

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

AUG 1 1997

Mr. Jay H. Smith
Executive Vice President
Sonat Exploration Company
4 Greenway Plaza
P.O. Box 4792
Houston, TX 77210-4792

Re: CPF No.43906

Dear Mr. Smith:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$4,000, and requires certain corrective action. 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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)
)
Sonat Exploration)
Company,)
)
Respondent.)
)

CPF No.43906

FINAL ORDER

On May 18 and 19, and August 20, 1993, 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, records, and drug testing program in Houston, Texas. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated September 20, 1993, 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 violated 49 C.F.R. §§ 195.615(a)(8), 195.402, and 195.403(a)(1), and proposed assessing civil penalties of \$1,000, \$5,000, and \$2,000 respectively for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violation of 49 C.F.R. § 195.403(a)(1).

Respondent responded to the Notice by letter dated October 7, 1993 (Response). Respondent contested the allegations of violation, offered information to explain the allegations, and requested mitigation of the civil penalty. In addition, Respondent provided information concerning the corrective actions it has taken.

FINDINGS OF VIOLATION

Emergency Procedures

The Notice (Item 1) alleged that Respondent violated 49 C.F.R. § 192.61 5(a)(8), by failing to have a list of appropriate officials to be notified in the event of a gas pipeline emergency, and by failing to have procedures to facilitate coordination between the officials and Respondent in case of an emergency. This allegation consists of two counts.

With respect to the first count, Respondent submitted a list of officials in its Response who could be notified in the event of an emergency. Respondent explained that the list was not available in its Houston, Texas office at the time of the inspection, but was located on Respondent's oil platform in the Gulf of Mexico which is subject to the pipeline safety regulations. The regulation, however, requires that the operator maintain procedures for notifying public officials of gas pipeline emergencies. While the regulation requires more than a listing, the Notice did not sufficiently identify the problem, alleging only that Respondent failed to have a "listing of appropriate officials." Notice at page 1. Respondent has such a list. Accordingly, I withdraw this count of the alleged violation of 49 C.F.R. § 192.615(a)(8).

With respect to the second count, Respondent did not have procedures for coordination with public officials during an emergency. Respondent contends that its operations and maintenance procedures require that "field supervisors maintain a liaison with appropriate public officials." Response at page 2. The regulation, however, requires more. It requires that an operator maintain procedures that provide guidance to operator personnel on how to coordinate with public officials on both planned responses and actual responses during an emergency. Accordingly, I find Respondent in violation of 49 C.F.R. 192.61 5(a)(8) for failing to have procedures that detail the manner by which Respondent would coordinate with "appropriate officials" in the event of an emergency.

Operating and Maintenance Procedures

The Notice (Item 2) also alleged that Respondent violated 49 C.F.R. § 195.402(a) because it "had not prepared the written procedures" as required by § 195.402(c)(4)-(6) and (13), 195.402(e)(3)-(6), 195.402(f), and 195.424." Notice at page 2.

With respect to the allegation concerning Respondent's failure to have procedures to determine which segments of its pipeline would receive an immediate response" in an emergency as described in 49 C.F.R. § 195.402(c)(4), Respondent stated that its procedures "require immediate response to all failures or malfunctions relating to each of our offshore facilities." Response at page 1. A blanket procedure stating that the operator would immediately respond to prevent all hazards to the public if facilities failed or malfunctioned does not satisfy the regulation. Respondent should have procedures that guide its employees in determining the priority areas that need to be addressed in responding to any malfunction or failure. Respondent did not proffer such procedures. Accordingly, I find Respondent in violation of § 195.402 for failing to have procedures to determine which segments of its pipeline are located in areas requiring an immediate response in accordance with 49 C.F.R. § 195.402(c)(4)

With respect to the allegation that Respondent violated 49 C.F.R. § 195.402(c)(13), Respondent asserted that the work performed by its operating personnel is formally reviewed each year, and informally reviewed throughout the year. The regulation requires a pipeline operator to establish procedures for periodic~ly reviewing the work done by its employees to

determine the effectiveness of the procedures used in normal operations and maintenance and taking corrective action where deficiencies are found. Respondent did not proffer any procedures addressing this requirement. Accordingly, I find Respondent in violation of 49 C.F.R. § 195.402(c)(13).

