

AUG 11 2011

Mr. Michel E. Nelson
Senior Vice President, Natural Gas Pipeline Operations
Midwestern Gas Transmission Company
100 West Fifth Street
Tulsa, OK 74103

Re: CPF No. 3-2010-1004

Dear Mr. Nelson:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$40,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by certified mail is complete upon mailing as 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. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety
Mr. David Barrett, Director, Central Region, PHMSA

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 1160 0001 0070 4060]

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

_____)	
In the Matter of)	
)	
Midwestern Gas Transmission Company,)	CPF No. 3-2010-1004
)	
Respondent.)	
_____)	

FINAL ORDER

On May 18–22, 2009, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Midwestern Gas Transmission Company (MGT or Respondent) in Channahon, Illinois. The MGT pipeline system is approximately 370 miles in length and is located in Illinois, Indiana, and Kentucky.¹ MGT is a subsidiary of ONEOK Partners, L.P.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated September 27, 2010, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that MGT committed violations of 49 C.F.R. §§ 191.5 and 191.15 and proposed assessing a civil penalty of \$40,000 for the alleged violations. In accordance with 49 C.F.R. § 190.205, the Notice also included several warning items, which advised Respondent to correct certain probable violations.

MGT responded to the Notice by letter dated October 28, 2010 (Response). The company did not contest the violations but provided an explanation and requested the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived the right to one.

FINDINGS OF VIOLATION

In its Response, MGT did not contest the allegations in the Notice that it violated 49 C.F.R. Part 191, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 191.5(a), which, in 2008, stated as follows:

¹ This information is reported by Respondent in accordance with 49 C.F.R. § 191.17.

§ 191.5 Telephonic notice of certain incidents.

(a) At the earliest practicable moment following discovery, each operator shall give notice in accordance with paragraph (b) of this section of each incident as defined in § 191.3.

(b) Each notice required by paragraph (a) of this section shall be made by telephone to 800-424-8802 (in Washington, DC, 267-2675) and shall include the following information.

(1) Names of operator and person making report and their telephone numbers.

(2) The location of the incident.

(3) The time of the incident.

(4) The number of fatalities and personal injuries, if any.

(5) All other significant facts that are known by the operator that are relevant to the cause of the incident or extent of the damages.²

The Notice alleged that Respondent violated 49 C.F.R. § 191.5(a) by failing to give telephonic notice at the earliest practicable moment following discovery of an incident that occurred at its Petersburg Compressor Station on June 24, 2008. Specifically, the Notice alleged that the station experienced an unintentional blowing of gas resulting in the loss of gas valued over \$50,000.³ Following the PHMSA inspection in May 2009, MGT provided telephonic notice of the incident on June 9, 2009.

Respondent did not contest this violation, but provided an explanation and requested that the proposed civil penalty be reduced. Respondent's request to reduce the proposed penalty is addressed in the Assessment of Penalty section below.

Accordingly, based upon a review of the evidence, I find Respondent violated 49 C.F.R. § 191.5(a) by failing to give notice at the earliest practicable moment following discovery of the incident that occurred at its Petersburg Compressor Station on June 24, 2008.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 191.15(a), which, in 2008, stated as follows:

§ 191.15 Transmission and gathering systems: Incident report.

(a) Except as provided in paragraph (c) of this section, each operator of a transmission or a gathering pipeline system shall submit Department of Transportation Form RSPA F 7100.2 as soon as practicable but not more than 30 days after detection of an incident required to be reported under § 191.5.⁴

² The section heading and paragraph (b) of § 191.5 were amended by Pipeline Safety: Updates to Pipeline and Liquefied Natural Gas Reporting Requirements, 75 Fed. Reg. 72,878, 72,905 (Nov. 26, 2010).

³ On the date in question, § 191.3 defined a reportable incident to include a release of gas resulting in property damage of \$50,000 or more, including cost of gas lost. The definition of incident was amended by 75 Fed. Reg. 72,905. Reportable incidents now include a release of gas resulting in property damage of \$50,000 or more, excluding the cost of gas lost, or an unintentional release of three million cubic feet (3 MMCF) or more of gas.

⁴ Section 191.15 was also amended by 75 Fed. Reg. 72,905.

The Notice alleged that Respondent violated 49 C.F.R. § 191.15(a) by failing to submit a written incident report on RSPA Form 7100.2 as soon as practicable, but not more than 30 days after detection of the incident that occurred on June 24, 2008. Following the PHMSA inspection in May 2009, MGT submitted a written report for the incident on June 9, 2009.

Respondent did not contest this violation, but provided an explanation and requested that the proposed civil penalty be reduced. Respondent's request to reduce the proposed penalty is addressed in the Assessment of Penalty section below.

Accordingly, based upon a review of the evidence, I find Respondent violated 49 C.F.R. § 191.15(a) by failing to submit an incident report on RSPA Form 7100.2 as soon as practicable, but not more than 30 days after detection of the incident.

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. The Notice proposed a total civil penalty of \$40,000 for the violations of 49 C.F.R. §§ 191.5 and 191.15.

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.

Item 1: The Notice proposed a civil penalty of \$20,000 for Respondent's violation of 49 C.F.R. § 191.5(a). Respondent violated § 191.5(a) by failing to provide telephonic notice to the National Response Center (NRC) at the earliest practicable moment following discovery of the incident that occurred at its Petersburg Compressor Station.

