



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

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

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APR 30 2003

Mr. Thomas C. Simmons
Vice President
Hawaiian Electric Company
820 Ward Avenue
Honolulu, HI 96813

RE: CPF No. 5-2002-5030

Dear Mr. Simmons:

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 \$2,500. The Final Order also requires certain corrective action and revision of certain operating and maintenance procedures. This enforcement action will be closed when the civil penalty is paid, your procedures are revised and the terms of the compliance order completed, as determined by the Director, Western Region. 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

Enclosure

cc: Mr. T. Michael, President HECO

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

In the Matter of

HAWAIIAN ELECTRIC COMPANY,

Respondent.

CPF No. 5-2002-5030

FINAL ORDER

During April 9-10, 2002, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Oahu, Hawaii. As a result of the inspection, the Director, Western Region, OPS, issued to Respondent, by letter dated September 4, 2002, a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§195.402, 195.404, 195.412 and 195.428, proposed assessing a civil penalty of \$2,500 for the alleged violations and proposed that Respondent take certain measures to correct the alleged violations. The Notice also proposed, in accordance with 49 C.F.R. §190.237, that Respondent amend its procedures for Operations, Maintenance and Emergencies.

Respondent responded to the Notice by letter dated October 9, 2002 (Response). Respondent did not contest the allegations 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.

FINDINGS OF VIOLATION

Uncontested

Respondent did not contest the alleged violation of §§195.402, 195.404, 195.428 in the Notice. Accordingly, I find that Respondent violated 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. §195.404(b)(1) – failure to have and maintain a formal record keeping program to ensure that high and low pressures are detected and recorded at appropriate time intervals during normal and abnormal conditions, as Respondent manually takes readings of pressures in its pipeline during operation every half hour.

49 C.F.R. §195.428(a) – failure to comply with inspection and testing requirements for pressure limiting devices at the Iwilei pump station, exceeding the prescribed 15 month maximum interval. The pressure relief valve was not inspected or tested during the calendar year 2001.

These findings 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 \$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 \$2,500 civil penalty for violation of 49 C.F.R. § 195.428.

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 \$2,500 for violation of 49 C.F.R. §195.428(a), as Respondent failed to timely test and maintain its pressure relief valve at the Iwilei pump station. In response to Item 7, the Respondent provided information concerning the corrective actions it has taken and requested elimination or mitigation of the proposed \$2,500 civil penalty. Respondent advised that, in addition to the hard copy, an electronic log is now generated which automatically calculates the time interval between inspections.

Respondent argued that the civil penalty should be waived because its additional operational and maintenance practices are consistent with the testing interval requirement. Respondent explained that its pressure relief valve is only needed for fifteen minutes, during initial diesel heating of the pipeline and final diesel displacement of the black oil pipeline. As a back up, an operator is physically stationed at the pump with instructions to shut down the pipeline if the pressure exceeds 220 psig. The MOP, 220 psig, and the relief valve setting, 205 psig, are much lower than the design pressure of the pipeline psig. Respondent further explained that it has a practice of installing new relief valves in lieu of testing the existing relief valve. Respondent argued that this practice means that the installed relief valve was never more than 20 months old, resulting in a much lower likelihood that the valve would operate improperly due to component wear or degradation from the environment.

Regardless of the pressure that the device is exposed to Federal regulations require all overpressure safety devices undergo inspection and testing at prescribed intervals. Respondent acknowledged that the testing interval for the pressure relief valve exceeded the required interval. Inspection and testing of these devices provide the operator with the information necessary to determine whether the device functions properly and serves as an alert to possible safety-related conditions. Respondent's practice of installing a new relief valve at 20 months would still exceed the maximum interval by 5 months.

The fact that the pressure relief valve is new does not provide any greater level of safety than a valve that is properly inspected, tested and maintained in good mechanical condition. There is no guarantee that a new valve is functioning properly and free of defect without inspection and testing.

The primary objective of the Federal pipeline safety standards is public safety. Failure to timely inspect and test pressure relief valves to correct deficiencies could adversely affect public safety, creating the risk that the valve may not operate properly in the event of an emergency. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$2,500, for violation of 49 C.F.R. §195.428.

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 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. 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 \$2,500 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 with regards to Item 5, violation of 49 C.F.R. § 195.404(b)(1).

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is hereby ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to Respondent's operations:

1. Implement program and procedures to monitor and record high and low discharge pressures, including the recording of periodic readings of constant pressure.

2. Submit documentation of the costs associated with the implementation of Item 1.
3. Within 30 days of receipt of this Order, submit confirmation and evidence of completion of these actions to the Director, Office of Pipeline Safety, Western Region, 12600 West Colfax Avenue, Golden Hills Center, Suite A-250, Lakewood, CO 80215-3736.

AMENDMENT OF PROCEDURES

Items 1-4 of the Notice alleged inadequacies in Respondent's Operations, Maintenance and Emergencies Manual and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. §§ 195.402(c)(12), 195.402(c)(3), and 195.402 (c)(2).

Respondent did not contest the proposed Notice of Amendment. Accordingly, I find that Respondent's procedures are inadequate to ensure safe operation of its pipeline system. Pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.237, Respondent is ordered to make the following revisions to its procedures. Respondent must:

1. Amend its procedural manual for operations, maintenance and emergencies to ensure documentation of all liaison activities.
2. Amend its procedural manual for operations, maintenance and emergencies manual to ensure that corrosion control procedures include methods for determining the remaining strength of corroded pipe.
3. Amend its procedural manual for operations, maintenance and emergencies manual to require that when the line pipe is moved the operating pressure shall be reduced to no more than 50% of the Maximum Operating Pressure (MOP).
4. Amend its procedure manual for operations, maintenance and emergencies to require an accident report for each failure in which there is a release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if the release is:
 - (1) Not otherwise reportable under this section;
 - (2) Not one described in Sec. 195.52(a)(4); (*descriptions must be specific*)
 - (3) Confined to company property or pipeline right-of-way; and
 - (4) Cleaned up promptly.
5. Submit the amended procedures within 30 days following receipt of this Order to Director, Office of Pipeline Safety Western Region, 12600 West Colfax Avenue, Suite A-250, Lakewood, CO 80215.

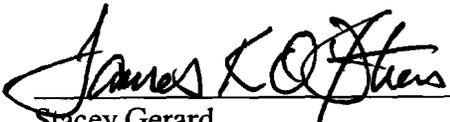
WARNING ITEM

The Notice did not propose a civil penalty or corrective action for Item 6 but warned Respondent that it should take appropriate corrective action to correct the item. Respondent presented information in its response showing that it has addressed the cited item. Respondent is again warned that if OPS finds a violation in a subsequent inspection, enforcement action will be taken.

Item 6 of the Notice alleges violation of 49 C.F.R. §195.412, failure maintain records to show inspection of the surface condition on or adjacent to each right-of-way and crossing under navigable waters at least 26 times each calendar year.

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.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.



for Stacey Gerard
Associate Administrator
for Pipeline Safety

APR 30 2001

Date Issued