



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

APR 29 2003

Mr. E. Keith Mitchell, President
Ozark Gas Transmission, L.L.C.
515 Central Park Drive, Suite 600
Oklahoma City, OK 73105

RE: CPF No. 2-2002-1004

Dear Mr. Mitchell:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violations, assesses a civil penalty of \$36,600 and requires certain corrective action. At such time that the terms of the compliance order are completed, as determined by the Southern Regional Director and the civil penalty is paid, this enforcement action will be closed. The penalty payment and 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: Dan Harris, Vice-President Operations

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)	
OZARK GAS TRANSMISSION,)	CPF No. 2-2002-1004
Respondent.)	
)	

FINAL ORDER

During May 7-11, 2001 and June 3-8, 2001, representatives of the Office of Pipeline Safety (OPS), pursuant to 49 U.S.C. § 60117, conducted on-site pipeline safety inspections of Respondent's facilities in Oklahoma, Arkansas, and Missouri and records in Fort Smith and Fayetteville, Arkansas. As a result of the inspections, the Director, Southern Region, OPS, issued to Respondent, by letter dated March 7, 2002, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order. In accordance with 49 C.F.R. §190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§192.517, 192.603, 192.605 and proposed assessing a civil penalty of \$41,000 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

In a letter dated April 10, 2002, Respondent submitted a Response to the Notice (Response). Respondent contested some of the allegations, provided information concerning the corrective actions it had taken and requested mitigation of the proposed civil penalty. On April 25, 2002, Respondent submitted a supplemental Response to the Notice, providing additional documents and information concerning the corrective actions it had taken. Respondent did not request a hearing, consequently Respondent waived its right to one.

FINDINGS OF VIOLATION

Item 3 of the Notice alleged that Respondent violated 49 C.F.R. §192.517 by not maintaining a sufficient record of each test performed under §§ 192.505 and 192.507 for the Mountain Home Lateral line, as test records did not contain elevation variations.

In its initial response to Item 3, Respondent stated that within 60 days it would determine significant elevation differences along the Mountain Home Lateral line and determine the pipeline's maximum allowable operating pressure (MAOP).

Respondent acknowledged that it was unable to provide test records containing elevation variations at the time of the inspection. Although Respondent advised that it would submit documentation, within 60 days, determining significant elevation differences along the line, it has failed to do so. Respondent has not shown any circumstance that would have prevented or justified it not maintaining a sufficient record with elevation variations of each test performed under §§ 192.505 and 192.507 of the Mountain Home Lateral line. Accordingly, I find that Respondent violated 49 C.F.R. §192.517.

Item 4a-e of the Notice alleged that Respondent violated 49 C.F.R. §192.603 by not maintaining records necessary to administer the procedures established under §192.605. There were (a) no records to determine the MAOP of the 8.5 mile 8-inch pipeline near Kennett, MO; (b) no records of the main line regulator inspection in year 2000 for the 10-inch to 8-inch Kennett Line regulator; (c) no documentation of required follow-up actions for patrol reports performed March 2000; (d) no records of inspection of all valves that could be used in an emergency at the Mountain Home Tap, Scotland Launcher Receiver site and Kennett Station; and (e) no records to indicate that blow off valves were partially operated and inspected.

In its initial response to Item 4a, Respondent explained that it had located records that would allow MAOP to be established by hydrostatic testing under the guidelines in 49 C.F.R. §192.619. As for Item 4b, Respondent acknowledged not having year 2000 inspection records for the 10-inch to 8-inch Kennett Line regulator but advised that an inspection was performed in March 2002 and submitted its "Downstream Pressure Over Ride Check" form. With regard to Item 4c, Respondent advised that its patrol reports have been corrected to reflect follow up actions. As for Item 4d, Respondent stated that it inspected the cited valves between August 3, 2001 and August 9, 2001 and listed them on the proper valve form. In response to Item 4e, Respondent explained that it has an Operating and Maintenance Agreement with Arkansas Western Gas Company (AWG) and that AWG has been instructed to maintain all jurisdictional facilities to DOT standards and in compliance with Respondent's operations and maintenance manual.

Respondent is responsible for compliance with the pipeline safety regulations, which includes sound record keeping. Without this history, an operator will have difficulty determining areas where there are problems that need to be addressed. The Notice alleged five instances in which Respondent failed to maintain adequate records necessary to administer the procedures established under §192.605. Respondent does not deny that records cited in Item 4a, Item 4c, Item 4d and 4e were not provided or properly maintained at the time of the inspection. Furthermore, Respondent acknowledged not having the inspection records cited in Item 4b. Accordingly, I find that Respondent violated 49 C.F.R. §192.603.

Item 5 of the Notice alleges that Respondent violated 49 C.F.R. §192.605 by not following written procedures (a) to take remedial measures where pipe-to-soil readings were not within the allowed criteria; (b) to conduct an annual population density/class location study in 1999 or 2000 on its 20-inch Ozark line and (c) to document West aerial patrols/leak surveys on Form 3101, *Pipeline Patrol and Leak Survey Report*.

In response, Respondent did not contest Item 5, but offered information in explanation of the allegations. Respondent explained that it has engaged a third party contractor to perform a Line Patrol/Leak Survey and Density/Class location study. Respondent further explained that at the time of the aerial patrol it was in the process of changing its forms. Respondent advised that it installed 5 insulator kits at the Davis station on June 20, 2001. Respondent further advised that its West Aerial Patrols/Leak Survey reports have been transferred and documented on Form 3101 for the 2001 Pipeline Patrol and Leak Survey.

