



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

Office of the
Chief Counsel

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

OCT 24 2001

Mr. Richard Rabinow
Vice President and General Manager
ExxonMobil Pipeline Company
P. O. Box 2220
Houston, TX 77252

RE: CPF No. 4-2000-6-001

Dear Mr. Rabinow:

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. 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

cc: Joel C. Larkin
Manager, Operations Integrity Department

Enclosure

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED) AND TELECOPY

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

In the Matter of)
)

ExxonMobil Pipeline Company)

CPF No. 4-2000-6-001

Respondent.)
_____)

FINAL ORDER

On September 8, 2000, pursuant to 49 U.S.C. § 60117, a representative of the Southwest Region, Office of Pipeline Safety (OPS) initiated an investigation of an incident involving a pipeline operated by ExxonMobil Pipeline Company (Respondent). As a result of the investigation, the Director, Southwest Region, OPS, issued to Respondent, by letter dated October 11, 2000, 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 violated 49 C.F.R. § 195.52 and proposed assessing a civil penalty of \$5,000 for the alleged violation.

In a letter dated November 10, 2000, Respondent submitted a Response to the Notice. Respondent contested the allegations of violation, offered an explanation and requested reconsideration of the proposed civil penalty. Respondent did not request a hearing and therefore, has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleges that Respondent violated 49 C.F.R. § 195.52, by failing to give telephonic notification to the National Response Center (NRC), at the earliest practicable moment, of a release of liquified natural gas. The incident occurred at 5 p.m. CDT on September 7, 2000 on Respondent's system near Abilene, Texas. Respondent did not notify the NRC until 12:00 noon on September 8, 2000, approximately 19 hours after the discovery of the accident.

Respondent contested the alleged violation and explained that the NRC was not initially notified because the incident involved an intrastate pipeline and notification had been made to state and local officials. Respondent further explained that it was not clear whether notification to both the state agencies and the NRC was required. Respondent argued that timely notification was made when the incident was reported by one of its managers to an OPS employee on the day of the incident.

49 C.F.R. §190.11 provides for informal guidance and interpretive assistance about compliance with pipeline safety regulations, 49 C.F.R. parts 190-199. If Respondent needs clarification, information on, and advice about compliance with pipeline safety regulations, then Respondent should take advantage of §190.11 to seek clarification. Had Respondent utilized this resource, Respondent would have been reminded that Pipeline Safety Alert Notice ALN-91-01 (ALN-91-01) addresses this issue. ALN-91-01 makes it clear that an incident should be reported with 1-2 hours after discovery and a telephonic report to a state agency does not meet the requirements of the federal regulations. An operator must report any event subject to §195.52 directly to the NRC, even when the operator may be required to report the same incident to a state agency. Compliance with 49 C.F.R. § 195.52 requires telephonic notifications to be reported by telephone to the NRC at 800-424-8802. Respondent has not shown any circumstance that justifies the failure to properly report to the NRC in a timely manner. Accordingly, I find Respondent violated 49 C.F.R. §191.52.

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. The Notice proposed assessing a penalty of \$5,000 for violation of 49 C.F.R. § 195.52.

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.

Respondent requested reconsideration of the proposed civil penalty due to the uncertainty regarding whether to report an intrastate pipeline incident to state and local officials and the NRC and because the incident was timely reported to an OPS employee. Respondent relies entirely on its own misinterpretation rather than on a series of mishaps that prevented its compliance. OPS's ability to consider the need for corrective action and/or mitigate potential safety problems is severely hampered by improper and untimely telephonic notification of an incident. An operator must report any event subject to §195.52 directly to the NRC, not an OPS employee. Respondent did not properly notify the NRC until approximately 19 hours after the incident occurred. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000. A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue business.

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.

Under 49 C.F.R. § 190.215, Respondent has a right to 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. All other terms of the order, including any required corrective action, shall remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.



Stacey Gerard
Associate Administrator
for Pipeline Safety

OCT 24

Date Issued

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