In its Response, MGT explained that the event on June 24, 2008, involved the release of gas through a 1.5-inch vent valve as a result of a loss of electric power at the unit control panel. This caused the valve to remain open, venting gas overnight until it was discovered and manually closed. Respondent explained further that the valve at issue was designed to permit the venting of gas to a safe location away from the compressor building and equipment, with little risk to public safety. MGT stated that it has made changes to the electric power supply for the unit control panel to minimize reoccurrence. MGT also made changes to its operating procedures to

ensure prompt reporting of incidents in the future in accordance with § 191.5. MGT contended that the changes made to its unit control panel, the clarifications to its procedures, and little risk to public safety warrant mitigation of the proposed civil penalty.

In general, failing to promptly report an incident can compromise public safety by preventing PHMSA and other regulatory agencies from assessing the incident and determining how best to respond. Failure to provide timely notice can also make it more difficult for PHMSA to investigate and determine the cause of the incident. The importance of incident reporting has been the subject of several public reminders published by PHMSA over the years.⁵ In those publications, the agency stressed to operators that they are expected to telephonically report all incidents in accordance with § 191.5 within only one to two hours of discovery.

While the release of gas on June 24, 2008, did not result in harm to the public or property, the unintentional venting of approximately 8 MMCF of gas from a station valve is a significant release of gas and large enough to require immediate reporting to PHMSA under both the former and current definition of incident.⁶ When the gas release was first discovered by Respondent, the company estimated the amount of gas lost was even larger, approximately 20 MMCF, yet Respondent still failed to report it.⁷ Furthermore, the record demonstrates Respondent did not have procedures for reporting such an incident as required by § 191.5.

With regard to the changes made to the unit control panel and clarifications to its procedures, these actions were taken after the violation had already been identified by PHMSA. Once a compliance issue is identified, PHMSA expects any prudent operator to take action to remediate the issue and prevent reoccurrence.⁸

For the above reasons, despite Respondent's contention of little risk to public safety, I find the nature, circumstances, and gravity of failing to report the significant release of gas supports assessment of the proposed penalty, and there is no justification in the record for mitigating the amount.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$20,000 for violation of 49 C.F.R. § 191.5(a).

⁵ On April 15, 1991, and September 6, 2002, Notices were issued by PHMSA's predecessor agency reemphasizing to pipeline operators that telephonic notification should be made within one to two hours after discovery so that PHMSA, NTSB, and other agencies can make a timely determination regarding the need for possible action. Pipeline Safety Alert Notice: ALN-91-01 (Apr. 15, 1991); Advisory Bulletin: ADB-02-04, 67 FR 57060 (Sept. 6, 2002).

⁶ NRC Report # 908043 (June 9, 2009). The volume of gas lost was reported as 8,000 MCF (thousand cubic feet), but for purposes of incident reporting, PHMSA measures volume in MMCF (million cubic feet).

⁷ Violation Report at 2.

⁸ See e.g., *In the Matter of Enbridge Pipelines LLC*, Final Order, CPF No. 3-2007-5022, at 3, 2009 WL 2336996 (Jun. 2, 2009) (finding corrective action taken after an accident had already occurred did not warrant mitigation of the proposed penalty); *In the Matter of Citgo Pipeline Co.*, Final Order, CPF No. 4-2005-5012, at 3, 2005 WL 5010156 (Jul. 14, 2005) (stating that corrective action taken after the OPS inspection did not justify reducing the proposed penalty).

Item 2: The Notice proposed a civil penalty of \$20,000 for Respondent's violation of 49 C.F.R. § 191.15(a). Respondent violated § 191.15(a) by failing to submit a written incident report as soon as practicable, but not more than 30 days after detection of the incident.

MGT requested that the civil penalty be reduced for the same reasons provided for Item 1.

Timely filing of written incident reports provides important information to PHMSA about an incident, in considerably more detail than can be collected when reporting telephonically. In addition, data collected by the agency about incidents contribute to the effectiveness of PHMSA's safety program by developing an understanding of how and why pipeline incidents occur. Important information like the cause, type of failure, type of pipe, and extent of harm to public and property help PHMSA determine whether there is a need to take a closer look at the operations and maintenance of a particular pipeline facility, or whether to evaluate and update current safety regulations or issue new ones.

For the same reasons discussed in Item 1, I find the nature, circumstances, and gravity of failing to file a timely written report support assessment of the proposed penalty. I further find there is no justification in the record for mitigating the amount.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$20,000 for violation of 49 C.F.R. § 191.15(a).

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 **\$40,000**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such 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 \$40,000 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 district court of the United States.

WARNING ITEMS

With respect to Items 3 and 4, the Notice alleged probable violations of Part 192 and specifically considered them to be warning items. The warnings were for:

49 C.F.R. § 192.227(a)-(b) (**Item 3**) – Respondent’s alleged failure to qualify each welder in accordance with Section 6 of API Standard 1104, “Welding of Pipelines and Related Facilities.” The Notice alleged that an insufficient number of destructive tests had been performed to comply with Section 6 of API Standard 1104, as evidenced by MGT’s Welder Qualification Test Reports. MGT stated during the PHMSA inspection that this was a recordkeeping error and subsequently provided information that additional tests had been performed.

49 C.F.R. § 192.743(b) (**Item 4**) – Respondent’s alleged failure to conduct annual reviews and calculations to verify relief devices had sufficient capacity. The Notice alleged that MGT’s procedures designated a particular computer program to be used for annual reviews and calculations, but the program had not been used for several years. MGT had instead relied on annual set point checks and routine maintenance as verification that device capacities were sufficient.

MGT presented information in its Response showing that it had taken actions to address the cited items. If OPS finds one or more of these issues in a subsequent inspection, Respondent may be subject to future enforcement action.

Pursuant to 49 C.F.R. § 190.215, Respondent may 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 the 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. If Respondent submits payment of 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 upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued