

§ 190.219

through 190.213 of this part to determine the nature and extent of the violations and to issue an order directing compliance.

[Amdt. 190-6, 61 FR 18514, Apr. 26, 1996]

§ 190.219 Consent order.

(a) At any time before the issuance of a compliance order under §190.213 the Associate Administrator, OPS and the respondent may agree to dispose of the case by joint execution of a consent order. Upon such joint execution, the consent order shall be considered a final order under §190.213.

(b) A consent order executed under paragraph (a) of this section shall include:

(1) An admission by the respondent of all jurisdictional facts;

(2) An express waiver of further procedural steps and of all right to seek judicial review or otherwise challenge or contest the validity of that order;

(3) An acknowledgement that the notice of probable violation may be used to construe the terms of the consent order; and

(4) A statement of the actions required of the respondent and the time by which such actions shall be accomplished.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18514, Apr. 26, 1996]

CIVIL PENALTIES

§ 190.221 Civil penalties generally.

When the Associate Administrator, OPS has reason to believe that a person has committed an act which is a violation of any provision of the 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder, proceedings under §§190.207 through 190.213 may be conducted to determine the nature and extent of the violations and to assess and, if appropriate, compromise a civil penalty.

[Amdt. 190-6, 61 FR 18515, Apr. 26, 1996]

§ 190.223 Maximum penalties.

(a) Any person who is determined to have violated a provision of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder, is subject to a civil penalty not to exceed \$25,000 for each violation for each day the violation

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continues except that the maximum civil penalty may not exceed \$500,000 for any related series of violations.

(b) Any person who knowingly violates a regulation or order under this subchapter applicable to offshore gas gathering lines issued under the authority of 49 U.S.C. 5101 *et seq* is liable for a civil penalty of not more than \$25,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense.

(c) Any person who is determined to have violated any standard or order under 49 U.S.C. 60103 shall be subject to a civil penalty of not to exceed \$50,000, which penalty shall be in addition to any other penalties to which such person may be subject under paragraph (a) of this section.

(d) No person shall be subject to a civil penalty under this section for the violation of any requirement of this subchapter and an order issued under §190.217, §190.219 or §190.233 if both violations are based on the same act.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-2, 54 FR 32344, Aug. 7, 1989; Amdt. 190-6, 61 FR 18515, Apr. 26, 1996; 61 FR 38403, July 24, 1996]

§ 190.225 Assessment considerations.

The Associate Administrator, OPS assesses a civil penalty under this part only after considering:

(a) The nature, circumstances and gravity of the violation;

(b) The degree of the respondent's culpability;

(c) The respondent's history of prior offenses;

(d) The respondent's ability to pay;

(e) Any good faith by the respondent in attempting to achieve compliance;

(f) The effect on the respondent's ability to continue in business; and

(g) Such other matters as justice may require.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18515, Apr. 26, 1996]

§ 190.227 Payment of penalty.

(a) Except for payments exceeding \$10,000, payment of a civil penalty proposed or assessed under this subpart may be made by 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-320), P.O. Box 25770, Oklahoma City, OK 73125, or by wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Payments exceeding \$10,000 must be made by wire transfer. Payments, or in the case of wire transfers, notices of payment, must be sent to the Chief, General Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

(b) Payment of a civil penalty assessed in a final order issued under § 190.213 or affirmed in a decision on a petition for reconsideration must be made within 20 days after receipt of the final order or decision. Failure to do so will result in the initiation of collection action, including the accrual of interest and penalties, in accordance with 31 U.S.C. 3717 and 49 CFR part 89.

[Amdt. 190-7, 61 FR 27792, June 3, 1996]

CRIMINAL PENALTIES

§ 190.229 Criminal penalties generally.

(a) Any person who willfully and knowingly violates a provision of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder shall upon conviction be subject for each offense to a fine of not more than \$25,000 and imprisonment for not more than five years, or both.

(b) Any person who willfully violates a regulation or order under this subchapter issued under the authority of 49 U.S.C. 5101 *et seq.* as applied to offshore gas gathering lines shall upon conviction be subject for each offense to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

(c) Any person who willfully and knowingly injures or destroys, or attempts to injure or destroy, any interstate transmission facility or any interstate pipeline facility (as those terms are defined in 49 U.S.C. 60101 *et seq.*) shall, upon conviction, be subject

for each offense to a fine of not more than \$25,000, imprisonment for a term not to exceed 15 years, or both.

(d) Any person who willfully and knowingly defaces, damages, removes, destroys any pipeline sign, right-of-way marker, or marine buoy required by 49 U.S.C. 60101 *et seq.* or 49 U.S.C. 5101 *et seq.*, or any regulation or order issued thereunder shall, upon conviction, be subject for each offense to a fine of not more than \$5,000, imprisonment for a term not to exceed 1 year, or both.

(e) No person shall be subject to criminal penalties under paragraph (a) of this section for violation of any regulation and the violation of any order issued under § 190.217, § 190.219 or § 190.229 if both violations are based on the same act.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-2, 54 FR 32344, Aug. 7, 1989; Amdt. 190-4, 56 FR 63770, Dec. 5, 1991; Amdt. 190-6, 61 FR 18515, Apr. 26, 1996]

§ 190.231 Referral for prosecution.

If an employee of the Research and Special Programs Administration becomes aware of any actual or possible activity subject to criminal penalties under § 190.229, the employee reports it to the Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. The Chief Counsel refers the report to OPS for investigation. Upon completion of the investigation and if appropriate, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

[Amdt. 190-6, 61 FR 18515, Apr. 26, 1996]

SPECIFIC RELIEF

§ 190.233 Hazardous facility orders.

(a) Except as provided by paragraph (b) of this section, if the Associate Administrator, OPS finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section, and § 190.211(a), a particular pipeline facility to be hazardous to life or property, the Associate Administrator, OPS shall issue an order pursuant to this section requiring the owner or operator of the facility to take corrective action. Corrective action may