



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

RECEIVED NOV 22 2005

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

NOV 15 2005

Mr. David Carroll
Vice President and General Counsel
Hunt Refining Company
100 Town Center Blvd., Suite 300
Tuscaloosa, AL 35406-1829

RE: CPF No. 2-2005-5002

Dear Mr. Carroll:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$5,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Ms. Linda Daugherty, Director, OPS Southern Region

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of

Hunt Refining Company,

Respondent.

CPF No. 2-2005-5002

FINAL ORDER

On December 28, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Southern Region, Office of Pipeline Safety (OPS) initiated an investigation of Respondent's report of an incident involving its 6-inch petroleum pipeline in Tuscaloosa, Alabama. As a result of the investigation, the Director, Southern Region, OPS, issued to Respondent, by letter dated March 21, 2005, 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 violated 49 C.F.R. § 195.52 and proposed assessing a civil penalty of \$5,000 for the alleged violation.

In a letter dated March 29, 2005, Respondent submitted a Response to the Notice(Response). Respondent contested the allegation of violation, offered information to explain the allegation, requested that the proposed civil penalty be eliminated, and requested a hearing. A hearing was held via telephone conference on May 4, 2005.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. § 195.52 by not giving telephonic notification to the National Response Center (NRC), at the earliest practicable moment, following discovery of the incident that occurred on December 27, 2004. The incident involved a release of 300 barrels of No.2-D fuel on Respondent's 6-inch petroleum pipeline three miles southwest of the Hunt Oil Refinery in Tuscaloosa, Alabama. In response to a phone call from an adjacent property owner, Respondent arrived at the incident site at approximately 3:15 p.m. on December 27, 2004 CST. According to the NRC and the Alabama Public Service Commission pipeline safety office, Respondent did not give the NRC telephonic notification of the incident until 10:20 a.m. EST on December 28, 2005, approximately 18 hours after discovery of the incident.

In response, Respondent conceded that it received notice from an adjacent property owner of a leak in the area of its 6-inch product pipeline on December 27, 2004, at approximately 2:30 p.m. CST and arrived at approximately 3:35 p.m. Respondent advised that upon arrival it observed bubbles

coming from water which covered the area of the pipeline right-of-way. Due to recent rains, there was a great deal of water covering the area and it was not possible to tell the extent of the release. Respondent immediately shutdown the pipeline and began an evaluation of a wooded area. Respondent explained that it also recognized that there was standing water and that any additional rainfall might cause any product to migrate. Respondent further advised that it took a sample from the nearest stream to confirm that no product had reached the stream. Respondent placed a boom at the stream, approximately ¼ mile away, because of the standing rainwater. Respondent then mobilized its vacuum truck to suction up the visible liquid, which appeared to be rainwater. This was done just before the sun set at 4:51 p.m. on December 27, 2004.

Respondent determined, based upon its initial evaluation, that it was not a reportable incident under 49 C.F.R. §195.52 because there was no death or personal injury requiring hospitalization; there was no fire or explosion; it did not appear that the property damage including clean up cost would meet \$50,000; there was no pollution of any stream and it did not appear significant.

Respondent argued that notification was made as soon as practicable, at 9:20 a.m. on December 28, 2004, when it made a determination that the incident was reportable under 49 C.F.R. §195.52(a)(3). Respondent contended it was not until morning that it became apparent that the spill area was larger than originally observed and that it provided timely notification. Concern was expressed by Respondent as to whether the incident was the result of third party excavator damage. The cause of the concern was the liquid located in the area on the side of an excavation company and pine tree nursery. Respondent also expressed concern about the impact of reporting the incident on December 27, 2004, which could have been premature because of incomplete information.

OPS opined that the nature of 49 C.F.R. §195.52 is two-fold, early warning and investigatory. Telephone notification to the NRC is an early warning for OPS, its State partner, and the National Transportation Safety Board (NTSB) to decide whether or not the federal government needs to investigate the incident for compliance and safety factors. OPS argued that notification must be made as soon as practicable so that an evaluation can be made to determine whether continued operation of the pipeline will endanger or further endanger the public, property or the environment. OPS posed that it is important that OPS arrive at the site when the evidence is still present at the site, the evidence is fresh and before the evidence is disturbed. OPS further argued that advisory bulletins have been issued to owners and operators of gas distribution, gas transmission, and hazardous liquid pipelines systems, and liquified natural gas facilities to ensure that telephonic reports of incidents to the NRC are prompt and at the earliest practicable moment following discovery. The bulletins also clarify the term incident, earliest practicable moment and discuss telephonic reports made when early information is incomplete. OPS also advised that Respondent is permitted to contact the NRC later to withdraw a report.

Pre-enforcement efforts such as advisory bulletins, agency interpretations and 49 C.F.R. §190.11 provide notice and enable Respondent to identify with certainty the standards with which OPS expects operators to comply. 49 C.F.R. §190.11 provides for informal guidance and interpretive assistance about compliance with pipeline safety regulations, 49 C.F.R. Parts 190-199.

If Respondent needs clarification, information on, and advice about compliance with pipeline safety regulations, then Respondent should take advantage of 49 C.F.R. §190.11 to resolve ambiguities.

In furtherance, the issuance of advisory bulletins of "Required Notification of National Response Center" basically addresses Respondent's concerns.¹ The advisory bulletin recognizes that telephonic reports are often made when the information on an incident is incomplete. The bulletin also makes it clear that OPS expects an operator to provide update information during the emergency response phase, as new information changes the understanding of the nature, cause, and severity of the incident. OPS understands that some hazardous liquid operators do not provide an estimated release amount when reporting an incident to the NRC. While the estimated spill size should be initially reported, OPS also recognizes that there may be difficulty in estimating spill amounts, especially if the release is underground or into water. An operator that provides update information to the NRC should tell the NRC representative if a previous report was filed for the incident and provide the NRC Report Number of the original telephonic.

Respondent's reservations or concerns about the reporting requirements do not negate the fact that a violation occurred. During its initial arrival at approximately 3:35 p.m., Respondent could have taken advantage of 49 C.F.R. §190.11 for informal guidance and interpretive assistance about compliance with pipeline safety regulations. PHMSA, OPS, has established a website on the Internet and a telephone line at OPS headquarters where operators can obtain information on and advice about compliance. The website and phone line (202-366-0918) are staffed by OPS personnel from 9:00 a.m. through 5:00 p.m., Eastern time, Monday through Friday, except Federal holidays. Even if Respondent was concerned about prematurely reporting the incident or an inaccurate spill estimate, Respondent could have made the telephonic report and filed an additional report during the emergency response phase if the circumstances and/or estimates changed. Respondent could have called the NRC to provide updated information to document the latest information. Respondent has not shown any circumstance that justifies the failure to report to the NRC in a timely manner. Accordingly, I find Respondent violated 49 C.F.R. §195.52 by failing to give telephonic notification to the National Response Center, at the earliest practicable moment, following discovery of an incident.

This finding 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 \$5,000 civil penalty for violation of 49 C.F.R. § 195.52.

¹ 67 FR 57060 (2002); 67 FR 57061 (2002).

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 \$5,000, as Respondent failed to give telephonic notification to the National Response Center (NRC), at the earliest practicable moment, following discovery of an incident on December 27, 2004. In response to the Notice and in support of its position, Respondent argued its initial evaluation suggested that it was not a reportable incident under 49 C.F.R. §195.52. However, Respondent conceded that the property damage including clean up cost would meet \$50,000. On April 15, 1991 and September 6, 2002, Notices were issued by the Department of Transportation, OPS, reiterating that telephonic notification should be made within one to two hours after discovery. OPS's ability to take corrective action and/or mitigate potential safety problems is severely hampered by untimely telephonic notification of an incident. Respondent has not shown any circumstance that would have prevented or justified it not taking prompt action to give telephonic notification to the NRC. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000, for violation of 49 C.F.R. §195.52.

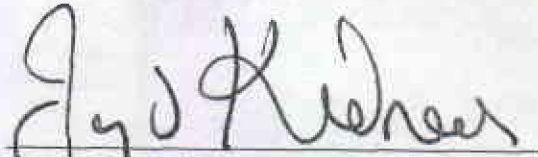
Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial 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 25082, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$5,000 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.

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 a 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 written request, grants

a stay. The terms and conditions of this Final Order are effective upon receipt.



for
Stacy Gerard
Associate Administrator
for Pipeline Safety

NOV 15 2005

Date Issued