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

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

JUN 23 2004

Mr. Louis Soldano
Vice President and Assistant General Counsel
Enron Pipeline Services Company
P.O. Box 1188
Houston, TX 77251-1188

Re: CPF No. 4-2002-5011

Dear Mr. Soldano:

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 $90,000. Because Enron Pipeline Services Company (EPSC) filed for Chapter 11 bankruptcy on June 16, 2003, the civil penalty will be collected through the bankruptcy proceeding. Based on information you provided that EPSC is no longer continuing in the business of operating pipelines and has no intention of conducting such business in the future, the Final Order also withdraws the Proposed Compliance Order as moot. 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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of	)	
	)	
Enron Pipeline Services Company,	)	CPF No. 4-2002-5011
	)	
Respondent.	)	
	)	

FINAL ORDER

On April 3, 2002, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) inspected Enron Pipeline Services Company's (Respondent's) integrity management program at Respondent's facility in Houston, Texas. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated July 31, 2002, 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 multiple violations of 49 C.F.R. § 195.452 and proposed assessing civil penalties totaling $110,000 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

After requesting and receiving an extension of time to respond, Respondent responded to the Notice by letter dated October 9, 2002 (Response). Respondent presented information and arguments contesting the alleged violations, contested any assessment of civil penalties in this enforcement action on procedural grounds, and requested a hearing. By letter dated February 12, 2004, Respondent withdrew its request for a hearing.

FINDINGS OF VIOLATION

Item 1 in the Notice alleged that Respondent violated 49 C.F.R. § 195.452(c) by failing to include a schedule prioritizing the baseline assessments of its pipeline segments that could affect a high consequence area ("HCA segments") by certain risk factors as an element of its baseline assessment plan. The integrity management regulations require pipeline operators to establish a schedule for their baseline assessments that prioritizes HCA segments according to specified factors that reflect the risk conditions on each segment. These risk factors are listed in § 195.452(e). Operators of Category 1 pipelines are required to assess at least 50 percent of the HCA segments, beginning with the highest risk pipe, not later than September 30, 2004 and must complete all baseline assessments by March 31, 2008.

In its response, Respondent presented a one-page flow chart and an short excerpt from its baseline assessment plan indicating that it had planned to conduct all of its baseline assessments "in the next five years" and that the results of its existing risk analysis process were to be used in setting priorities for the baseline assessment schedule. Under the relevant provision, however, the baseline assessment schedule itself had to be in place as an element of the baseline assessment plan. On this point, Respondent asserts that it "had available at that time a segment listing in risk ranking order," and claims that it did not provide this list to the OPS inspector because this information "was never requested" by the inspector. As a required element of its baseline assessment plan, however, Respondent had the burden of producing a completed baseline assessment schedule reflecting the manner in which the risk factors listed in section 195.452(e) were weighed. If its baseline assessment schedule was not included in Respondent's plan, Respondent bears the responsibility for the omission. Moreover, in its response to the Notice issued in this enforcement action, Respondent still has not demonstrated that it had a baseline assessment schedule in place at the time of the inspection. For example, in its response, Respondent did not identify its highest and lowest risk HCA segments or give the dates that were scheduled for the first and last baseline assessments on these segments, much less provide a copy of the schedule in its entirety. Accordingly, I find that Respondent violated 49 C.F.R. § 195.452(c) by failing to include a schedule prioritizing the baseline assessments of its HCA segments by the specified risk factors as an element of its baseline assessment plan.

Item 2 in the Notice alleged that Respondent committed multiple violations of 49 C.F.R. § 195.452(b)(4) by failing to adequately address six of the elements required in to be included in its written integrity management program including: (1) a process for integrated information analysis; (2) a process for continual integrity assessments at intervals not to exceed five years; (3) a process for identification of preventative and mitigative measures to protect each HCA; (4) methods to measure the program's effectiveness; (5) a process for review of the results of certain program activities by a qualified individual; and (6) a process for making decisions regarding implementation of each program requirement (Elements 1-6).

In its response, Respondent contended that each of these required elements were adequately addressed in its program. With respect to Element 1, a process for integrated information analysis, operators are required to have a comprehensive plan for systematically collecting and effectively utilizing all data on a system-wide basis, particularly the data sets necessary to evaluate areas of known concern. Existing management information system (MIS) databases are one source of data, as are external sources such as industry-wide and agency reports and databases that include information such as soil data, demographics, and hydrology, as examples. An effective data integration plan would explain, among other things, how data elements are structured and the manner in which consistency in units is achieved or graphical overlays are utilized. In this case, Respondent provided only a general statement about an existing database of information about its pipelines, and noted that it used algorithms to model the relative risks based on the inputs from this information database. Respondent, however, failed to demonstrate that its written integrity management program described its information analysis process in sufficient detail that would have permitted the OPS inspector to evaluate the capacity of this process to produce the intended results.

