

Mr. Louis Kapfer
Executive Vice President Kentucky Operations
Kentucky West Virginia Gas Co.
630 North Lake Drive
Prestonsburg, Kentucky 41653

Re: CPF No. 27103

Dear Mr. Kapfer:

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 \$500. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

I acknowledge receipt of, and accept, your check in the amount of \$500, as payment in full of the civil penalty assessed against Kentucky West Virginia Gas Company in the Final Order. I also acknowledge, and accept as adequate, your prompt corrective action with respect to the items in the proposed compliance order. This case is now closed and no further enforcement action is contemplated with respect to the matters involved in the case. Thank you for your cooperation in our joint effort to ensure pipeline safety.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

_____)	
In the Matter of)	
)	
Kentucky West Virginia Gas Co.,)	
)	CPF No. 27103
Respondent.)	
_____)	

FINAL ORDER

On February 19-21, 1997, 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 Prestonsburg, Kentucky. As a result of the inspection, the Director, Southern Region, OPS, issued to Respondent, by letter dated March 27, 1997, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$500 for Item 1 of the Notice. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated April 24, 1997 (Response). Respondent did not contest the allegations of violation but offered an explanation. In addition, although Respondent submitted a check in the amount of the proposed civil penalty (\$500), Respondent requested waiver of the proposed civil penalty. Respondent did not request a hearing and therefore, has waived its right to one. In addition, Respondent has forwarded several letters to OPS providing information concerning the corrective actions it has taken.

FINDINGS OF VIOLATION

Respondent did not contest the alleged violations in the Notice. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Part 192, as more fully described in the Notice:

49 C.F.R. § 192.605(a) -- failing to review and update the procedural manual for operations,

maintenance and emergencies at intervals not exceeding 15 months, but at least once each calendar year;

49 C.F.R. § 192.615(a)(3) -- failing to establish procedures for the prompt and effective response to notice of emergency;

49 C.F.R. § 192.463(a) -- failing to update procedures to address the impressed current requirements for cathodic protection systems in relation to the satisfactory levels of protection contained in Appendix D;

49 C.F.R. § 192.227(a) -- failing to update procedures to ensure that welders are requalified under section 3 of the current edition of API Standard 1104; and

49 C.F.R. § 192.705(a) -- failing to have a patrol program to observe conditions on and adjacent to the transmission right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation.

These findings of violation will be considered prior offenses 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.

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 \$500 for Item 1, violation of 49 C.F.R. § 192.605(a). Respondent argues that this penalty should be waived in light of its express desire to fully cooperate. In doing so, Respondent explains that downsizing resulted in restructuring of the work force and reassignment of duties and responsibilities among employees and, as a result, some responsibilities were overlooked. Subsequently, Respondent has taken steps to remedy the situation and, based on those efforts, requests waiver of the civil penalty.

While Respondent urges that it will take steps to ensure that it achieves compliance in the future, civil penalties are assessed as a result of past violations. In this case, the reassignment of duties led to the Operations and Maintenance Manual not being updated for nearly six years. During this period of time,

there were a number of significant code changes that impact public safety that were not incorporated into the Operations and Maintenance Manual. Therefore, Respondent's request for a waiver of the civil penalty is denied. Respondent has the ability to pay the penalty, and there is no indication that the penalty would affect Respondent's ability to remain in business. Accordingly, having reviewed the record and considered the assessment criteria, I assess a civil penalty of \$500, already paid by Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order. Respondent has demonstrated corrective action addressing the items in the proposed compliance order. The Director, Southern Region, OPS has accepted these measures as adequately fulfilling the requirements of the regulations and no further action is needed with respect to a compliance order.

Stacey Gerard
Associate Administrator
for Pipeline Safety

Date Issued