



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

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

NOV 13 2002

Mr. Myron B. Hoover  
Vice-President of Transportation  
National Cooperative Refinery Association  
1391 Iron Horse Road  
P.O. Box 1404  
McPherson, KS 67460

Re: CPF No. 3-2002-5010

Dear Mr. Hoover:

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. 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,

Gwendolyn M. Hill  
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 )  
 )  
National Cooperative ) CPF No. 3-2002-5010  
Refinery Association, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER

On January 23-24, 2002, pursuant to 49 U.S.C. § 60117, representatives of the Central and Eastern Regions, Office of Pipeline Safety (OPS), conducted an integrity management segment identification and completeness check of National Cooperative Refinery Association's (Respondent's) integrity management program in McPherson, Kansas. As a result of the inspection, the Director, Central Region, OPS, issued to Respondent, by letter dated May 23, 2002, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 195.452 and proposed assessing a civil penalty of \$10,000 for the alleged violation. The Notice also proposed that Respondent take certain measures to correct the alleged violation.

Respondent responded to the Notice by letter dated June 19, 2002 (Response). Respondent did not contest the allegation of violation but offered an explanation and provided information in mitigation of the proposed civil penalty. Respondent did not request a hearing; consequently, Respondent waived its right to one.

FINDING OF VIOLATION

*Uncontested Violation*

Respondent did not contest the alleged violation in the Notice. Accordingly, I find that Respondent violated the following section of 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. § 195.452(b)(i) – failure to identify all pipeline segments that could affect a high consequence area by December 31, 2001.

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 \$25,000 per violation for each day of the violation up to a maximum of \$500,000 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 civil penalty of \$10,000 for violation of 49 C.F.R. 195.452(b)(i). The Respondent explained that it had initially misinterpreted the application of the regulation to its system. Respondent also demonstrated that it had taken timely corrective action and completed the process of identifying pipeline segments which could affect high consequence areas. Accordingly, having reviewed the record and considered the assessment criteria, a reduction will be made in the amount of the proposed penalty. I assess Respondent a civil penalty of \$5,000 for failing to comply with the requirements of 49 C.F.R. § 195.452(b)(i).

Payment of the civil penalty must be made within 20 days of service. Payment can 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-320), P.O. Box 25770, 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. After completing the wire transfer, send a copy of the electronic funds transfer receipt to the Office of the Chief Counsel (DCC-1), Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001.

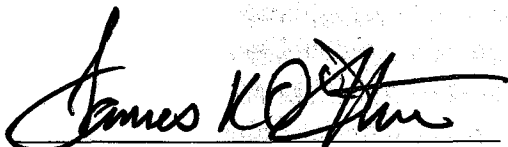
**Questions** concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$5,000 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 an United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order. Respondent has demonstrated corrective action addressing the item in the proposed compliance order. Respondent has completed the process of identifying its pipeline segments which could affect high consequence areas and performed a risk analysis. Because Respondent's actions satisfied the proposed compliance terms, no need exists to issue a compliance order.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. However, upon payment of the civil penalty, the case closes automatically and Respondent waives the right to petition for reconsideration. The filing of a petition automatically stays the payment of any civil penalty assessed. 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 terms and conditions of this Final Order are effective on receipt.



Stacey Gerard  
Associate Administrator  
for Pipeline Safety

NOV 13 2002

Date Issued