

Mr. John Abboud
Senior Vice President
Operation and Engineering
Santa Fe Pacific Pipeline Partners, L.P.
888 South Figueroa Street
Los Angeles, CA 90017

RE: CPF No. 52510

Dear Mr. Abboud:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws one of the allegations of violation, makes findings of violation, and assesses a civil penalty of \$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))
))
Santa Fe Pacific Pipeline))
Partners, L.P.) CPF No. 52510
))
Respondent.))
_____))

FINAL ORDER

On April 23, 1992, 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 anti-drug program in Los Angeles, California. As a result of the inspection, the Director, Western Region, OPS, issued to Respondent, by letter dated August 4, 1992, 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 violated 49 C.F.R. §§ 199.7(a)(1)-(3) and 199.21 and proposed assessing a civil penalty of \$500 for the alleged violation of 49 C.F.R. § 199.7(a)(2)-(3) and \$5,000 for the alleged violation of 49 C.F.R. § 199.21. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated September 3, 1992 (Response). Respondent contested the allegations and requested a hearing that was held on December 4, 1992. After this hearing, Respondent provided additional information on December 14, 1992.

FINDINGS OF VIOLATION

Anti-Drug Procedures

The Notice alleged that Respondent violated 49 C.F.R. § 199.7(a)(1) for failing to include required procedures in its anti-drug plan. In particular, the following required procedures from 49 C.F.R. Part 40 were omitted:

1. Procedures regarding testing preparations, as described in § 40.23;

2. Procedures regarding specimen collection, as described in § 40.25;
3. Procedures for quality assurance and quality control, as described in § 40.31;
4. Procedures concerning reporting and review of drug testing results, as described in § 40.33;
5. Procedures concerning the confidentiality of employee's records, as described in § 40.35; and
6. Procedures concerning individual access to drug test records and laboratory certifications results, as described in § 40.37.

In its Response, Respondent did not deny that these items were missing from its anti-drug plan, and presented a revised anti-drug plan incorporating these elements. At the hearing, Respondent stated that while these materials were not in the plan, both the laboratory and the Medical Review Officer (MRO) were using procedures in accordance with the anti-drug regulations with respect to the Part 40 allegations. Respondent believes that having appropriate procedures with the laboratory and MRO would “do some good.” Response at page 1. Although the procedures were available to some of the persons the company charged with carrying out its program, the procedures were not contained in the anti-drug plan at the time of the inspection. Thus, company personnel charged with oversight responsibilities, internal and external auditors, and employees subject to the testing and their representatives had no access to these procedures.

In addition, the Notice also alleged that Respondent's anti-drug plan did not include the following procedures required by 49 C.F.R. Part 199:

1. Retention of drug testing samples and procedures for retesting, as described in § 199.17;
2. Training of supervisors through an Employee Assistance Program, as described in § 199.19(c); and
3. Recordkeeping, as described in § 199.23.

While Respondent did not deny that these elements were missing from its anti-drug plan, it asserted that it was complying with the regulations. Although Respondent was complying with the substantive aspect of the regulations described above, it did not include these elements in its anti-drug plan. The drug testing regulations in 49 C.F.R. Part 199 require that “[t]he plan

must contain . . . [m]ethods and procedures for compliance with all the requirements of this part, including the employee assistance program.” 49 C.F.R. § 199.7.

Accordingly, I find that Respondent violated 49 C.F.R. § 199.7(a)(1). Respondent has since revised its plan to include these elements.

Names and Addresses of laboratories and MRO's

The Notice also alleged that Respondent violated 49 C.F.R. § 199.7(a)(2) for failing to include in its anti-drug plan the name and address of the laboratory that analyzes its drug testing specimens, and 49 C.F.R. § 199.7(a)(3) for failing to include in its anti-drug plan the name and address of the MRO in its anti-drug plan.

In its Response, Respondent did not deny that this information was missing from its anti-drug plan at the time of the inspection. At the hearing, Respondent stated that while these items were not included in its plan, the names and addresses of the laboratory and MRO were included in a video, and contained in its files. The regulations require that these items be included in an operator’s anti-drug plan. Accordingly, I find Respondent in violation of 49 C.F.R. § 199.7(a)(2)-(3).

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

WITHDRAWAL OF ALLEGATION

The Notice [Item 3] alleged that Respondent violated 49 C.F.R § 199.21(a). Respondent proffered evidence that it had obtained certifications of compliance from its contractors and there is no evidence that any of its contractors were not in compliance. Therefore, this allegation of violation is withdrawn.

ASSESSMENT OF PENALTY

At the time the Notice was issued, under 49 U.S.C. § 60122, Respondent was subject to a civil penalty not to exceed \$10,000 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.

Failing to include procedures and other information in the anti-drug plan required by the drug testing regulations limits the operator's employees from gaining a complete understanding of the plan. Failing to have all the required information in the plan could also cause confusion in the application of the regulations or inadequate oversight.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$500.

Payment of the civil penalty **must be made within 20 days of service**. Payment can be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit 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 8405, 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 \$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.

COMPLIANCE ORDER

The Notice proposed a compliance order. Respondent has demonstrated corrective action addressing the items in the proposed compliance order. The Director, Western Region, OPS has accepted these measures as adequately fulfilling the requirements of the regulations and no further action is needed with respect to a compliance order.

Under 49 C.F.R. § 190.215, 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 Issued: 3/25/1997