

Mr. James W. Clinton
Vice-President
Air Liquide America Corporation
3535 West 12th Street
Houston, Texas 77008

RE: CPF No. 43521 - Big Three Industries, Inc.

Dear Mr. Clinton:

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 \$5,000, and requires certain corrective action. I acknowledge receipt of, and accept your wire transfer in the amount of \$5,000 received on January 21, 1994, as payment in full of the civil penalty assessed 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)
)
Big Three Industries, Inc.,) CPF No. 43521
)
Respondent.)
_____)

FINAL ORDER

On August 25-27, 1993 and October 21, 1993, 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 at Hobbs, New Mexico and your DOT Headquarter's drug program at Houston, Texas. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated December 17, 1993, a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 195.402(a), 195.412, 199.11, and 199.23(a)(5), and proposed assessing civil penalties of \$500, \$2,000, \$2,000, and \$500, respectively, for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violation of §195.402. Additionally, the Notice proposed, in accordance with 49 C.F.R. §190.237, that Respondent amend its procedures for its anti-drug plan for its employees and contractor employees.

Respondent responded to the Notice by letters dated January 21, 1994 and February 17, 1994 (Response). Respondent indicated its desire to comply with the Notice, and provided a correction plan for coming into full compliance. Respondent did not request a hearing and therefore, has waived its right to one.

FINDINGS OF VIOLATION

Respondent did not contest the alleged violations in the Notice. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Parts 195 and 199, as more fully described in the Notice:

49 C.F.R. § 195.402 -- failing to prepare a complete manual of written procedures for operations (normal and abnormal), maintenance, emergencies and safety related condition reports;

49 C.F.R. § 195.412 -- failing to inspect its right-of-way within the three week interval prescribed by the regulation on 24 occasions in 1992 and 1993;

49 C.F.R. § 199.11 -- failing to randomly drug test 50% of its employees within a 12 month period; and

49 C.F.R. § 199.23(a)(5) -- failing to maintain training records for its supervisors and employees.

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

ASSIGNMENT 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.

Failing to have complete written procedures, properly inspect its right-of-way, randomly drug test 50% of its employees, and maintain training records during the period of time prior to compliance with the pipeline safety requirement could have led to an employee's use of drugs going undetected or other serious problems to the operation of the pipeline facility.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000, which has already been paid by Respondent.

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.

In its Response, Respondent submitted a correction plan for compliance by May 1, 1994. In an effort to assess whether Respondent had made progress on compliance, a representative of OPS sent a facsimile, dated July 7, 1997, to Respondent requesting further information. Respondent sent letters dated August 15, 1997 and October 13, 1997 in response to OPS's inquiry. In those letters, Respondent provided further information concerning the steps it has taken to achieve full compliance. Respondent has adopted procedures adequate to correct the violations of §195.402 noted in Item 1 (a)-(h) of the Notice. However, the amended procedures do not adequately address Item 1 (i)-(k). The amended "Operating and Maintenance Procedure" is not a "procedure," but rather a description of the equipment that it installed and a description of the procedure it uses. A procedure is a step-by-step course of action that a pipeline employee must follow to accomplish the required task assigned. Specific guidance on compliance was detailed in an OPS facsimile to Respondent dated October 23, 1997.

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) Revise your operating and maintenance manual to incorporate the procedures for the following:
 - (a) Gathering of data needed for reporting accidents under Subpart B of Part 195, in a timely and effective manner, in accordance with 49 C.F.R. § 195.402(c)(2);

- (b) Determining which pipeline facilities are located in areas that would require an immediate response by the operator to prevent hazards to the public of the facilities failed or malfunctioned, in accordance with 49 C.F.R. § 195.402(c)(4); and
 - (c) In the case of facilities not equipped to fail safe that are identified under paragraph 195.402(c)(4) or that control receipt and delivery of the hazardous liquid or carbon dioxide, detecting abnormal operating conditions by monitoring pressure, temperature, flow or other appropriate operational data and transmitting this data to an attended location, in accordance with 49 C.F.R. 195 § 402(c)(9).
- (2) Submit copies of the appropriate procedures to:
- Director, Southwest Region
Office of Pipeline Safety
2320 LaBranch Street, Room 2116
Houston, Texas 77004
- (3) Accomplish these actions within 30 days following receipt of the Final Order. The Regional Director may grant an extension of time upon receipt of a written request stating the reasons therefor.

AMENDMENT OF PROCEDURES

The Notice alleged inadequacies in Respondent's anti-drug plan procedures for its employees and contractor employees, and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. §§ 199.7 and 199.21(a).

In its Response, Respondent submitted copies of its amended procedures, which the Director, Southwest Region, OPS has accepted as adequate to assure safe operation of Respondent's pipeline system. Accordingly, no need exists to issue an order directing amendment.

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 terms of the order, including the 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 any aspect of 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.

/s/Richard B. Felder

Richard B. Felder
Associate Administrator for Pipeline Safety

Date issued: 01/07/98