



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

OCT 21 2004

Mr. Scott E. Parker
President
Natural Gas Pipeline Company of America
747 East 22nd Street
Lombard, IL 60148-5072

RE: CPF No.4-2003-1005

Dear Mr. Parker:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, requires certain corrective actions, and assesses a civil penalty of \$30,500. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5. At such time that the civil penalty is paid and the terms of the compliance order are completed, as determined by the Director, Southwest Region, this enforcement action will be closed. 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

cc: Mr. Michael Noone, Attorney for NGPL
Mr. Dwayne Burton, Vice-President of Gas Pipeline Operations, NGPL
Mr. R.M. Seeley, Director, OPS Southwest Region

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of

Natural Gas Pipeline Company of America,

Respondent

CPF No. 4-2003-1005

FINAL ORDER

Between February 25 and July 26, 2002 pursuant to 49 U.S.C. § 60117, representatives of the Southwest Region, Office of Pipeline Safety (OPS), conducted onsite pipeline safety inspections on multiple units of Respondent's natural gas onshore Gulf Coast pipeline system in Texas and Louisiana and the Oklahoma Extension and Mountain View pipeline systems, which consist of Ratliff City, Mooreland, Roxton, Mt. View, Lufkin, Victoria, Robstown, Wharton, New Caney, Cameron, Devers and Marshall. Respondent is a subsidiary of KN Energy, Incorporated. As a result of this investigation, the Director, Southwest Region, OPS, issued to Respondent, by letter dated May 14, 2003, 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, proposed assessing a total civil penalty of \$31,000 for the alleged violations, and proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated, June 13, 2003 (Response). Respondent contested two of the three allegations, offered information in explanation of the allegations and in mitigation of the proposed penalty and requested a hearing. The hearing was held on November 13, 2003 in Houston, TX. After this hearing, Respondent provided additional information and a closing Response dated December 2, 2003.

FINDINGS OF VIOLATION

In its Response and at the hearing, Respondent did not contest **Item 1** of 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. § 195.605(a) -- failing to prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and emergencies, as O&M procedures we not followed at the New Caney District. Although the relief valve at location 302FUEL-1-RVS was inspected twice in 2000 (08/30/00 and 12/21/00) and twice in 2001 (11/30/01 and 12/18/01), the inspections exceeded the 7 ½ month interval by 45 days in 2000 and 119 days in 2001. Also, procedures were not followed to inspect cased highway and railroad crossings mechanically shorted and not filled with wax for leaks using combustible gas indicators at least 4 times each calendar year, not to exceed 4 ½ months. At the time of the inspection, shorted casings were inspected only twice in 1999 (05/05/99 and 09/29/99) at locations FM 321, FM 787, FM 2098, and FM59.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

(Contested Items)

Item 2 in the Notice alleged that Respondent violated 49 C.F.R. § 192.465(d) by failing to take prompt remedial action to correct any deficiencies indicated by monitoring, as Respondent's corrosion control records at the Ratliff City District for the Love County Laterals showed that pipe-to-soil potential had been low for multiple years and there was no documented remedial action for the low pipe-to-soil potential below:

Love County Laterals Pipe-to-Soil Potentials		
Mile Marker	Dates Inspected	Readings
521+52	06/24/99	.843
	06/16/00	.730
576+87	06/24/99	.837
	06/16/00	.719
710+99	06/24/99	.800
	06/21/00	.735
769+60	06/24/99	.812
	06/21/00	.715
837+10	06/24/99	.818
	06/21/00	.720
877+28	06/24/99	.809
	06/21/00	.730

920+94	06/24/99	.845
	06/21/00	.832
953+76	06/24/99	.822
	06/21/00	.830

In response to the Notice and at the hearing, Respondent acknowledged that its corrosion control records showed low pipe-to-soil readings but contended that the readings were not at "critical" levels. Respondent argued that it took immediate action in response to the 6/19/99 low pipe-to-soil readings in the affected area by installing a new rectifier on 8/24/99. However, the new rectifier did not improve the low pipe-to-soil potentials. Respondent explained that when it discovered that the rectifier had not improved the readings, it designed a deep ground bed system. Respondent further explained that it took approximately 6-7 months to obtain the necessary approvals and permits, execute bid packages and select a contractor for the ground bed system. The ground bed system was installed between 7/10/00 and 7/12/00. Respondent stated that its annual survey, performed on 5/18/01, showed all readings were in compliance. Respondent contends that these steps show that it took prompt remedial action within the 15 month inspection interval to address low pipe-to-soil condition readings.

