DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

In the Matter of Columbia Gas Transmission Company, Respondent.	)	CPF No. 1-2000-1002

FINAL ORDER

Between the dates of August 16 and November 5, 1999, and during June 2000, pursuant to 49 U.S.C § 60117, representatives of the Eastern and Central Regions, Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in portions of the OPS Eastern Region and Ohio sections of Respondent's pipeline system. As a result of the inspection, the Director, Eastern Region, OPS, issued to Respondent, by letter dated August 25, 2000, a Notice of Probable Violation, Proposed Civil Penalty and Warning (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 192 and proposed assessing a civil penalty of $200,000 for the alleged violations. The Notice also warned Respondent to take appropriate corrective action.

Respondent responded to the Notice by letter dated September 22, 2000 (Response). Respondent contested the allegations in Items 2 and 3 of the Notice and requested mitigation of the proposed civil penalties for Items 1, 2 and 3 of the Notice. Respondent also requested a hearing that was held on November 7, 2000.

FINDINGS OF VIOLATION

In its written responses and at the hearing, Respondent presented evidence which challenged two of the alleged violations set forth in the Notice of Probable Violation as well as evidence that related to actions taken by the Respondent after the inspections had occurred. As a general matter, evidence is only considered relevant to determining whether a violation occurred if it relates to activities that occurred or conditions that were present on or before the date of the inspection. Evidence that relates to activities that occurred after the inspection is not relevant to determining whether a violation occurred.

Uncontested Violations

Respondent did not contest Items 1, 4, 5 or 6 of the Notice. Therefore, pursuant to §190.209(a)(1) and 49 U.S.C. §60122, I hereby find that Respondent violated the following sections of 49 C.F.R. Part 192, as described more completely in the Notice:

49 C.F.R. § 192.751(a) -- failing to remove each potential source of ignition from an area

where a hazardous amount of gas was being vented into open air;

49 C.F.R. § 192.616 -- failing to establish an education program to assist officials in Fauquier and Culpepper counties of Virginia to recognize and report gas pipeline emergencies;

49 C.F.R. § 192.707(d) -- failing to maintain a current telephone number on numerous pipeline markers in Rutledge, Maryland, in Hallertown, Pennsylvania, and in Middle Valley and Hanover, New Jersey;

49 C.F.R. § 192.477 -- failing to check internal corrosion coupons at thirteen locations between 1996 and 1999, at intervals not exceeding 7.5 months.

Contested Violation

Respondent presented evidence in its written response and at the hearing for the purpose of contesting Item 3 of the Notice. The Notice alleges that Respondent violated 49 C.F.R. § 192.731(c) by failing to test each emergency remote control shutdown device during periodic emergency system testing in Downington, Pennsylvania. Specifically, Respondent was alleged to have violated the regulation by failing to test individual devices. Pipeline safety regulations require that operators perform such tests at intervals not exceeding 15 months, but at least once each calender year. The regulations also require that operators maintain records of such tests for a period of at least 5 years or until the next test is completed, whichever is longer, 49 C.F.R. § 192.709(c).

Where the regulations require that operators keep records of specific required activities, the absence of such records is evidence that the operator has failed to perform the required activities. Respondent argues that, although it failed to maintain records that would indicate whether testing of each shutdown device had occurred, it did perform the required tests. In this regard, Respondent presented a affidavit from Herbert P. Myers (Respondent's Exhibit 3), the Compressor Engineer in charge at the Downington Compressor Station in Downington, Pennsylvania "during the calender [sic] year."[1] In his statement, Mr. Myers states that he "supervised the inspection and testing of each individual ESD system trigger (trip) valve or device at [Downington Compressor Station]." Mr. Myers goes on to state that "[e]ach such valve or device was determined to be in proper working order." Mr. Myers statement does not list the valves or devices that were tested or the dates of those tests. Even the year is not specified. Respondent has not offered any other evidence to support the affidavit. Since the statement does not list the individual shutdown devices covered by Mr. Myers' claim, it is unclear whether Mr. Myers was aware of every valve or device that required testing. It is possible that there were

[1] It is unclear from the affidavit exactly what calendar year is being referred to; however, for the sake of argument I will assume that it was a calendar year which covered the inspection and testing period addressed in the Notice.

