Mr. George M. Rootes, President
Shell Pipe Line Corporation
P.O. Box 2099
Houston, TX 77252

Re: CPF No. 46509

Dear Mr. Rootes:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, and withdraws the $16,000 proposed civil penalty. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Based on the recommendation of the Director, Southwest Region, this case is now closed and no further enforcement action is contemplated with respect to the matters involved in this 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

cc: Barbara Hickl
Shell Legal Department
One Shell Plaza
P.O. Box 2463
Houston, TX 77252

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of	)	
Shell Pipe Line Corporation,	)	CPF No. 46509
Respondent.	)	

FINAL ORDER

On December 2 – 3, 1995, pursuant to 49 U.S.C. § 60117, representatives of the Office of Pipeline Safety (OPS), initiated an investigation of an accident that occurred at the McCamey Tank Farm in McCamey, Texas. On December 1, 1995, at approximately 2:30 p.m., a flash fire occurred during the replacement of a valve on the pipeline. Three fatalities and two injuries occurred as a result the accident. No definitive cause of the accident has been established. As a result of the investigation, the Director, Southwest Region, OPS, issued to Respondent, by letter dated August 19, 1996, 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 (Shell Pipe Line Corporation) had violated 49 C.F.R. §§ 195.402(a) and 199.21(a), and proposed assessing civil penalties of $1,000 and $15,000, respectively, for the alleged violations.

Respondent responded to the Notice by letter dated September 19, 1996, and requested an extension of time to respond to the Notice. The extension was granted and Respondent submitted a written request for a hearing in a letter dated November 18, 1996. Respondent submitted additional correspondence dated January 11, 1995 (sic), in response to a request for specific information by the OPS Southwest Region office. By mutual agreement of the parties, a hearing was subsequently held at the OPS Southwest Region office on February 5, 1998. Following the hearing, Respondent submitted additional written correspondence dated February 25, 1998.

FINDINGS OF VIOLATION

Item one in the Notice alleged a violation of 49 C.F.R. § 195.402(a), which requires each operator to follow a manual of written procedures for conducting normal operations. Specifically, the Notice alleged Respondent did not follow its written procedures addressing "Lockout/Tagout Procedures for Control of Hazardous Energy." These written procedures, in Respondent's operations and maintenance manual (Section 3.7.6 "Lockout and Tagout Sequence," dated May 15, 1995) specify that each person that may be exposed to the release of energy shall apply the necessary locks and tags to all isolating devices.

The investigation revealed, and Respondent confirmed at the hearing, that the valve numbered TMC11 at the McCamey Tank Farm was not properly chained and locked. The investigation revealed that a chain and lock were placed around the valve, but the chain was not placed through the flywheel of the valve. Respondent was able to provide information that the valve had not been operated and did not contribute to the accident. In addition, at the time of the accident all nearby valves were closed according to Respondent. (January 11, 1995 response, p. 1).

I therefore find that Respondent violated 49 C.F.R. § 195.402(a).

Item two alleged that Respondent violated 49 C.F.R. § 199.21(a), which requires each operator to ensure that all contractors and persons employed by contractors comply with the drug testing requirements of Part 199, including post-accident testing, as required by 49 C.F.R. § 199.11(b).[1] Section 199.21(a) permits a contractor to conduct drug testing so long as "[T]he operator remains responsible for ensuring that the requirements of this part [Part 199] are complied with." The Notice alleged that Respondent failed to provide drug test results after the Southwest Region office requested information to verify that all persons working at the accident site had been drug tested. There were a total of six employees, including five contractor employees, working at the site when the accident occurred.

The Notice alleged that following the accident Respondent failed to forward drug test results for any of the contractor employees who were working on the pipeline at the time of the accident. More than one month after the accident occurred, in a letter of January 11, 1996 (erroneously dated January 11, 1995), Respondent confirmed that it had "no information regarding drug testing results for [the] contractor employees associated with the McCamey incident."[2] The Southwest Region office subsequently learned that the contractors involved in the accident, Bob Muncy Welding Service & Construction (Muncy's) and Roberto's Backhoe Service, Inc. (Roberto's), had performed drug tests, and simply refused to provide the results to Respondent. (February 25, 1998 response, p. 1). As a result, Respondent was unable to forward any drug test results to OPS.

