



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

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

JAN - 3 2006

Jeryl Mohn  
Senior Vice President  
Florida Gas Transmission Company  
1331 Lamar Street  
Houston, TX 77002

RE: CPF No. 45102 Petition for Reconsideration

Dear Mr. Mohn:

Enclosed is the decision on the Petition for Reconsideration filed in the above-referenced case. The Associate Administrator for Pipeline Safety is denying in part and granting in part the relief sought by Respondent.

Your receipt of the enclosed document constitutes service under 49 C.F.R. § 190.5. Payment of the \$109,000 penalty assessed is due as set forth herein. Amended Emergency Response Procedures have been accepted as adequate to ensure safe operation of Respondent's pipeline system. No further action is necessary with regard to the Amendment of Procedures.

Sincerely,

James Reynolds  
Pipeline Compliance Registry  
Office of Pipeline Safety

Enclosure

cc: Jon L. Benjamin, Esq.  
LeBoeuf, Lamb, Greene & MacRae, L.L.P.  
One Embarcadero Center  
San Francisco, California 94111

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

**In the Matter of  
Florida Gas Transmission Company,  
Respondent**

**CPF No. 45102**

**DECISION ON PETITION FOR RECONSIDERATION**

On June 3, 1997 pursuant to 49 U.S.C. § 60112, I issued a Final Order in this case, assessing Respondent a civil penalty of \$296,000 for violating 49 C.F.R. §§ 192.612 and 192.615(a)(2), and requiring certain corrective action and revision of certain operating and maintenance procedures. On July 10, 1997, Respondent filed a petition requesting reconsideration (Petition) of that Final Order. The Petition requested that the civil penalty be reduced to \$500 and raised many factual and legal issues including: whether the allegations in the NOPV and the conclusion in the Final Order are well-founded; whether the requirements of the compliance order are well-founded; the bases for seeking civil penalties, the amount of the civil penalty and the one-time nature of the violation. The Petition also requested a stay of the Final Order and a hearing to discuss the issues set out in Petition.

The filing of the Petition automatically stayed payment of the civil penalty pending a decision on the Petition. By letter dated August 1, 1997, the Office of Pipeline Safety (OPS) granted Respondent's request for a stay of all other terms of the Final Order. On October 7, 1997, in Houston, Texas, an informal hearing was held at which time Respondent further explained its position.

This decision denies in part and grants in part the relief sought by Respondent in its Petition. This decision constitutes the final agency with respect to these issues.

1. Petition relating to violation of 49 C.F.R. § 192.612(a) - - pipelines in bays.

The Final Order found that Respondent violated 49 C.F.R. § 192.612(a) by failing to conduct an underwater inspection of its pipelines in Dickinson and Galveston Bays in Galveston County, Texas during the prescribed period. Respondent asserted that it inspected the pipeline before November 16, 1992 as a matter of good faith and prudence, not in response to the requirements in the regulation. (Petition, p.3) Further, Respondent argued in its Petition that the pipeline is not within the scope of the regulation as it is not "offshore." (Petition, p.4)

Additionally, Respondent argued that 49 C.F.R. § 192.612(a) goes beyond the scope of Public Law (P.L.) 101-599 and the intended scope of the regulation itself, and, therefore, is invalid. *Id.* Alternatively, Respondent argued that even if the regulation applies to “inland water,” it still does not extend to Dickinson and Galveston Bays because they are not “open to the sea.” (Petition, p.4)

A. 49 C.F.R. § 192.612(a) encompasses pipelines located in Dickinson and Galveston Bays.

Respondent contends that 49 C.F.R. § 192.612(a) does not apply to Dickinson and Galveston Bays because the “Gulf of Mexico and its inlets” does not cover these bays. (Petition pp. 3-5) The regulation states, “[e]ach operator shall . . . conduct an underwater inspection of its pipelines in the Gulf of Mexico and its inlets. The inspection must be conducted after October 3, 1989 and before November 16, 1992.” 49 C.F.R. § 192.612(a) (1997). Section 192.3 defines “Gulf of Mexico and its inlets” as “the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and Outer continental Shelf to a depth of 15 feet, as measured from the mean low water.” 49 C.F.R. § 192.3 (1997). As explained in the Final Order, the term “inlets” was widely commented on during the rulemaking process.

