



US Department  
of Transportation

**Research and  
Special Programs  
Administration**

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

SEP 20 2004

Mr. Richard C. Kelly  
President  
Northern States Power Co.  
414 Nicollet Mall  
Minneapolis, Minnesota 55401-1927

Re: CPF No. 36301

Dear Mr. Kelly:

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 \$3,000. 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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, DC 20590

In the Matter of )  
)  
)

Northern States Power Company, )

CPF No. 36301

Respondent | )  
\_\_\_\_\_ )

FINAL ORDER

On November 1, 1995, pursuant to 49 U.S.C. § 60117, a representative of the Department of Public Safety, State of Minnesota, as agent for the Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Respondent's liquefied natural gas (LNG) facility and records in Wescott, Minnesota. As a result of the inspection, the Director, Central Region, OPS, issued to Respondent, by letter dated January 30, 1996, a Notice of Probable Violation and Proposed Civil Penalty. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 193.2621(a) and proposed assessing a civil penalty of \$5,000 for the alleged violation. The Notice also warned Respondent to take corrective action.

Respondent responded to the Notice by letter dated February 29, 1996 (Response). Respondent did not contest the allegation of violation, but offered an explanation and requested that the proposed civil penalty be reduced. Respondent also provided information concerning the corrective action it had taken. Respondent did not request a hearing, and therefore waived its right to one.

FINDING OF VIOLATION

In its Response, Respondent did not contest the violation alleged in the Notice. Accordingly, I find that Respondent violated the following section of 49 C.F.R. Part 193, as more fully described in the Notice:

49 C.F.R. § 193.2621(a) – failing to test each hose used in LNG or flammable refrigerant transfer systems to maximum pump pressure or relief valve setting, once each calendar year with intervals not exceeding 15 months. Respondent failed to test its ethylene refrigerant system hoses to maximum pump pressure or relief valve setting.

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 \$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 \$5,000 for the violation of § 193.2621(a). In its Response, Respondent requested a reduction in the civil penalty on three grounds. Respondent claimed that it had misinterpreted § 193.2621(a) to not apply to its ethylene refrigerant hoses. Respondent also contended that it had taken separate measures to ensure the safety of the hoses. Finally, Respondent explained that it had promptly remedied the violation by testing the hoses pursuant to § 193.2621(a).

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.

In its Response, Respondent explained that it had wrongly interpreted § 193.2621(a) to not apply to its 3/8" x 18" long ethane-ethylene liquefaction refrigerant make-up bottle hoses. Respondent contended that its interpretation was consistent with other LNG operators' interpretations, which indicated that the requirements of the regulation were "unclear."

Contrary to Respondent's suggestion, I do not find the language of the regulation unclear. Section 193.2621(a) specifically applies to "hoses used in LNG or flammable refrigerant transfer systems," which include Respondent's ethylene refrigerant system hoses used in LNG operations. If Respondent had been uncertain as to the regulation's applicability to its ethylene refrigerant system hoses, Respondent could have consulted with OPS. Instead, Respondent confirmed that its interpretation was consistent with that of other operators. Respondent is ultimately responsible for complying with this and other applicable pipeline safety regulations; therefore, I do not find Respondent's misinterpretation of § 193.2621(a) excuses Respondent's failure to comply with the regulation.

Respondent also requested a reduction in the civil penalty based on its efforts to ensure the safety of its refrigerant hoses. Respondent stated that it had conducted regular visual inspections of the hoses and in-service testing during each bottle addition to ensure their safety. Respondent's efforts are recognized; however, these efforts do not warrant a reduction in the civil penalty. The purpose of § 193.2621(a) is to ensure the integrity of hoses at higher pressures. In-service testing may not identify certain defects or damage to a hose that could be identified during testing at maximum pump pressure or relief valve setting. Similarly, visual inspections may not identify hidden damage or defects which could lead to hose failure at higher pressures. By not testing the ethylene refrigerant system hoses to maximum pump pressure or relief valve setting at regular intervals, Respondent failed to ensure the safety of these hoses at higher pressures, increasing the risk of danger to personnel, the public and the environment.

Finally, Respondent requested a reduction in the civil penalty based on the corrective action it had taken following the inspection. Respondent had tested its ethylene refrigerant system hoses to 110 percent of the relief valve setting pursuant to § 193.2621(a) immediately after the matter was brought to Respondent's attention during the 1995 inspection. Respondent had corrected the violation prior to receiving formal notice from OPS of this enforcement action. I find Respondent's prompt effort to correct this violation demonstrates a good faith effort by Respondent to comply with the pipeline safety regulations and warrants a reduction in the proposed civil penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$3,000. A determination has been made that 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 \$3,000 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.


#### WARNING ITEM

The Notice did not propose a civil penalty or corrective action for the following item, but warned Respondent that it should take appropriate corrective action to correct the item. The warning was for:

49 C.F.R. § 193.2619(c) – failing to inspect and test each control system in service, but not normally in operation, once each calendar year with intervals not exceeding 15 months. Respondent failed to inspect pressure control valves at Tanks T1 and T2 during the period from April, 1994 to October, 1995, thereby exceeding a 15-month interval.

Respondent is warned that if it does not take appropriate action to correct this item, 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 the payment of any civil penalty assessed. 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.



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Stacey Gerard  
Associate Administrator  
for Pipeline Safety

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SEP 20 2004

Date Issued