

Mr. Ted Snailum, Vice President
Valero Transmission L.P.
530 McCullough Avenue
P.O. Box 500
San Antonio, Texas 78292-0500

Re: CPF No. 45001

Dear Mr. Snailum:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws the allegation of violation and the 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 action is contemplated with respect to the matters involved in the 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

Enclosure

cc: John Sommer
Director, Environmental and Regulatory Compliance

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)

Valero Transmission L.P.,)

Respondent.)

CPF No. 45001

FINAL ORDER

On October 20, 1994, a representative of the Office of Pipeline Safety (OPS) was notified of an incident involving a pipeline operated by Respondent. The Southwest Region office, OPS determined that Respondent did not promptly report the incident by telephone to the National Response Center (NRC). As a result of the review, the Director, Southwest Region, OPS, issued to Respondent, by letter dated June 9, 1995, 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 committed a violation of 49 C.F.R. § 191.5, and proposed assessing a civil penalty of \$5,000 for the alleged violation.

Respondent responded to the Notice by letter dated June 30, 1995 (Response). Respondent contested the allegation of violation, and requested that it be withdrawn. Respondent did not request a hearing and therefore has waived its right to one.

WITHDRAWAL OF ALLEGATION

The incident consisted of a full break in Respondent's pipeline which occurred as a result of a flood which began at the San Jacinto River crossing, east of Houston, Texas, at 3:45 p.m. on October 20, 1994. The flood continued for several days. The Notice alleged this incident met the reporting criteria in 49 C.F.R. § 191.3, and was not reported telephonically to the NRC until October 24, 1994 at 5:06 p.m. (EST). Approximately 96 hours passed before Respondent reported the failure as an incident. The Notice alleged a violation of 49 C.F.R. § 191.5 based on Respondent's failure to provide the NRC a telephonic notice of the incident "at the earliest practicable moment following discovery."

According to 49 C.F.R. § 191.5, each operator must, at the earliest practicable moment following discovery of an "incident" as defined in 49 C.F.R. § 191.3, telephonically relay certain information to the NRC. An incident is defined by 49 C.F.R. § 191.3 as:

(1) an event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and

* * * *

(ii) Estimated property damage, including cost of gas lost, of the operator or others, or both, of \$50,000 or more.

The Notice alleged that Respondent should have known on the day of the incident that the "estimated costs for loss of gas, replacement of the affected pipeline segment, and new construction exceeded the threshold for incident reporting . . ." Respondent took exception to this allegation and stated that it did not immediately recognize that the incident was reportable because the failure in its pipeline could have been caused by a hole gouged in the pipeline, in which case repairs could have been completed for much less than \$50,000." (Response, page 1).

According to Respondent, at "approximately mid-afternoon on the day of the incident [October 20, 1994], Valero detected a drop in pressure on its 12" Sinco pipeline and . . . shut-in procedures were immediately initiated . . ." At the time of the reduction in pressure, Respondent was "unable to assess the estimated damage to the pipeline because of the flood waters." Respondent continued, "It was not known by Valero until the flood waters subsided many days later that the pipeline was washed out in a new channel cut across the oxbow of the river." (Response, page 1).

Historically, OPS has taken the position that incidents meeting the telephonic reporting criteria should be reported within one to two hours following their discovery. OPS realizes there will be occasions immediately following an incident where it is impossible for the operator to gather the essential information. Thus, when OPS discovers that an operator has not submitted a telephonic report within one to two hours following an incident, it does not immediately issue a notice of probable violation. Instead, OPS determines when the operator had an opportunity to gather the essential information and when it actually submitted a telephonic report.

OPS encourages pipeline operators to report accidents to the National Response Center (NRC) at the earliest practicable moment, even if at the time the report is transmitted the operator is not certain that the accident is a reportable incident. An Alert Notice issued by the Department of Transportation, dated April 5, 1991, advised pipeline operators that telephonic reports can and should be made within one to two hours after discovery of the incident. This policy ensures pipeline accident reports are transmitted at the earliest practicable moment following discovery, thus avoiding lengthy delays in the transfer of information.

In this case, Respondent makes the argument that more than one to two hours was necessary to determine whether the accident was reportable. The question is whether, based on the information available, 96 hours was a reasonable amount of time to allow the operator to evaluate the situation and determine whether damages exceeded the \$50,000 reporting threshold.

In its Response, Respondent indicated that it detected the pipeline was damaged. However Respondent argued that it did not know damages would exceed \$50,000. Specifically, Respondent argued that the drop in pressure may have been the result of a gouge, in which case damages could have amounted to less than \$50,000. If Respondent had known that a full break in the line had occurred, Respondent would have been obligated to report the incident immediately since damages would have exceeded \$50,000. The most important factor to consider in determining Respondent's ability to assess the damage is the size of the drop in pressure. A significant drop in pressure would clearly indicate a full break in the line. There is no evidence in the record, however, to indicate the precise size of the drop in pressure.

An assumption could be made that because there was a full break in the line, a correspondingly large drop in pressure must have occurred. Such an assumption would not be legally sustainable. It is possible, for instance, that the line was initially gouged, and then at some point completely separated from the rest of the line. While OPS would prefer that operators file prompt reports in instances such as this where the possibility of significant damage exists, the evidence in this case does not clearly demonstrate that Respondent was aware of the full extent of damages at the time the incident occurred. Therefore the allegation of violation must be withdrawn.

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

/s/ Richard B. Felder

Richard B. Felder
Associate Administrator
For Pipeline Safety

Date Issued: _____ June 30, 1998_____

~~OPS realizes this policy results in the NRC receiving numerous reports of accidents that are not required to be reported. However, this policy allows the NRC to gather potentially critical information at the earliest practicable moment. If through subsequent investigation an operator determines an accident was initially reported as an “incident,” but is actually not required to be reported, the operator should forward a written notification retracting its report to the OPS Information Resources Manager at DOT/RSPA/OPS, Room 2335, 400 Seventh Street, S.W., Washington, DC 20590. Of course, in cases where the failure does not ultimately necessitate the filing of a report, the operator may nonetheless deem the event significant and elect to leave the report on record.~~

~~In this case, Respondent makes a credible argument that more than one to two hours was necessary to determine whether the accident was reportable. The question is whether 96 hours was a reasonable amount of time to allow the operator to evaluate the situation and determine whether damages exceeded the \$50,000 reporting threshold.~~

~~In its Response, Respondent indicated that it detected the pipeline was damaged. However there is no evidence in the record to indicate that Respondent should have expected damages to exceed \$50,000. While OPS would prefer that operators immediately file a report in instances such as this where significant damages may be present, the evidence indicates Respondent could not have reasonably known the true extent of damages until the flood waters receded. The operator here had no means to assess the damages other than to wait until the flood waters receded. As Respondent pointed out, it was possible that the pipeline may have been gouged rather than completely washed away, in which case damages could have amounted to less than \$50,000. Therefore the allegation of violation is withdrawn.~~

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