

Mr. Leon Hutchens
President
Kaneb Pipe Line Operating Partnership, L.P.
100 N. Broadway, Suite 550
Wichita, KS 67203

Re: CPF No. 53509

Dear Mr. Hutchens:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$10,000, requires certain corrective action, and withdraws allegations of violation. 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)
)
)
Kaneb Pipe Line Operating) CPF No. 53509
Partnership, L.P.,)
)
Respondent.)
)

FINAL ORDER

On August 31 and September 17, 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 Wichita, Kansas, and Sinclair, Wyoming. As a result of the inspection, the Director, Western Region, OPS, issued to Respondent, by letter dated November 29, 1993, 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 195 and proposed assessing a civil penalty of \$23,000 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated December 22, 1993, in which Respondent contested the violations. Subsequently, by letter dated January 25, 1994, Respondent requested a hearing, which was held on February 25, 1994.

FINDINGS OF VIOLATION

Deficiencies in Operations, Maintenance and Emergency Manual --
Violation of 49 C.F.R. § 195.402(c)(3)

Under 49 C.F.R. § 195.402, each pipeline operator is required to prepare and follow a manual of written procedures for conducting normal operations and maintenance activities and for handling abnormal operations and emergencies. ("O&M Manual"). Written operating and maintenance procedures enhance public

safety by reducing the potential for a serious pipeline accident. Written emergency procedures assure that operators will take appropriate action in the event of an emergency and take steps to minimize any resulting damage.

Subsection 195.402(c)(3) requires that each O&M Manual include procedures for operating, maintaining, and repairing the pipeline system in accordance with each of the subparts of Part 195. Item 1 of the Notice alleged that Respondent had violated § 195.402(c)(3) by failing to establish required procedures as follows:

1. Failure to establish procedures for placement of line markers, corrosion control, placement of signs, security of facilities, and pipeline repair -- Item 1(c), (d)(3), (h), (i), & (j)(1)

These allegations charged that Respondent's O&M Manual lacked procedures for complying with the following sections of 49 C.F.R. Part 195:

§§ 195.410(a)(1) and 195.410(c) -- Placement of line markers [Item 1(c)];
 § 195.416 -- External corrosion control [Item 1(d)(3)]
 § 195.434 -- Placement of signs [Item 1(h)];
 § 195.436 -- Security of facilities [Item 1(i)]; and
 § 195.226 -- Safe repair of pipelines [Item 1(j)(1)].

Respondent has contested these allegations. Respondent has maintained that its O&M Manual satisfies the regulatory requirements because it references and incorporates 49 C.F.R. Part 195, stating "Part 195 is referenced and made part of our O&M Manual, all supervisory personnel are charged with the responsibility of being familiar with and understanding Part 195. [The subsection at issue] is well written and easily understood. We do not see the necessity of re-writing this particular section for inclusion in our O&M Manual." (Response at pp. 2, 3, & 4). In essence, Respondent has argued that § 195.402(c)(3) -- at least as it applies to these allegations -- requires only that the O&M Manual re-state the regulatory requirements.

Respondent's argument is flawed because it neglects to account for the how question. The argument assumes that because the O&M Manual tells Respondent's supervisory personnel that they must comply with the regulatory requirements, there is no need to tell them how to comply.

Respondent's argument is unpersuasive. The regulatory requirements are performance-based. Rather than telling operators what to do, the regulations tell them what level of safety to achieve. For example, § 195.410 requires operators to place and maintain line markers over buried pipelines. Subsection § 195.410(a)(1) states,

Markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known.

This language tells operators that their pipelines must be marked with a "sufficient number" of markers, but the regulation leaves it to the operator to determine what constitutes a sufficient number. The O&M Manual should provide supervisory personnel with additional detail. For example, the O&M Manual could require that markers be placed every "x" number of feet or require that a certain number of markers be placed along a line according to the type of area in which the pipeline is located.

There is tremendous variation between pipeline operators and between pipeline facilities. In order for one set of regulations to be comprehensive in scope, it would have to be quite lengthy and detailed. It would have to prescribe what operating, maintenance and emergency procedures are appropriate for all conceivable scenarios. The performance-based regulations reject this approach. They tell operators what level of safety must be achieved but do not spell out all of the steps necessary to get there. Thus, the pipeline safety regulations are not procedures that can be adopted "as is." Each operator should interpret the regulations as they apply to its facilities and establish its own procedures in its O&M Manual.

Therefore, mere incorporation of Part 195 into the O&M Manual does not satisfy the regulatory requirements. An operator may not comply with the regulations simply by restating them. An O&M Manual must establish in detail what operational, maintenance and emergency procedures a facility will follow in order to achieve the minimum safety requirements.

2. Failure to establish welding procedures beyond reference to Part 195 and an API publication -- Item 1(j)(2) & (3)

These allegations charged that Respondent's O&M Manual lacked welding procedures sufficient to satisfy 49 C.F.R. §§ 195.226

and 195.230. Respondent has contested these allegations on the grounds that its O&M Manual references both Part 195 and API Publication 1104 ("Welding of Pipelines and Related Facilities.") As discussed above, reference to Part 195 does not satisfy the regulatory requirements. For similar reasons, reference to both Part 195 and the API publication is insufficient.

The API publication sets forth industry standards for welding procedures. The publication is no substitute for an O&M Manual. While it provides guidance, the publication does not establish an operator's procedures -- that is the O&M Manual's role. The O&M Manual must describe in detail what welding procedures the operator will use in order to ensure that unacceptable welds are repaired or removed and that pipeline repairs are performed safely.

3. Failure to establish procedures for external corrosion control -- Item 1(d)(1) & (2)

These allegations charged that Respondent's O&M Manual lacked procedures for external corrosion control. Specifically, the Manual allegedly lacked procedures for (1) monitoring pipeline casings to determine whether they are electrically isolated from the carrier and the mitigating steps necessary if a casing is determined to be shorted, and (2) consideration of IR-drop to determine the true polarized potential of the pipeline.

Respondent has contested these allegations on the ground that it has engaged the services of an outside contractor to provide cathodic protection for its pipelines. Respondent has maintained that hiring a qualified contractor fulfills the regulatory requirements so that Respondent is not required to establish its own procedures for external corrosion control.

Respondent's interpretation of the regulations is incorrect. Contracting with an outside vendor does not exempt a pipeline operator from compliance with the pipeline safety regulations. While cathodic protection may be performed by a contractor, at a minimum, the operator must establish procedures that require its contractor to satisfy the requirements of 49 C.F.R. § 195.416.

4. Failure to establish procedures prohibiting the movement of pipeline absent precautionary measures -- Item 1(f)

This allegation charged that Respondent's O&M Manual lacked procedures for the safe movement of pipeline. Section 195.424 prohibits operators from moving pipeline unless certain safety

measures have been taken. Respondent contested this allegation on the grounds that it has not been required to move this line and it has no foreseeable need to do so.

Respondent is incorrect in its interpretation of the regulations. The regulatory provision not only establishes minimum requirements for the safe movement of pipeline but also prohibits pipeline movement absent compliance with this subpart. Even if Respondent does not anticipate moving its lines, its O&M Manual must nonetheless contain a prohibition on line movement unless the regulatory safety requirements have been satisfied.

5. Failure to establish procedures for the pressure testing of steel pipes -- Item 1(j)(4-7)

These allegations charged that Respondent's O&M Manual lacked procedures for the pressure testing of steel pipelines required by the following sections:

- § 195.302 -- testing of certain new or modified ("replaced, relocated, or otherwise changed") pipes;
- § 195.304 -- testing of components;
- § 195.306 -- test medium requirements; and
- § 195.308 -- testing of tie-ins.

Respondent contested these allegations on the grounds that it has not been necessary to make any modifications to its pipelines such that hydrostatic testing would be required. Thus, Respondent maintained, hydrostatic testing procedures are not required until and unless events occur that would require modification to the pipeline.

Events that would require pressure testing cannot always be anticipated. For example, should a rupture occur, the operator would be required to conduct pressure testing on the replacement pipe and its components. Each operator must have procedures for pressure testing sufficient to assure that the testing will be done safely and effectively. However, Respondent is correct that pressure testing procedures might never actually be used because pressure testing might never be required. An acceptable alternative would be a requirement in the operator's procedures that pressure testing procedures be developed before any pressure testing actually takes place.

Accordingly, I find that Respondent violated 49 C.F.R. § 402(c)(3) substantially as alleged in the Notice, Item 1 sections c, d(1-3), f, h, i, and j (1-3). I also find that Respondent violated this section by failing to have procedures

for conducting pressure testing or, alternatively, for requiring such procedures to be developed before pressure testing. This is a modification of the allegation of item 1(j) (4-7).

Valve Maintenance -- Violation of 49 C.F.R. § 195.420(b)

Item 8 of the Notice alleged that Respondent had violated 49 C.F.R. § 195.420(b) because, at the time of inspection, it could not demonstrate that it had conducted all required valve inspections. The regulation states, "Each operator shall, at intervals not exceeding 7 ½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly."

According to the Notice, there are three mainline valves on the Rawlins Diesel line: a valve immediately downstream of the Sinclair pump ("Sinclair valve"), a valve at the Pioneer tie-in ("Pioneer valve"), and a valve just upstream of the Union Pacific Meter ("Union Pacific valve"). Records supplied by Respondent at the inspection indicate that Respondent was in violation with respect to all three valves.

In its Response, Respondent submitted supplemental information documenting that it had completed inspections of the Sinclair valve and the Union Pacific valve. Respondent admitted, however, that it had failed to inspect the Pioneer valve. At the hearing, Respondent confirmed this information.

Therefore, I withdraw the alleged violation as it relates to the Sinclair and Union Pacific valves, and I find Respondent in violation of 49 C.F.R. § 195.420(b) for its failure to inspect the Pioneer valve.

WITHDRAWAL OF ALLEGATIONS

Operations, Maintenance and Emergency Manual -- Withdrawal of Alleged Violation of 49 C.F.R. § 195.402(c)(3) [in part]

1. Procedures for training of personnel and supervisors -- Item 1(a)

The Notice alleged that the O&M Manual lacked procedures for the training of personnel and supervisors as required by 49 C.F.R. § 195.403. In its Response, Respondent submitted information demonstrating that it is using the Williams Computer Based Training System to train pipeline employees and supervisors. At the hearing, Respondent agreed to make

reference to this system in its O&M Manual. Therefore, I withdraw this allegation of violation.

2. Procedures for maintaining records -- Item 1(b)

The Notice alleged that the O&M Manual lacked procedures for maintaining records as required by 49 C.F.R. § 195.404(c). In its Response, Respondent submitted copies of its written procedures as they apply to this requirement. Respondent also submitted a copy of its "Trunk Line Activity Report" form, which Respondent contends further satisfies the regulatory requirement. At the hearing, Respondent stated that it would incorporate the form into its O&M Manual. Therefore, I withdraw this allegation of violation.

3. Procedures for internal corrosion control -- Item 1(e)

The Notice alleged that the O&M Manual lacked procedures for internal corrosion control as required by 49 C.F.R. § 195.418. In its Response, Respondent stated that the corrosive effects of the diesel fuel that is run through the pipeline are minimal. In the absence of contrary evidence, I accept this declaration to be true. The provisions of § 195.418 apply only to the transportation of corrosive substances. Therefore, I withdraw this allegation of violation.

4. Procedures for the safe operation of scraper and sphere facilities -- Item 1(g)

This allegation charged that Respondent had violated 49 C.F.R. § 402(c)(3) because its O&M Manual lacked procedures requiring the use of pressure relief devices at scraper and sphere facilities as required by 49 C.F.R. § 195.426. In its Response, Respondent stated that it has not used its scraper traps since it purchased the line in 1991. The facilities are kept locked in order to prevent their accidental use. In the absence of contrary evidence, I accept this declaration to be true. Respondent stated that should it decide to use these facilities in the future, it would first prepare written procedures. Therefore, I withdraw this allegation of violation.

Designation of pipeline facilities located in immediate response areas -- Withdrawal of Alleged Violation of 49 C.F.R. § 402(c)(4)

Item 2 alleged that the O&M Manual lacked procedures for determining which pipeline facilities are located in areas that would require an immediate response by the operator to prevent

hazards to the public if the facilities failed or malfunctioned. In its Response, Respondent submitted copies of its procedures that relate to this provision. The pipeline facility transports number two fuel oil exclusively. Because the line does not present a high level of risk, it has not been included on the list of facilities that require immediate response. Therefore, I withdraw this allegation of violation.

Procedures for checking variations from normal operation after abnormal operation has ended -- Withdrawal of Alleged Violation of 49 C.F.R. § 402(c)(4)

Item 3 alleged that the O&M Manual lacked procedures for checking variations from normal operation after abnormal operation has ended at sufficient critical locations in the system. In its Response, Respondent submitted information demonstrating that it was in compliance with this provision at the time of the inspection. Therefore, I withdraw this allegation of violation.

