



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

FEB - 5 2003

Mr. John Deacon
Manager, ES&RC
Nuevo Energy Company
201 South Broadway
Orcutt, CA 93455

Re: CPF No. 5-2002-0004

Dear Mr. Deacon:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$15,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. 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: Bob Marsalek
Pipeline Safety Coordinator
Nuevo Energy Company

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)
)
Nuevo Energy Company,) CPF No. 5-2002-0004
)
Respondent.)
_____)

FINAL ORDER

On February 26-28, 2002, 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 Brea, California. As a result of the inspection, the Director, Western Region, OPS, issued to Respondent, by letter dated May 20, 2002, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 192.705 (Item 1) and 192.745 (Item 2) and proposed assessing a civil penalty of \$15,000 for the alleged violation in Item 2.

Respondent responded to the Notice by letter dated June 28, 2002 (Response) and requested a hearing. A hearing was held via telephone conference on October 2, 2002. Respondent did not contest the allegations of violation and presented information in mitigation of the proposed penalty.

FINDING OF VIOLATION

At the hearing, Respondent did not contest the alleged violations in the Notice. Accordingly, I find that Respondent violated the following section of 49 C.F.R. Part 192, as more fully described in the Notice:

49 C.F.R. § 192.745 - failure to inspect transmission line valve operation at three separate locations within the required intervals.

This finding of violation will be considered a prior offense 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. § 192.745 (Item 2), failing to inspect the operation of certain transmission line valves within the required intervals, a civil penalty of \$15,000 was proposed in the Notice. At the hearing, Respondent acknowledged that the valve inspections were missed and explained that in August 1999, responsibility for operations and maintenance of the subject facilities was transferred from the Coast District to the Bakersfield District, which lacked a D.O.T. compliance foreman, resulting in the lapses. Respondent further explained that since the time of occurrence, it had transferred operations and maintenance responsibility for these facilities back to the Coast District and had made diligent efforts towards 100 percent compliance.

Transmission line valves serve the critical function of stopping the flow of product when necessary during release incidents, emergencies, and pipeline repairs. Pipeline operators are required to inspect and partially operate their transmission line valves at intervals not exceeding 15 months, but at least once each calendar year to ensure their proper operation. Failure to properly maintain transmission line valves can put the public safety at increased risk. Although Respondent has taken prompt remedial measures, including ensuring that its personnel rigorously verify the accuracy and completeness of its automated inspection process, during the time frame at issue, Respondent failed to follow its own procedures. In fact, the inspection delay for each of the three subject valves exceeded the required 15-month interval by several months for each valve. Respondent has not presented information that warrants mitigation of the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$15,000 for failure to comply with the requirements of 49 C.F.R. § 192.745. A determination has been made that Respondent has the ability to pay this penalty without impairing its ability to continue in 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 Montroney Aeronautical Center, P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$15,000 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.

WARNING ITEM


The Notice did not propose a civil penalty or corrective action for the following Item, but warned Respondent that it should take appropriate corrective action. Respondent presented information at the hearing showing that it is addressing the cited item:

49 C.F.R. § 192.705 (Item 1) -- failing to conduct adequate patrolling of the Richfield Gas transmission line within the required interval.

Respondent is again warned that if OPS finds a violation in a subsequent inspection, enforcement action will be taken.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. However, if the civil penalty is paid, the case closes automatically and Respondent waives the right to petition for reconsideration. The filing of a 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).

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. The terms and conditions of this Final Order are effective on receipt.



Stacey Gerard
Associate Administrator
for Pipeline Safety

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Date Issued