

Mr. Chris Girrens
Vice President and General Manager
Dixie Pipeline Company
1117 Perimeter Center West
Suite 301 W
Atlanta, GA 30338

Re: CPF 23503

Dear Mr. Girrens:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, withdraws the notice of amendment items, and assesses a civil penalty of \$7,000. The penalty payment terms are set forth in the Final Order. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

_____)	
In the Matter of)	
)	
Dixie Pipeline Company,)	CPF No. 23503
)	
Respondent.)	
_____)	

FINAL ORDER

On January 12 - 15, March 29 - 31, April 14 - 16, May 12 - 14, and August 26 - 27, 1993, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS), conducted onsite pipeline safety inspections of your pipeline facilities and records at Atlanta, Milner, and Albany, GA; Hattiesburg, MS; Demopolis and Opelika, AL; Lexington and Cheraw, SC; and Apex, NC. As a result of the inspections, the Director, Southern Region, OPS, issued to Respondent, by letter dated September 15, 1993, a Notice of Probable Violation, Notice of Amendment, and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 195.401(b), 195.403(c), 195.416(b), 195.412(b), and 195.420(b), and proposed assessing a civil penalty of \$10,500 for the alleged violations. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its procedures in its Operations and Maintenance Manual.

Respondent responded to the Notice by letter dated September 23, 1993 and requested a hearing. Respondent subsequently forwarded a second letter dated October 7, 1993. The second letter did not refer to Respondent's previous request for a hearing. The Southern Region office subsequently contacted Respondent and determined that Respondent did not wish to proceed with a hearing. Respondent contested some of the allegations, offered information to explain the allegations, and requested that the civil penalties for three of the violations be withdrawn or reduced.

FINDINGS OF VIOLATION

Cathodic Protection

Item 3 in the Notice alleged that Respondent violated 49 C.F.R. § 195.401(b). This provision requires that whenever an operator discovers a condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. Specifically, this item alleged that Respondent discovered inadequate cathodic protection and did not take appropriate action at the following locations:

T.P. #5, Unit #2, Suction side (Southern Pines Station): -0.627V (11/90), -0.784V (11/91).

T.P. #6, Unit #2, Discharge side (Southern Pines Station): -0.658V (11/90), -0.478V (11/91).

Item 4 in the Notice alleged that Respondent violated 49 C.F.R. § 195.403(c). This provision requires each operator to verify that its supervisors maintain a thorough knowledge of all sections under § 195.402 for which the supervisor(s) are responsible to ensure compliance.

Item 5 in the Notice alleged that Respondent violated 49 C.F.R. § 195.416(b). This provision requires each operator to maintain its test leads for cathodic protection in such condition that electrical measurements can be made to ensure adequate protection. The Notice alleged the following locations had faulty test leads for varying periods up to 21 months.

<u>Location</u>	<u>P/S Readings</u>	<u>Dates</u>
Survey Station #35068+42 (M.P.: 664.17)	None, Bad test lead	11/90
	None, Bad test lead	10/91
	1.14 V	7/29/92
	1.344 V	11/92
Survey Station #39255+24 (M.P.: 743.17)	None, Bad test lead	11/90
	None, Bad test lead	11/91
	No Reading	8/18/92
	1.279 V	11/92
Survey Station #42109+34 (M.P.: 743.17)	None. No test lead	11/90
	None, No test lead	11/91
	1.36 V	8/19/92

Survey Station	None, Bad test lead	11/90
#49753+53	None, Bad test lead	11/91
(M.P.: 942.30)	1.27 V	8/3/92
	1.706 V	11/92

In its Response, Respondent provided information to indicate that it had taken certain corrective actions to address the above matters. Consequently, the proposed civil penalties with regard to the above violations have been eliminated. Respondent did not deny any of the above violations. Therefore, I find Respondent violated 49 C.F.R. §§ 195.401(b), 195.403(c), and 195.416(b).

