

JUN 9 1997

Mr. Larry E. Shakley  
President  
ARCO Pipe Line Company  
15600 JFK Blvd., Suite 300  
Houston, TX 77032

Re: CPF No. 41506; Four Corners Pipe Line Company

Dear Mr. Shakley:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$10,000. 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,

*MS*  
Gwendolyn M. Hill  
Pipeline Compliance Registry  
Office of Pipeline Safety

Enclosure

cc Mr. Terry Fronterhouse  
Chief, Pipeline Safety Group  
Arizona Corporation Commission  
Pipeline Safety Section  
1200 West Washington Street  
Phoenix, AZ 85007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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DEPARTMENT OF TRANSPORTATION  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
WASHINGTON, DC

\_\_\_\_\_) )  
In the Matter of ) )  
Four Corners Pipe Line Company, ) CPF No. 41506  
Respondent. ) )  
\_\_\_\_\_)

FINAL ORDER

On May 14-16, 1991, pursuant to 49 U.S.C. § 60117, representatives of the Arizona Corporation Commission, as agent for the Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Respondent's facilities and records in Arizona. As a result of the inspection, the Director (formerly Chief), Southwest Region, OPS, issued to Respondent, by letter dated August 19, 1991, 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. §§ 195.402(c)(3), 195.402(d) and 195.404(c)(3) and proposed a civil penalty of \$15,000 for the alleged violations.

Respondent responded to the Notice by letter dated September 18, 1991 (Response). Respondent contested the allegations and submitted information to support its position and to mitigate the proposed penalty. Respondent also proposed a compromise offer. In a letter dated October 11, 1991, OPS rejected Respondent's offer of compromise, and requested Respondent submit further information. By letter dated October 23, 1991, Respondent submitted additional information (Additional Response). Respondent did not request a hearing and therefore, has waived its right to one.

FINDINGS OF VIOLATION

Item 1 in the Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(3), which requires that an operator include in its operations manual written procedures for operating, maintaining and repairing the pipeline system that meet each of Part 195's Operation and Maintenance requirements (found at subpart f). Specifically, the Notice alleged that Respondent did not have written procedures for testing its three breakout tanks to determine whether the cathodic protection was adequate, as required by § 195.416(a). Section 195.416(a) (1991 ed.) required an operator to test each cathodically protected underground facility within its pipeline system, at intervals not exceeding 15 months, but at least once each calendar year, to determine whether the facility had adequate cathodic protection.

Respondent asserted that the cited breakout tanks are not underground facilities subject to the requirements of § 195.416(a) because they are aboveground breakout tanks.

Since the Notice was issued, OPS revised § 195.416(a) to delete the term "underground facility" and substitute "buried, in contact with the ground, or submerged pipeline facility." (59 Fed. Reg. 33388, 33394; June 28, 1994). OPS explained that it was making this revision because OPS has meant an underground pipeline facility as one that is buried or is in contact with the ground. OPS further explained that this revision would not change the burden on operators because OPS safety inspectors have consistently required any facility in contact with the ground to be cathodically protected.

Each of the cited breakout tanks rests on or lies beneath the soil surface. Because the bottom portion of each of the cited breakout tanks is in contact with the ground, each tank is considered an underground facility within the scope of § 195.416(a). Furthermore, Respondent indicated that it had been electrically inspecting its breakout tanks for adequate cathodic protection and had found the tanks to be protected. Cathodic protection is pointless unless maintained on a routine basis. Thus, because the breakout tanks are underground (as OPS has defined that term) facilities under cathodic protection, Respondent was required to have written procedures for testing the tanks to determine whether the cathodic protection was adequate. Accordingly, I find that Respondent violated 49 C.F.R. § 195.402(c)(3).

Item 2 alleged that Respondent's Operations Manual did not contain certain written procedures covering abnormal operations, in violation of 49 C.F.R. § 195.402(d)(5).

Respondent said that a combination of material contained in its Operations Manual and Operations Control Center (OCC) Operating Procedures Manual satisfies the regulatory requirements.

Respondent's Operations Manual, the operating manual for its field personnel, is located at its Arizona facility. Respondent's OCC Procedures Manual, the operating manual for its OCC personnel, is located at Respondent's facility in Long Beach, California. Section 195.402(a) requires an operator to prepare a written procedural manual and to maintain the manual's appropriate parts at those locations where operations and maintenance activities are conducted. Operations and maintenance activities include handling abnormal operations and emergencies.