In addition, Respondent did not contest the allegation that it lacked instructions to enable personnel who perform operations and maintenance activities to recognize safety-related conditions as required by § 195.402(f). Accordingly, I find Respondent in violation of 49 C.F.R. § 195.402 for failing to establish procedures required by 49 C.F.R. § 195.402(f).

With respect to the allegation that Respondent failed to have procedures to address pipe movement required by 49 C.F.R. § 195.424, Respondent noted its belief that this requirement does not apply offshore. Respondent points to nothing that supports its belief and the regulation appears sufficiently clear. Accordingly, I find Respondent in violation of 49 C.F.R. § 195.402 by failing to have procedures required by 49 C.F.R. § 195.424.

As discussed in the "Withdrawal of Allegation" section below, I am withdrawing the remaining 6 counts alleging violation of 49 C.F.R. § 195.402(a).

Training Program

Finally, the Notice alleged that Respondent violated 49 C.F.R. § 195.403(a)(1) for "failing to have a training program" that could enable its employees to carry out the operating, maintenance and emergency procedures under 49 C.F.R. § 195.402 that relate to their assignments. Notice at page 2.

In its Response, Respondent asserted that its operating personnel were adequately trained to carry out the operating maintenance and emergency procedures established in its operations and maintenance plan. However, Respondent offered no evidence of a training program. Accordingly, I find Respondent in violation of 49 C.F.R. § 195.403(a)(1).

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

WITHDRAWAL OF ALLEGATIONS

The withdrawal of one count of Item 1 is discussed above. The Notice (Item 2) alleged that Respondent had violated 49 C.F.R. § 195.402, by failing to establish procedures required by 49 C.F.R. §§ 195.402(c)(5) and (6), and 195.402(e)(3), (4), (5) and (6). The Notice provided insufficient information to explain these counts alleging violation of 49 C.F.R. § 195.402(a) and failed to provide adequate notice to Respondent of the charges. In addition, in its Response, Respondent submitted information undermining the vague allegations in the Notice. Therefore, these counts are withdrawn, as is more fully explained below.

The Notice alleged that Respondent failed to establish procedures in its operations and maintenance manual for analyzing pipeline accidents to determine their causes in accordance with 49 C.F.R. § 195.402(c)(5). In its Response, Respondent indicated it had such procedures in an Accident/incident Investigation Policy/Procedure (Accident Policy), and enclosed the policy in its Response. In its recommendation, the Southwest Region asserted that the attachment was not satisfactory because it was not discussed during the inspection of Respondent's facilities, and that Respondent's operations and maintenance manual did not reference its "Accident/incident Investigation Policy." The regulations simply require written procedures addressing the requirements in the regulations. While it would have been more efficient for both the government and Respondent to discuss the accident policy during the inspection, there is insufficient evidence on which to base a violation for lack of procedures. Because OPS only alleged that Respondent did not have procedures, and did not question the adequacy of the procedures that Respondent submitted with its Response, I will not consider the issue of the adequacy of the procedures. Accordingly, I withdraw the allegation of violation as it relates to 49 C.F.R. § 195.402(c)(5).

With respect to the alleged violation of 49 C.F.R. § 195.402(c)(6), the Notice simply asserted that Respondent failed to have procedures to meet the requirements of 195.402(c). In its Response, Respondent stated that its procedures are designed to minimize the potential for hazards and the possibility of recurrence of accidents. Although Respondent did not submit any additional materials, the vagueness of the allegation made a more substantial response difficult. OPS did not specifically address this issue in its recommendation. Therefore, I withdraw the allegation of violation of 49 C.F.R. § 195.402 as it relates to 195.402(c)(6) based on Respondent's contention, uncontradicted in the record, that it had procedures meeting these requirements.

In addition, Respondent explained that it did not consider that procedures concerning traffic flow on railroads and roads and evacuation of residents (§195 .402(e)(6)) were applicable to its offshore operations. Because there is nothing in the record to counter Respondent's belief that these procedures were inapplicable to its offshore pipeline, I withdraw the allegations. of violation with respect to this provision.

The Notice also alleged that Respondent was in violation of 195.402 by failing to have procedures addressing the requirements of § 195.402(e)(3). The regulation requires that pipeline operators have procedures for "[h]aving personnel, equipment, instruments, tools, and materials available as needed at the scene of an emergency." In its Response, Respondent stated that its emergency procedures reference its "Oil Spill Contingency Plan" (Plan). According to Respondent, this Plan includes names and phone numbers for a wide variety of personnel, services, and equipment available in cases of emergency. Response at page 2. Again, Respondent's defense that these procedures were referenced in its Oil Contingency Plan are not specifically addressed by OPS. Since it appears possible that the Plan could have these procedures, I withdraw this allegation of violation as it relates to § 195.402(e)(3).

The Notice also alleged that Respondent violated 195.402 by failing to have procedures addressing the control of released hydrocarbons as required by § 195.402(e)(5). In its Response, Respondent stated that its emergency procedures reference its Oil Spill Contingency Plan, which "covers control of released hydrocarbons." response at page 2. Respondent's defense that these procedures were referenced in its Oil Contingency Plan is not refuted by OPS. Therefore, I withdraw this allegation Gf violation is it relates to 195.402(e)(5).

Finally, the Notice alleged that Respondent violated 49 C.F.R. § 195.402 for failing to have procedures for failing to have procedures for taking necessary action, such as emergency shutdown or pressure reduction, to minimize the volume of hazardous liquid released from any segment of a pipeline in the event of a failure in accordance with 49 C.F.R. § 195(e)(4). In its Response, Respondent states that its "abnormal operations" section of its emergency procedures has procedures that require its supervisors to "initiate the "appropriate" response to each event and lists platform shutdown specifically as one response that may be appropriate." Response at page 2. By stating that it had procedures in its "abnormal operations" section, Respondent directly disputes the Notice which alleges that Respondent did not have "any procedures" regarding this requirement,. Because Respondent claims to have some procedures where the Notice alleged none, and because OPS has not specifically addressed Respondent's claim, I withdraw the violation of 49 C.F.R. § 195.402 as it relates to the requirement in § 195.402(e)(4).

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.

Because of the withdrawal of one count from the allegation of violation of 49 C.F.R. § 195.615(a)(8), and seven counts from the allegation of violation of 49 C.F.R. § 195.402(a), the proposed civil penalty is \$4,000.

Respondent's failure to establish written procedures addressing various items relating to operation, maintenance, training and emergency-response activities on its pipeline could cause confusion during the performance of routine operations and maintenance on the pipeline, or during an emergency. The lack of such procedures could result in errors that increase the possibility of a failure.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$4,000 for violation of 49 C.F.R. 192.61 5(a)(8) (\$500 for violation of 1 of 2 counts alleged), 49 C.F.R. § 195.402(a) (\$1,500 for violation of 3 of 10 counts alleged), and 49 C.F.R. § 195.403(a)(1) (\$2,000).

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** (I)CC-1), Research and Special Programs Administration, Room 8405, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590-0001.

Questions concerning wire transfers should be directed to: **Valeria Dungee, Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ320), P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.**

Failure to pay the \$4,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 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

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of [gas] 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 its operations.

Establish a continuing training program to instruct operating and maintenance personnel to carry out the operating, maintenance and emergency response procedures established under § 195.402 that relate to their assignments.

Establish the training within 8 months following receipt of the Final Order.
Notify the Director, Southwest Region, of the completion of this action by letter.
The Director, Southwest Region, may extend time upon request stating reasons.

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 \$25,000 per violation per day, or in the referral of the case for judicial enforcement.

Richard Felder
Associate Administrator
for Pipeline Safety

Date Issued: August 1, 1997