

JUN 05 2009

Mr. Tony Finneman
Executive Vice President
Williston Basin Interstate Pipeline Company
1250 West Century Avenue
Bismarck, ND 58503

Re: CPF No. 5-2005-0004

Dear Mr. Finneman:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and specifies the actions that need to be taken by Williston Basin to comply with the pipeline safety regulations. It also requires the amendment of certain inadequate operating and maintenance procedures. When the terms of the Final Order have been completed, as determined by the Director, Western Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, Director, Western Region, OPS

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0046 9518]

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

_____)	
In the Matter of)	
)	
Williston Basin Interstate)	CPF No. 5-2005-0004
Pipeline Company,)	
)	
Respondent.)	
_____)	

FINAL ORDER

From July 19 to July 23, 2004, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected the operator qualification (OQ) program of the Williston Basin Interstate Pipeline Company (Williston or Respondent), in Glendive, Montana.¹ As a result of the inspection, the Director, Western Region, OPS (Director), issued to Williston, by letter dated February 16, 2005, a Notice of Probable Violation, Proposed Compliance Order, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Williston had violated Part 192 of Title 49 of the Code of Federal Regulations. The Notice further proposed that Williston be required to take certain actions to correct such violations and to amend its OQ plan.

Williston responded to the Notice by letter dated March 17, 2005 (Response). The Response discussed, but did not dispute, the allegations of violation and included a copy of an amended OQ Manual. Williston did not request a hearing and has therefore waived its right to one.²

Each of the Items cited in the Notice are addressed below in the following order: Findings of Violation; Compliance Order; Amendment of Procedures; Order Directing Amendment of Inadequate Procedures; and Warning Items.

FINDINGS OF VIOLATION

Item 2c: The Notice alleged that Williston violated 49 C.F.R. § 192.805, which states, in relevant part:

§ 192.805 Qualification program.

¹ Respondent operates approximately 3,700 miles of natural gas pipelines in Montana, Wyoming, North Dakota, and South Dakota.

² See, 49 C.F.R. § 190.209.

Each operator shall have and follow a written qualification program. The program shall include provisions to: . . .

(b) Ensure through evaluation that individuals performing covered tasks are qualified;

The Notice alleged that Williston violated § 192.805(b) by failing to ensure that certain individuals performing covered tasks were qualified. An individual is “qualified” if he or she can (1) “perform assigned covered tasks,” and (2) “recognize and react to abnormal operating conditions.”³ Specifically, the Notice alleged that Williston failed to ensure through evaluation that approximately 70 employees who were qualified on the basis of work performance history reviews were evaluated to determine if they could recognize and react to abnormal operating conditions (AOCs).⁴ Williston did not dispute this allegation in its Response. Accordingly, upon consideration of all of the evidence, I find that Williston violated 49 C.F.R. § 192.805 by failing to ensure that certain individuals performing covered tasks were qualified to recognize and react to AOCs.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to Item 2c for violations of 49 C.F.R. Part 192. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas 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 ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations.

1. With regard to Item 2c of the Notice, Respondent shall perform an AOC evaluation of all individuals who were qualified to perform covered tasks solely on the basis of a work performance history review, within 60 days of the issuance of this Final Order.
2. Respondent shall submit documents that verify the completion of those AOC evaluations to the address listed below within 60 days of the issuance of this Final Order.

³ The terms “qualified” and “evaluated” are defined in § 192.803, which states, in relevant part:

§ 192.803 Definitions.

. . .

Evaluation means a process, established and documented by the operator, to determine an individual’s ability to perform a covered task by any of the following:

- (a) Written examination;
- (b) Oral examination;
- (c) Work performance history review;
- (d) Observation during:
 - (1) Performance on the job;
 - (2) On the job training; or
 - (3) Simulations;
- (e) Other forms of assessment.

Qualified means that an individual has been evaluated and can:

- (a) Perform assigned covered tasks; and
- (b) Recognize and react to abnormal operating conditions.

⁴ See, 49 C.F.R. § 192.809.

3. Respondent shall maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Chris Hoidal, Director, Western Region, Pipeline and Hazardous Materials Safety Administration, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228. Costs shall be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

AMENDMENT OF PROCEDURES

Items 1a, 1b, 2d, 4b, 4c, 4d and 5a of the Notice alleged certain inadequacies in Respondent's OQ Manual and proposed to require amendment of its procedures to comply with the requirements of 49 C.F.R. §§ 192.803, 192.805, and 192.809. Respondent has submitted copies of its amended procedures, which the Director has reviewed. Accordingly, based on the results of that review, I find that Respondent's original procedures, as described in Items 1a, 1b, 2d, 4b, 4c, 4d, and 5a in the Notice, were inadequate to ensure safe operation of its pipeline system but that Respondent has corrected the identified inadequacies. Therefore, there is no need to issue an order directing amendment with respect to these items.

In addition, Item 5b of the Notice alleged that Respondent's OQ procedures were inadequate because those procedures did not clearly indicate the effective date of the company's OQ program. In its Response, Williston submitted evidence showing that the original, April 14, 2001 effective date of its OQ program was clearly printed on the first page of the OQ Manual. Therefore, based upon consideration of all of the evidence, I hereby withdraw the allegation in Item 5b of the Notice.

ORDER DIRECTING AMENDMENT OF INADEQUATE PROCEDURES

Item 4a of the Notice alleged that Respondent's OQ Manual procedures were inadequate to comply with 49 C.F.R. § 192.805, because Williston failed to include a covered task for excavation or small pipefitting. Having considered the evidence of record, I find that Respondent's original procedures as described in Item 4a were inadequate to ensure the safe operation of its pipeline systems. Pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.237, Respondent is ordered to make the following changes to its procedures to address the inadequacy identified in Item 4a. Specifically, Respondent must—

1. Adopt and include in its OQ Manual a written procedure for the performance of excavation and small pipefitting by qualified individuals.
2. Submit a copy of its OQ Manual that includes a written procedure for the performance and excavation and small pipefitting to the Director within 30 days following receipt of this Order.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent demonstrating good cause for an extension.

WARNING ITEMS

With respect to Items 2a, 2b, and 3, the Notice alleged probable violations of Part 192 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. §§ 192.803, 192.805 (Item 2a) —Williston allegedly provided its employees with blank copies of its written OQ examinations for study purposes, thereby undermining the integrity of its evaluation process.

49 C.F.R. §§ 192.803, 192.805 (Item 2b) — On October 2, 2003, June 1, 2004, and July 30, 2004, Williston allegedly allowed unqualified individuals, acting on behalf of Williston's parent company, Montana Dakota Utilities (MDU), to change the regulator pressure settings at one of Williston's compressor stations.

49 C.F.R. § 192.283 (Item 3) —Williston's OQ Manual allegedly stated that MDU would perform any needed joining procedures on its section of polyethylene pipe, but Respondent had not qualified the procedure or personnel that MDU planned to use to perform that covered task.

Williston presented information in its Response indicating that it had taken certain actions to address these warning items. Having considered that information, I find that probable violations of 49 C.F.R. §§ 192.283, 803, and 805, had occurred as of the date of the inspection. Williston is hereby advised to review and correct such conditions. In the event OPS finds a violation of any of these items in a subsequent inspection, Williston may be subject to future enforcement action.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

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 terms of the order, including any required corrective action and amendment of procedures, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order shall be effective upon receipt.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued