

AUGUST 1, 2012

Mr. Gary L. Sypolt
President
Dominion Transmission, Inc.
120 Tredegar Street
Richmond, VA 23219-4306

Re: CPF No. 1-2010-1008

Dear Mr. Sypolt:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$182,500, and finds that Dominion Transmission, Inc. has completed the action specified in the Notice to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Byron E. Coy, Director, Eastern Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Jeffrey L. Barger, Senior Vice President, Dominion Transmission, Inc.
445 West Main Street, Clarksburg, WV 26301
Ms. Susan A. Olenchuk, Counsel for Dominion Transmission
Van Ness Feldman, P.C.
Seventh Floor, 1050 Thomas Jefferson St., N.W., Washington, DC 20007
Mr. Girija S. Bajpayee via Email at gbajpayee@psc.state.wv.us

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of)

Dominion Transmission, Inc.,)

Respondent.)

CPF No. 1-2010-1008

FINAL ORDER

On July 18, 2006, pursuant to 49 U.S.C. § 60117, a representative of the West Virginia Public Service Commission (WV PSC), as agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Dominion Hope Gas, Inc., a subsidiary of Dominion Transmission, Inc.¹ (Dominion or Respondent), following an incident that occurred on July 18, 2006, at the Dominion Regulating Station XS-2125, near New Martinsville, West Virginia (Incident).² Dominion operates 11,000 miles of natural gas transmission, gathering, and storage pipelines and 21,800 miles of gas distribution pipelines in Ohio, West Virginia, Pennsylvania, New York, Maryland, and Virginia.³

The investigation arose out of a rupture on a plastic pipeline owned and operated by Dominion Hope Gas, Inc. The cause of the rupture was the closure of valves at the Dominion Transmission Regulating Station XS-2125, located upstream of the Incident location. Respondent's employees were preparing the station for sandblasting/painting, and an employee mistakenly closed valves located on the pressure sensing lines to the regulators. No mechanisms were in place to prevent unauthorized operation of the valves. As a result, the downstream line became over-pressured and ruptured. The rupture could have resulted in injuries, deaths, or evacuations, especially considering the proximity to Route 2, a public roadway.

As a result of the Incident and inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated October 13, 2010, a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order, which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that

¹ Dominion website, available at <http://www.dom.com/about/companies/index.jsp> (last visited Apr. 5, 2012).

² Pipeline Safety Violation Report (Violation Report) at 4, (July 18, 2006) (on file with PHMSA).

³ SEC Form 10-K, Dominion Transmission, Inc. (February 2011) at 5.

Dominion had violated 49 C.F.R. §§ 192.805 and 192.199 and proposed assessing a civil penalty of \$185,600 for the alleged violations. The Notice also proposed that Respondent be required to take certain measures to correct the alleged violations. The warning item required no further action, but warned the operator to correct the probable violation or face future potential enforcement action.

Respondent responded to the Notice by letter dated November 12, 2010 (Response). Dominion contested the allegations, requested a hearing, and provided a preliminary statement of issues to be discussed in the hearing. By letter dated March 7, 2011, Respondent stated that it intended to submit a “written answer” and withdrew its request for a hearing. On May 3, 2011, Respondent submitted a document entitled, “Final Response of Dominion Transmission, Inc. to Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order” (Closing). Submission of the Closing thereby authorized the entry of this Final Order without further notice.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192.805, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.805(b), which states:

§ 192.805 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (a) Identify covered tasks;
- (b) Ensure through evaluation that individuals performing covered tasks are qualified;....

The Notice alleged that Respondent violated § 192.805(b) by failing to ensure that individuals performing covered tasks were qualified. More specifically, the Notice alleged that two of Respondent’s employees performed covered tasks, “Regulator Bypass” and “Operation of M&R Station,” when the employees’ qualification records did not show that they had been qualified to perform said tasks. Section 192.805(c) allows individuals who have not been qualified to perform covered tasks to do so, provided they are directed and observed by an individual who has been qualified. The Notice further alleged that the employees in question were not directed and observed by a qualified individual when they performed the covered tasks that led to the Incident.

In its Closing, Dominion did not contest the allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.805(b) by failing to ensure that employees performing covered tasks were either qualified or directed and observed by individuals who were.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.199(h), which states:

§ 192.199 Requirements for design of pressure relief and limiting devices.

Except for rupture discs, each pressure relief or pressure limiting device must:

(a)

(h) Except for a valve that will isolate the system under protection from its source of pressure, be designed to prevent unauthorized operation of any stop valve that will make the pressure relief valve or pressure limiting device inoperative.

The Notice alleged that Respondent violated § 192.199(h) by failing to design certain pressure-limiting devices in a manner that would prevent the unauthorized operation of stop valves that would make the pressure-limiting devices inoperative. More specifically, the Notice alleged that Respondent failed to have locks or other means to prevent unauthorized operation of the stop valves located in the regulator pressure sensing lines at regulator station XS-2125.

In its Closing, Dominion did not contest the allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.199(h) by failing to design certain pressure-limiting devices in a manner that would prevent unauthorized operation of stop valves.

