

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Paul Bilek, President
Praxair, Incorporated
39 Old Ridgebury Road
Danbury, CT 06810-0001

RE: CPF No. 48107

Dear Mr. Bilek:

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 \$8,000 and requires certain corrective action. 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

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
WASHINGTON, DC 20590

)	
In the Matter of)	
)	
PRAXAIR, Incorporated,)	CPF No. 48107
)	
Respondent.)	
)	

FINAL ORDER

On February 10 and 12, 1998, a representative of the Southwest Region, Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code, conducted an inspection of your hydrogen pipeline facilities and records in your Deer Park, Texas facility. As a result of the investigation, the Director, Southwest Region, OPS, issued to Praxair (Respondent), by letter dated September 30, 1998, 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 violated 49 C.F.R. §§ 192.465(a), 192.465(d), 192.467(a), (d), and 192.491(a), and proposed assessing a civil penalty of \$8,000. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

In a letter dated October 26, 1998, Respondent requested an extension of time to respond to the Notice. The extension was granted and Respondent submitted a Response to the Notice dated February 8, 1999. Respondent contested the allegations of violation, offered information to support its position and provided information concerning the corrective actions it has taken. Also, Respondent requested the dismissal of Item 1 of the Notice and the proposed civil penalty associated therewith. Respondent has not requested a hearing and therefore, has waived its right to do so.

FINDINGS OF VIOLATION

Item 1 of the Notice alleges that Praxair violated of 49 C.F.R. § 192.465(a), as the records for Respondent's hydrogen pipeline indicate that the cathodic protection systems were not monitored at least once each calendar year.

In response to Item 1, Respondent explained that during its annual cathodic protection surveys, Respondent obtains a reading for as many test stations as possible. However, due to weather constraints and construction activities, it was not able to obtain a reading at every test station at the time a pipeline was tested. Respondent argued that its testing of some of the stations is sufficient and requested the dismissal of Item 1 of the Notice.

Contrary to Respondent's argument, Respondent must test **each** station annually. Respondent lacks documentation to support that testing was done at each of the following test stations:

Geographical Location	Test station name or location	No. of Test Station (*)	Size of Line H2	Years which records are missing
Deer Park	2C3 - 2E 3A1 - 3A 3B 3C-3G	2 TEST STA. 4 TEST STA. 9 TEST STA	8"	1996 1995 1995 & 1996 1995
	3W- 3L1 3M1 3AA - 3R 3T 3Y - 3S	3 TEST STA. 3 TEST STA. 2 TEST STA.	10"	1995 1995, 1996 & 1997 1995 1995 & 1996 1995
	4C - 4E	3 TEST STA.	6"	1995,1996 & 1997
	6X1 - 6G1 7B1 9EI-9F1	5 TEST STA. 2 TEST STA.	8"	1995 & 1996 1995, 1996 & 1997 1995 & 1996
Bayport	2A - 8A 15A 25D 29C-31A 37A-42B 45A-49C 50A 51A-51B 69B 2E 3P1	2 TEST STA. 2 TEST STA 2 TEST STA. 2 TEST STA. 2 TEST STA.	8"	1995, 1996 & 1997 1995 1997 1995, 1996 & 1997 1995 1995, 1996 & 1997 1995 1995 & 1997 1995 1996 & 1997 1996
	3M1		10"	1996 & 1997
	4C 4D- 4E	2 TEST STA.	6" 6"	1996 & 1997 1995, 1996 & 1997
	3AA-11FF	8 TEST STA.	3"	1997
Bayshore	10B 20B		3"	1995, 1996 & 1997 1995
Texas City	3H- 4Q 8E 8F	10 TEST STA.	8"	1995, 1996 & 1997 1996 1997

Ucar	U20 - U29 U30-U37 U41 U42	2 TEST STA. 8 TEST STA.	10"	1995 & 1996 1995, 1996 & 1997 1995 1996 & 1997
Warren	10W-11W 12W	2 TEST STA.	6"	1997 1995, 1996 & 1997
Lyondell/ Enterprise	L-H-5 TO 9 L-H-10 L-H-11 L-H-12	3 TEST STA.	10"	1995, 1996 & 1997 1995 1996 & 1997 1995
Star/Quest	SQ-1 TO SQ-16 SQ-21 SQ-29	3 TEST STA.	10"	1995, 1996 & 1997 1995 & 1996 1995
Cowboy	2CC-6AA 7WW-7YY 7Q-9CC	4 TEST STA 2 TEST STA. 12 TEST STA.	8"	1995 & 1997 1995 1995 & 1997

Inspection and testing at required intervals are essential to knowing that the pipeline equipment is being maintained, will function properly and that its integrity is not compromised. Failure to perform the proper monitoring on each test station could result in inadequate protection of the pipe and could result in a leak in the future. Respondent has not shown any circumstance that would have prevented or justified it not monitoring each test station annually. Accordingly, I find Respondent violated 49 C.F.R. § 192.465(a) by not monitoring each test station at least once each calendar year.