With respect to Element 2, a process for continual integrity assessments, after completing the baseline assessment, an operator must periodically assess the integrity of its HCA segments as frequently as needed to assure pipeline integrity. An operator must base the frequency of the periodic assessments on risk factors specific to its line pipe except that the interval may not exceed five years. In this case, Respondent provided a general statement about including relevant information when evaluating risks and identified four personnel groupings who would be available to provide input and guidance in the application of its program. Respondent, however, failed to demonstrate that its written program described its periodic integrity assessment process in sufficient detail that would have permitted the OPS inspector to evaluate the appropriateness of the chosen interval or the validity of its engineering basis.

With respect to Element 3, a process for identification of additional preventative and mitigative measures to protect each HCA, Respondent stated that a number of mitigative measures already formed part of its ongoing operational activities and pointed out that it did include a list of such measures in its written program. Respondent, however, failed to recognize that this is a process-oriented requirement and as such it requires pipeline operators to go beyond merely identifying known mitigative measures and listing equipment. In order to comply with this requirement, operators must establish criteria that, when encountered, will trigger implementation of the additional preventative and mitigative measures (*i.e.*, installation of the equipment). In its response, Respondent acknowledged that its written program failed to identify the circumstances and criteria by which determinations that additional mitigative measures were needed would be made.

With respect to Element 4, methods to measure the program's effectiveness, Respondent points out that it did include a list of metrics that it intended to track in order to judge the effectiveness of its program. Although we believe operators would be well-served by enhancing the implementation aspects of this element of their programs well beyond Respondent's effort, I find that Respondent has met the minimum threshold of this aspect of the implementation requirements at this stage of the development of its program. Accordingly, the relevant fraction of the civil penalty amount proposed for this element will be withdrawn.

With respect to Element 5, a process for review of the results of program activities by a qualified individual, Respondent stated that as it interprets this provision, the normal process of conducting physical assessments performed by trained personnel would satisfy this requirement. Respondent's interpretation, however, is incorrect. In order for pipeline integrity management programs to be fully effective, a high-level quality review process is essential. A qualified individual who may not have been directly involved in conducting the field assessments provides a means of reviewing the tool run logs and other relevant data and ensuring that integrity threat determinations and other judgments have been appropriately made. An adequate quality review process involves at a minimum the identification of the title of the person designated as the qualified individual, a description of the qualifications needed to perform this function, and a detailed description of the manner in which information and decisions are to be reviewed and the results of the quality review are to be documented and records kept. In its response, Respondent acknowledged that its program had no such descriptive process for this required element.

With respect to Element 6, a process for making decisions regarding implementation of each program element, Respondent noted that decision making is inherent to the process of program implementation itself and as a result, citing this provision is redundant in light of the process-oriented violations already covered. While we believe that establishing and following sound processes is important to consistency in achieving the best outcomes, I do not find it appropriate in this case to cite § 195.452(b)(4)(ii) as an additional violation in light of the violations already covered in Item 2. Accordingly, the relevant fraction of the civil penalty amount proposed for this element will be withdrawn.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.452(b)(4) by failing to adequately address the following four elements required in to be included in its written integrity management program: a process for integrated information analysis; a process for continual integrity assessments at intervals not to exceed five years; a process for identification of preventative and mitigative measures to protect each HCA; and a process for review of the results of program activities by a qualified individual.

Item 3 in the Notice alleged that Respondent violated 49 C.F.R. § 195.452(c)(1)(i) by failing to document the capability of its assessment methods to evaluate, among other things, seam integrity on low frequency electric resistance welded (ERW) pipe or lap welded pipe susceptible to longitudinal seam failures.

In its response, Respondent contends that none of its pipe is susceptible to longitudinal seam failures and that as a result, documenting the capability of its internal inspection tools to assess seam integrity was not required by the regulation. Respondents argument, however, is unpersuasive. Respondent has acknowledged that large portions of its system are composed of ERW or lap welded pipe manufactured prior to 1970. It is well established in the pipeline safety regulations that all pre-1970 ERW pipe and lap welded pipe is deemed susceptible to longitudinal seam failures unless an engineering analysis shows otherwise (*See, e.g.*, the pressure-testing requirements at 49 C.F.R. § 195.303(d)). In its response, Respondent references an article in the August 5, 2002 edition of the *Oil and Gas Journal* and asserts that it worked through a decision algorithm from the article and concluded that an assessment of seam integrity was not necessary on any of the pipelines it operated. A comparison of pipeline characteristics with an article published in an industry periodical, however, does not constitute an engineering analysis for purposes of overcoming the presumption that pre-1970 ERW or lap welded pipe is susceptible to longitudinal seam failures. In conducting such an engineering analysis on any given portion of a pipeline, an operator must consider the seam-related leak history of the pipe and pipe manufacturing information such as the mechanical properties of the steel including fracture toughness; the manufacturing process and controls related to seam properties including whether the ERW process was high-frequency or low-frequency, whether the weld seam was heat treated, whether the seam was inspected, the test pressure and duration during mill hydrotest; the quality control of the steel-making process; and other factors pertinent to seam properties and quality. No such engineering analysis report was submitted to the OPS inspector or in response to this enforcement action. Accordingly, I find that Respondent violated 49 C.F.R. § 195.452(c)(1)(i) by failing to document the capability of its assessment methods to assess seam integrity on its pre-1970 ERW pipe or lap welded pipe susceptible to longitudinal seam failures.