OPS argued that at the time of the 2002 inspection, Respondent's corrosion control records on the Love Country Laterals indicated that pipe-to-soil potentials had been low for multiple years with no documented remedial action. Respondent acknowledged that at the time of the inspection its corrosion control records showed there were low pipe-to-soil readings. During the hearing, Respondent submitted documents to indicate remedial action had been completed. Although Respondent argued that it had initiated several projects to address low pipe-to-soil readings in the subject area, Respondent's documentation and records at the hearing did not demonstrate that the entire lateral was surveyed before the next inspection cycle. Respondent's annual survey was performed on 5/18/01.

Consistent low cathodic protection readings indicate that a pipeline is not receiving adequate protection, a condition that could adversely affect the safe operation of a pipeline system. The risk of corrosion on the pipeline significantly increases with inadequate pipe-to-soil potentials and can result in a pipeline failure. Prompt remedial action at the earliest warning or indication of low pipe-to-soil readings is critical to safety of the public, environment and property. Respondent's Love County Laterals had low pipe-to-soil readings with no indication or documentation of timely corrective action on the entire lateral before the next inspection cycle. Documentation submitted by Respondent at the hearing showed completion of remedial action at only one location, Mile Post 710+99, where the reading on 8/15/00 was 1.298. Accordingly, I find that Respondent violated 49 C.F.R. §192.465(d) by not taking prompt remedial action actions to correct the condition.

Item 3 in the Notice alleged that Respondent had violated 49 C.F.R. § 192.705(a) by not providing records at the time of the inspection to show that it patrolled its pipelines to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction

activity, and other factors affecting safety and operation. At highway and railroad crossings, in Class 1 and 2 locations, the maximum intervals between patrols is 7 ½ months, but at least twice each calendar year.

At the time of the inspection, Respondent's records for the Mt. View District indicated that Line Number OE#1 has 13 highway crossings that have never been patrolled,¹ Line Number M&M has 15 crossings that have never been patrolled,² and in the Roxton and Chico Districts 5 highway crossings have never been patrolled.³ Also, in the Lufkin District there are 21 highway crossings that have never been patrolled.⁴

OPS testified that during the inspection, a request was made for patrol records and that in response to the request, records were provided by Respondent's employee with the locations identified in the Notice. OPS inspector testified that while reviewing the records identified by Respondent's employee as patrol records, he saw that the form identified locations as highways and written next to some of the highways was "N/A". The OPS inspector testified that he questioned the "N/A" designation and Respondent's employee stated that they were not inspecting those locations.

Respondent countered that it is not responsible for personnel providing incorrect forms that led the OPS inspector to request the patrol records which lead to the Notice. Respondent stated that it patrols all Class 1 and Class 2 areas by aerial patrol once a year. Respondent argued that some of the roads identified by OPS are not highways. Although Respondent conceded that two of the locations were highways, Respondent argued that the remaining locations are county roads and that regulations do not require the patrol of county roads. Respondent stated that the county does not consider these locations highways. During the hearing, Respondent submitted an excerpt from Webster's Dictionary II and argued that Webster's defines highway as "A main public road, esp. one connecting towns and cities." Respondent further argued that 49 C.F.R. §195.55 (b)(1) defines highways in relation to safety-related condition reports and in that regulation a distinction is made between highways, roads and streets. Respondent submitted color photographs of the locations identified in the Notice to support its position that the locations are not highways.

¹ Thirteen crossings not patrolled at Mile Numbers: 141, 146, 151, 153, 155, 157, 158, 173, 174, 182, 187, 196 and 202.

² Fifteen crossings not patrolled at Mile Numbers: 143, 146, 151, 153, 154, 157, 158, 164, 166, 170, 172, 176, 177, 178 and 186.

³ Five highways and crossing not patrolled at: FM 1658 at MP 346, Highway 101 at MP 344, FM 1655 at MP 339 and MP 337 and Highway 287 at MP 333.

⁴ Twenty-one highway crossings not patrolled: String Town Road, River Jordan Road, Industrial Road, Providence Road, Rayon Road, Greens Road, Jack Station, Bill Barrett, Princess Road, Boot Harvard Road, C.R. 257, C.R.285, Deer Lane, Hoskin Road, Carrel Road, C.R. 137a, Water Well Road, C.R. 220, C.R. 223, C.R. 260 and C.R.263.

As for Respondent's position that it is not responsible for personnel providing incorrect forms that led the OPS inspector to request the patrol records, an employer is ultimately responsible for the actions of its employees. Although Respondent's employee may have provided the incorrect forms initially, it was those forms that dictated further inquiry and led to a closer inspection of Respondent's patrol records. It is an appropriate response for an OPS inspector, in his or her quest to determine compliance, to follow-up on, inspect and to investigate documentation that raises questions about compliance with pipeline safety laws and regulations.

With respect to Respondent's position that some of the locations identified by OPS are not highways and that the regulations do not require Respondent to patrol county roads, Respondent argued that for OPS to apply 49 C.F.R. § 192.705(a) to county roads a rulemaking is required by the Administrative Procedures Act, as this represents a substantive policy change. It is common for a Respondent found in violation of OPS regulations to claim that OPS' interpretation of the regulation is misplaced; or that the agency's interpretation of the statute, even if permissible, renders the statutory language sufficiently vague that reasonable persons could not have been expected to understand that their conduct was unlawful. The ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation. Interpretation begins with the language of the statute or regulation itself and is based largely on reading the language of the regulation being interpreted, in light of the purpose of the regulation and the agency's general policy goal. In this case, it is the broad powers and authority to enforce pipeline safety.

Respondent is considered to have received fair notice of the agency's interpretation if a prudent person familiar with the pipeline industry and the safety purposes of the standard would have recognized the safety requirement. In applying the reasonable person standard to the notice issue, consideration is given to a variety of factors, including the language of the regulation, its purpose, its placement in the overall regulatory scheme, its regulatory history, the agency's enforcement, and OPS' advisory notices and interpretations informing the regulated community of its interpretation. Pre-enforcement efforts such as advisory bulletins, agency interpretations and 49 C.F.R. §190.11 provide notice and enable Respondent to identify with ascertainable certainty the standards with which OPS expects parties to conform. Respondent failed to cite any precedent where OPS excluded county roads from the definition of highway, for purposes of enforcing the patrolling requirements.

As for the Respondent's argument about the dictionary definition of highway, we believe that most definitions of "highway" included a common term, the word "public."⁵ The primary objective of the Federal gas pipeline safety standards and the purpose for the patrolling requirements is to maintain public safety. Notably, the Federal Highway Act, Title 23 of the United States Code, Section 101, subsection(a), which contains definitions, defines the term "highway" as including a road, street, and parkway; a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign,

⁵ Webster's International Dictionary, for example, defines a highway as 'a road or way open to the use of the public.' Funk & Wagnalls Standard Dictionary defines a highway as '1, A public thoroughfare; specified line of travel. 2. A common or open way or course.'

guardrail, and protective structure, in connection with a highway; and a portion of any interstate or international bridge or tunnel and the approaches thereto. There is a clear indication that these locations are areas traversed by the public.

The "true test" of whether a "way" is a highway is "whether the 'way or place of whatever nature' is open to the use of the public for purposes of vehicular travel." *Crouse v. Pugh*, 188 Va. 156, 164, 49 S.E.2d 421, 426, 4 A.L.R.2d 1242.⁶ Respondent argued that the regulations do not require Respondent to patrol county roads or roads that are composed of certain materials and in support of that position submitted color photographs of areas that it deemed county roads. The Court in *Crouse v. Pugh* clearly states that a highway "... or place is not determined by whether the way is improved or consists of dirt and gravel". *Id at 165*. A public way is a way which all the people have the right to use.

The patrolling of county roads open to use by the public does not expand or represent a change in OPS policy or interpretation, as pipelines must be patrolled to observed surface conditions for indications of leaks, construction activity, and other factors affecting safety and operation and for the purpose of insuring against pipeline encroachments and preventing tree roots from damaging underground pipes in a manner sufficient to cause corrosion. When a pipeline is not adequately monitored and a system of inspection maintained an operator will not be able to insure reasonable promptness in the detection of all surface conditions on and adjacent to the transmission line right-of-way for indications of any and all factors affecting the safety and operations of the pipeline.

Patrolling is particularly critical at highway and railroad crossings where the public traverse almost constantly. Patrolling reduces the risk of damage to property, persons and the environment. Without the required documentation an operator cannot adequately demonstrate that it patrolled its pipelines to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation. Without this history of patrol records, an operator will have difficulty determining areas where there are problems that need to be addressed. Respondent does not dispute the allegation that it did not provide records to demonstrate that the locations identified in the Notice were patrolled. Accordingly, I find that Respondent violated 49 C.F.R. §192.705(a).

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

⁶In *Crouse v. Pugh*, 188 Va. 156, 164, 49 S.E.2d 421, 426 (1948), 4 A.L.R.2d 1242, the Court said: 'This section needs no construction. Its meaning is perfectly plain, comprehensive and unambiguous. It does not limit the meaning of the word 'highway' to a hard-surfaced or partly hard-surfaced way or to a dirt and gravel way. It does not confine a highway to the main-travelled portion of the way or to lanes specifically designated for vehicular traffic. No exception is made as to the shoulders or slopes of a way. The nature of the way or place is not determined by whether the way is improved or consists of dirt and gravel. The paving of a way does not make it a 'highway.' The true test is whether the 'way or place of whatever nature' is 'open to the use of the public for purposes of vehicular travel.'

ASSESSMENT OF PENALTY

The Notice proposed a \$31,000 civil penalty for violation of 49 C.F.R. §§192.465(d) and 192.705(a). 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.

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 proposed penalty for **Item 2** is \$4,000 for violation of 49 C.F.R. §192.465(d). Respondent failed to timely correct for multiple years low pipe-to-soil readings on its Love County Laterals, which could adversely affect the safe operation of its pipeline system. Respondent did contest the alleged violation and requested that the proposed violation and civil penalty be set aside. Although Respondent provided documentation to show completion of remedial action at one location, Mile Post 710+99, Respondent's Love County Laterals had low pipe-to-soil readings with no indication or documentation of timely corrective action on the entire lateral before the next inspection cycle. However, based upon documentation that showed the completion of remedial action at one location the proposed civil penalty is reduced. Without adequate cathodic protection, corrosion can occur resulting in a pipeline failure. A failure in a line carrying hazardous material poses a danger to the public and the environment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$3,500.

The proposed penalty for **Item 3** is \$27,000 for violation of 49 C.F.R. § 192.705(a). Although Respondent contested the alleged violation and contended that the proposed civil penalty associated with county roads be eliminated, Respondent conceded that two of the locations were highways. County roads are open to the use of the public for purposes of vehicular travel and the dirt, gravel or paving does not restrict, confine or limit it as a highway. As discussed above, 49 C.F.R. § 192.705(a) does not limit the meaning of the word 'highway' to a particular surface and does not confine a highway to a main public road, one connecting towns and cities. Minimum safety standards for pipeline safety are inclusive and not exclusive. Pipelines must be patrolled to observed surface conditions for indications of leaks, construction activity, and other factors affecting safety and operation and for the purpose of insuring against pipeline encroachments and preventing tree roots from damaging underground pipes in a manner sufficient to cause corrosion. Respondent failed to exercise vigilance commensurate with the danger to protect the public, environment, and property. Respondent is responsible for compliance with the pipeline safety regulations, which includes sound record keeping. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$27,000.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$30,500. A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue business.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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) 954-8893.

Failure to pay the \$30,500 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 a United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to **Item 3** for violation of 49 C.F.R. §192.705(a).

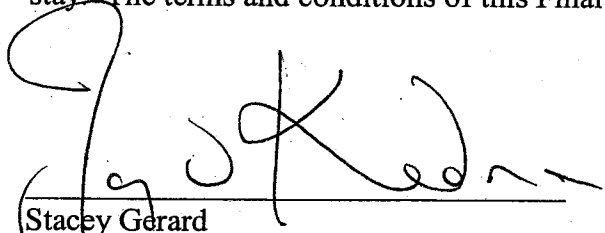
Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations. Respondent must -

1. Within 30 days of the receipt of this Final Order, perform an audit to ensure all NGPL pipelines are in compliance with 49 C.F.R. §192. 705(a). This audit shall include:
 - (A) Review of all applicable procedures and amendment of procedures, as necessary. Any amended procedures shall be submitted to the Southwest Regional Director.
 - (B) Perform survey of pipelines throughout NGPL's system to evaluate patrol program to ensure that the patrolling of highways, including county roads, are performed in accordance with §192. 705(a); and
 - (C) After completion of the review and survey, develop a plan for patrolling highway crossings to bring NGPL into compliance. Submit plan along with a summary and evidence of completion the plan to Southwest Regional Director.

2. Within 30 days of receipt of this Final Order, submit confirmation and/or evidence of completion of these actions to the Director, OPS, Southwest Region, 8701 South Gessner Street, Suite 1110, Houston, TX 77074.
3. The Director, OPS, Southwest Region may grant an extension of time for compliance with any of the terms of this order for good cause. A request for an extension must be in writing.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a 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, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective on receipt



Stacey Gerard
Associate Administrator
for Pipeline Safety

OCT 21 2004

Date Issued