



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

FEB 16 2006

Mr. Richard E. Keyser
Vice President, Operations and Engineering
Panhandle Energy
5444 Westheimer Road
Houston, Texas 77056

Mr. Richard Gielecki
President, Guardian Pipeline
200 South Executive Drive, Suite 101
Brookfield, Wisconsin 53005

Re: CPF No. 3-2003-1011

Dear Mr. Keyser and Mr. Gielecki:

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 \$135,000. 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 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
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

In the Matter of)
)
)

Guardian Pipeline)
and)
Panhandle Energy,)

Respondents)
)

CPF No. 3-2003-1011

FINAL ORDER

On various dates throughout July, August, and October 2002, pursuant to 49 U.S.C. § 60117, representatives of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of the "Guardian Pipeline" facilities and records in Illinois and Wisconsin. As a result of the inspection, the Director, Central Region, OPS, issued to Panhandle Energy, by letter dated December 17, 2003, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Panhandle Energy had committed violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$135,000 for the alleged violations. The Notice also warned Panhandle Energy to take appropriate corrective action.

Panhandle Energy responded to the Notice by letter dated January 7, 2004, explaining that it believed Guardian Pipeline should be served with the Notice. Guardian Pipeline subsequently responded on January 29, 2004, stating that it had received a copy of the notice on or about January 7, 2004 from Panhandle Energy. Guardian Pipeline concurred in Panhandle Energy's response and explained the organizational relationship between Panhandle Energy and Guardian Pipeline.¹ At the time of the inspection, Panhandle Energy was a subsidiary of CMS Gas Transmission Company (CMS). CMS was one of three companies that held a partnership interest in Guardian Pipeline. Panhandle Energy, through its subsidiary relationship with CMS, was assigned to handle operational aspects of the pipeline. However, the pipeline was owned by the Guardian Pipeline partnership. As the pipeline safety laws are applicable to the operator, Panhandle Energy, and the owner, Guardian Pipeline, of this pipeline at the time of the inspection, in accordance with 49 U.S.C. § 60102, both Guardian Pipeline and Panhandle Energy (Respondents) may be held jointly and severably liable for the violations alleged in the Notice.

¹ See letter from Panhandle Energy to Office of Pipeline Safety, January 7, 2004; letter from Guardian Pipeline to Office of Pipeline Safety, January 29, 2004. See also *Transcript of Hearing*, pages 6-13.

The Respondents' concurring responses requested a hearing to contest Probable Violations 1(a), 1(b), 1(c), and 2 as alleged in the Notice, as well as to explain the business relationships between the entities, discussed above. The hearing was held on March 23, 2004 in Kansas City, Missouri. Representatives of Guardian Pipeline, CMS, and Panhandle Energy (along with its Trunkline Gas Company unit) appeared at the hearing.

FINDINGS OF VIOLATION

The Notice alleged three violations of 49 C.F.R. § 192.225, regarding welding procedures, as applied more generally through the requirement in 49 C.F.R. § 192.303 that transmission lines be constructed in accordance with comprehensive written specifications or standards.

Probable Violation 1(a) alleged a failure to follow the entirety of the procedure established by Section A.3.1 of the Appendix to API Standard 1104 (the Appendix) when qualifying welds on pipe of .357" nominal wall thickness. The Appendix may provide an otherwise satisfactory method to determine the acceptability of welds in this case, so long as the procedure is followed in its entirety (as required by §§ 192.225 and 192.303). The Appendix required that both high and low values of gas flow rate be established during the procedure qualification test. At the hearing, a representative for Panhandle Energy confirmed that these high and low values were not established, but that the welds at issue were qualified using an alternative method based on a single midpoint value.² This alternative method was not contemplated by the Appendix, however, and thus utilizing this alternative method amounted to a failure to follow the comprehensive written procedures for qualifying the welds established by the Appendix. Accordingly, I find that the Respondents violated 49 C.F.R. §§ 192.225 and 192.303.

Probable Violation 1(b) alleged a failure to qualify a welding procedure, as required by § 192.225, for use when welding .514" nominal wall thickness pipe. API Standard 1104 requires requalification of a welding procedure, even if it is identical in form, whenever that welding procedure will be applied to a pipe that varies more than .125 inches in nominal wall thickness from the pipe for which the procedure was originally qualified. Generally, nominal wall thickness is considered to be the wall thickness that is listed on a pipe's specifications.³ The evidence in the record indicates that the wall thickness of the .514" pipe is more than .125" greater than the .357" pipe, referenced above, for which the Respondents qualified a procedure. The record indicates that a procedure was used that had been previously qualified for a different wall thickness pipe by a different operator. Further, during the hearing, representatives of Panhandle Energy and Guardian Pipeline stated that a welding procedure was not qualified for use on the .514" pipe. Accordingly, I find that the Respondents violated 49 C.F.R. §§ 192.225 and 192.303.