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

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$185,600 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$85,600 for Respondent's violation of 49 C.F.R. § 192.805(b), for failing to ensure that the individuals performing covered tasks were qualified. As stated above, Respondent did not contest the violation but argued that the proposed civil penalty is excessive and advanced several arguments in support of a penalty reduction. First, Respondent argued that the violation report erroneously stated that two unqualified individuals performed two tasks each (i.e., four covered tasks), when it should have been one.⁴

⁴ Closing at 5.

Respondent argued that the first act of closing the stop valves was performed by one employee, and the second covered task (i.e., closing the inlet valve) was performed as a matter of necessity to avoid further consequence. Dominion argued it should not be penalized for this second covered task. Next, Respondent argued that the Violation Report erroneously indicated that two customers experienced gas supply disruption as a result of the incident, when only one customer experienced disruption.

Respondent also took issue with PHMSA's characterization of the penalty assessment factors that were considered. First, the company cited the statement in the "Culpability" section of the Violation Report that Respondent failed to take any action to comply with the regulation. Respondent argued that the company did properly instruct its employees on the tasks they were directed to perform at the regulator station. Further, Dominion disagreed with the statement in the Violation Report that the company failed to act in good faith.

I address each of Respondent's arguments in turn. First, Respondent argued that PHMSA should calculate the civil penalty as though only one covered task had been performed by an unqualified individual. I agree, and the civil penalty has been reduced accordingly. Second, Dominion contended that the gravity of the violation should be reduced because only one customer experienced a service disruption as a result of the Incident.⁵ Respondent is correct that only a single customer experienced a service disruption, but the number of customers affected was not a factor in the proposed penalty calculation.

Third, Respondent argued with PHMSA's contention in the "Culpability" section of the Violation Report that Dominion failed to take action to comply with the regulation. Respondent countered that it had properly instructed the employees in the tasks to be performed at the regulator station, i.e., sandblasting and painting, and that its culpability should therefore be considered "low."⁶

I disagree. Unless the employee's closure of the valves was intentional, such act itself demonstrates that there was a misunderstanding as to what the employee was supposed to do. Also, Respondent did not provide documentation of its instructions to its employees to show that they had been instructed not to operate the stop valves. Therefore, this argument does not support reduction of the civil penalty.

Finally, Respondent disagreed with PHMSA's selection of the statement in the Violation Report that "good faith does not exist." To clarify, this section of the Violation Report is not meant to gauge Respondent's overall good-faith or intent to comply with regulatory requirements in general. It only considers whether, for the instant allegation of violation, Respondent's actions were a result of an alternative, reasonable, yet mistaken, interpretation of the regulations. This incident was not the result of an alternative interpretation of the regulation; it was the result of the misunderstanding of an employee about what action was appropriate for him to perform. Therefore, I reject Respondent's argument that mitigation of the penalty for good faith is warranted.

⁵ Closing, at 5.

⁶ *Id.* at 6.

Based upon the foregoing, I assess Respondent a reduced civil penalty of \$82,500 for violation of 49 C.F.R. § 192.805(b).

Item 2: The Notice proposed a civil penalty of \$100,000 for Respondent’s violation of 49 C.F.R. § 192.199(h), for failing to design pressure-limiting devices in a manner that would prevent unauthorized operation of stop valves. Again, Respondent does not contest the violation but argues that the proposed civil penalty is excessive and advanced several arguments in support of a penalty reduction. First, Respondent objects that, contrary to assertions in the Violation Report, its employees did not make statements to the WV PSC inspector agreeing that “stop valves should have been protected by installing locks or other devices in accordance with O&M procedures.”⁷ Dominion submitted affidavits from two of its employees in support of this contention. Respondent further stated, “[t]reating these statements as aggravating factors is inappropriate”

Respondent also argued that the proposed penalty should be reduced because it is disproportionate compared to civil penalties assessed in other proceedings involving violations of § 192.199(h). In support of this contention, it cited a 2006 case and a 2002 case in which PHMSA assessed a \$1,000 civil penalty in the 2006 case and a \$20,000 combined penalty in the 2002 case for two violations, one of which was a violation of § 192.199(h).

First, I respond to Dominion’s argument that PHMSA inappropriately considered the alleged “admissions” by Respondent’s employees to be “aggravating factors” in calculation of the civil penalty. The facts in this case establish that Respondent had not taken any steps to design pressure relief valves “to prevent unauthorized operation of any stop valve that will make the pressure relief valve or pressure limiting device inoperative.”⁸ As noted above, Respondent did not contest this violation. The statements allegedly made by Dominion employees to the WV PSC inspector were neither necessary to establish the violation nor were they deemed “aggravating factors” in determining the proposed penalty.⁹ Therefore, reduction of the proposed civil penalty is not merited based on this argument.