Several industry members and associations including Transcontinental Gas Pipeline Corp., Exxon, INGAA, AGA, Texaco, Texas Gas Transmission Corp., and Monterey Pipeline Co., indicated their understanding that OPS intended bays to be covered by the regulation. (See Docket No. PS-120) In fact, Enron Corp., Respondent’s parent company at the time, suggested adding a separate definition for inlets that stated, “Inlet means bays or other bodies of water, that are open to the Gulf of Mexico and subject to navigation by commercial vessels but excludes such waters as lakes and rivers flowing into such bays or bodies of water.” (See, Enron Letter to Docket No. PS-120, May 28, 1991) Enron’s rationale was that water channels flowing into bays, and bays not subject to navigation by commercial vessels, should be excluded. *Id.* Although OPS did not ultimately incorporate the exact wording of this suggestion into the final rule, this comment does reflect the understanding of Respondent’s parent company that “inlet” means bays like Galveston and Dickinson, both of which are navigated by commercial vessels and have been since at least 1964. In fact, Dickinson Port is connected to Galveston Bay and the Houston Ship Channel by Dickinson Channel at or near the rupture location. Although Respondent contended that it made a good faith effort to correctly interpret the regulation and consult within industry, it did not adopt, or at least acknowledge, Enron’s interpretation of the regulation. In furtherance, Respondent could have taken advantage of 49 C.F.R. §190.11 to resolve any questions or concerns. This resource along with OPS related statements and interpretations provide notice of required conduct and helps an operator to identify the standards with which OPS expects it to conform.

The final definition of "Gulf of Mexico and its inlets" reflects suggestions OPS received during the comment period. Exclusionary language was added listing rivers, tidal marshes, lakes, and canals as areas where operators were not required to do the one time underwater pipeline inspection. See, Inspection and Burial of Offshore Gas and hazardous Liquid pipelines, 56 Fed. Reg. 63,764, 63,771 (1991) (codified at 49 C.F.R. pts. 192 and 195) As explained in the Final Order, the term "bays" was discussed in many of the comments, yet OPS chose not to include it in the regulation's exclusionary clause. OPS did not include bays in the list of excluded areas because OPS intended operators to inspect their pipelines located in bays.

The Respondent points out in the Petition that later inspections of its pipelines in bays were only done as a matter of prudence and good faith. (Petition, pp. 5-6) Yet, when faced with uncertainty about the meaning and extent of the regulatory requirements, the Respondent failed to request from OPS an interpretation of the regulation. In furtherance, 49 C.F.R. §190.11 provides informal guidance and interpretive assistance about compliance with pipeline safety regulations, 49 CFR parts 190-199. If Respondent needed clarification, information on, and advice about compliance with pipeline safety regulations, then Respondent could have taken advantage of §190.11 to resolve any questions or concerns regarding compliance. Respondent, although not required by law to do so, did not attempt to clarify its uncertainty with OPS.

For the above stated reasons, I find that 49 C.F.R. § 192.612(a) does apply to Respondent's pipeline in Dickinson and Galveston Bays.

B. 49 C.F.R. §192.612(a) is well within the scope of P.L. 101-599.

Although the Final Order thoroughly addressed the intent and scope of P.L.101-599, as well as Congressional remarks on the law, and the resultant pipeline safety regulations, the Respondent continues to petition 49 C.F.R. §192.612(a) as beyond the scope of the law. The Respondent's claim is incorrect. Congress intended the language of P.L.101-599 to provide a safeguard against hazards to navigation caused by exposed or shallow underwater pipelines. Congress acted in response to several tragic accidents where vessels struck shallow or exposed pipelines and where several crewmen were killed in the resulting explosions. In order to remedy the dangerous situation caused by these shallow or exposed pipelines, Congress chose to focus on pipelines located in shallow waters in the Gulf of Mexico and its inlets because that is where accidents involving vessels and underwater pipelines are most likely to occur, and that is where 95 percent of offshore pipelines are located.

