Notice; therefore, this is considered a 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.

49 C.F.R. §199.11(b) - failing to drug test, as soon as possible but no later than thirty-two hours after the accident, each employee whose performance either contributed to or cannot be completely discounted as a contributing factor to the Clearbrook accident on July 18, 1997.

The terms and conditions of this Final Order are effective upon receipt.



Stacey Gerard
Associate Administrator
for Pipeline Safety

NOV 30 2004

Date Issued