



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

APR 19 2006

Mr. H. T. Pettigrew
Vice President, Operations
Black Hills Operating Company, LLC
518 Cox Dairy Road
Longview, Texas 75604

Re: CPF No. 4-2005-5027

Dear Mr. Pettigrew:

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 \$11,300, and specifies actions to be taken to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

_____)
In the Matter of)

Black Hills Operating Company, LLC,)

Respondent)
_____)

CPF No. 4-2005-5027

FINAL ORDER

On March 29–31, 2005, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration’s Office of Pipeline Safety (PHMSA) and the Railroad Commission of Texas conducted an on-site pipeline safety inspection of Respondent’s Operator Qualification (OQ) records and procedures in Longview, Texas. As a result of the inspection, the Director, Southwest Region, PHMSA, issued to Respondent, by letter dated July 12, 2005, 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 \$11,300 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Respondent responded to the Notice by letters dated July 27 and September 1, 2005 (Response). Respondent contested several of the allegations, offered information to explain the allegations, and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing, and therefore has waived its right to one.

FINDINGS OF VIOLATION

Item 2A in the Notice alleged Respondent violated 49 C.F.R. §§ 195.505 and 195.509(c) by failing to ensure through evaluation that 7 individuals performing covered tasks were qualified. The Notice alleged that Respondent used work performance history reviews as the sole evaluation method for those individuals (29 instances) even though the individuals had not performed the covered tasks for Respondent prior to October 26, 1999. Section 195.505 requires Respondent to have and follow a written qualification program to ensure through evaluation that individuals performing covered tasks are qualified. Section 195.509(c) states that work performance history review may be used as a sole evaluation method only for individuals who were performing a covered task prior to October 26, 1999. In its Response, Respondent stated that when it took over operations of the pipeline on March 1, 2002, the identified individuals had

been performing covered tasks for the former operators of the pipeline. Respondent submitted training records of the former operators to support Respondent's contention that the individuals had been performing the covered tasks prior to October 26, 1999. Training records, however, do not satisfactorily demonstrate that the individuals had been evaluated to determine their ability to perform covered tasks. Moreover, Respondent had not established and documented a written process for accepting former operators' training records for qualification purposes. Accordingly, I find Respondent violated §§ 195.505 and 195.509(c) as alleged in Item 2A of the Notice.

Item 2B in the Notice alleged Respondent violated 49 C.F.R. §§ 195.505 and 195.509(d) by failing to ensure through evaluation that two individuals hired since January 2004 were qualified to perform covered tasks. The Notice alleged that Respondent qualified the two individuals to perform covered tasks using work performance history reviews as the sole method. Section 195.509(d) states that work performance history may not be used as a sole evaluation method after October 28, 2002. In its Response, Respondent stated that the two individuals were qualified to perform covered tasks based on work history and training records provided by the former pipeline operators. Training records, however, do not satisfactorily demonstrate that the individuals had been evaluated to determine their ability to perform covered tasks. Moreover, Respondent had not established and documented a written process for accepting former operators' training records for qualification purposes. Accordingly, I find Respondent violated §§ 195.505 and 195.509(d) as alleged in Item 2B of the Notice.

Item 3 in the Notice alleged Respondent violated 49 C.F.R. § 195.505 by failing to ensure through evaluation that several individuals performing covered tasks could recognize and react to abnormal operating conditions (AOCs). The Notice alleged that Respondent's records showed the two employees hired since January 2004 were qualified without receiving AOC training or orientation. Additionally, Respondent's records showed that a contractor was qualified without completing AOC training. In its Response, Respondent did not challenge the allegation in regard to the contractor. In regard to the two employees, however, Respondent stated that they were qualified to perform covered tasks based on work history and training records provided by the former pipeline operators. Respondent submitted training records, including AOC training records. Training records, however, do not satisfactorily demonstrate the individuals had been evaluated to determine whether they can recognize and react to AOCs. Moreover, Respondent had not established and documented a written process for accepting former operators' training records for qualification purposes. Accordingly, I find Respondent violated § 195.505 as alleged in Item 3 of the Notice.

These findings of violation will be considered prior offenses 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 \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations. The Notice proposed a total civil penalty of \$11,300 for the 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.

Items 2A and 2B in the Notice proposed civil penalties of \$5,800 and \$4,000 respectively, for failing to ensure through evaluation that individuals performing covered tasks were qualified. Respondent improperly qualified several individuals by using work history as the sole evaluation method. Respondent stated that it had examined extensive training records for the individuals; however, the training records were inadequate to demonstrate evaluation of the individual's ability to perform covered tasks and Respondent had not established and documented a process for accepting former operator's training records for qualification purposes. Failure to properly evaluate individuals performing tasks that affect the operation and integrity of a pipeline may lead to human error that causes a pipeline failure. Having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$9,800 for these violations.

Item 3 in the Notice proposed a civil penalty of \$1,500 for failing to ensure through evaluation that two employees and one contractor performing covered tasks could recognize and react to abnormal operating conditions. Respondent stated that it had examined training records for the employees; however, the training records were inadequate to demonstrate evaluation of the employee's ability to recognize and react to abnormal operating conditions. Failure to ensure individuals can recognize and react to abnormal operating conditions when performing certain tasks affecting the operation and integrity of a pipeline may lead to an accident that jeopardizes public safety. Having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$1,500 for this violation.

Accordingly, I assess Respondent a total civil penalty of **\$11,300**. Respondent has the ability to pay this penalty without adversely affecting its 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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$11,300 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 authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Failure to pay the civil penalty may also result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to the violations. 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 ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations. Respondent must—

1. Reevaluate and requalify in accordance with 49 C.F.R. § 195.505(b) each individual performing a covered task who has been qualified to perform that task by use of work performance history review as a sole method. Complete this item and submit documentation of compliance within 60 days of receipt of this Order.
2. Reevaluate the two employees hired since January 2004 and the contractor referenced in Item 3 in the Notice, to determine whether they can recognize and react to abnormal operating conditions applicable to the covered tasks they perform. Provide training, orientation, and testing, as necessary, in accordance with a method established in Respondent's OQ procedures to ensure the individuals meet the requirements for AOC recognition and reaction. Complete this item and submit documentation of compliance within 30 days of receipt of this Order.
3. Information required to be submitted pursuant to this Order, including documentation that each item has been completed, shall be submitted to the Director, Southwest Region, Office of Pipeline Safety, 8701 S. Gessner Dr., Suite 1110, Houston, TX 77074-2949.

The Director, Southwest Region, may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent demonstrating good cause for an extension.

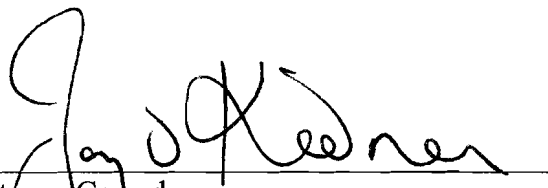
Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

WARNING ITEM

The Notice did not propose a civil penalty or corrective action for **Items 1 and 4**, but warned Respondent that it should take appropriate corrective action to correct those items. Respondent is warned that if it does not take appropriate action to correct those item, enforcement action will be taken if a subsequent inspection reveals a violation.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a 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 this Order, including required corrective action, remain in full effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective on receipt.



for

Stacey Gerard
Associate Administrator
for Pipeline Safety

APR 19 2006

Date Issued