Congressional remarks made prior to the signing of H.R. 4888, the bill version of P.L. 101-599, referred to in both the Petition and the Final Order, reflect this intent. Underwater Pipeline Safety Joint Hearing of H.R. 4478 and H.R. 4888 Before the Subcomm. On Energy and Power of the House Comm. On Energy and Commerce and the Subcomm. On Surface Transportation of the House Comm. On Public Works and

Transportation, 101<sup>st</sup> Cong., 2d Sess. 2 (1990). Although the remarks, the law, and the regulation each lack a specific list of all the bodies of water that are to be covered by the regulation, the intent and scope of the law and the rule remain clear. Congress, in passing P.L. 101-599, intended pipelines in shallow areas of the Gulf of Mexico and its inlets to be inspected to avoid the possibility of future injuries and deaths resulting from pipeline accidents involving vessels striking shallow pipelines. OPS, in drafting 49 C.F.R. §192.612(a), had the same intention. In fact, the language of 49 C.F.R. §192.612(a) nearly mirrors the language of the public law.

P.L. 101-599 applies to “[e]ach offshore pipeline facility in the Gulf of Mexico and its inlets . . .” and only to “pipeline facilities between the mean high water mark and the point where the subsurface is under fifteen feet of water, as measured from mean low water.” (Pub. L. No. 101-599, § 1, 104 Stat. 3038 (1990)) Title 49 of the C.F.R. § 192.3 defines the term “offshore” even though it appears in neither 49 C.F.R. §192.612(a) nor the definition of “Gulf of Mexico and its inlets,” which delineates the inspection requirement. “Offshore means beyond the line of ordinary low water along that portion of the coast of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters.” 49 C.F.R. § 192.3. (1997) Respondent claims that the term “offshore” functions to exclude its pipeline in Dickinson and Galveston Bays because those areas are not “offshore,” but are instead “inland” waters. (Petition, p.p. 3-4) Respondent attempts to support this claim by referring to case law which provides tests for determining “inland waters.” (Petition, p. 4) However, even if Dickinson and Galveston Bays satisfy these tests, they are irrelevant because, as stated in the Final Order, OPS did not focus on the exclusion of inland waters; OPS focused on the Congressional intent to mandate inspections in shallow Gulf waters where pipelines presented the greatest risk to navigating vessels and the lives of their crewmen. The approach taken by OPS was consistent with the statutory mandate of P.L. 101-599.

For the above-stated reasons, I find that 49 C.F.R. §192.612(a) is not beyond the scope of P.L. 101-599.

C. OPS’s interpretation of 49 C.F.R. § 192.612(a), as applicable to pipelines in Dickinson and Galveston Bays, is directly in line with the intended scope of the regulation.

Respondent petitions the application of 49 C.F.R. § 192.612(a) to Dickinson and Galveston Bays as beyond the intention of the regulation itself. (Petition, pp. 3-4) However, this assertion is incorrect. The preamble to Part 192 discusses reporting requirements for pipelines. It states that “where MMS or state offshore area and block number tract are not available, the location of shallow or exposed pipelines must be reported by the *name of the bay* or inlet or by other suitable location reference.” See, Inspection and Burial of Offshore Gas and hazardous Liquid pipelines, 56 Fed. Reg. 63,764, 63,767 (1991) (emphasis added). This language indicates that the regulation was intended to include pipelines found in bays. OPS’ interpretation of the regulation to include Dickinson and Galveston Bays is not inconsistent with that intent.

Further, OPS included the Fisheries Institute's list of areas where menhaden and other commercial fishing takes place in order that it would better define "Gulf of Mexico and its inlets." *Id.* Respondent argues that the list only caused confusion and that it implied a performance standard. The list, however, included a pass across a bay. *Id.* While the final rule specifically excluded some areas which were included in the list, it did not exclude bays. The final rule was prescriptive and was clear that only those bodies of water specifically listed were excluded from the areas to be inspected. *Id.* The regulation provides a straightforward requirement (inspection of potentially hazardous pipelines), and it provides a straightforward reason for doing so (to avoid tragic accidents caused by vessels colliding with shallow or exposed pipelines). 56 Fed. Reg. 63,764 (1991) OPS' interpreting the regulation to include Dickinson and Galveston Bays, where commercial traffic has been common for many years, is in line with this intention.

For the above-stated reasons, I find that OPS's interpretation of 49 C.F.R. § 192.612(a) is not beyond the intended scope of the regulation.

D. Dickinson and Galveston Bays are "open to the sea" as that phrase is used in the definition of "Gulf of Mexico" in 49 C.F.R. § 192.3.

Respondent petitions the inclusion of Dickinson and Galveston Bays under 49 C.F.R. §192.612(a) arguing that even if those Bays are covered "inlets," they are not "open to the sea" as "Gulf of Mexico" is defined in 49 C.F.R. § 192.3. (Petition, pp. 4-5) In support of this argument, Respondent provided a map of the area and stated that courts have interpreted "open to the sea" to mean in direct contact with offshore, as opposed to inland, waters. (Petition, p. 5)

Dickinson and Galveston Bays are covered by the phrase "open to the sea" as that phrase is intended in the definition of "Gulf of Mexico" found in 49 C.F.R. § 192.3. The words "open to the sea" are not found in P.L. 101-599. That phrase was added to the definition of "Gulf of Mexico" by OPS in order to better define the term "inlets" after OPS considered comments received from industry during the official comment period. The intention of many of the commenters, as well as that of OPS, was to exclude areas that were only tenuously connected to the Gulf by rivers, lakes, canals, and the like. In the same vein, the Fisheries Institute stated that it was to be assumed that bodies of water (such as large bays) are included within the definition of "Gulf of Mexico." Another commenter stated that it was clear that the definition included inland bays directly open to the Gulf. (See, Exxon Letter to Docket No. PS-120, May 24, 1991) As stated above, Enron, Respondent's parent company at the time, commented that the definition only excluded water channels flowing into bays. (See, Enron Letter to Docket No. PS-120, May 28, 1991) Mud flats, marshes and shallows were all terms used to describe areas that were intended to be excluded from the regulation. *Id.* The language "open to the sea" was added to clarify the fact that the types of areas listed above were not covered by the regulation. The phrase was not added as a loophole for companies to escape the

inspection requirement in shallow areas of the Gulf where there has long been commercial navigation and where shallow or exposed pipelines could cause a hazard to navigation and a risk of injury or death.

For the above-stated reasons, I find that Dickinson and Galveston Bays are "open to the sea" as that phrase is intended in the definition of "Gulf of Mexico" in 49 C.F.R. § 192.3.

2. Petition relating to violation of 49 C.F.R. § 192.612(a) - - finding of continuing violation.

The Final Order found Respondent in violation of 49 C.F.R. § 192.612(a) and assessed and civil penalty for that violation in the amount of \$266,000. The penalty was assessed at a daily penalty of \$500 for 532 days beginning on the date the inspection was required by the regulation, November 16, 1992, and continuing through May 2, 1994, the date of the incident which occurred on Respondent's pipeline in Dickinson and Galveston Bays.

Respondent petitions the continuing nature of the penalty and argues that the violation of 49 C.F.R. § 192.612(a) constitutes a single event for which only a one-day penalty of \$500 should be assessed. (Petition, pp. 6-7) In the alternative, Respondent argues that if the violation is found to be one of a continuing nature, then the penalty should only be calculated up to the time of the late inspection which was completed in June of 1993 instead of the date of the incident which occurred in May of 1994. Id.

