

Mr. Larry Ratliff, P.E.
Vice President, Engineering and Technical Services
Public Service Company of New Mexico (formerly Gas Company of New Mexico)
414 Silver Avenue, S.W.
Alvarado Square
Albuquerque, New Mexico 87158-0606

Re: CPF No. 44003

Dear Mr. Ratliff:

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 in the amount 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

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)	
)	
Public Service Company of New Mexico,)	CPF 44003
)	
Respondent.)	
)	
)	

FINAL ORDER

Pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted a review of a September 25, 1994 incident in which a natural gas release resulted in an injury requiring hospitalization. As a result of the review, the Director, Southwest Region, OPS, issued to Respondent, by letter dated November 18, 1994, 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 committed a violation of 49 C.F.R. § 191.5, and proposed assessing a civil penalty of \$5,000 for the alleged violation.

Respondent responded to the Notice by letter dated December 6, 1994 (Response). Respondent did not contest the alleged violation of 49 C.F.R. § 191.5, but requested mitigation of the proposed civil penalty. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

The incident occurred while an individual was welding a cap on a 16-inch transmission main located at Coors Bypass and 7 Bar Loop near the Cottonwood Mall in Albuquerque, New Mexico. During this procedure, gas accidentally escaped from a valve and ignited, resulting in a flash fire. As a result, a worker was injured and required in-patient hospitalization. The Notice alleged this incident met the reporting criteria in 49 C.F.R. § 191.3, but was not reported telephonically to the National Response Center (NRC) until September 26, 1994 at 3:26 p.m. (EST), approximately 30 hours after the incident occurred.¹ The Notice alleged a violation of 49 C.F.R. § 191.5, based on Respondent's failure to provide the NRC with telephonic notice of the incident "at the earliest practicable moment following discovery."

¹ The Notice incorrectly indicated that there was a 16 hour delay in reporting.

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
- (i) A death, or personal injury necessitating in-patient hospitalization; . . .

An Alert Notice issued by the Department of Transportation on April 5, 1991, stated the policy of OPS, which is that incidents meeting the telephonic reporting criteria can and should be made within one to two hours following discovery of an incident. OPS encourages pipeline operators to report accidents to the National Response Center at the earliest practicable moment, even if at the time the report is transmitted the operator is not certain that the accident is a reportable incident. This policy ensures pipeline accident reports are transmitted at the earliest practicable moment following discovery, thus avoiding lengthy delays in the transfer of information.

OPS realizes this policy results in the NRC receiving numerous reports of accidents that are not required to be reported. 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 not required to be reported, the operator should forward a written notification retracting its report to the OPS Information Resources Manager at DOT/RSPA/OPS, Room 2335, 400 Seventh Street, S.W., Washington, DC 20590. Of course, in cases where the failure does not necessitate the filing of a report, the operator may nonetheless deem the event significant and elect to leave the report on record.

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 this case, Respondent did not allege that it provided telephonic notice in a timely fashion. Rather, Respondent asserted that there was a "breakdown in GCNM's internal communications" which resulted in a supervisor failing to file a telephonic report. (Response, p.2). More specifically, Respondent provided the following explanation:

On Sunday, September 25, 1994, the supervisor whom the on-site inspector asked the Dispatch Center to contact was not the "on call" supervisor. Since the

supervisor contacted was not “on call”, he assumed that the “on call” supervisor had been contacted and that he had made the necessary calls. (Response, p.1).

While this statement explains what occurred, it does not negate the violation.

Respondent also stated in its Response that the workers did not know whether the injured individual would remain hospitalized overnight. However, Respondent should have been aware of the requirements of 49 C.F.R. § 191.5, and thus investigated further to determine whether an overnight stay was likely. If an overnight stay was likely, and it apparently was, Respondent should have promptly reported the incident. Instead, Respondent did not report the incident until more than one day after the incident occurred.

Accordingly, I find that Respondent violated 49 C.F.R. 191.5 by failing to telephonically report the incident of September 25, 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 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 \$5,000. Following this incident, Respondent retrained its employees in telephonic reporting responsibilities, and in light of this action, requested that the civil penalty be withdrawn. (Response, p. 2). Waiving the civil penalty in this case, in recognition of the training, would not be an “appropriate alternative”, as Respondent has proposed. This option is not appropriate because Respondent merely fulfilled its duty as a pipeline operator to train its personnel to respond to “incidents.” Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty in the amount of \$5,000. I find Respondent has the ability to pay the assessed civil penalty and such a penalty will not effect Respondent's ability to continue in business.

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 \$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.

/s/ Richard B. Felder
Richard B. Felder
Associate Administrator
For Pipeline Safety

Date Issued: 03/02/98