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 $100,000 per violation for each day of the violation up to a maximum of $1,000,000 for any related series of violations.

In its response, Respondent contested any assessment of civil penalties in this enforcement action on procedural grounds, contending that the Notice subjected Respondent to civil penalties in a manner contrary to the requirements of 49 C.F.R. Part 190. Specifically, Respondent cited 49 C.F.R. § 190.223(d) which states that:

> No person shall be subject to a civil penalty under this section for the violation of any requirement of this subchapter and an order issued under § 190.217, § 190.219 or § 190.233 if both violations are based on the same act.

While it is true that the July 31, 2002 Notice issued to Respondent involves both a civil penalty and a § 190.217 order, Respondent's contention that § 190.223(d) is applicable to this enforcement proceeding is incorrect. Section 190.223(d) applies only when OPS has previously issued an order under § 190.217, § 190.219 or § 190.233 that assessed monetary civil penalties, and the pipeline operator subject to that existing order subsequently fails to comply with the terms of that order. Therefore, § 190.223(d) is inapplicable in this instance because this enforcement action is not based on a failure to comply with a previously existing order.

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.

With respect to Item 1, the Notice proposed a civil penalty of $25,000 for Respondent's failure to include a schedule prioritizing the baseline assessments of its HCA segments by the specified risk factors as an element of its baseline assessment plan. In the absence of a complete schedule, OPS is unable to determine whether the actual result of a given operator's application of its risk ranking process to its HCA segment list corresponds to the required risk factors or evaluate the feasibility an operator's plan to complete the requisite number of HCA segment assessments within the relevant time frame. Respondent has presented no information that would warrant mitigation of the proposed penalty amount. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $25,000 for this Item.

With respect to Item 2, the Notice proposed a civil penalty of $60,000 for Respondent's failure to adequately address six elements required to be included in its written integrity management program (referenced above as Elements 1-6) including a process for integrated information analysis; a process for continual integrity assessments at intervals; a process for identification of preventative and mitigative measures to protect each HCA; methods to measure the program's effectiveness; a process for review of the results of certain program activities by a qualified individual; and a process for making decisions regarding implementation of each program element. In the absence of detailed descriptions of the processes for implementing these program elements, OPS is unable to determine whether the relevant processes are likely to be employed in a successful manner and achieve a result consistent with public safety. As noted above, Respondent did present information that warranted withdrawal of the penalty amounts proposed for the adequacy of Respondent's methods to measure the program's effectiveness and Respondent's process for making decisions regarding implementation of each program element. Therefore, I find that a proportional reduction in the civil penalty amount for two of the six elements of this Item is warranted. Respondent has presented no information that would warrant mitigation of the proposed penalty amount for the other four elements. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $40,000 for this Item.

With respect to Item 3, the Notice proposed a civil penalty of $25,000 for Respondent's failure to document the capability of its assessment methods to assess seam integrity on its pre-1970 ERW pipe or lap welded pipe susceptible to longitudinal seam failures. In the absence of such documentation, OPS is unable to determine whether the assessment methods selected by an operator are suitable for the particular application. Respondent has presented no information that would warrant mitigation of the proposed penalty amount. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $25,000 for this Item.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of $90,000. Because Respondent filed for Chapter 11 bankruptcy on June 16, 2003, the civil penalty will be collected through the bankruptcy proceeding (*In re Enron Pipeline Services Company*, Case No. 03-13918 AJG, jointly administered with *In re Enron Corp., et al*, Case No. 01-16034 AJG, S.D. New York). A proof of claim has been filed with the bankruptcy court (Claim No. 0000024624).

COMPLIANCE ORDER

The Notice proposed a Compliance Order in connection with the above referenced violations. Because Respondent has informed us that it is no longer continuing in the business of operating pipelines and has no intention of conducting such business in the future, the Proposed Compliance Order is withdrawn as moot.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. Should Respondent elect to do so, 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). In the absence of a timely filed petition, this Final Order is the final administrative action in this proceeding. The terms and conditions of this Final Order are effective on receipt.

William H Gutke
for

Stacey Gerard
Associate Administrator
for Pipeline Safety

JUN 23 2004

Date Issued