

Mr. Charles Rankin
Vice President, Operations
Equitable Resources
420 Boulevard of the Allies
Pittsburgh, Pennsylvania 15219

Re: CPF No. 18007

Dear Mr. Rankin:

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. This enforcement action closes automatically upon payment. Your receipt of this 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 ON TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of)
)
Equitable Resources,)
)
Respondent.)
_____)

CPF No. 18007

FINAL ORDER

On September 8, 1998, the Eastern Region, Office of Pipeline Safety (OPS), was notified by Telephonic Report from the National Response Center (NRC) of a natural gas incident in McKeesport, Pennsylvania, Allegheny County, involving Equitable Gas Company's (Equitable) facilities. As a result of the report and the subsequent investigation by a representative of the Commonwealth of Pennsylvania Public Utility Commission (PAPUC), pursuant to 49 U.S.C. § 60117, as agent for the Office of Pipeline Safety (OPS), the Director, Eastern Region, OPS, issued to Respondent, by letter dated September 16, 1998, 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 October 2, 1998 (Response). Respondent contested the allegation and requested a hearing. By agreement of the parties, a hearing was held via telephone conference on January 6, 1999. A representative from the PAPUC also participated in the telephone conference. After this hearing, Respondent and the PAPUC representative provided additional information on January 21, 1999 and January 7, 1999, respectively.

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. § 191.5(a). This provision requires that an operator, at the earliest practicable moment, give notice of each incident as defined in § 191.3. The Notice specifically alleged that Respondent failed to provide incident notification at the earliest practicable moment following discovery of the incident. Respondent provided notification fourteen (14) hours after the occurrence of the incident.

In its Response, Respondent stated that this incident was not reportable “until it was confirmed that a fatality had occurred and that the release of natural gas was involved.” (Response, p.2) Respondent added that the fire occurred during a severe storm and the fire authorities initially thought the cause of the fire may have been a lightning strike. Id. Furthermore, Respondent stated that

[d]ue to the intensity of the fire, utility crews could not get close to the area other than to shut off gas and electric service to the affected locations. It was not until the following day that Equitable . . . discovered the damage to the natural gas service line. Furthermore, it was not until the following day that the authorities confirmed that one fatality had occurred.

Id.

Section 191.5 requires that telephonic notice be provided at "the earliest practicable moment following discovery." The question that Respondent raises here is similar to that raised in In the Matter of Enstar Natural Gas Company (Enstar), CPF No. 52016 (May 14, 1997). Enstar, like Respondent, focused on the meaning of the word "discovery," since that is the word that triggers the notice requirement. (Enstar, p.2) In Enstar, the order pointed out that "[d]iscovery could either mean discovery of the *cause* of the incident or discovery of the *incident* itself." Id. (Emphasis in original) Furthermore, the order set forth that "[i]f the regulation were read to mean at the earliest moment following discovery of the *cause* of the incident, the operator would never be required to report an incident until the cause of the incident was definitively determined." Id.

In this case, the cause of the incident was the release of gas which exploded and resulted in the destruction of two homes and in one death. Respondent did not need to definitely determine that the cause was a release of gas before reporting the incident. It should have been apparent, very early into the incident, that an explosion occurred at the location of a gas customer, and the subsequent fire easily caused over \$50,000 in property damage. Those facts alone should have put Respondent on notice to promptly report the incident. Furthermore, Respondent notified the PAPUC at around 7:52 p.m. on September 7th of the explosion. Respondent must have suspected that gas was involved since it called the PAPUC. Coupled with the fact that at approximately 10:23 p.m., Respondent’s crew found damage to the service line leading to the home that exploded, and the knowledge, at 1:10 am on September 8th, that there was absolute confirmation of a fatality, the facts in this case provide sufficient justification, and in fact necessity, for the filing of a telephonic report well before 8:41 a.m. on September 8th.

Although the cause of the incident may not always be apparent, OPS has stressed that telephonic notice can and should be made where it appears that gas was involved, or there is a strong likelihood that gas was involved, and where at least one of the criteria indicated in § 191.3 (i.e., death, injury requiring hospitalization, or \$50,000 in damages) is present. OPS has always encouraged operators to report accidents even if at the time the report is transmitted the operator

is not certain that the accident is a reportable one. OPS realizes this policy results in the receipt of a number of non-reportable accidents. 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 a non-reportable accident, the operator should contact OPS and retract its incident report.

This reporting procedure assures operators will meet the DOT standard of "the earliest practicable moment following discovery." As early as 1971, and most recently in the Alert Notice issued on April 5, 1991, the standard has been defined as being, in most cases, one to two hours following discovery of the incident.

None of the facts presented justify Respondent's delay in reporting. Accordingly, I hereby find that Respondent violated 49 C.F.R. § 191.5 by failing to telephonically report the incident of September 7, 1998, 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. The Notice proposed a civil penalty of \$5,000.

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 is a natural gas pipeline operator. The circumstances in this case strongly indicate that Respondent should have reported this incident many hours prior to the time it did so. Accordingly, having reviewed the record and considered the assessment criteria, I assess a civil penalty of \$5,000.

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 8407, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590-0001.

Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, 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 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. If you pay the penalty, the case closes automatically and you waive the right to petition for reconsideration. The filing of the petition automatically stays the payment of any civil penalty assessed. 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 terms and conditions of this Final Order are effective upon receipt.

Stacey Gerard
Associate Administrator
for Pipeline Safety

Date Issued