



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

JUN 20 2005

Mr. Gary Heminger
President
Marathon Ashland Pipe Line LLC
539 S. Main Street
Findlay, OH 45840

Re: CPF No. 3-2001-5004

Dear Mr. Heminger:

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 \$7,500. 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,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Ivan Huntoon, Region Director
Central Region, OPS

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of

Marathon Ashland Pipe Line LLC,

Respondent

CPF No. 3-2001-5004

FINAL ORDER

On November 13 - 17, 2000, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), conducted an on-site pipeline safety inspection of Respondent's facilities and records in Illinois, Indiana, and Kentucky.¹ As a result of the inspection, the Director, Central Region, OPS, issued to Respondent, by letter dated March 14, 2001, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding Respondent had violated 49 C.F.R. § 195.420(a) and proposed assessing a civil penalty of \$10,000 for the alleged violation.

Respondent responded to the Notice by letter dated April 4, 2001 (Response). Respondent did not contest the allegation of violation. Respondent offered an explanation of the violation, provided information concerning corrective action it has taken, and requested the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing, and therefore has waived its right to one.

FINDING OF VIOLATION

In its Response, Respondent did not contest the violation alleged in the Notice. Accordingly, I find Respondent violated the following section of 49 C.F.R. Part 195, as more fully described in the Notice:

¹ The Norman Y. Mineta Research and Special Programs Improvement Act, Pub. L. No. 108-426, 118 Stat. 2423 (2004), created the Pipeline and Hazardous Materials Safety Administration (PHMSA) and transferred the authority of RSPA exercised under chapter 601 of title 49, United States Code, to the Administrator of PHMSA. See also 70 Fed. Reg. 8299, 8301-8302 (2005) (delegating authority to the Administrator of PHMSA).

49 C.F.R. § 195.420(a) – failing to maintain each valve in good working order at all times. Valve #8 (Sta. 2829+82) at the Little Wabash River did not operate during the field inspection.

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.² The Notice proposed a total civil penalty of \$10,000 for failing to maintain the subject valve in good working order.

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.

Respondent's failure to maintain a valve necessary for the safe operation of its pipeline system created a risk to public safety and the environment. In the event a pipeline release occurred at this particular location, efforts to control the release could be delayed by the inability to operate Valve #8. The valve's proximity to the Little Wabash River means a pipeline release at this location may cause environmental damage to the Little Wabash River and the larger Wabash River, a major waterway between Illinois and Indiana.

In its Response, Respondent requested the proposed civil penalty be reduced or eliminated. Respondent explained Valve #8 did not operate during the inspection because the hydraulic reservoir for the hand-operated closing mechanism was low on fluid due to recent environmental conditions. Respondent refilled the hydraulic fluid reservoir and confirmed proper operation of the valve within three days of the inspection. Respondent also instituted a program of inspecting these types of valves on the Patoka Owensboro system monthly to minimize the potential for this condition to reoccur. Respondent is investigating additional methods to eliminate the potential for low fluid level, such as replacing the hydraulic actuator with a hand wheel operator. Respondent noted Valve #8 was the only valve not properly operational during the inspection of forty-three valves.

In the present case, Respondent has instituted preventative measures beyond the regulatory requirements in an effort to eliminate the reoccurrence of the identified deficiency. The

² The Pipeline Safety Improvement Act of 2002, Pub. L. No. 107-355, § 8(b)(1), 116 Stat. 2992, increased civil penalty liability to \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

preventative measures taken by Respondent were in addition to correcting the cited deficiency within three days of the OPS inspection. The cited violation was an isolated incident caused by recent environmental conditions and was not indicative of a systematic problem on Respondent's system. I find the foregoing facts lessen the gravity of the violation and demonstrate good faith in attempting to achieve compliance. Accordingly, a reduction of the civil penalty is justified.

Having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$7,500. Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business.

Payment of the civil penalty must be made within 20 days of service. Payment may 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-120), P.O. Box 25082, 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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$7,500 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 ITEMS

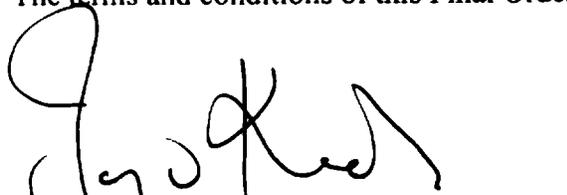
The Notice did not propose a civil penalty or corrective action for the following items but warned Respondent that it should take appropriate action to correct the items. The warnings were for:

49 C.F.R. § 195.404(c)(3) – failing to maintain the following records: (a) internal pipe inspection report for the replacement of 39 feet of pipe at the Johnsonville Pump Station in October 1999; and (b) valve inspection reports for Valves 5, 6 and 7 for the Fall 1999 inspection period. Valves 5, 6 and 7 were locked out during the scheduled inspection and no report was completed for the valve inspection that took place when the lock-out ended.

Respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a 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 payment of the assessed civil penalty. However, if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative action and the right to petition for reconsideration is waived.

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



for
Stacey Gerard
Associate Administrator
for Pipeline Safety

JUN 20 2005

Date Issued