



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

FEB 16 2006

Mr. Royce Ramsay
Vice President of Operations
Northern Natural Gas Company
1111 South 103rd Street
Omaha, NE 68124

Re: CPF No. 3-2003-1009

Dear Mr. Ramsay:

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 \$205,000. 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: Mr. Ivan Huntoon
Director, Central Region, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)

Northern Natural Gas Company,)

Respondent.)

CPF No. 3-2003-1009

FINAL ORDER

During 1999 and 2000, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an on-site pipeline safety inspection of Respondent's New Lisbon pipeline facilities and records in Wisconsin. As a result of the inspection, the Director, Central Region, PHMSA, issued to Respondent, by letter dated September 15, 2003, 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 committed violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$205,000 for the alleged violations.

Respondent responded to the Notice by letter dated October 15, 2003, as supplemented by letter dated January 10, 2005 (Response). Respondent contested the allegations in part, offered information to explain the allegations, described the corrective measures it has taken, and requested that the proposed civil penalty be reduced or eliminated. 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. § 192.609 by failing to complete a class location study following an apparent population increase along its pipeline near Spring Green, Wisconsin until several years after the increased housing had been constructed. Section 192.609 requires a pipeline operator to promptly conduct a class location study following an increase in population density that indicates a change in class location. In its response, Respondent acknowledged that although the expansion of the housing development known as the Oak Ridge Estates Trailer Court had occurred by 1994, it failed to include the trailer court in making its class location determinations until 1998.¹ Accordingly, I find that Respondent

¹ There was never any dispute that the trailer court was within 220 yards (200 meters) of the centerline of the pipeline. Although Respondent and OPS disagreed about whether the change in class location actually occurred in

violated § 192.609 by failing to timely complete a class location study following a population increase along its pipeline.

Item 2 in the Notice alleged that Respondent violated 49 C.F.R. § 192.611(d) by failing to confirm or revise the maximum allowable operating pressure (MAOP) of its pipeline within 18 months following a change in class location. In its response, Respondent acknowledged that new piping to meet the requirements of the appropriate MAOP was not in place until 1999. Therefore, at least several years elapsed between the change in class location and the corrective measures. Accordingly, I find that Respondent violated § 192.611(d) by failing to confirm or revise the maximum allowable operating pressure (MAOP) of its pipeline within 18 months following a change in class location.

Item 3 in the Notice alleged that Respondent violated 49 C.F.R. § 192.605(a) by failing to adequately conduct continuing surveillance of its facilities in accordance with the operating procedures it established under § 192.613(a). Section 192.613(a) requires a pipeline operator to establish procedures for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location. In its response, Respondent explained that it believed that its personnel did follow the applicable procedures for conducting surveillance, but acknowledged that in practice its methods failed to detect the encroaching trailer homes. Accordingly, I find that Respondent violated § 192.605(a) by failing to adequately conduct continuing surveillance of its facilities in accordance with the operating procedures established under § 192.613(a).

Item 4 in the Notice alleged that Respondent violated 49 C.F.R. § 192.619(a)(1) by operating a segment of pipeline at a pressure that exceeded the maximum design pressure determined by the applicable MAOP criteria. Specifically, the Notice alleged that between August 1, 1997 and September 30, 1999 the actual operating pressure exceeded the Class 2 MAOP of 866 psig on at least 268 days. In its response, Respondent explained that had it detected the increased housing and correctly assigned the proper class location, it would have revised the MAOP. Respondent, however, did not contest the facts as alleged. Accordingly, I find that Respondent violated § 192.619(a)(1) by operating a segment of pipeline at a pressure that exceeded the maximum design pressure determined by the applicable MAOP criteria.

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 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.

1990 or in 1994, we need not reach this question as it is not determinative to this case.

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.

With respect to Item 1, the Notice proposed a civil penalty of \$20,000 for Respondent's failure to complete a class location study following a population increase along its pipeline. Timely completion of a class location study is an important part of pipeline safety because operators are obligated to manage the additional risks associated with increased population in the vicinity of a pipeline. In its response, Respondent explained that its failure to acknowledge the trailers in the Oak Ridge Estates Trailer Court was largely due to the fact that the view of the trailer court was obscured by a wooded area between the pipeline right-of-way and the trailers. However, Respondent failed to explain why other means such as aerial surveillance were not used. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, I assess Respondent a civil penalty of \$20,000 for violating 49 C.F.R. § 192.609.

With respect to Item 2, the Notice proposed a civil penalty of \$20,000 for Respondent's failure to confirm or revise the MAOP of its pipeline within 18 months following a change in class location. In its response, Respondent explained that had it detected the increased housing and correctly assigned the proper class location, it would have confirmed or revised the MAOP at the time the housing was constructed. Respondent, however, has presented no information that would justify this failure or would otherwise warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, I assess Respondent a civil penalty of \$20,000 for violating 49 C.F.R. § 192.611(d).

With respect to Item 3, the Notice proposed a civil penalty of \$90,000 for Respondent's failure to adequately conduct continuing surveillance of its facilities in accordance with the operating procedures established under § 192.613(a). We acknowledge that Respondent subsequently took corrective measures including making significant improvements to its surveillance program. Respondent, however, has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, I assess Respondent a civil penalty of \$90,000 for violating 49 C.F.R. § 192.605(a).

With respect to Item 4, the Notice proposed a civil penalty of \$75,000 for operating a segment of pipeline at a pressure that exceeded the maximum design pressure determined by the applicable MAOP criteria. In its response, Respondent explained that had it detected the increased housing and correctly assigned the proper class location, it would have confirmed or revised the MAOP at the time the housing was constructed and thereby avoided this violation. Respondent, however, has presented no information that would justify this failure or would otherwise warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, I assess Respondent a civil penalty of \$75,000 for violating 49 C.F.R. § 192.619(a)(1).

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$205,000.

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. 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) 954-4719.

Failure to pay the \$205,000 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.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, 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 a petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.

Stacey Gerard

Stacey Gerard
Associate Administrator for Pipeline Safety

SG

FEB 16 2008

Date Issued