

US Department of Transportation

**Research and
Special Programs**

Administration

Office of the Chief Counsel
400 Seventh St S W Washington DC 20590

Mr. William F. Ryan
Chairman of the Board
President and Chief Executive Officer
South Jersey Gas Company
Number One South Plaza
Route 54
Folsom, NJ 08037

Re: CPF No.15001

Dear Mr. Ryan:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$5,000. 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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

cc: Edward J. Tonielli
Vice President, Operations

I.

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

In the Matter of)
)
South Jersey Gas Pipeline Co.,)
)
Respondent)

CPF No. 15001

FINAL ORDER

On January 24, 1994, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OP S), initiated an investigation of Respondent's report of an incident involving its pipeline system. As a result of the investigation, the Director, Eastern Region, OPS, issued to Respondent, by letter dated January 25, 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 had violated 49 C.F.R. § 191.5(a), and proposed assessing a civil penalty of \$5,000 for the alleged violation.

Respondent responded to the Notice by letter dated February 22, 1995 (Response). Respondent contested the allegation, offered information to explain the allegation, and requested that the proposed civil penalty be withdrawn. Respondent has not requested a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

According to Respondent's telephonic report, the incident occurred on January 23, 1994 at approximately 2:32 p.m. in Glassboro, New Jersey. The incident consisted of a house explosion which resulted in one person requiring in-patient hospitalization and the evacuation of two nearby homes. Respondent contacted the National Response Center (NRC) on January 24, 1994 at 9:50 a.m. approximately 19 hours after discovery of the incident. The Notice alleged this incident met the reporting criteria established in 49 C.F.R. § 191.3. 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.

Respondent contested the allegation, arguing that the cause of the incident was not immediately known. Respondent, however, provided a vaguely worded response which failed to describe the specific action it took in attempting to "accumulate the essential information to determine if an incident had occurred. . ." (Response, page 1). In other words, Respondent failed to explain why the delay in reporting lasted for 19 hours. In addition, rather than providing a specific time that the gas leak was discovered, Respondent merely explained: "When it was determined that there was a gas leak, it was well into the night." (Letter to Board of Regulatory Commissioners dated February 4, 1994).

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. In these instances, it is important that telephonic notice be given promptly so that OPS and local authorities are made aware of the incident, even if the cause has not been determined. It is crucial that information of this nature be disseminated immediately so that OPS and local officials may respond in an appropriate manner and in a timely fashion.

In this case, Respondent's abrupt explanation for its delay in reporting is unconvincing. Accordingly, I hereby find that Respondent violated 49 C.F.R. 191.5(a) by failing to telephonically report the incident of January 23, 1994 at the earliest practicable moment following discovery. This finding of violation will be considered a prior offense 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.

49 U.S.C. § 60122 and 49 U.S.C. § 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 \$5,000. It should first be noted that Respondent has previously been held liable by OPS for violating 49 C.F.R. § 191.5. In a final order issued on March 5, 1991 (CPF No.1108), it was held that Respondent delayed notifying OPS for three days after an incident occurred in which a sub-contractor required in-patient hospitalization. In that case, Respondent argued that it was unable to confirm the hospitalization until the day that the incident was reported.

The circumstances surrounding this violation indicate that Respondent clearly should have identified the incident as significant based upon the personal injury that resulted. In its Response, Respondent argued, among other things, that no harm was done given the notification on January 25, 1994. To the contrary, OPS and local officials were precluded from participating in the investigation as it occurred because Respondent did not contact the National Response Center until 19 hours after the incident. As a result, OPS and local officials were prevented from making a determination as to whether an on-scene investigation was necessary. By the time they were informed of the incident the investigation was complete.

Respondent also argued in its Response that it did not intend to withhold information. There is no reason to doubt Respondent's characterization of its intent; however, the degree of Respondent's culpability is measured by whether the violation could have been avoided with due diligence, not by Respondent's intent. In this case, it appears that the violation could have been avoided. Accordingly, having reviewed the record and considered the assessment criteria and Respondent's prior noncompliance, I assess Respondent a civil penalty of \$ 5,000.

Payment of the civil penalty must be made within 20 days of service. Federal regulation (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 8405, U.S. Department of Transportation, 400 Seventh St., 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-3 20), P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.**

Failure to pay the \$5,000 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 an United States District Court.

Under 49 U.S.C. § 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: MAY 9, 1997