

JUN 9 2011

Mr. Jeffrey L. Barger
Vice President, Operations
Dominion Transmission, Inc.
445 West Main Street
Clarksburg, WV 26301

Re: CPF No. 1-2010-1006

Dear Mr. Barger:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$60,000. 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 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. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety
Mr. Byron E. Coy, Director, Eastern Region, PHMSA

Ms. Susan A. Olenchuk, Esq.
Counsel for Dominion Transmission, Inc.
Van Ness Feldman, P.C.
1050 Thomas Jefferson St. N.W.
Seventh Floor
Washington, DC 20007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 1160 0001 0075 9305]

**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.,)	CPF No. 1-2010-1006
)	
Respondent.)	
)	

FINAL ORDER

On May 8, 2009, pursuant to 49 U.S.C. § 60117, a representative of the West Virginia Public Service Commission, as agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an investigation of an incident involving the pipeline system operated by Dominion Transmission, Inc. (Dominion or Respondent).¹ The incident occurred in the Racht-Newberne gas storage field, which is located near Cox’s Mill, West Virginia. Dominion operates 11,000 miles of natural gas transmission, gathering, and storage pipeline and 21,800 miles of gas distribution pipeline in Ohio, West Virginia, Pennsylvania, New York, Maryland, and Virginia. Dominion also owns the nation’s largest underground gas storage system, constituting approximately 262,000 acres of operated leaseholds in New York, Ohio, Pennsylvania, and West Virginia.²

The investigation arose out of a third-party strike of Respondent’s TL-286 natural gas pipeline that occurred on May 7, 2009. While clearing mud from an access road located within the gas storage field, a Dominion contractor struck an 8-inch main trunk, rupturing it and causing a release of natural gas from an approximately 2-inch gouge.³ No fires or fatalities resulted from the strike.

As a result of the investigation, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated October 18, 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 Dominion had violated 49 C.F.R. § 192.605 and assessing a civil penalty of \$60,000 for the alleged violation.

Dominion responded to the Notice by letter dated November 15, 2010, seeking additional time to file a formal response and a copy of the agency’s case file. On November 18, 2010, PHMSA

¹ Dominion Transmission, Inc., is the interstate gas transmission subsidiary of Dominion Resources, Inc.

² SEC Form 10-K, Dominion Transmission, Inc., February 2011, at 5.

³ Pipeline Safety Violation Report (Oct. 18, 2010) (Violation Report), at 5.

granted the extension request and provided the case file. Dominion submitted a timely written response on January 6, 2011 (Response). The company did not contest the allegation of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

In its Response, Dominion did not contest the allegation in the Notice that it violated 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a), which states:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow its own written procedures for conducting operations and maintenance activities. Specifically, the Notice alleged that Dominion conducted neither a field survey nor an engineering survey prior to clearing an access road, in violation of its operations and maintenance procedure, *Guidelines for Construction Activities on Rights of Way and in the Vicinity of Dominion Inc.* By conducting either survey, Dominion would have discovered the potential consequences of using a bulldozer to scrape an access road running directly over Respondent's line.⁴ As a result of Dominion's failure to follow its own written procedure, the company's contractor was unaware of the exact depth of the pipeline and did not take proper precautions.

Dominion indicated in its Response that it took various actions following the accident to improve operations, including a new procedure to "identify and protect any DTI pipelines in the vicinity of any DTI-managed well work in any DTI storage field."⁵ In addition, the Respondent developed a new form in order to integrate Field Operations and Gas Storage Personnel. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow its own operations and maintenance procedures requiring a field survey and an engineering study to determine the effects of any proposed activity over its pipelines.

⁴ "Norman Isenhardt, the dozer operator, stated he was just scraping the mud off the access road when he hit the line. He said he knew there was a pipeline crossing but had no idea how shallow the pipe was." Violation Report, at 6.

⁵ Response, at 2.

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 \$60,000 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$60,000 for Respondent's violation of 49 C.F.R. § 192.605(a), for failing to follow its own written procedures when conducting operations and maintenance activities. Respondent advanced several arguments in support of a penalty reduction. First, Dominion argued that the Violation Report inappropriately identified the incident as occurring in or affecting a populated area, a High Consequence Area (HCA),⁶ an HCA "could affect" segment, a road or railroad crossing, a plant/station, or similar higher-risk area.⁷ Dominion argued that the affected area posed little or no threat to public safety, as it was privately owned, inaccessible to the public, and rural in character. In support of its argument, Dominion submitted several photographs and an employee statement "demonstrat[ing] the rural character of the road."⁸