Procedures for correcting variations from normal operations of pressure and flow equipment controls -- Withdrawal of Alleged Violation of 49 C.F.R. § 195.402(d)(3)

Item 4 alleged that the O&M Manual lacked procedures for correcting variations from normal operation of pressure and flow equipment and controls. In its Response, Respondent submitted information demonstrating that it was in compliance with this provision at the time of inspection. Therefore, I withdraw this allegation of violation.

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.

The Notice proposed assessing a civil penalty of \$23,000. This

penalty amount should be reduced in light of the fact that seven of the Notice's alleged violations have been withdrawn and two of the counts of alleged violation in item 8 have also been withdrawn.

In assessing the penalty amount, it is proper to consider a previous warning that Respondent received regarding its O&M Manual. In a warning letter dated June 5, 1989, the Western Regional Director, OPS, cited deficiencies in the O&M Manual. Specifically, the Director pointed out that recitation of the regulations in the O&M Manual does not satisfy the regulatory requirements and warned Respondent to make necessary amendments. Apparently, Respondent ignored this warning as, at the time of the 1993 inspection, its O&M Manual still suffered from these deficiencies.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000. I find that Respondent has the ability to pay the penalty and that payment will not impact Respondent's ability to continue in 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.** 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 8507, 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 \$10,000 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 United States District Court.

COMPLIANCE ORDER

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids 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 hereby ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations.

1. Establish procedures providing for the placement of line markers as required by 49 C.F.R. § 195.410(a)(1) & (c).
2. Establish procedures as required by 49 C.F.R. § 195.416(a) with regards to shorted casings --
 - a. for the monitoring of casing potentials to detect the presence of shorts, with monitoring to take place at least once each calendar year at intervals not exceeding 15 months;
 - b. for the determination of a course of action to correct or negate the effects of casing shorts within six months of the discovery;
 - c. for verifying that a casing short exists;
 - d. for clearing the short, if practical (clearing must be considered before alternative measures may be used);
 - e. if clearing the short is impractical, for filling the casing/pipe interstice with high-dielectric casing filler or other material that provides a corrosion-inhibiting environment;
 - f. if filling the interstice is impractical, for monitoring the casing with leak detection equipment for leakage at least twice each calendar year but at intervals not to exceed 7 ½ months;
 - g. providing that if a leak is found by monitoring casings with leak detection equipment, immediate corrective action to eliminate the leak and further corrosion will take place; and

- h. providing that in lieu of other corrective actions, the condition of the carrier pipe will be monitored by using an internal inspection device at specified intervals.
3. Establish procedures prohibiting the movement of pipe unless the line pressure is first lowered as required by 49 C.F.R. 195.424.
 4. Establish procedures for marking pump stations and breakout tank areas with signs as required by 49 C.F.R. § 195.434.
 5. Establish procedures for the security of facilities as required by 49 C.F.R. § 195.436.
 6. Establish procedures for the safe repair or replacement of pipeline facilities as required by § 195.422, specifically--
 - a. procedures prohibiting the welding of a ground to a pipe or fitting that is being welded, as required by 49 C.F.R. § 195.226(c);
 - b. procedures for the repair or removal of defective welds, as required by 49 C.F.R. § 195.230; and
 - c. procedures for the nondestructive testing of welds, as required by 49 C.F.R. § 195.234;
 7. Establish procedures to require that, before the conduct of any pressure testing required in operations and maintenance, the following procedures are developed:
 - a. procedures for the hydrostatic testing of pipe that has been relocated or replaced, as required by § 195.302;
 - b. the hydrostatic testing of components, as required by 49 C.F.R. § 195.304;
 - c. the use of the correct test medium, as required by 49 C.F.R. § 195.306; and
 - d. the testing of tie-ins as required by 49 C.F.R. § 195.308.

8. When appropriate procedures have been prepared, submit copies to --

Director, Western Region
 Office of Pipeline Safety
 Research and Special Programs Administration
 12600 W. Colfax Avenue, Suite A250
 Lakewood, CO 80215

9. The above items shall be accomplished within 30 days following receipt of the Final Order. The Regional Director may grant an extension of time upon receipt of a written request stating the reasons therefor, for completion of any of the actions required herein.

WARNING ITEMS

The Notice did not propose a penalty with respect to items 5, 6, and 7. Therefore, Respondent is warned that should it not take appropriate corrective action and a violation come to the attention of OPS in a subsequent inspection, enforcement action will be taken.

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 the 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.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$25,000 per violation per day, or in the referral of the case for judicial enforcement.

/s/ Richard B. Felder

Richard B. Felder
 Associate Administrator for
 Pipeline Safety

Date Issued: _____02/26/98_____

