

Mr. James E. Street
Vice President, Human Resources
Enron Corporation
P.O. Box 1188
Houston, Texas 77251-1188

Re: CPF No. 43103

Dear Mr. Street:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws one of the alleged violations, makes findings of violation and assesses a civil penalty of \$850. 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

cc: Sharon A. Butcher, Esq.

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT of TRANSPORTATION
RESEARCH and SPECIAL PROGRAMS ADMINISTRATION
OFFICE of PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of)
Enron Corporation,) CPF No. 43103
Respondent.)
_____)

FINAL ORDER

On August 24-25, 1992, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's anti-drug plan in Houston, Texas. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated February 26, 1993, a Notice of Probable Violation, Proposed Civil Penalty and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 40.23(a) and 199.7(a) and proposed assessing a civil penalty of \$2,500 for the alleged violations. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its procedures relating to its anti-drug program. The Notice also directed Respondent to take appropriate corrective action.

Respondent responded to the Notice by letters dated March 3 and 23, 1993 (Response). Respondent contested the allegations, offered information to explain the allegations, requested mitigation of the proposed civil penalty and a hearing. A hearing was held on September 9, 1993, and Respondent submitted additional information at the hearing (Supplemental Response).

FINDINGS OF VIOLATION

Anti-Drug Plan

Item 1(b) in the Notice alleged that Respondent had violated 49 C.F.R. § 199.7, by defining a "covered employee" to include employees who performed administrative functions. Under 49 C.F.R. § 199.3, the term "employee" means "a person who performs on a pipeline or LNG facility an operating, maintenance, or emergency-response function regulated by part 192, 193, or 195 of this chapter. This does not include clerical, truck driving, accounting, or other functions not subject to part 192, 193, or 195."

In its Response, Respondent requested mitigation based on its corrective actions. Respondent stated that only three human resources representatives were included in the pool of DOT-covered positions. Thus, based on this "statistically insignificant number", Respondent argued that the gravity of the violation was "minimal." In addition, Respondent emphasized that over a three and a half year period, only one human resources employee was selected for random drug testing. Respondent indicated that it included these employees to give its anti-drug program "legitimacy." Respondent stated that, once notified of the probable violation, it took immediate corrective action by removing the human resources employees from its random testing roster.

After reviewing the record, I find that Respondent included employees in its anti-drug plan that were not covered by the pipeline safety regulations. I find that in this respect Respondent's anti-drug plan did not conform with the DOT drug testing regulations and, accordingly, Respondent violated 49 C.F.R. § 199.7(a).

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

WITHDRAWAL OF ALLEGATIONS

Item 1(a) of the Notice alleged that Respondent's anti-drug plan violated 49 C.F.R. § 199.7, by failing to identify and separate company policy from the requirements of 49 C.F.R. Part 40 and 199. Respondent claimed that it had no knowledge of this requirement or any OPS interpretation of this requirement.

Respondent agreed to amend its plan and requested that no civil penalty be imposed. After reviewing the entire record, I can not make a finding that Respondent "knowingly" committed the alleged violation. Therefore, this allegation of violation is withdrawn.

Item 1© of the Notice alleged that Respondent violated 49 C.F.R. § 199.7, by failing to have procedures requiring that when a person, in a covered position, fails or refuses to take a drug test, the operator may not use the person in a covered position. At the hearing, Respondent submitted information showing that its anti-drug plan states that employees who fail or refuse to take a drug test "will be terminated from their position immediately." Respondent stated that because its anti-drug plan requires "termination" of an employee who fails or refuses to take a drug test, the employee would be automatically removed from a covered position.

Respondent has shown that its anti-drug plan conforms with the regulatory requirement to remove a person from a covered position if the person fails or refuses to take a drug test. A review of Respondent's plan shows that it goes further than the regulatory requirements, which only require that the employee be removed from the covered position. Therefore, this allegation of violation is withdrawn.

WARNING ITEMS

Item 2 of the Notice alleged that Respondent's donor certification statement was inadequate and cited a deficiency concerning Respondent's requirement for an employee to complete a consent form. The Notice did not propose a civil penalty but warned Respondent to correct its anti-drug plan or face the possibility of future enforcement action. Respondent presented information at the hearing that shows that it has addressed the cited items. In addition, as clarification to the Notice, Respondent should be aware that it may use consent forms as part of its anti-drug program. The Notice stated that 40 C.F.R. § 40.25(f)(22)(ii) (1991 edition) "authorizes the use of a consent form for DOT mandated urine specimen collection for drug testing only when specified by DOT agency regulation or required by the collection site (other than an employer site) or by the laboratory" (emphasis added). The regulation states: "When specified by DOT agency regulation or required by the collection site (other than an employer site) or by the laboratory, the employee may be required to sign a consent or release form authorizing the collection of the specimen ..."

(emphasis added). Thus, the Notice should not be read to prohibit the use of consent forms in situations other than when required by DOT regulations.

AMENDMENT OF PROCEDURES

The Notice alleged inadequacies in Respondent's anti-drug plan and proposed to require amendment of the plan to comply with the requirements of 49 C.F.R. § 199.7.

In its Response, Respondent submitted documentation of its amended procedures, which the Director, Central Region, OPS has accepted as adequate to assure the safe operation of Respondent's pipeline system. Accordingly, no need exists to issue an order directing amendment of Respondent's procedures.

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 total 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 violations, 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.

In assessing the nature and gravity of the violation, I considered that including human resources employees in a company's drug testing program would run counter to the purpose of the anti-drug program. The purpose of the anti-drug program is both the deterrence and detection of those employees who occupy safety-related positions. By including human resources employees in the company's drug testing program, Respondent reduced the likelihood that an employee in a covered position would be selected for drug testing. Accordingly, having reviewed the record and considered the assessment criteria including that only one human resources employee was selected for drug testing, I assess Respondent a civil penalty of \$850.

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: **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 \$850 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. 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.

Richard B. Felder
Associate Administrator
for Pipeline Safety

Date: _____