Item 2 in the Notice alleges that the Respondent violated 49 C.F.R. § 192.465(d), as Respondent's cathodic protection records show that some readings were below the minimum protection levels specified in Respondent's Operating and Maintenance Manual or show no readings at all. At Texas City and Star/Quest no readings were recorded for either calendar years 1996 or 1997. Respondent had not taken prompt remedial action to correct any deficiencies indicated by the monitoring.

In Respondent's post violation response, Respondent advised that a contractor will install a new anode and retest the portion of the pipeline and casing involved with respect to Deer Park and Texas City by July 16, 1999. As for the Star/Quest location, Respondent explained that a wire broke off of the pipeline and a contractor will rewire the pipeline.

The primary objective of the Federal gas pipeline safety standards is public safety and failure to take prompt remedial action to correct any deficiencies could adversely affect public safety. When the pipeline is not adequately protected by current the pipeline could start to deteriorate or there may be pipeline failure in the future. Respondent has not shown any circumstance that would have prevented or justified it not taking prompt remedial action to correct any deficiencies indicated by the monitoring. Therefore, Respondent violated 49 C.F.R. § 192.465(d) by failing to take action to correct the insufficient pipe to soil readings within a reasonable time.

Item 3 of the Notice alleged that Respondent violated §192.467 (a) and (d). Respondent's cathodic protection records indicate that the pipelines have not been electrically isolated from other underground metallic structures. Furthermore, there were no electrical tests made to assure the adequacy of electrical isolation.

Respondent's post violation response, with respect to Deer Park, Bay Port and Texas City, advised that a contractor has been directed to re-check and verify the possibility of a shorted casing and to take appropriate corrective action by July 16, 1999. As for Lyondell/Enterprise and Star/Quest, Respondent explained that the drawings indicate that these locations have casing, but the casings may not be installed. The contractor was also directed to field-verify and correct the drawings by July 16, 1999.

Respondent's response does not dispute the allegations in Item 3, but offers information on corrective actions taken. Respondent's records indicate some of the pipeline locations are not electrically isolated from other underground metallic structures. Also, Respondent has never performed tests to determine whether these casings were metallic or electrolytic short. Accordingly, I find Respondent violated 49 C.F.R. §192.467 (a) and (d) by not having documentation that pipelines have been electrically isolated from other underground metallic structures and failing to perform electrical tests to assure the adequacy of electrical isolation.

Item 4 of the Notice alleged that the Respondent violated § 192.491, governing corrosion control maps and records. Respondent's maps and records did not provide adequate detail to compare the cathodic protection test records between one year and the next, nor was it possible to locate Respondent's cathodically protected piping or cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the cathodic protection system. Respondent's Operating & Maintenance Manual, which is required by § 192.605, also requires this type of detail.

In their post violation response to Item 4, Respondent explained that its 1998 cathodic protection survey was based upon the new maps but refers to the old test station numbers. Respondent advised that a cross-reference table is being developed and field-verified to allow easy reference of the prior test station number to the new test station numbers. Respondent further advised it completed new operating maps in December 1998.

Respondent's actions may correct the situation, but it does not excuse the violation. Improperly maintained maps and records make it difficult or impossible to determine causes of pipeline failure in the future. Accordingly, I find Respondent violated 49 C.F.R. § 192.491(a) by not maintaining records or maps to show the location of cathodically protected piping, cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the system.

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. The Notice proposed assessing a penalty of \$8,000 for Item 1 (49 C.F.R. §192.465(a)).

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, consideration is given to 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. § 192.465(a) (Item 1), Respondent failed to test each pipeline that is under cathodic protection at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection is adequate. This is a preventive measure designed to prevent leaks before a leak occurs. Monitoring of cathodic protection is imperative to prevent corrosion. Considering the number of test stations missed, as identified on pages 2 & 3 of this Order, the proposed penalty is very moderate.

Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty of \$8,000. A determination has been made that Respondent has the ability to pay this penalty amount without adversely affecting its ability to continue business.

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 \$8,000 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.

COMPLIANCE ORDER

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

(1) With respect to violation of 49 C.F.R. § 192.465(a) and (d), submit evidence that all locations identified in the Notice as having been missed during annual inspections or as having inadequate readings were addressed in the first annual inspection following receipt of the Notice. If that is not the case, submit to the Southwest Region Office of Pipeline Safety, proposed scheduling for retesting or correcting deficiencies within 180 days following your receipt of this Final Order and provide evidence to the Regional Director following completion.

(2) Item No.3 of the Notice, pertaining to electrical isolation records, shows that Praxair has not electrically isolated its pipeline from other underground metallic structures:

Submit to the Southwest Region Office of Pipeline Safety, your plans and proposed scheduling for retesting these locations. Following approval by the Director, Southwest Region, the aforementioned records shall be completed within 180 days following your receipt of the Final Order.

(3) As for Item No.4 of the Notice, Praxair's cathodic protection test station records and Praxair's maps are incompatible:

Submit to the Southwest Region Office of Pipeline Safety, your plans and proposed scheduling for how to reconstruct a new map that reflects the cathodic protection test stations. Following approval by the Director, Southwest Region, the aforementioned records shall be completed within 180 days following your receipt of the Final Order.

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.

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.

Stacey Gerard
Associate Administrator
for Pipeline Safety

Date: _____