Respondent may keep separate procedural manuals at each of its facilities. However, keeping procedures necessary to the operation and maintenance of the Arizona facility at the California facility does not comply with the regulation. Procedures necessary for the operation and maintenance of a facility must be kept at that facility. Respondent has not shown that the cited missing procedures for handling abnormal operations were not necessary for operation of the Arizona facility. Accordingly, I find that Respondent violated 49 C.F.R. § 195.402(d)(5).

Item 3 in the Notice alleged that Respondent violated 49 C.F.R. § 195.404(c)(3), which requires that an operator maintain a record of each inspection and test required by subpart f for the longer of 2 years or until the next inspection is performed. The Notice alleged that Respondent did not record the test results of the annual tests that Respondent was conducting to determine if the three breakout tanks had adequate cathodic protection.

Respondent said that it had electrically tested its breakout tanks for adequate cathodic protection, but had not retained the records. Respondent explained that since its breakout tanks were not required to be cathodically protected (see above discussion), the record retention requirements do not apply.

Respondent further said that although it did not believe its breakout tanks required cathodic protection, its tanks were protected. Respondent explained that the pipe-to-soil potential readings it has taken on station piping on either side of each breakout tank reflect the potential of the breakout tank, and that these readings show that the stations where the cited aboveground breakout tanks are located remain protected within the NACE RP-01-69 section 6.3.3.1 criteria.

As discussed supra, Respondent was required to install and maintain cathodic protection on its aboveground breakout tanks. Because Respondent is required to maintain adequate cathodic protection for its breakout tanks, Respondent is also required to maintain records concerning its cathodic protection tests and inspections.

Respondent's monitoring practice is not a reliable indicator of a breakout tank's corrosion potential. The level of corrosion on a breakout tank's bottom is affected by the surrounding environmental and soil conditions, as well as by the potential reading from the tank itself. Thus, the pipe-to-soil potentials taken on station piping on either side of a breakout tank may not accurately reflect the breakout tank's corrosion potential. Rather, to accurately gauge a breakout tank's corrosion potential, an operator must place probes in the soil beneath the tank's bottom.

Nonetheless, even if Respondent believed the breakout tanks had adequate cathodic protection, without being able to review records, OPS cannot verify that Respondent was performing the annual tests to determine that the cathodic protection was adequate. Accordingly, I find that Respondent violated 49 C.F.R. 195.404(c)(3).

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

#### ASSESSMENT OF PENALTY

At the time the Notice was issued, under 49 U.S.C. § 60122, Respondent was subject to a civil penalty not to exceed \$10,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations. The Notice proposed a total civil penalty of \$15,000.

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 discussed above, I did not accept Respondent's explanation concerning its lack of procedures and record keeping for monitoring cathodic protection at breakout tanks (Items 1 and 3). Because any portion of a tank's surface in contact with the soil, or below the soil's surface, is vulnerable to external corrosion adequate cathodic protection is necessary to mitigate corrosion that might result in structural failure. However, I recognize that Respondent's non-compliance was based on its misinterpretation of the term underground. Respondent has indicated its willingness to change its practices if its interpretation differs from OPS's. Respondent said that it would include a procedure for monitoring cathodic protection and maintain records of future tank-to-soil readings.

As for the remaining violation (Item 2), the lack of written guidance for employees encountering abnormal operations could have affected employees' safety and the integrity of the pipeline. During abnormal operations, an employee may have to make critical decisions under pressure. The lack of written procedures can hamper an employee's ability to respond and effectively deal with an abnormal condition. Written procedures help prevent an error in judgment that can lead to a pipeline accident. Respondent did not present information to mitigate the proposed civil penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000.

**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.** 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, SW, Washington, D.C. 20590-0001.

Questions concerning wire transfers should be directed to:  
Valeria Dungee, Federal Aviation Administration, Mike Monroney  
Aeronautical Center, Financial Operations Division (AMZ-320),  
P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$10,000 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.

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.

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Richard B. Felder  
Associate Administrator  
Pipeline Safety

Date:     JUN 9