

Mr. Gary Zollinger
Vice President
Total Petroleum, Inc.
999 18th Street, Suite 2201
P.O. Box 500
Denver, CO 80201-0500

Re: CPF No. 46504

Dear Mr. Zollinger:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation in part, withdraws one allegation of violation in whole and withdraws one allegation of violation in part. 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, OPS, this case will close within 20 days of your receipt of this Final Order unless you file a petition for reconsideration. No further enforcement action is contemplated with respect to the matters involved in the case. Thank you for your cooperation in our joint effort to ensure public safety.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

cc: Harry L. Bickford
Bickford, Pasley and
Farabough
P.O. Box 1027
Ardmore, OK 73402

Mr. Dennis Fothergill
Manager, Pipeline Safety
Department
Oklahoma Corporation
Commission
P.O. Box 52000-2000
Oklahoma City, OK 73152-2000

DCC-1:DUNN:8-29-97
DCC-1/FILE TOTALFO.WPD

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

In the Matter of)
)
Total Pipeline Corporation,) CPF No. 46504
)
Respondent.)

FINAL ORDER

On September 26-29, 1995, pursuant to 49 U.S.C. § 60117, a representative of the Oklahoma Corporation Commission, as agent for the Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Respondent's facilities in Healdton, Oklahoma. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated March 7, 1996, 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 committed violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$5,000 for the alleged violations.

Respondent responded to the Notice by two letters dated April 11, 1996 (Response). Respondent contested the allegations, offered explanations, sought mitigation of the proposed penalty, and requested a hearing. The hearing was held on July 18, 1997.

The Notice listed two items of alleged violation. Item one concerned Respondent's alleged failure to inspect a mainline valve. This order withdraws item one due to a re-evaluation of the scope of the pipeline safety regulations. Item two concerned Respondent's alleged failure to protect three scraper traps from vandalism and unauthorized entry. This order makes a finding of violation for failure to protect the Ruby Jones trap but withdraws the allegations involving the Bomar Point trap and the Oscar trap at Center Point based on the re-evaluation of the scope of the regulations.

FINDING OF VIOLATION

Item 2: Protection from Vandalism and Unauthorized Entry -- Ruby Jones Trap

The pipeline safety regulations require operators to "provide protection for each pumping station and breakout tank area and other exposed facility (such as scraper traps) from vandalism and unauthorized entry." 49 C.F.R. § 195.436. The Notice alleged that Respondent violated this provision by failing to protect the Ruby Jones trap against unauthorized entry.

In its Response and at the hearing, Respondent maintained that the Ruby Jones trap was adequately protected from unauthorized entry.* The trap was located on private property, approximately 100 yards from the nearest county road. At the time of the inspection, there was a three-strand barbed wire fence bordering a private road adjacent to the trap but no fencing around the trap itself. There were padlocks and chains around each of the valves so that they could not be opened except by key.

Respondent argued that the regulation requires protection against unauthorized entry into the traps but does not require protection against unauthorized access to the exterior of the traps. Respondent maintained that the somewhat remote location of the trap combined with the locked valves were adequate protection against unauthorized entry.

Respondent is incorrect in its interpretation. The regulation promotes public safety by requiring that exposed facilities be protected from vandalism and unauthorized entry. A pipeline facility could be vandalized not only from entry into the system itself but also by external damage to the facility. For example, a vandal could have easily walked from the public road to the Ruby Jones trap and, while denied entry into the inside of the trap, done damage to the exterior piping. While the regulation provides no detail as to the amount or type of protection that is necessary, locking the valves in the closed position does not ensure that the entire facility is adequately protected.

* The Ruby Jones trap no longer exists. Respondent stated at the hearing that it removed the trap on July 16, 1997.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.436. This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

WITHDRAWAL OF ALLEGATIONS

Item 1: Mainline valve inspection

The Notice alleged that Respondent failed to inspect a mainline valve. Under 49 C.F.R. § 195.420(b), mainline valves must be inspected at least twice each calendar year, at intervals not to exceed 7 ½ months. The Notice alleged, and Respondent has admitted, that it failed to inspect block valve DA9 during the calendar year 1994. Both in its Response and at the hearing, Respondent maintained that this failure was not a deliberate violation of the pipeline safety regulations but was, instead, an oversight. Respondent explained that at the time block valve DA9 was scheduled for inspection, the road leading to the valve was flooded. Once the road was again passable, the inspection crew neglected to return to block valve DA 9, leaving it uninspected for the year.

Although Respondent has admitted that it failed to conduct this inspection, I am withdrawing the proposed violation of 49 C.F.R. § 1295.420(b). As of September, 1995 -- when the Oklahoma Corporation Commission conducted its inspection -- OPS considered the type of pipeline on which block valve DA9 is located to be a regulated gathering line. However, since that time, OPS has re-evaluated the scope of the gathering line definition.

Under 49 C.F.R. § 195.1(b)(4), on-shore gathering lines in rural areas are exempt from OPS regulation. A gathering line is defined at 49 C.F.R. § 195.2 as "a pipeline 219.1 mm (8 5/8 inch) or less nominal outside diameter that transports petroleum from a production facility."

This definition was adopted through the final rule promulgated on April 22, 1986. (51 Fed. Reg. 15005). The final rule's preamble addressed two commenters' concerns that a pipeline that otherwise qualifies as a non-regulated gathering line might be subject to regulation if joined by a lateral line that is regulated. The preamble responded by stating that an intersecting lateral line would not affect a gathering line's status. The preamble noted that a gathering line ceases to be a gathering line in only two situations: "[t]he only cause for a gathering line to terminate would be upon connection with a non-pipeline facility (e.g., a refinery) or a pipeline larger

than 8 inches in nominal diameter." Thus, a non-regulated gathering line that is joined by a regulated lateral line is still exempt from the pipeline safety regulations.

Block valve DA9 is located on a non-regulated gathering line. Because this line is exempt from the regulations, I withdraw the alleged violation of 49 C.F.R. 195.420(b).

Item 2: Protection from Vandalism and Unauthorized Entry -- Bomar Point Trap and Oscar Trap at Center Point

The Bomar Point trap and Oscar trap at Center Point also are located on non-regulated gathering lines. Thus, for the reasons discussed above, I withdraw the alleged violation of 49 C.F.R. § 195.436 pertaining to failure to protect the Bomar Point and Oscar Traps from vandalism and unauthorized entry.

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.

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.

Respondent has demonstrated good faith in attempting to achieve compliance. The Notice discussed inadequate protection of three scraper traps. Two of these traps -- the Ruby Jones trap and the Oscar trap at Center Point -- have since been removed. The only remaining trap -- Bomar Point -- is now enclosed by a chain-link fence with three strands of barbed wire affixed to the top. Respondent's good faith in attempting to achieve compliance, together with the nature of the violation, suggest that the proposed penalty be rescinded.

Accordingly, having reviewed the record and considered the assessment criteria, I do not assess Respondent a civil penalty.

/s/ Richard B. Felder

Richard B. Felder
Associate Administrator for
Pipeline Safety

Date Issued: _____10/20/98_____