Respondent did not dispute the allegations in Item 5. Accordingly, I find that Respondent violated 49 C.F.R. §192.605 (a) by not following written procedures for conducting operations and maintenance activities and for emergency response.

Item 6 of the Notice alleges that Respondent violated 49 C.F.R. §192.605(a) by failing to have its procedure manual available to appropriate operating personnel to maintain its facilities. Respondent has an agreement with AWG to operate and maintain Respondent's Mountain Home Lateral line and certain meter/regulator stations. At time of the inspection, AWG personnel did not have Respondent's procedure manual available. AWG personnel stated that they use AWG's Operation, Inspection, and Maintenance Plan to maintain Respondent's facilities.

In its Response, Respondent did not contest the violation alleged in Item 6 of the Notice but offered information in explanation of the allegation. Respondent explained that on February 28, 2002 it provided an updated copy of its O&M manual to AWG and explained to AWG that all O&M activities for Respondent's facilities are to be conducted in accordance with Respondent's O&M manual.

All gas and hazardous liquid pipeline operators must maintain and make available to appropriate operating personnel a manual of written procedures for conducting operations and maintenance activities and for emergency response to enable personnel to safely and effectively perform their duties and maintain its facilities. Respondent did not dispute the allegations in Item 6. Accordingly, I find that Respondent violated 49 C.F.R. §192.605 by failing to have its written procedures for conducting operations and maintenance activities available to appropriate operating personnel.

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 \$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 total penalty assessment of \$41,000 for Items 4, 5, and 6.

The Notice proposed a civil penalty of \$22,000 for violations of 49 C.F.R. §192.603(b), as Respondent failed to maintain records necessary to administer the procedures established under §192.605. In response to Item 4, the Respondent requested elimination or mitigation of the proposed \$22,000 civil penalty.

The Notice identified five instances in which Respondent failed to maintain records. Having reviewed the record, considered the assessment criteria and Respondent's submission of original records (Item 4a) for the Kennett 8-inch pipeline, the civil penalty will be reduced proportionately. Accordingly, I assess Respondent a civil penalty of \$17,600 for failing to maintain records necessary to administer the procedures established under §192.605, as described in Items 4 (b) - (e).

Item 5 of the Notice proposed a civil penalty of \$14,000 for Respondent's failure to follow written procedures. Respondent did not contest Item 5, but offered information in explanation of the allegations. Respondent has not shown any circumstance that would have prevented or justified it not following written procedures as required by 49 C.F.R. §192.605(a). Remedial measures for low pipe-to-soil readings were not taken within 1 year. Adverse conditions should be corrected as soon as possible and no later than the next inspection cycles. Respondent should have take prompt remedial action to address the low pipe-to-soil readings, rather than wait for two or three cycles of low readings before installing 5 insulator kits at the Davis station. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$14,000 for violation of 49 C.F.R. §192.605(a).

Item 6 of the Notice proposed a civil penalty of \$5,000 for Respondent's failure to have its written procedures for conducting operations and maintenance activities and for emergency response available to appropriate operating personnel to maintain its facilities. Respondent has not shown any circumstance that would have prevented or justified it not making its written procedures available. 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. §192.605.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$36,600. A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue business.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this **payment 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. 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 \$36,600 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.

WARNING ITEMS

The Notice did not propose a civil penalty or corrective action with respect to Items 1, and 2; therefore, these are considered warning items. Respondent is warned that if it does not take appropriate action to correct the following items, enforcement action will be taken if a subsequent inspection finds a violation.

49 C.F.R. §192.465(a) - failing to test its 16-inch Noark Line at test station MP 70.06 for cathodic protection at least once each calendar year, but with intervals not exceeding 15 months.

49 C.F.R. §192.471(a) - failing to connect the test lead wire to its 16-inch Noark pipeline at test station No. 46 (MP 229.03). Survey records indicated "broken wire" and no repairs were made in 1999 or 2000.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 3 and 4a. Respondent has demonstrated corrective action addressing Item 4a by submitting the missing records and copies of pipe mill records and hydrostatic tests reports of the Kennett 8-inch pipeline. Also Respondent has determined the pipeline MAOP to be 915 psig. These measures are accepted as adequately fulfilling the requirements of the pipeline safety regulations.

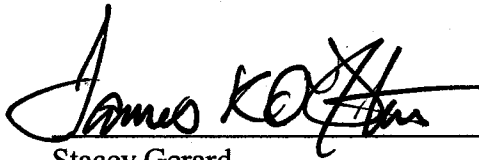
Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is hereby ordered to take the following actions related to Item 3 of the Notice to ensure compliance with the pipeline safety regulations applicable to its operations.

- 1) With respect to Item 3, violation of 49 C.F.R. §192.517, determine significant elevation differences along the Mountain Home Lateral line and use hydrostatic test records to determine and/or re-confirm pipeline MAOP in accordance with §192.619. Complete this work within 60 days following receipt of the Final Order. Submit the records and notice of completed actions to the Southern Regional Director, Office of Pipeline Safety, 61 Forsyth Street, SW, Suite 16T15, Atlanta, GA 30303.

- 2) The Southern Regional Director, 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.

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 \$100,000 per violation per day, or in the referral of the case for judicial enforcement.



41 Stacey Gerard
Associate Administrator
for Pipeline Safety

APR 29 2003

Date Issued