Second, Dominion argued that the proposed penalty was excessive in comparison to one imposed by PHMSA in another case involving a violation of § 192.605(a). In that case, PHMSA reduced a proposed civil penalty, based upon an operator's showing that a release of gas did not threaten a nearby school's gas facilities.⁹ Dominion argued that this accident involved a similar lack of threat to public safety, given the rural, non-public character of the incident site. Third, Dominion contended that the statutory assessment criteria require "a reduction in the civil penalty due to the remote, private, and secure nature of the road at the incident location."¹⁰

I address each of Respondent's arguments in turn. First, Respondent argues that the Violation Report mistakenly identified the location of the noncompliance and that Box 4 should not have

⁶ A "High Consequence Area" is an area defined as either a Class 3 location or Class 4 location under § 192.5; any area in a Class 1 or Class 2 location where the potential impact radius is greater than 660 feet and the area within a potential impact circle contains 20 or more buildings intended for human occupancy; or as further defined in 49 C.F.R. § 192.903.

⁷ Response, at 3.

⁸ Response, Attachments C-D.

⁹ *In the matter of Southern Star Central Gas Pipeline, Inc.*, Final Order, CPF No. 3-2005-1015, 2006 WL 3825330, at 2-3 (Apr. 26, 2006).

¹⁰ Response, at 3.

been checked.¹¹ However, an underground gas storage field is properly categorized as a higher-risk “station/plant or similar area”¹² Underground gas storage fields, like the other types of locations listed in Box 4, present a heightened level of risk because of the concentrated volume of flammable product, the presence of people in the vicinity, and the potentially grave consequence in the event of an accident.

Second, Dominion argues that the penalty should be reduced because, in another case involving a violation of 49 C.F.R. § 192.605(a), the penalty was reduced due to a finding of diminished gravity. I do not agree that a comparison of the two cases demonstrates a need to reduce the proposed penalty here. Under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the facts and circumstances of each case individually and weigh each of the penalty assessment criteria set out in the statute and regulations. Each violation involves a unique set of circumstances that impacts the penalty assessment, including the gravity of the violation, an operator’s history of prior offenses, and the degree of culpability. Therefore, it is difficult to compare the facts of various cases in an attempt to discern significant parallels or differences among them.

Furthermore, Respondent’s argument that both cases involved a reduced impact on public safety is specious. In the *Southern Star* case cited by Respondent, PHMSA found that the operator failed to follow required procedures after discovering abnormal operating conditions in its regulating facilities. Dominion argues that “PHMSA reduced the civil penalties for two separate violations on the basis of the operator’s showing that a release of gas did not threaten to overpressurize a nearby school’s gas facilities.” Given the “rural, non-public character of the well access road,” Respondent argues that a similar reduction is appropriate here because the incident location posed little threat to public safety.

However, the penalty in *Southern Star* was not reduced simply because the operator demonstrated a generalized, reduced impact on public safety. The operator specifically provided evidence of additional over-pressure protection equipment that adequately protected a neighboring school, notwithstanding the violation. In this case, Respondent has not offered any evidence that its violation was mitigated by additional measures or circumstances that would have prevented the potential for serious consequences.

Third, Respondent argues that the statutory assessment criteria under 49 C.F.R. § 190.225 (a)(1) and (b)(2) require a penalty reduction. I find this argument equally unpersuasive. Despite the rural character of the incident site, the gravity of the violation and the degree of Respondent’s culpability support the proposed penalty. While this incident did not result in injury or loss of life, such consequences may have been largely fortuitous.

Finally, the gravity of the violation here is heightened because Dominion’s failure to follow its own procedures was a causal factor in the accident.¹³ PHMSA considers pipeline accidents,

¹¹ Box 4 is located in Section C1, Gravity, of the Violation Report. This Section enumerates certain criteria that may affect the amount of a proposed penalty based upon the seriousness of the alleged violation. Box 4 applies if “[t]he location of the noncompliance . . . was in or affected a populated area, an HCA, an HCA ‘could affect’ segment, a road or RR crossing, a plant/station, or similar area.” Violation Report, at 5.

¹² Dominion acknowledges that “the pipeline is located in and serves the Racket-Newberne Gas Storage Field.”

¹³ Violation Report, at 5.

regardless of whether they constitute “near-misses,” spills, property damage, injuries, or fatalities, 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. In this case, the potentially disastrous consequences of the incident are directly linked to the Respondent’s violation of its own procedures and the regulation. Accordingly, based upon the foregoing, I assess Respondent a civil penalty of **\$60,000** for the violation of 49 C.F.R. § 192.605(a).

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 \$ 60,000 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.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5. Under 49 C.F.R. § 190.215, Respondent has the 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 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 but does not stay any other provisions of the Final Order, including any required corrective actions. 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued