



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

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

MAR 29 2005

Mr. David Young  
Senior Vice President, NEBU  
MarkWest Hydrocarbon, Inc.  
155 Inverness Drive West, #200  
Englewood, CO 80112-5000

RE: CPF No. 2-2004-5018

Dear Mr. Young:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, requires certain corrective actions, and assesses a civil penalty of \$5,000. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5. At such time that the civil penalty is paid and the terms of the compliance order are completed, as determined by the Director, Southern Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds  
Pipeline Compliance Registry  
Office of Pipeline Safety

cc: Ms. Linda Daugherty, Region Director  
Southern Region, OPS

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

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| <b>In the Matter of</b>            | ) |                            |
| <b>MarkWest Hydrocarbon, Inc.,</b> | ) | <b>CPF No. 2-2004-5018</b> |
| <b>Respondent</b>                  | ) |                            |

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**FINAL ORDER**

On August 31 through September 2, 2004 pursuant to 49 U.S.C. § 60117, representatives of the Southern Region, Office of Pipeline Safety (OPS), conducted an inspection of Respondent's Operator Qualification Plan at Respondent's Kenova, West Virginia facility. As a result of this investigation, the Director, Southern Region, OPS, issued to Respondent, by letter dated December 7, 2004, 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, proposed assessing a civil penalty of \$5,000 for one of the alleged violations, and proposed that Respondent take certain measures to correct the alleged violations.<sup>1</sup>

Respondent responded to the Notice by letter dated, January 20, 2005 (Response). Respondent contested one of the five allegations, offered information in explanation of the allegation, and requested additional clarification and mitigation or elimination of the proposed civil penalty. Respondent did not request a hearing, and therefore has waived its right to one.

**FINDINGS OF VIOLATION**

In its Response, Respondent did not contest **Items 1, 2, 4, and 5** of the Notice. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Part 195, as more fully described in the Notice:

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<sup>1</sup>This case, however, is no longer before RSPA for decision. Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) was created to further the highest degree of safety in pipeline transportation and hazardous materials transportation. See, section 108 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). See also, 70 Fed. Reg. 8299 (February 18, 2005) re delegating the pipeline safety functions to the Administrator, PHMSA.

49 C.F.R. § 195.503(b) -- failing to develop a generic abnormal operating conditions list and failing to qualify each employee that performs covered tasks, to recognize and react to each item on the list.

49 C.F.R. § 195.505(a) and (b)-- failing to determine all covered tasks that are to be included in the Operator Qualification Plan and failing to develop evaluation methods for each covered task.

49 C.F.R. § 195.505(c)--failing to adequately prepare and follow a written qualification program, as Respondent failed to include provisions to define the number of persons, and under what conditions, a qualified person can direct and observe non-qualified persons. Also, Respondent failed to define covered tasks, such as welding, that can not be directed and observed.

49 C.F.R. § 195.509(b)--failing to complete the qualification of individuals performing covered tasks by October 28, 2002, as a long term employee was not qualified until November 4, 2002.

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

**(Contested Items)**

**Item 3** of the Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to have and follow a written qualification program with provisions to ensure through evaluation that individuals performing covered tasks are qualified. Respondent permitted employee "A" to evaluate and qualify employee "B" who in turn evaluated and qualified employee "A."

In response to the Notice, Respondent argued that it met the requirements of 49 C.F.R. § 195.505, as the employee evaluations were completed. Respondent explained that its individual qualification of covered tasks was conducted through observations of job performance. There was interaction between the evaluator and the person being evaluated, although, interaction was not documented. Respondent further explained that the individuals who evaluated each other have a combined 50 years experience in the oil and gas industry. Respondent stated that it did not have a written protocol for testing, although, abnormal operating conditions are incorporated in covered tasks work instructions.

Respondent is responsible for compliance with the pipeline safety regulations, which includes sound record keeping to document compliance. The regulation requires a written qualification program, including written procedures for evaluating an employee's qualifications. Respondent failed to produce any records or documentation demonstrating that either employee's evaluation was supported by a written protocol for testing or a written guideline for abnormal operating conditions

responses for that covered task. There were no documented questions to ask or documented replies to questions. Respondent acknowledged that there was no evidence of interaction during the evaluation. An evaluation of an individual's qualifications conducted only by observation of job performance is insufficient to comply with pipeline safety regulations. Documentation is essential not only to show that the evaluation was conducted in accordance with a written qualification program, but to show that the individuals performing covered tasks are qualified. Accordingly, I find Respondent violated 49 C.F.R. § 195.505(b), by not having and following a written qualification program with provisions to ensure through evaluation that individuals performing covered tasks are qualified.

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

### **ASSESSMENT OF PENALTY**

The Notice proposed a \$5,000 civil penalty for violation of 49 C.F.R. §§195.505(b). 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.

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 a penalty for **Item 3**, as Respondent failed to have and follow a written qualification program with provisions to ensure through evaluation that individuals performing covered tasks are qualified. Respondent argued that the proposed civil penalty should be eliminated or mitigated because the individuals who evaluated each other have a combined 50 years experience in the oil and gas industry. Contrary to Respondent's position, 49 C.F.R. §195.505(b) does not include the grand-fathering of employees to satisfy the individual's qualification to perform covered tasks. In furtherance, Respondent acknowledged that there was no evidence of interaction during the evaluation. To show that an individual performing a covered task is qualified, an evaluation must be conducted in accordance with a written qualification program and supported by a written protocol for testing. Without this history, an operator increases the risk of harm to its personnel and the public. Respondent has not shown any circumstance that would have prevented or justified it not having and following a written qualification program with provisions to ensure through evaluation that individuals performing covered tasks are qualified. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000.

Payment of the civil penalty must be made within 20 days of service. Payment may 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-120), P.O. Box 25082, Oklahoma City, OK 73125.

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, 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 a United States District Court.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to **Item 1, 2, 3, 4, and 5** 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. Respondent must -

1. Develop, within 30 days of receipt of this Order, a generic abnormal operating condition list and qualify each employee that performs covered tasks, to recognize and react to each item on the list in compliance with 49 C.F.R. §195.
2. Review all Part 195 requirements and operator O&M requirements to determine all covered tasks that should be part of the Operator Qualification Plan, within 30 days of receipt of this Order.
3. Develop evaluation methods for each of the covered tasks identified in item #2 above. The method(s) developed must test knowledge, skills, and abilities that are needed to perform each task on the covered task list. In addition, on the job performance tests must have documented interaction between the evaluator and the person being evaluated; observation of the work is insufficient compliance. Complete this item within 90 days of receipt of this order.
4. Define the number of non-qualified persons(span of control) that a qualified individual can direct and observe at one time by covered task. In addition, define which covered task(s) can not be directed and observed, such as welding. Complete this item within 30 days of receipt of this order.
5. Qualify all employees in accordance with the new Operator Qualification Plan no later than 90 days from receipt of the Final Order.

- 6. Submit documentation and evidence of completion of these actions within 90 days of receipt of the Final Order to the Director, OPS, Southern Region.
- 7. The Director, OPS, Southern Region may grant an extension of time for compliance with any of the terms of this order for good cause. A request for an extension must be in writing.

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.

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 the order, including any 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.

  
Stacey Gerard  
Associate Administrator  
for Pipeline Safety

for

MAR 29 2007  
Date Issued