I reject Respondent's argument that the violation should only be assessed as a one day penalty. Respondent argues that once the deadline in the regulation had elapsed, it would then have been unable to comply with the regulation regardless of whether the inspection was completed the very next day or months later. Id. Although Respondent is correct that late completion of the inspections would not "cure" the violation, the completion of the inspections does serve to cut off the continuing nature of the violation and reduce the potential amount of the penalty. The ability to encourage compliance, albeit late, through the daily assessment of penalties, helps to remove any disincentive to comply once a date has passed. The hazard caused by potentially shallow or exposed pipelines continued each day that the inspections were not completed. The failure to comply with 49 C.F.R. § 192.612(a) created an unnecessary hazard and was clearly a continuing violation.

For the above-stated reasons, I find that Respondent's violation of 49 C.F.R. § 192.612(a) was a continuing violation.

However, I agree with Respondent's argument that the continuing violation should only be calculated up to the time that the inspection was completed. This calculation is dependent on whether it was reasonable for Respondent to rely on the aerial inspection data as sufficiently meeting the requirements of the applicable safety regulations.

In an innovative and creative attempt to advance the types of technology utilized by the pipeline industry, Respondent selected aerial remote sensing as its new method for

completing the underwater inspections. Ultra Konsult Corporation provided this technology which consisted of a mix of then-existing technologies and sophisticated analytical software. The new method was claimed to be capable of providing depth of cover, leak detection, global position of the pipeline, cathodic protection status, and a video image of the pipeline at any desired location and orientation. In May 1993, a rigorous field test procedure was undertaken to determine whether the Ultra Konsult technology was sound and appropriate for use in the Gulf of Mexico inlets. A comparison of the results of a traditional survey (using divers with probes) and the results of an Ultra Konsult laser magnetic data survey of the same line proved favorable, and the decision was made to utilize the new technology. Respondent completed its inspection of the pipelines located in Dickinson and Galveston Bays on or about May 22, 1993.

With the benefit of hindsight, it is now known that Ultra Konsult's depth of cover data was faulty and did not reveal at least five separate areas of Respondent's pipelines where there was less than sufficient depth of cover. However, Respondent relied on data presented to it in 1993 and on an appropriate validation study of the newly-emerging radar-based Ultra Konsult technology. Respondent reasonably believed at the time of the aerial inspections that the technology was reliable and accurate. OPS encourages innovative attempts to discover and use new and better technological methods of complying with pipeline safety regulations. Therefore, I am mitigating the number of days that Respondent was in violation of 49 C.F.R. § 192.612(a) down to 188 days to reflect the time elapsed between November 16, 1992 and May 21, 1993, the date of completion of the aerial inspections of Respondent's pipelines. The resulting civil penalty is assessed at \$94,000.

3. Petition relating to assessment of both civil penalty and compliance order for failure to inspect underwater pipelines.

The Final Order found Respondent in violation of 49 C.F.R. § 192.612(a) and assessed a civil penalty in the amount of \$266,000 for that violation. The Final Order also directed Respondent to take certain corrective actions to ensure compliance with 49 C.F.R. § 192.612(a). These actions included completing the required inspections, completing necessary re-burial of shallow or exposed pipelines, and submitting plans for and results of these inspections to the Regional Director, Southwest Region.

Respondent, pursuant to 49 C.F.R. § 190.223(d), petitions the assessment of both a civil penalty and a compliance order for the violation of 49 C.F.R. § 192.612(a). The regulation cited by Respondent states that "no person shall be subject to a civil penalty under this section for the violation of any requirement of this subchapter and an order issued under §190.217, §190.219, or §190.223, if both violations are based on the same act." 49 C.F.R. §190.223(d). Respondent points to legislative history in support of its argument citing a phrase under enforcement powers which states, "it is recognized that in certain situations the issuance of a compliance order would be more effective than assessment of monetary penalties in ultimately achieving compliance with the NGPSA or regulations issued thereunder." (Pub. L. No. 96-129, 93 Stat. 989 (1979)). However, this quotation does not



substantially support Respondent's argument that the two enforcement mechanisms, civil penalties and compliance orders, function exclusively from one another.