Probable Violation 1(c) alleges a failure to follow, for the .514" nominal wall thickness pipe, the procedures established by the operator requiring that "new welding procedures shall be qualified, submitted to and approved by the Engineer prior to welding on project piping." The allegation is essentially that the Respondents failed to follow their own procedures. This violation parallels Probable Violation 1(b) in that whether a violation took place hinges upon whether the operator

² See *Transcript*, pages 26-28.

³ See, e.g., definition at 49 C.F.R. § 195.2.

qualified a procedure for welding the .514" pipe. As established above, the Respondents did not have a qualified procedure in this instance. Accordingly, I find that the Respondents violated 49 C.F.R. §§ 192.225 and 192.303.

The Notice also alleged one violation of 49 C.F.R. § 192.241(c), involving the determination of the acceptability of welds. Probable Violation 2 alleged a failure to use Section 6 of API Standard 1104 to evaluate the acceptability of certain welds. As stated in the Notice, OPS inspectors observed records indicating that welds joining pipe of .357" nominal wall thickness to pipe of .429" nominal wall thickness were not evaluated in accordance with Section 6, but instead were evaluated in accordance with the Appendix to API Standard 1104 (the Appendix). The Appendix states, however, that "[o]nly circumferential welds between pipes of equal nominal wall thickness are covered by this Appendix." At the hearing, the Respondents and OPS staff focused on the meaning of nominal wall thickness, with the Respondents arguing that .357" and .429" pipe could, in certain circumstances, be considered to have equal wall thickness. As established above, nominal wall thickness is generally construed in terms of the specifications listed for a particular pipe. Thus, since the pipe specifications in the current instance were listed at .357" and .429" nominal wall thickness, they are of unequal wall thickness and should be evaluated under Section 6. Accordingly, I find that the Respondents violated 49 C.F.R. § 192.241(c).

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.⁴ The Notice proposed a total civil penalty of \$135,000 for the 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 the Respondents' culpability, history of the Respondents' prior offenses, the Respondents' ability to pay the penalty, good faith by the Respondents in attempting to achieve compliance, the effect on the Respondents' ability to continue in business, and such other matters as justice may require.

All of the violations in this case involve aspects of the welding of pipeline joints during the construction of a new pipeline. Strong, sound welds are critical to the structural integrity of a pipeline. The failure of even one weld can lead to a rupture that could have dire consequences for nearby persons or the environment. Hence, while the failure to properly evaluate the soundness of welds or to properly qualify a welding procedure may seem like mere procedural oversights, the implications may be severe. Fortunately, in the present case, after OPS inspectors pointed out these oversights, the operator properly reevaluated welds and qualified valid welding procedures where necessary. This is greatly to the Respondents' benefit, as their workers reacted to OPS inspectors' concerns promptly and before ever receiving the Notice. The Respondents' good faith efforts to correct the issues identified were noted in the Notice and thus considered in

⁴ The Pipeline Safety Improvement Act of 2002, Pub. L. No. 107-355, § 8(b)(1), 116 Stat. 2992, increased civil liability for violation of federal pipeline safety standards to \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

calculating the proposed penalty.

Having reviewed the record and considered the assessment criteria, I assess the Respondents a total civil penalty of \$135,000. The Respondents have the ability to pay this penalty without adversely affecting their ability to continue in business. The penalty is attributed jointly and fully to both the owner and operator of the pipeline, thus either respondent may pay the full penalty or they may apportion the penalty among them.

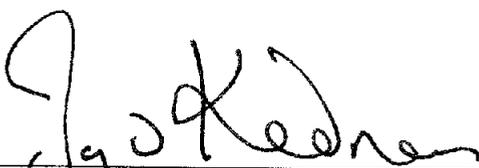
Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the 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 \$135,000 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.

WARNING ITEMS

The Notice did not propose a civil penalty or corrective action for Probable Violation 3; therefore, this is considered a warning item. The Respondents presented information in their responses and at the hearing showing that they have addressed Probable Violation 3.

Under 49 C.F.R. § 190.215, the Respondents have a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of the Respondents' 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 the Respondents submit payment for the civil penalty, the Final Order becomes the final administrative action and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.

for


 Stacey Gerard
 Associate Administrator
 for Pipeline Safety

FEB 16 2000

 Date Issued