some devices, unknown to Mr. Myers, that were not tested. In addition, since the statement does not indicate the dates of testing, it is unclear whether the required time intervals for testing were met. Again, it is possible that Mr. Myers' recollection of time frames and events may be incomplete or blurred with other tests that he has undoubtably supervised during his career with Respondent. A sworn statement from a supervisor that makes a blanket claim that inspections and tests were performed but provides no more detail as to which devices were tested, the dates of those tests, reasons why records might be missing or other tangible evidence to support the claim, is not sufficient to counter the lack of records and convince one that the tests were in fact performed. Therefore, I find that respondent violated 49 C.F.R. § 192.731(c), by failing to test individual shut off valves.

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

WITHDRAWAL OF ALLEGATION

Item 2 of the Notice alleged violation of 49 C.F.R. § 192.16(b) for Respondent's failure to notify its customer Allied Chemical, regarding the cathodic protection of the customer's service line by August 14, 1996. The regulation requires that operators retain evidence that a notice has been sent to its customers for a period of three years after such notices are sent.

Respondent concedes that it does not have evidence that a notice was sent to Allied Chemical prior to August 14, 1996; however, Respondent argues that the notice was sent prior to August 14, 1996, and that at the time of inspection on August 16, 1999, the three year record keeping period had expired. Since the record keeping period had lapsed, the mere absence of records is not sufficient evidence that the Respondent has failed to perform its responsibility under the regulations.

At the hearing, OPS inspectors testified that during the inspection of Respondent's facilities they reviewed photocopies of letters that served as evidence that Respondent had sent a Cathodic Protection Notice to its customers pursuant to the regulation. OPS inspectors further testified that they did not locate any letter to Allied Chemical among the letters they reviewed. However, OPS inspectors could not recall the dates on the letters they reviewed and could not be certain if they had been sent during the same time period that Respondent claimed it had sent the Allied Chemical notice. In rebuttal, Respondent submitted the affidavit of Barry Lowery who worked as a Manager in Respondent's Agreement Administration Section (Respondent's Exhibit 1) and a copy of a memo dated January 12, 1996 [2] (Respondent's Exhibit 2). The memo informs its recipients about the customer notification requirements set forth in 49 C.F.R. § 192.16. In addition, Mr. Lowery states in his affidavit that the Cathodic Protection Notice was sent to

[2] The memo was sent to nine persons and copied to a tenth, who are identified only by their first two initials and their last name. The memo was not published on Respondent's letterhead and does not identify the title or position of the sender or any of the recipients.

approximately 50 customers, including Allied Signal Corporation "sometime prior to December, 1996...." While it is not entirely clear whether Allied Chemical and Allied Signal Corporation are the same entity, nor is it conclusive that a notice was sent to Allied Chemical prior to August 14, 1996, I find that there is insufficient evidence to conclude that no notice was sent. Accordingly, I withdraw Item 2 of the Notice.

WARNING ITEMS

The Notice did not propose any penalty with respect to Items 7 through 12 (Warning Items) of the Notice; therefore, Respondent is warned that should it not take appropriate corrective action and should a violation come to the attention of OPS in a subsequent inspection, enforcement action will be taken.

The Warning Items were not discussed at the hearing. At the end of the hearing, Respondent was offered the opportunity to respond to the Warning Items in a supplemental brief. Respondent submitted a supplemental brief on December 1, 2000, wherein it contested some of the Warning Items. Since no Findings of Violation are made with respect to Warning Items, there is no need to resolve the disputes raised in Respondent's supplemental brief; however, Respondent's argument with respect to one of the Warning Items raises concerns that Respondent may not be properly interpreting the underlying regulation. For the purpose of clarifying the requirements set forth in the regulation, I have discussed the issues raised in the Notice and Respondent's supplemental brief below.

Protection from Hazards. Respondent addressed Item 9 of the Notice. Item 9 warned Respondent that it must protect its pipeline in Moorefield, West Virginia, from accidental damage caused by farm equipment, pursuant to 49 C.F.R. § 192.317. The regulation requires that operators protect their above ground transmission lines or mains from possible damage caused by "vehicular traffic or other similar causes". Operators are required to provide such protection by locating their facilities a safe distance from the traffic or by installing barricades.

