



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Ave., S.E.
Washington, DC 20590

SEP 23 2008

Ms. Patty Walker
Senior Vice President
Ohio and Kentucky Gas Operations
Duke Energy Corporation
139 East Fourth Street
Cincinnati, OH 45202

RE: CPF No. 2-2007-6009

Dear Ms. Walker:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions that need to be taken by Duke Energy to comply with the PHMSA pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Southern Region, this enforcement action will be closed. Your receipt of this Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

William H. Gate
for
Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Linda Daugherty, Director, Southern Region, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

)	
In the Matter of)	
)	
Duke Energy Corporation,)	CPF No. 2-2007-6009
)	
Respondent.)	
)	

FINAL ORDER

On October 30 through November 3, 2006, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (OPS), and the Kentucky Public Service Commission conducted an on-site pipeline safety inspection of the facilities and records of Duke Energy Corporation (Duke Energy or Respondent) in Ohio and Kentucky. Respondent operates over 250 miles of liquid and natural gas pipelines in North Carolina, South Carolina, Ohio, Indiana, and Kentucky, including a two-mile-long propane pipeline in Erlanger, Kentucky. As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated June 21, 2007, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed various violations of 49 C.F.R. Part 195 and ordering Respondent to take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated July 17, 2007 (Response). Respondent did not contest the allegations of violation and expressed its intent to comply with the corrective actions proposed in the Notice. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Respondent did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 2: The Notice alleged that Respondent violated 49 C.F.R. §195.410(a)(2)(ii), which states:

§ 195.410 Line markers.

(a) Except as provided in paragraph (b) of this section, each

operator shall place and maintain line markers over each buried pipeline in accordance with the following:...

(2) The marker must state at least the following on a background of sharply contrasting color:...

(ii) The name of the operator and a telephone number (including area code) where the operator can be reached at all times....

The Notice alleged that as of the date of the inspection, one of Respondent's line markers in Kentucky was found displaying incorrect information. Accordingly, I find that Respondent violated 49 C.F.R. §195.410(a)(2)(ii) by displaying the disconnected emergency telephone number 513-632-3636 on one of its line markers.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. §195.440, which states:

§ 195.440 Public education.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see §195.3).¹

The Notice alleged that Respondent did not implement a continuing educational program for years 2003, 2004, and 2005, that was directed at the public in the vicinity of Duke Energy's propane pipelines in Kentucky. Respondent did not contact right-of-way owners and the general public in the vicinity of its pipeline facilities and failed to educate them as to how to recognize and report a propane pipeline emergency. Accordingly, I find that Respondent violated 49 C.F.R §195.440(a) by failing to develop and implement a continuing public education program that met the requirements of API Recommended Practice 1162.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 2 and 5 in the Notice for violations of 49 C.F.R. Part 195.

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, as follows:

¹ 49 C.F.R. § 195.440 was amended in 2005 to include additional requirements for public awareness programs (70 FR 28843). Under that amendment, operators were required to comply with the amended regulation as of June 20, 2006. Because the allegations set forth in this Item involved the 2003-2005 time period, the Notice cited the regulation as it existed prior to the 2006 amendment.

1. In regard to Item Number 2 of the Notice pertaining to inaccurate line markers, Duke Energy shall update all line markers to display a current telephone number.
2. In regard to Item Number 5 of the Notice pertaining to a failure to implement, during 2003, 2004, and 2005, a written continuing educational program directed at the public in the vicinity of its propane pipelines in Kentucky, Duke Energy shall provide an additional notification to the affected public in the vicinity of said facilities that includes relevant propane pipeline information. This additional public notification shall be in addition to any other actions needed to implement the provisions of Respondent's new public awareness plan which follows the guidance provided in API 1162.²
3. Duke Energy shall, within 120 days after receipt of a Final Order, complete Items 1 and 2 of this Proposed Compliance Order.
4. Duke Energy shall maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. Costs shall be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

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

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 1, 3, 4, and 6, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these Items. Therefore, these are considered to be Warning Items. The warnings were for:

49 C.F.R. § 195.404 (Notice Item 1) – Respondent's alleged failure to maintain proper documentation of the inspections of relief devices on the LP-3 pipeline in 2005. In September or October 2005, Respondent installed an additional relief device on its LP-3 pipeline at the Erlanger Cavern location. During the inspection, Respondent could not produce any documentation that the additional relief device was tested as required by 195.262(c).

² Respondent is required to comply with the amended version of 49 C.F.R. § 195.440 that was in effect as of June 21, 2007, the date of the Notice.

49 C.F.R. § 195.412 (Notice Item 3) – Respondent’s alleged failure to inspect the surface conditions on or adjacent to each pipeline right-of-way at least 26 times each calendar year. Respondent’s records indicate that Respondent’s LP-3 pipeline was patrolled only 24 times in calendar year 2005.

49 C.F.R. § 195.428 (Notice Item 4) – Respondent’s alleged failure to inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control at least twice a calendar year. Respondent did not inspect the relief devices associated with its LP-3 propane pipeline located at the Erlanger Cavern in Kentucky twice in calendar year 2006.

49 C.F.R. § 195.589 (Notice Item 6) – Respondent’s alleged failure to maintain records of each inspection or examination in sufficient detail to demonstrate adequate corrosion control. In 2005, Respondent replaced five valves on the LP-3 propane pipeline. During the installation, the pipeline’s internal surface was exposed and a cylinder of pipe removed from the pipeline in order to accommodate the new valves. The cylinder was sent to Respondent’s corrosion department for examination for internal corrosion. Respondent failed to record this examination.

Respondent presented information in its Response showing that it had taken certain actions to address the cited Warning Items. Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. § 195.404 (Notice Item 1), 49 C.F.R. § 195.412 (Notice Item 3), 49 C.F.R. § 195.428 (Notice Item 4), and 49 C.F.R. § 195.589 (Notice Item 6) have occurred and Respondent is hereby advised to correct such conditions. In the event that OPS finds a violation for any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

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 terms of the order, including any required corrective action, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.

William H. Gorte

Sen

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

SEP 23 2008

Date Issued