Next, I respond to Dominion’s argument that the proposed civil penalty is excessive in comparison to the 2006 and 2002 cases. This argument is flawed because it does not consider that, unlike the cases cited by Respondent, the instant case resulted from a reportable incident, not a routine inspection. PHMSA considers pipeline accidents to constitute serious threats to life, property, and the environment under the federal Pipeline Safety Laws. When regulatory violations lead directly to such accidents, it is logical and appropriate that they serve to elevate substantially the amounts of the penalties assessed. Furthermore, the cases that Respondent cited resulted from inspections that were not contemporaneous to the 2006 incident at issue in this case. The cited cases resulted from inspections that took place in 2003 and 2000, respectively. Civil penalties assessed by PHMSA have increased generally in recent years, particularly in light of Congress’ decision to increase the maximum penalties for pipeline safety violations.

⁷ Violation Report at 10.

⁸ 49 C.F.R. § 192.199(h).

⁹ Closing at 6 and 7.

Further, it is widely recognized that administrative agencies have wide latitude to enforce the statutes that Congress has entrusted to them. As the Supreme Court stated in 1973, “The employment of a sanction within the authority of an administrative agency is.... not rendered invalid in a particular case because it is more severe than sanctions imposed in other cases.”¹⁰ In the absence of statutory language mandating “uniformity of sanctions for similar violations,” agencies are free to assess penalties in a manner that “best serves to deter violations and achieve the objectives of that statute.”¹¹ The Pipeline Safety Laws list the factors that the Secretary “shall” and “may” consider in assessing civil penalties. Nowhere in the statute or in 49 C.F.R. Part 190 is there a provision requiring that the Secretary consider civil penalties assessed in other cases for similar violations in calculating a proposed penalty.¹²

I am satisfied that the proposed penalty for this violation was both reasonable and appropriate. Accordingly, based upon the foregoing, I assess Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 192.199(h).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$182,500**.

Payment of the civil penalty must be made within 20 days of service of this Final Order. Payment may be made by sending a certified check or money order (containing the CPF Number for this case), made payable to “U.S. Department of Transportation,” to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-341), P.O. Box 269039, Oklahoma City, Oklahoma 73125. Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit 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-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$182,500 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 district court of the United States.

¹⁰ *Butz v. Glover Livestock Commission Company, Inc.*, 411 U.S. 182, 187 (1973).

¹¹ *Id.*

¹² Section 49 U.S.C. § 60122(b) states: “Penalty considerations.--In determining the amount of a civil penalty under this section--(1) the Secretary shall consider-- (A) the nature, circumstances, and gravity of the violation, including adverse impact on the environment; (B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on ability to continue doing business; and (C) good faith in attempting to comply; and (2) the Secretary may consider-- (A) the economic benefit gained from the violation without any reduction because of subsequent damages; and (B) other matters that justice requires.”

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 2 in the Notice for violation of 49 C.F.R. § 192.199(h). The Proposed Compliance Order included two items. Item A stated that Respondent was to “[i]nstall a device/s on the sensing line stop valves at regulator station XS-2125 to prevent the unauthorized operation of the regulator stop valves.”¹³ Item B stated that Respondent was to “[m]odify appropriate inspection form/s procedures to require verification during inspections that pressure limiting devices are designed and installed to prevent unauthorized operation of any stop valve that will make the pressure relief valve or pressure limiting device inoperative.”

As stated above, Respondent did not contest that it violated § 192.199(h) but disagreed with the terms of the compliance order. Dominion argued that § 192.199(h) affords operators with flexibility in achieving compliance and that “no one method of valve protection is required under the regulations.”¹⁴ In support of this argument, Respondent cited prior PHMSA documents supporting this interpretation. Dominion also provided a photograph showing that it had installed a six-foot chain-link fence, topped with barbed wire, at the regulator station and requested that PHMSA find that this action satisfied the terms of the compliance order.¹⁵

Respondent’s argument is legally sound, as the regulation requires that the pressure-limiting device “be designed to prevent unauthorized operation.” However, it is important to note that Dominion’s installation of the fencing would not prevent a similar incident from reoccurring. Unqualified employees could still have access to the fenced area for similar maintenance purposes. Valve locks provide a higher level of protection because they ensure that no unauthorized person (either employee or otherwise) inside the fenced area can operate any stop valve. However, as stated above, Respondent’s demonstrated fencing of the XS-2125 satisfies the letter of the regulation, and I find that it has satisfied the terms of the proposed compliance order.

With regard to Item B of the Proposed Compliance Order, I find that the proposed corrective action is no longer applicable given that this Order finds that fencing of the regulator station satisfies the regulation. Once fencing is installed, and compliance with the regulation is achieved, it is not necessary or practical for Respondent to verify the presence of the fencing at each inspection.

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice for Item 2 are not included in this Order.

¹³ Notice at 5

¹⁴ Closing at 2.

¹⁵ Closing at Exhibit A.

WARNING ITEM

With respect to Item 3, the Notice alleged a probable violation of Part 199 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 199.225 (**Item 3**) — Respondent's alleged failure to prepare and maintain a record stating the reasons an alcohol test was not administered within two hours of the Incident. Dominion's records allegedly showed that Respondent did not administer an alcohol test to the employees involved until 2:06 p.m., over 4½ hours after the 9:30 a.m. incident, but the company was unable to provide a record explaining why the test had not been administered promptly.

Dominion did not present information in its Response or Closing showing that it had taken actions to address this item. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

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 sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued