



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

SEP - 5 2002

Mr. Jerry Gwaltney
City Manager
City of Dansville
427 Patton Street
Municipal Building, 4th Floor
Danville, VA 24541

Re: CPF No. 1-2002-0004

Dear Mr. Gwaltney:

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 \$5,000, and requires certain corrective action. At such time that the civil penalty is paid and the terms of the compliance order are completed, as determined by the Director, Eastern Region, this enforcement action will be closed. 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, D.C. 20590

In the Matter of)
)
City of Danville,)
)
Respondent)
)

CPF No. 1-2002-0004

FINAL ORDER

Between May 14 and 17, 2001, 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 facilities and records in Danville, Virginia. As a result of the inspection, the Director, Eastern Region, OPS, issued to City of Danville (Respondent), by letter dated February 7, 2002, 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 violated 49 C.F.R. §§ 192.457(b)(3), 192.465(a) and 192.469 and proposed assessing a civil penalty of \$5,000 for the first of the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

By letter dated March 5, 2002, Respondent requested an extension of time to respond to the Notice. By letter dated March 19, 2002, OPS granted the extension request. Respondent responded to the Notice by letters dated April 5 and May 23, 2002 (Response). Respondent contested one of the allegations of violation, offered information explaining its position, and requested withdrawal of the proposed civil penalty. Respondent did not request a hearing and therefore, has waived its right to one.

FINDINGS OF VIOLATION

Respondent did not contest the alleged violations of §§ 192.465(a) and 192.469 in the Notice. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Part 192, as more fully described in the Notice:

- 49 C.F.R. § 192.465(a) – failure to randomly survey at least 10 percent of the separately protected service lines on an annual basis;

49 C.F.R. § 192.469 –

failure to install test stations verifying the adequacy of the cathodic protection on the supply pipe from the Transco Gate Station.

Item 1 of the Notice alleged that Respondent violated 49 C.F.R. § 192.457(b)(3) by failing to demonstrate that its cathodically unprotected bare and coated steel piping was evaluated for active corrosion.

In its first response letter, Respondent acknowledged that it had no program in place to evaluate the unprotected bare and coated pipe in its system for active corrosion. Respondent contended that because an estimated 90 percent of its unprotected bare and coated pipe is buried under road pavement, conducting electrical surveys of this pipe for active corrosion was impractical. In its second response letter, Respondent further explained that certain parts of its system were being leak surveyed at three-year intervals in lieu of electrical testing, and requested that Item 1 of the Notice be treated as a warning item and not a violation.

Section 192.457 requires pipeline system operators to perform a baseline survey to identify areas of active corrosion in cathodically unprotected bare and coated pipeline, to take remedial action where active corrosion is found and continuing corrosion could result in a condition detrimental to public safety, and to continually monitor pipelines for corrosion by conducting ongoing corrosion surveys at the required intervals. While electrical surveys are the primary method prescribed in the regulations because they can identify corrosion before leaks occur, the regulations provide for the use of alternative methods, including leak surveys, when electrical surveys are impractical. According to the OPS, when Respondent's corrosion technician, Mr. Fitzgerald, was asked whether leak survey records were being used to identify areas of active corrosion, he acknowledged that no such surveys had been performed and that these records did not exist. Therefore, Respondent's use of the leak survey method was inadequate for purposes of compliance with § 192.457 because Respondent failed to demonstrate that leak survey records were actually used to identify areas of active corrosion. Moreover, OPS guidelines recommend that in locations where electrical surveys can not be performed, leak surveys done in lieu of electrical testing should be conducted at least once per year. However, Respondent only performed a leak survey every three years. Performing leak surveys at more frequent intervals is critical to public safety as leak surveying identifies corrosion only after leaking begins. Accordingly, I find that Respondent violated 49 C.F.R. § 192.457(b)(3) by failing to evaluate its cathodically unprotected bare and coated pipeline for active corrosion.

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 \$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.

As for the violation of 49 C.F.R. § 192.457(b)(3) (Item 1), failing to demonstrate that bare and coated steel piping was evaluated for active corrosion, a civil penalty of \$5,000 was proposed. In its response, Respondent stated that it was in the process of replacing its unprotected bare pipe in conjunction with a 15-year program to replace the metallic mains in its system and requested, in light of this replacement strategy and the fact that prior OPS inspections had not resulted in citations for these deficiencies, that the proposed civil penalty not be assessed. While Respondent's replacement program will ultimately reduce the number of unprotected metallic lines in this system over time, the failure to develop and implement a documented program to survey and identify the presence of active corrosion can result in dangerous leaks or accidents hazardous to public safety before all of the unprotected pipe is replaced. Respondent's 15-year replacement program does not supplant the need to identify current areas of active corrosion and implement remedial measures. Moreover, a previous inspection that does not result in an enforcement action does not relieve Respondent's obligation to comply with the pipeline safety regulations. A previous inspection may not focus on the areas that a subsequent inspection does.

Respondent has not presented information that warrants withdrawal of the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for violation of 49 C.F.R. § 192.457(b)(3). A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to operate.

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: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, 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, 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 an United States District Court.

COMPLIANCE ORDER

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas 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 hereby ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

- (1) Establish written operating and maintenance procedures for the surveying and determination of areas of active corrosion for cathodically unprotected bare and coated steel pipe in its system that meet the requirements of 49 C.F.R. § 192.457. For those areas that are determined to have active corrosion, Respondent shall provide a schedule to the Director, Eastern Region, OPS for the installation of cathodic protection or other remedial measures.
- (2) List the number of separately protected service lines and verify their correspondence with the Annual Report submissions. The list shall also contain the address and location of separately protected service lines and mains not exceeding 100 feet. Respondent shall develop and establish a written audit program to verify that each year's sample equals or exceeds the 10 percent required by regulation.
- (3) Install test wires on all casings over steel pipe on the supply line from the Transco Gate Station, conduct the required testing at the appropriate intervals, and record the number and location of the test leads installed and the pipe-to-soil and case-to-soil readings per the applicable regulations. Respondent shall also prepare formal plans to correct shorted casings and integrate these plans into its operations and maintenance manual.
- (4) Submit all documents, procedures, action plans, schedules and evaluations demonstrating compliance with this Order within 90 days following receipt of this Final Order to the Director, Eastern Region, Office of Pipeline Safety, 400 7TH Street, S.W., Room 7128, Washington, DC 20590.
- (5) The Director, Eastern Region, OPS may grant an extension of time to comply with any of the required items upon a request by the Respondent demonstrating good cause for an extension.

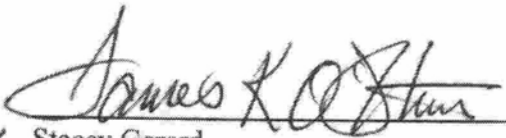
WARNING ITEM

The Notice did not propose any penalty with respect to the following item. Respondent is warned that if it fails to take appropriate corrective action to address this item, and a violation comes to the attention of OPS in a subsequent inspection, enforcement action will be taken.

Item 3 in the Notice alleged that Respondent failed to properly test the cathodic protection rectifier at Memorial Drive between August 21, 2000 and December 4, 2000.

Under 49 C.F.R. 190.215, Respondent has a right to petition for reconsideration of this Final Order. If you pay the penalty, the case closes automatically and you waive the right to petition for reconsideration. The filing of the petition automatically stays the payment of any civil penalty assessed. 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 and conditions of this Final Order are effective on receipt.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$25,000 per violation per day, or in the referral of the case for judicial enforcement.


for Stacey Gerard
Associate Administrator For Pipeline Safety

SEP - 5 2002
Date Issued