



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

MAY - 5 2005

Mr. G.P. Bilinski
Vice President, Transmission
Texas Eastern Transmission Corporation
5400 Westheimer Court
Houston, Texas 77056-5310

Re: CPF No. 4-2001-1003

Dear Mr. Bilinski:

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,

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)
)

Texas Eastern Transmission Corporation,)

Respondent)
_____)

CPF No. 4-2001-1003

FINAL ORDER

On July 19, 2001, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an investigation into Respondent's telephonic report of a natural gas release near Kinder, Louisiana. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated July 20, 2001, 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(a) and proposed assessing a civil penalty of \$5,000 for the alleged violation.

Respondent responded to the Notice by letter dated August 16, 2001 (Response). Respondent contested the allegation, offered information in explanation of the allegation, and stated that it would be willing to have a telephone hearing. A telephone hearing was held on August 9, 2004. Respondent submitted a post-hearing brief by letter dated September 9, 2004 (Brief).

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. § 191.5(a), which requires the operator to notify the National Response Center (NRC) of each incident at the earliest practicable moment following discovery. An incident is defined by § 191.3 to mean, *inter alia*, "an event that involves a release of gas from a pipeline . . . and . . . estimated property damage, including cost of gas lost, of \$50,000 or more." On May 15, 2001, at 12:30 pm, a relief valve opened on Respondent's pipeline, causing gas to release into the atmosphere. Respondent arrived at the release location approximately 1.25 hours after the valve had opened and manually closed the valve. On May 16 at 5:26 pm, approximately twenty-seven hours after the release occurred, Respondent telephonically reported the release to the NRC. The cost of the gas lost during the release was approximately \$120,000, but no other property damage or injuries occurred. Based on these uncontested facts, the Notice alleged that Respondent failed to report the incident at the earliest practicable moment following discovery in violation § 191.5(a).

In its Response, at the hearing, and in its post-hearing Brief, Respondent contested the allegation that it committed a violation. Respondent argued that the release did not meet the definition of a reportable incident in § 191.3. Assuming the release was an incident, Respondent contended that the telephonic report was made at the earliest practicable moment following discovery in accordance with § 191.5(a).

I. Whether the release met the criteria of a reportable incident.

Section 191.3 defines an incident that must be reported as “an event that involves a release of gas from a pipeline . . . and . . . estimated property damage, including cost of gas lost, of \$50,000 or more.” In its Brief, Respondent stated that during the event, approximately 29 million cubic feet (29 MMCF) of gas was lost. Respondent also stated that gas cost \$4.14 per million British thermal units (\$4.14/MMBTU) on the day of the event. Based on these numbers, the cost of the gas lost during the event was approximately \$120,000, almost 2.5 times the threshold reporting amount. Accordingly, the Notice alleged that the event met the criteria for a reportable incident under § 191.3.

Respondent argued that the event did not meet the definition of an incident, despite the amount of gas lost, because the reporting regulation implicitly excludes “operational events” from being reported. Respondent explained that this release was an “operational event,” because it was caused by a properly-functioning relief valve and there was no threat to safety.¹ (Brief, p.4) Respondent contended that § 191.5(a) applies only to “safety events,” which are events that involve personal injury, death, or significant property damage other than the loss of gas. (*Id.*) “When gas loss is the only factor,” Respondent stated, “operators are forced to make a reasonable determination between operational events and safety events that should be reported as incidents.” (Brief, p.4) For this reason, Respondent argued the event was not a reportable incident “regardless of the amount of natural gas released.” (Response attachment, p.1)

To support this position, Respondent cited an Interpretation issued by OPS on November 5, 1973, and the preamble to the final rule, 35 FR 316, January 8, 1970. Respondent quoted from the Interpretation that “the primary purpose of the Reporting Requirements regulation is to provide for the accumulation of factual data that will give [OPS] a sound statistical base with which to define safety problems, determine their underlying causes, and propose regulatory solutions.” Respondent contended this statement illustrates that § 191.5(a) applies only to safety-related events and excludes events caused by properly-operating equipment when no threat to safety is present.

The Interpretation cited does not support the position proffered by Respondent for a number of reasons. First, the Interpretation has a limited scope. The Interpretation was issued for the

¹ Respondent and OPS disagreed as to whether the relief valve in question functioned properly. The evidence suggests that the valve malfunctioned, because it opened at a pressure below MAOP and remained open for 1.25 hours until Respondent manually closed the valve. However, since this question of fact is not material to the outcome in this case, I do not make a finding as to whether the valve malfunctioned.

specific purpose of notifying operators that they must report incidents when the cause of the release is not definitely known. The language cited by Respondent was background to the regulation and did not effectively limit the definition of a reportable event. Also, the Interpretation itself conflicts with Respondent's position. The Interpretation states that "§ 191.5 applies to all leaks in pipeline systems regardless of their cause," yet Respondent contended that § 191.5 does not apply to leaks caused by relief valves. I find nothing in the Interpretation or the preamble that supports Respondent's position that "operational events" are excluded from the definition of reportable incidents.

Ultimately, Respondent's position cannot be sustained. The reporting regulations establish specific criteria for determining when a release must be telephonically reported to the NRC. The established criterion for a release of gas with no personal injury or death is estimated property damage of \$50,000 or more, including the cost of gas lost. Accordingly, an operator must report each event that involves solely the release of gas estimated to cost at least \$50,000, regardless of the cause of the release or the operator's opinion that no threat to safety is present.

Respondent admitted that the event in question involved the release of gas from a pipeline and the cost of gas lost was approximately \$120,000. Therefore, I find the release was a reportable incident as the term is defined by § 191.3.

II. Whether the incident was reported at the earliest practicable moment following discovery.

Section 191.5(a) requires each operator notify the National Response Center (NRC) of each incident "at the earliest practicable moment following discovery." OPS notified all pipeline operators by Alert Notice ALN-91-01, dated April 15, 1991, that in most cases, telephonic reporting under § 191.5(a) "can and should be made within 1-2 hours after discovery. This prompt notice is necessary in part for OPS and NTSB to make timely determination regarding the need for possible action." Respondent admitted that it reported the release twenty-seven hours after the event occurred. During the OPS inspection, the inspector did not find justifiable reason for the delay. Accordingly, the Notice alleged that Respondent violated § 191.5(a).

Even though the report was made twenty-seven hours after the incident occurred, Respondent explained that the report was made at the earliest practicable moment following discovery. "In order to make discovery, [Respondent] needed to calculate the volume of natural gas released and the cost of natural gas at the time of the event." (Brief, p.2) Respondent stated that it took twenty-seven hours to gather all the relevant information necessary for it to determine that the release was reportable. As soon as Respondent determined that the incident was reportable, it promptly reported it to the NRC.

Respondent's position is based on an interpretation that "discovery" is the point when an operator discovers the release must be reported. OPS has consistently interpreted "discovery" to mean discovery of the incident itself, not the determination that the incident is reportable. See In the Matter of Enstar Natural Gas Company, CPF No. 52016 (May 14, 1997). In Enstar, the order explained that "[d]iscovery could either mean discovery of the cause of the incident or discovery of the incident itself." (Enstar, p.2.) The order set forth that "[i]f the regulation were read to

mean at the earliest practicable moment following discovery of the cause of the incident, the operator would never be required to report an incident until the cause of the incident was definitely determined.” (*Id.*) The delay to reporting caused by an operator waiting until it definitely decides an event meets the reporting criteria would frustrate a fundamental purpose of the regulation, which is to give OPS and other agencies the earliest opportunity to assess whether an immediate response to a pipeline incident is needed. Therefore, OPS requires pipeline operators to report incidents to the NRC at the earliest practicable moment following discovery of the incident, even if at the time of reporting there is some question as to whether reporting will be required. See e.g., In the Matter of Transok, Inc., CPF No. 44002 (Aug. 18, 1997); and In the Matter of Equitable Resources, CPF No. 18007 (June 3, 2002). This requirement is not overly burdensome because only the most basic and essential information is collected during the telephone call. After a more thorough investigation, the operator can supplement the telephonic report and/or submit more detailed information in the written incident report.

In Transok, the pipeline operator reported an incident sixteen hours after the event occurred. The operator contended that it complied with § 191.5(a) because it took sixteen hours to determine that the amount of gas lost exceeded the threshold amount. The order found that enough information was available to the operator shortly after discovery of the incident to enable the operator to conclude the release would likely trigger the reporting requirements. The information available to the operator included data from pipeline monitors that indicated how long the leak had lasted, which was enough time for a significant amount of gas to be released.

In the present case, Respondent arrived at the release site aware the valve had been open for 1.25 hours. Having knowledge of the operating pressure on the line at the valve site and the length of time the valve was open, Respondent could have estimated the volume of gas that released. Using a reasonable estimate of the cost of gas, Respondent should have known within a relatively short period of time that the amount of gas lost likely exceeded the threshold and a report would likely be required. In its Response, Respondent stated that extraordinarily high gas prices were the only reason the incident met the threshold. (Response, p.3) Given the considerable amount of gas that was lost, I disagree. A release of 29 MMCF of natural gas has consistently exceeded the \$50,000 threshold in months and even years prior to May 15, 2001.² Furthermore, during the OPS inspection Respondent’s Senior Engineer stated that the reason for the delay in reporting was that field personnel thought abnormal operations did not need to be reported. (Gas Pipeline Safety Violation Report, p.2)

In its Brief, Respondent argued that “earliest practicable moment” is not a specific time frame and that use of the 1-2 hour time frame mentioned in Alert Notice ALN-91-01 violates Respondent’s right to “regulatory due process” because it is not incorporated into regulations. OPS issued ALN-91-01 to provide guidance to the industry about the reporting requirements of § 191.5(a). The Alert Notice itself does not form the legal basis for a violation, but advises operators of the conduct required by § 191.5(a) in most cases, which enables them to conform their conduct accordingly. “When OPS learns that an operator has not submitted a telephonic

² Gas prices are published by the Energy Information Administration, U.S. Department of Energy, <http://www.eia.doe.gov>.

report within one to two hours, OPS makes a case-by-case determination whether the operator should have known that a report was likely to be required and, if so, whether the operator had adequate opportunity to collect the reportable information." (Transok, p.4)

In the present case, we look to see if Respondent was capable of knowing that a report was likely to be required shortly after the incident, and, if so, whether Respondent was able to collect the reportable information. The evidence shows that Respondent was capable of estimating that the incident would likely need to be reported shortly after the incident. Respondent was able to estimate the amount of gas released during the 1.25 hours the valve was open and the cost of the gas. Respondent was able to collect the minimal amount of information required to be reported under § 191.5(b), which was: the location of the incident, time of the incident, number of injuries or fatalities if any, the name of person reporting, and any other significant facts known at the time the report is made. I find Respondent failed to report the incident to the NRC at the earliest practicable moment by delaying the report until twenty-seven hours after the incident occurred. Accordingly, I find Respondent violated § 191.5(a) as alleged in the Notice.

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. The Notice proposed a total civil penalty of \$5,000 for the violation of § 191.5(a).

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 circumstances of this case strongly indicate that Respondent should have reported this incident many hours prior to the time it did so. In its Response and at the hearing, Respondent contended that the gravity of the violation was negligible, because the event occurred in a rural area with no potential adverse effects to safety. Prompt reporting of a pipeline incident is critical to OPS's ability to investigate and resolve pipeline safety concerns. Failure to report an incident promptly, even when an incident is in a rural area, hinders OPS's ability to decide whether immediate response to the incident is necessary, which can jeopardize public safety and any subsequent investigation conducted by OPS.

Respondent also contended that it made a good faith attempt to comply with the regulatory requirements by reporting the incident as soon as it determined the value of the gas released, which exceeded \$50,000 only because of extraordinarily high gas prices. However, Respondent was capable of estimating the price of gas much earlier and should have known that the incident would need to be reported given the amount of gas that was released. The amount of gas released would have exceeded the \$50,000 threshold in most circumstances. Furthermore, there is evidence to suggest that Respondent's field personnel did not promptly report the incident because they incorrectly believed that abnormal operations did not need to be reported.

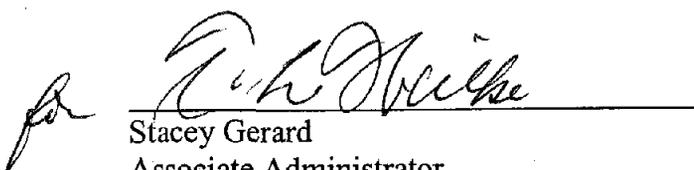
Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$5,000.

Payment of the civil penalty must be made within 20 days of service. Payment may 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-120), P.O. Box 25082, 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. 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) 954-8893.

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 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 action 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

MAY - 5 2005

Date Issued