



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

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

JUL 28 2004

Mr. Steven E. Kurmas
Senior Vice President, Gas Operations
DTE Energy Gas
Michigan Consolidated Gas Company
500 Griswold Street
Detroit, MI 48226

Re: CPF No. 3-2002-0001

Dear Mr. Kurmas:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$25,000. 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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)

DTE Energy Gas,)
Michigan Consolidated Gas Company,)

Respondent.)

CPF No. 3-2002-0001

FINAL ORDER

On July 17, 2002, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) initiated an investigation of Respondent's incident reporting involving its pipeline system. As a result of the investigation, the Director, Central Region, OPS, issued to Respondent, by letter dated November 12, 2002, 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. §§ 191.5, 191.9, and 191.15 and proposed assessing a civil penalty of \$25,000 for the alleged violations.

Respondent responded to the Notice by letter dated December 5, 2002 (Response). Respondent contested the allegation of violation in Item 1 in the Notice, offered information to explain the allegation, and requested that the proposed civil penalty be reduced or eliminated. Respondent did not contest the violations alleged in Item 2 and Item 3 in the Notice, but provided information concerning the corrective actions it has taken. Respondent did not request a hearing and, therefore, has waived its right to one.

FINDINGS OF VIOLATION

Contested Item

Item 1 in the Notice alleged that Respondent violated 49 C.F.R. § 191.5 by failing to provide the National Response Center (NRC) with telephonic notification at the earliest practicable moment following discovery of an incident that occurred around 9:23 AM CST on July 16, 2002. Respondent reported the incident to the Michigan Public Service Commission (MPSC) at approximately 10:45 AM on July 16, 2002, but did not report the incident to the NRC until 3:23 PM the next day, approximately 30 hours after the incident.

A contractor for the city struck Respondent's three-inch high density polyethylene distribution line (main) in Detroit, Michigan at approximately 9:23 AM on July 16, 2002. The contractor struck the main while boring, resulting in the release of gas which ignited and set fire to the main and surrounding equipment. Respondent's personnel arrived at the site of the incident at 9:48 AM and stopped the gas flowing to the burning main at approximately 1:27 PM. The fires were extinguished shortly after the gas flow was stopped. MPSC personnel arrived at approximately 2:00 PM. The damage immediately visible to MPSC personnel included the burned main, burned portions of the contractor's truck-mounted auguring equipment, melted traffic control barrels, and singed surrounding trees.

While Respondent reported to the MPSC within 2 hours of the incident, it did not report to the NRC until approximately 30 hours later. In its Response, Respondent stated it immediately determined the incident met the MPSC reporting criteria of \$10,000 or more property damage but that OPS reporting thresholds were not triggered until July 17 because "[i]nformation was not readily available immediately after the incident to decide if the DOT reporting criteria would be met." Respondent explained that it realized estimated property damage would exceed \$50,000 after interviewing contractor personnel on July 17. Respondent contested the allegation of violation because it "believe[d] it notified [the NRC] of the incident immediately after concluding that the estimated property damage criteria was met...."

The pipeline safety regulations require reporting at the earliest practicable moment after discovery of an *incident*—not after fully investigating the extent of property damage—because of the time-sensitive safety and response coordination functions that incident reporting serves. Reporting must be done promptly to ensure timely response from local and national officials and reduction of risk to public safety and the environment. Accordingly, OPS has historically construed the telephonic incident reporting regulations to require an incident that could potentially meet the reporting criteria to be reported within one to two hours after the pipeline operator first becomes aware of its occurrence. All pipeline operators were formally notified of the two-hour time frame for telephonic incident reporting through an Alert Notice published on April 15, 1991 (ALN-91-01). The Alert Notice, while not itself a basis for a violation, provided pipeline operators with explicit guidance on the manner in which reporting requirements would be enforced. Thus, operators were made aware of OPS's interpretation of "earliest practicable moment" and the need to exercise diligence in making reporting determinations.

Based on the totality of the evidence, Respondent does not appear to have reported to the NRC at the earliest practicable moment. There is no evidence that Respondent was prevented from gathering information to estimate property damage shortly after the incident on July 16. Access to the incident site was not blocked off, Respondent's personnel were at the incident site within minutes of the incident, and the contractor personnel that struck the main were contemporaneously present and available for interview. Furthering the applicability of the two-hour time frame to the facts of this case, the definition of "incident" in § 191.3 requires operators to *estimate* property damage, not ascertain a definitive dollar amount of property damage. However, even ignoring Respondent's notice of the two-hour practicability time frame from ALN-91-01, Respondent did not exercise

diligence in estimating property damage for reporting purposes by choosing to wait until the day after the incident to gather important and relevant information. Therefore, Respondent did not telephonically report the incident on July 16, 2002 to the NRC at the earliest practicable moment.

For the foregoing reasons, I find that Respondent violated 49 C.F.R. § 191.5.

Uncontested Items

In its Response, Respondent did not contest the violations alleged in Items 2 and 3 of the Notice. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Part 191, as more fully described in the Notice:

49 C.F.R. § 191.9 -- failing to submit timely DOT RSPA Form 7100.1 written reports following telephonic reporting of three incidents involving Respondent's gas distribution pipeline system that occurred on November 30, 2001, June 28, 2002, and July 16, 2002. Respondent submitted written reports for all of these incidents on September 19, 2002, a minimum of approximately 34 days over the 30-day submission deadline and a maximum of approximately 263 days over the deadline; and

49 C.F.R. § 191.15 -- failing to submit timely a DOT RSPA Form 7100.2 written report following telephonic reporting of an incident involving Respondent's gas transmission pipeline system that occurred on December 12, 2001. Respondent submitted a written report for this incident on September 16, 2002, approximately 247 days after the 30-day submission deadline.

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 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 \$25,000 for the violations.

Telephonic incident reports and written follow-up reports are crucial to fulfilling the OPS mission of ensuring public and environmental safety. Failure to telephonically report incidents in a timely

fashion significantly affects local and national response to pipeline incidents and can put the public and environment at risk. Failure to file written follow-up reports within 30 days of telephonic reporting deprives OPS of information on the status of incident response and changes, additions, or corrections to data that was originally supplied with the telephonic report. Furthermore, incident reporting is critical to determine nationwide trends in pipeline incidents.

I have determined that Respondent has no financial circumstances that would prevent it from paying the penalty amounts assessed below and that Respondent's ability to continue in business will not be significantly affected.

Having reviewed the record and considered the assessment criteria, I assess a total penalty of \$25,000 which reflects \$5,000 for violation of 49 C.F.R. § 191.5, \$15,000 for three instances of violation of 49 C.F.R. § 191.9, and \$5,000 for violation of 49 C.F.R. § 191.15.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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) 954-4719.

Failure to pay the \$25,000 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.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a 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 the 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 on receipt.



Stacey Gerard
Associate Administrator
for Pipeline Safety

7/28/07

Date Issued