Respondent argues in its supplemental brief that this regulation is exclusively concerned with "vehicular traffic on public roadways" (Response letter of December 1, 2000, p.2). It further argues that an above-ground portion of a pipeline located in an agricultural field is not required by the regulation to be protected from farm vehicles or other equipment that might be operated in the vicinity of the pipeline. According to Respondent, so long as such a pipeline is located a considerable distance from the nearest road it does not require any further protection.

Respondent's argument fails because the plain language of the regulation clearly indicates that the regulation is not exclusively concerned with vehicular traffic on public roadways. If, as Respondent posits, the regulation had been exclusively concerned with vehicular traffic on public roadways, it would not have been written with the words "or other similar causes....", 49 C.F.R. § 192.317(b). The clear intent of the regulation is to prevent injury to property, loss of life, or damage to the environment that might occur if a vehicle or any other similar machine were to

accidentally damage a pipeline facility. One of the more obvious examples of a similar cause is the damage that may occur when a tractor or other farm vehicle collides with the aboveground portion of a pipeline located in an agricultural field. When a pipeline operator has an aboveground facility in an agricultural field, it is required by the regulation to protect that facility not only from vehicular traffic on nearby public roadways, but also from farm vehicles or other equipment which may be operated in that field.

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, good faith by Respondent in attempting to achieve compliance, Respondent's ability to pay the penalty, the effect of the penalty on Respondent's ability to continue in business, and such other matters as justice may require.

The Notice proposed a civil penalty of $10,000 for Item 1, violation of 49 C.F.R. § 192.751(a). Respondent argues that this penalty should be reduced because not even continuous testing for gas could have prevented the explosion. However, Respondent admits that, after testing for gas accumulation, its employees left the work site for a period of time before returning to use the electrical impact wrench that caused the explosion. Two of Respondent's maintenance workers were injured in this explosion. Therefore, because it appears that testing immediately before the use of the electrical impact wrench could have prevented the explosion, Respondent's argument must fail. Accordingly, having reviewed the record and considered the assessment criteria, I find that the proposed penalty is proper. Therefore, pursuant to §190.225 and 49 U.S.C. §60122, I hereby assess Respondent a civil penalty in the amount of $10,000 for failure to remove each potential source of ignition from an area where a hazardous amount of gas was being vented into open air.

The Notice proposed a civil penalty of $5,000 for Item 3, violation of 49 C.F.R. § 192.731(c). Although this violation did not result in any injuries or property damage, the failure to properly test emergency valves and devices may result in the failure of those valves and devices during an emergency. Such a valve or device failure could have severe consequences to life, property or the environment. Respondent argues that it actually performed the test but that its form did not contain a space to record the results of the requisite tests. Respondent further argues that the penalty should be mitigated because, following the inspection, it modified its form. However, OPS presented evidence at the hearing that some of Respondent's facilities were still using the old, inadequate form. In addition, Respondent has a prior history of violations related to the timely and proper testing of compressor stations under 49 C.F.R. § 192.731(a) and external

corrosion control under 49 C.F.R. § 192.465(a). Accordingly, having reviewed the record and considered the assessment criteria, I find that the proposed penalty is proper. Therefore, pursuant to §190.225 and 49 U.S.C. §60122, I hereby assess Respondent a civil penalty in the amount of $5,000 for failure to test individual shut off valves.

With respect to Items 4, 5, and 6 of the Notice, Respondent did not contest the allegations or present any evidence that would lessen the gravity of these violations. Accordingly, I assess civil penalties in the amount of $10,000, $8,000 and $165,000 for Items 4, 5, and 6, respectively.

Summary of Civil Penalties:

49 C.F.R. § 192.751(a)	$ 10,000
49 C.F.R. § 192.731(c)	$ 5,000
49 C.F.R. § 192.616	$ 10,000
49 C.F.R. § 192.707(d)	$ 8,000
49 C.F.R. § 192.477	$ 165,000
TOTAL PENALTY:	**$ 198,000**

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 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 $198,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 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. 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.

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Stacey Gerard
Associate Administrator
for Pipeline Safety

Date Issued

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