Congress authorized the Secretary to issue compliance orders to provide an additional tool that would be effective in achieving compliance administratively where civil penalties for some reason are not appropriate or where they are not sufficient alone to assure compliance. The Administrator of the Research and Special Programs Administration testified before the House Interstate and Foreign Commerce Subcommittee on Energy and Power on March 1, 1979 in support of H.R. 2207 and stated that "compliance order authority . . . has been found to be the most useful in situations where monetary penalties *alone* are not fully effective in achieving compliance with NGPSA or regulations issued under the Act." Fuel Transportation Safety Amendments of 1979: Hearings on H.R. 51, 1414, 2207 before the Subcomm. on Energy and Power of the House Comm. on Interstate and Foreign Commerce, 96th Cong. 96-32 (1979) (statement of Dr. James Palmer, Administrator of the Research and Special Programs Administration, USDOT). Congress stated that compliance orders were appropriate and possibly more effective than civil penalties in *certain situations*. Examples of such situations included (1) when the sum of civil penalties and compliance costs result in a substantial risk that the operator may be put out of business, (2) when the evidence does not warrant a civil penalty, and (3) when the case is unacceptable for prosecution due to age. (Pub. L. No. 96-129, 93 Stat. 989 (1979)). Compliance orders have also been used to guide an operator in achieving compliance with the regulations.

Respondent should have looked to the statutory basis of the regulation for a clearer understanding of its meaning. The current language of the law reads, "[s]eparate penalties for violating a regulation prescribed under this chapter and for violating an order under section 60112 or 60118(b) of this title may not be imposed under this chapter if both violations are based on the same act." 49 U.S.C. § 60122(f). The law proscribes the issuance of separate penalties for the violation of a regulation and the *violation of an order* if both are based on the same act. The law does not address the issuance of a penalty for the violation of a regulation and the *issuance of an order* if both are based on the same act. Further, the legislative history of the Pipeline Safety Act of 1979, to which Respondent refers, mirrors the language of the current law. "Sec. 11(d) states that nothing in this Act shall be construed to authorize the imposition of penalties for the violation of any regulation and the violation of any order under section 10(b) or 12(b) if both violations are based on the same act." (Pub. L. No. 96-129, 93 Stat. 989 (1979)). Clearly, the law describes a situation different than the one at hand. Therefore, Respondent's argument that 49 C.F.R. §190.223(d), which originates from this law, prohibits the issuance of a civil penalty and a compliance order in relation to Respondent's violation of 49 C.F.R. § 192.612(a) is faulty.

Additionally, the Office of Pipeline Safety has the authority to issue both civil penalties and compliance orders for violation of the same regulation and has followed a long standing practice of doing so in the past. It is particularly appropriate where there are two different objectives at issue. Here, Respondent failed to comply with the applicable pipeline safety regulations when it did not complete the requisite underwater inspections by the deadline

provided in the regulation. The assessment of a civil penalty is the result of this failure to comply with the pipeline regulations. The civil penalty also functions as an incentive for operators to comply with the regulations in the future.

Unfortunately, when Respondent failed to do the inspection and failed to provide adequate depth of cover, Respondent not only disregarded the safety regulations, it also disregarded the integrity of its pipeline facility and the safety of the vessels and crewmen navigating the waters above the pipeline. Respondent did not do the minimum required by the regulations. The compliance order is a remedial measure intended to ensure pipeline safety by requiring Respondent to inspect its pipelines and to provide adequate depth of cover.