Because the employees from Muncy's did not survive the accident and because the sole drug testing method permitted by OPS regulation is urine analysis, no drug test results were available,

[1] Section 199.11(b) states: "As soon as practicable, but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident."

[2] Test results for the only Shell employee working at the site were submitted to OPS with the same correspondence of January 11, 1996.

nor were they required to be submitted, for the Muncy's employees.[3] However, Respondent was required to obtain and submit the results for the two surviving Roberto's employees. Respondent did not submit these results to OPS until the February 5, 1998 hearing – more than three years after the accident occurred.

In its written post-hearing submittal, Respondent stated that its personnel discussed "post-accident contractor employee drug/alcohol testing with the contractors on the evening of the incident." (February 25, 1998 response, p. 1). The correspondence Respondent submitted indicated that Respondent was later told that employee drug testing had taken place. According to Respondent, the contractors refused to turn over the drug test results, despite several attempts by Respondent, based on the advice of legal counsel who were hired immediately following the accident. In January 1997, after lawsuits associated with the accident were settled, Respondent received the drug test results for the two surviving Roberto's employees. (February 25, 1998 response, p. 1).

Based on the information contained in the record, including the fact that the drug test results were not turned over to OPS for over three years, I find that Respondent violated 49 C.F.R. § 199.21(a). It is important that OPS obtain drug test results immediately following each accident so that the investigation can proceed. In a case where crucial information such as drug test results are withheld, the progress of the investigation can be delayed and, in some cases, halted. Therefore, it is imperative that all relevant information be submitted to OPS immediately. In this case, it is noted that Respondent took all reasonable steps in attempting to obtain the information. This fact has been taken into consideration in the determination of the civil penalty. These findings of violation will be considered as 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 U.S.C. § 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 assessing a civil penalty of $16,000, consisting of $1,000 for Item one (49 C.F.R. § 195.402(a)) and $15,000 for Item two (49 C.F.R. § 199.21(a)). With regard to Item

[3] Three workers were employed by Muncy's and two by Roberto's. All three Muncy's employees died as a result of the accident.

one, Respondent reviewed its lockout/tagout procedures, and implemented training designed to heighten the awareness of its employees. Respondent will continue to train its operations and maintenance personnel in lockout/tagout procedures, as well as audit these procedures at each work group location, both on an annual basis. (February 25, 1998 response, p. 2).

Two critical factors favor mitigation of the proposed civil penalty for Item two. First, Respondent was unable to submit the drug test records not because the contractor failed to perform the drug test, but because the contractor was unwilling to submit the results. The record indicates that Respondent followed all required drug testing procedures, with the one exception being that the contractor refused to turn over the results. Second and most importantly, Respondent appears to have taken all reasonable steps, both prior to and following the accident, to obtain the records. Indeed, the procedures that Respondent had in place prior to the accident appear to have adequately addressed contractor drug testing responsibilities. Specifically, both contractors in this case had signed written agreements certifying that they maintained anti-drug programs that met the requirements of 49 C.F.R. Part 199. Furthermore, these agreements stated that the contractor would allow Respondent access to its drug testing records and that failure to comply would cause any agreements between Respondent and contractor(s) to be canceled, terminated, or suspended. As Respondent stated in its March 25, 1998 correspondence, Respondent's "procedures are in full compliance with the regulations and . . . no additional measures could have been taken . . . to insure . . . receipt of the drug test records."

In addition, Respondent developed a "communications package" designed to inform its employees of the events that took place at the McCamey Tank Farm on December 1, 1995. One of the objectives of the communication was to inform employees of the importance of following procedures, as well as to make them aware of the possible consequences of failing to follow procedures. (February 25, 1998 response, p. 2).

Therefore, in light of the actions that Respondent took both before and after the accident, no civil penalty will be assessed.

Under 49 U.S.C. § 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.

\s\ Richard B. Felder

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Richard B. Felder
Associate Administrator for Pipeline Safety

Date Issued: ____06/24/98____