Navigable Waterway Inspections

Item 6 alleged that Respondent violated 49 C.F.R. § 195.412(b). This provision requires operators to inspect, at intervals not exceeding 5 years, each crossing under a navigable waterway to determine the condition of the crossing. According to Respondent’s records, the following river crossings were not inspected within five years:

<u>River Crossing</u>	<u>Size</u>	<u>Date of Inspections</u>
Chattahoochee River, GA	6-inch	6/85, 3/91
Chattahoochee River, GA	10-inch	6/85, 3/91
Flint River, GA	6-inch	6/85, 3/91
Flint River, GA	10-inch	6/85, 2/91
Coosa River, AL	12-inch	6/85, 3/91

The inspection of these five river crossings exceeded the 5-year interval period by approximately 8-9 months. In its October 7, 1993 response, Respondent argued that neither public safety nor the integrity of its pipeline was jeopardized as a result of these violations. Respondent contended that the aforementioned rivers “are very stable in nature”, that “[w]ater levels and flow rates in these streams are regulated by upstream and downstream dams”, and that the civil penalty should therefore be reduced.

While these rivers may be stable, it is not clear that the applicable regulation was written with the intention of applying only to rapidly flowing or high volume rivers. No distinction in river volumes is indicated in the regulation. It is more likely that at least one of the underlying policy considerations in implementing the regulation was the recognition that heightened environmental concerns exist when considering potential releases into waterways, and indeed these concerns outweigh the additional burdens that may result in mandating such inspections. Respondent therefore violated 49 C.F.R. § 195.412(b), and must be assessed the full civil penalty as proposed.

Mainline Valve Inspections

Item 7 alleged that Respondent violated 49 C.F.R. § 195.420(b). Section 192.420(b) requires operators to inspect each mainline valve at intervals not exceeding 7½ months to determine that it is functioning properly. An inspection of Respondent's records indicated that Respondent inspected its mainline valves located at its Prattville and Opelika stations on one occasion each in the calendar years 1990 and 1991. Respondent did not contest this alleged violation.

Accordingly, I find that Respondent violated 49 C.F.R. §§ 195.401(b), 195.403(c), 195.416(b), 195.412(b) and 195.420(b). These findings of violation will be considered as prior offenses in any subsequent enforcement action taken against Respondent.

AMENDMENT OF PROCEDURES

The Notice alleged inadequacies in Respondent's written procedures on abnormal operations and Respondent's emergency procedure manual and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. §§ 195.402(d) and 195.402(e). Respondent has properly addressed these items. Accordingly, no need exists to issue an order directing amendment.

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.

49 U.S.C. § 60122 and 49 U.S.C. § 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.

The Notice proposed assessing a civil penalty of \$10,500. Based on the information presented in Respondent's October 7, 1993 response, the proposed civil penalties for Items 3, 4, and 5 in the Notice have been eliminated. The civil penalties for Items 6 and 7 in the Notice will remain as proposed. Accordingly, having reviewed all the assessment criteria, I assess Respondent a civil penalty of \$7,000. I find Respondent has the ability to pay the assessed civil penalty and such a penalty will not effect Respondent's ability to continue in business.

Accordingly, I assess Respondent a civil penalty of \$ 7,000.

Payment of the civil penalty **must be made within 20 days of service**. Payment can 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-320), P.O. Box 25770, 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**. After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel** (DCC-1), Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590-0001.

Questions concerning wire transfers should be directed to: **Valeria Dungee**, Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125; **(405) 954-4719**.

Failure to pay the \$7,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 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 an United States District Court.

WARNING ITEMS

The Notice did not propose any penalty with respect to Items 8 and 9 in the Notice for violating 49 C.F.R. §§195.416(h) and 195.416(c), respectively. Respondent has presented information showing that it addressed the cited items. However, Respondent is warned that should similar violations come to the attention of OPS in a subsequent inspection, enforcement action will be taken.

Under 49 U.S.C. § 190.215, Respondent has a right to 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. All other terms of the order, including any required corrective action, shall remain in full effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon receipt.

Richard B. Felder
Associate Administrator for Pipeline Safety

Date Issued: 08/12/1997