For the above-stated reasons, I find that the Office of Pipeline Safety's issuance of both a civil penalty and a compliance order in response to Respondent's violation of 49 C.F.R. §192.612(a) to be in accord with 49 C.F.R. § 190.223(d).

4. Petition relating to violation of 49 C.F.R. § 192.615(a)(2) - - emergency response

In the Final Order, I found that Respondent violated 49 C.F.R. § 192.615(a)(2) and assessed a civil penalty in the amount of \$30,000 for that violation. 49 C.F.R. § 192.615(a)(2) requires operators to establish written procedures to minimize hazards resulting from a gas pipeline emergency. These procedures must provide a method for establishing and maintaining adequate means of communication with appropriate fire, police, and other public officials. The Final Order found that Respondent's emergency manual did not provide guidance about when certain communications should occur and what should be communicated.

Respondent petitioned that its emergency response policy met the requirements of 49 C.F.R. § 192.615(a)(2) and that while the policy did not explicitly state that contact with appropriate emergency response agencies was required, it was understood by Respondent's employees as a requirement. (Petition, p. 9) However, Respondent also stated that it trains its employees to use their considered, professional judgment as to when to contact appropriate officials. *Id.* This is insufficient for compliance with the regulations and presents no new information upon which to reconsider my original finding. Therefore, I affirm my finding that Respondent violated 49 C.F.R. § 192.615(a)(2).

In requesting reconsideration, Respondent has provided evidence of steps it has taken to enhance its response to pipeline emergencies. (Petition, pp. 9-10) Respondent has amended its procedures to mandate that, upon determination of a pipeline emergency, the Regional Director of Operations or its designee shall establish communications with appropriate local officials and/or emergency response personnel. These contacts are identified in Respondent's Emergency Contact Telephone List contained in Respondent's Manual.

Another change in Respondent's emergency response capabilities comes from the scheduling of two gas controllers per shift. In an emergency, one handles pipeline operation requirements while the other handles communications and record keeping. Another

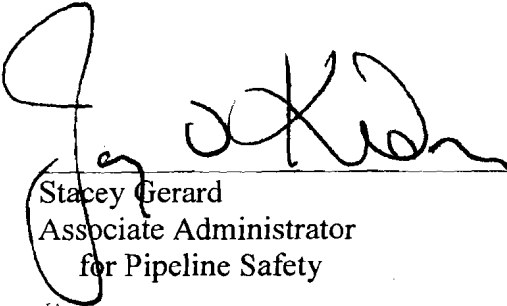
improvement is the implementation of an automated pipeline incident notification system which includes an on-line paging system and a mailbox recording of current information regarding the incident. Further, Respondent has increased the number of electronic flow measurement devices which provide information on mainline pressures throughout the system and enable Respondent to identify drops in pressure faster than in the past. A new SCADA system has improved Respondent's response time for polling responses from between five and eight minutes to less than two minutes. Respondent has constructed a real time model that enables Respondent to simulate pressures within the SCADA system and is being used by Respondent to develop a training program for gas control staff in leak and rupture detection and management on the SCADA system. Additionally, Respondent is developing a program for mock drills of pipeline incidents in order that emergency response personnel may learn where improvements in emergency response may be necessary and how to integrate these improvements system-wide.

These enhancements represent considerable progress in emergency response capabilities that exceed the regulations. Although they do not excuse the violation, they are an additional consideration in the assessment of a civil penalty. Accordingly, I adjust the civil penalty assessed for violation of 49 C.F.R. § 192.615(a)(2) from \$30,000 to \$15,000.

Relief Denied in Part and Granted in Part

I have considered Respondent's request for reconsideration. I do not find Respondent's assertions warrant withdrawal the violation or of the civil penalty. However, Respondent did provide information concerning its actions which warrant a reduction in the total civil penalty from \$296,000 to \$109,000.

This decision on reconsideration is the final administrative action in this proceeding.

*for*  
  
Stacey Gerard  
Associate Administrator  
for Pipeline Safety

JAN - 3 2006

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Date Issued