

U.S. Department
of Transportation

**Research and
Special Programs
Administration**

JULY 31, 1997

Mr. E. R. Murray
President
Texas-New Mexico Pipe Line Company
P.O. Box 42130
Houston, TX 77242

Re: CPF No. 43520

Dear Mr. Murray:

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 \$7,500. 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
Texas-New Mexico Pipe Line
Company,

CPF No. 43520

Respondent.

FINAL ORDER

On November 12, 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 and records in Katy, Texas. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated December 9, 1993, 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 had violated 49 C.F.R. §§ 195.401(b) and 195.410(a), and proposed assessing a civil penalty of \$10,000 for the alleged violations.

Respondent responded to the Notice by letter dated January 21, 1994 (Response). Respondent contested the violations, offered information to explain the allegations and requested mitigation of the proposed civil penalty. Respondent has not requested a hearing and therefore, has waived its right to one.

FINDINGS OF VIOLATION

General Operation and Maintenance Requirements

Item 1 in the Notice alleged that Respondent had violated 49 C.F.R. § 195.401(b), which requires that whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it shall correct the condition within a reasonable time. The Notice alleged that Respondent did not, within a reasonable time, remove the tree growth along its pipeline right-of-way. According to the Notice, although Respondent performed periodic aerial surveys of its pipeline right-of-way, the extensive tree growth along the right-of-way prevented Respondent from inspecting the surface conditions of the right-of-way as, required by 49 C.F.R. § 195.412(a).

In its Response, Respondent contested the alleged violation. Respondent claimed that it had taken remedial action within a reasonable time. Respondent stated that, in its opinion, the condition of the right-of-way did not "adversely" affect the safe operation of its pipeline. Respondent supported its position by pointing out the pipeline's leak history and cathodic protection records. In addition, Respondent emphasized that several landowners had denied it permission to remove many of the large trees along the right-of-way. Respondent indicated that it was conducting negotiations to resolve this problem. In addition, Respondent stated that it had hired an outside contractor to remove the large vegetation along its pipeline right-of-way. However, as Respondent noted, at the time of the inspection, the contractor had not cleared the locations cited in the Notice.

In reviewing the record, I find that there were locations where Respondent did not clear vegetative growth from along its pipeline right-of-way (e.g., 10th Street and Avenue D, VFW Park and West of Avenue D). This vegetative growth prevented an aerial inspection of the surface conditions of the right-of-way as required by 49 C.F.R. § 195.412(a). In addition, the violation report indicates that tree and vegetative removal had not occurred in five to six years prior to the inspection.

This condition has serious safety implications, especially in a residential area, and therefore could adversely affect the safe operation of the pipeline. Accordingly, I find that Respondent did not correct this condition within a reasonable period of time and, violated 49 C.F.R. § 195.401(b).

Line Markers

Item 2 in the Notice alleged that Respondent had violated 49 C.F.R. § 195.410(a), which requires that an operator place and maintain line markers over each buried pipeline. The markers must be located at each public road crossing, railroad crossing and in sufficient number along the remainder of the buried pipeline so that the location is accurately known. In addition, the marker must include the operator's name and telephone number and other information.

The Notice alleged that the line markers for the pipeline segments crossing the following streets were either not installed or not properly maintained: Cedar, Carnation, Fern, Chilton and Airline. In particular, the Notice alleged that in some residential locations, Respondent had painted the street curb to indicate the location of the pipeline, many of the flat line markers, which were installed at ground level, were covered by grass or soil and in some cases, the required language on the line markers was not legible.

Respondent contested the alleged violation. In its Response, Respondent stated that it had made a good faith effort to maintain its line markers. Respondent cited vandalism as one reason it had encountered problems maintaining its line markers. Respondent explained that in its effort to combat vandalism, Respondent installed flat line markers and painted the street curbs in residential areas. Respondent stated that it was installing a new type of vertical line marker that would be less prone to vandalism. Respondent also emphasized its public awareness program. Respondent said that it had mailed safety information to adjacent landowners and has conducted house-to-house pipeline awareness campaigns. Respondent stressed its work with one-call agencies and local planning agencies.

Respondent did take steps to mark the location of its pipeline, however, in some locations there were no line markers and in other locations the markers were covered by sand or grass. In reviewing the record, I find that there were locations where Respondent did not maintain or erect a line marker that satisfied the requirements of 49 C.F.R. § 195.410.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.410(a).

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 \$25,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations. The Notice proposed a total penalty of \$10,000.

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 violations, 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.

Although Respondent's cites the pipeline's leak history as a mitigating factor, the fact that this pipeline may not have experienced a major incident is not a mitigating factor in this case. Respondent's failure to remove the vegetation along its pipeline right-of-way enhanced the likelihood that there would be unacceptable delay in detecting and reporting a pipeline failure. Thus, this condition could have adversely affected the safe operation of the pipeline. In some locations, the vegetation was quite dense which indicated that the condition had existed for some period of time. I consider Respondent's prompt corrective actions in removing the vegetation, as a mitigating factor and have reduced the proposed penalty accordingly.

Third-party damage to pipelines continues to be a leading cause of pipeline failures. Marking the location of a buried pipeline is one method to prevent third-party damage. The cited pipeline segments were located in a residential development and, at the time of the inspection, there was ongoing residential construction. Thus, in the event of a pipeline failure there was an enhanced risk to life and property. I consider Respondent's good faith effort to maintain its line markers as a mitigating factor and have reduced the proposed penalty accordingly;

Accordingly, having reviewed the record and considered the assessment criteria including Respondent's corrective actions, I assess Respondent a civil penalty of \$7,500 (\$5,000 for the first violation and \$2,500 for the second violation)

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 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** (DCC-1), Research and Special Programs Administration, Room 8407, 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 (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$7,500 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.

Under 49 C.F.R. § 490.215, 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.

Richard B. Felder
Associate Administrator
for Pipeline Safety

Date: JULY 31, 1997