



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

OCT 21 2004

Mr. Scott O. Nugent
Vice President & General Manager
Dixie Pipeline Company
Suite West 301
1117 Perimeter Center
Atlanta, Georgia 30338-5423

Re: CPF No. 2-2004-5009

Dear Mr. Nugent:

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 \$25,000. 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)

Dixie Pipeline Company,)

Respondent)

CPF No. 2-2004-5009

FINAL ORDER

On July 7-24, 2003, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Alabama, Georgia, Mississippi, North Carolina, and South Carolina. As a result of the inspection, the Director, Southern Region, OPS, issued to Respondent, by letter dated April 22, 2004, 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 violated 49 C.F.R. § 195.406(a)(3) and proposed assessing a civil penalty of \$25,000 for the alleged violation.

Respondent responded to the Notice by letter dated May 25, 2004 (Response). Respondent contested the allegation of violation, offered information to explain the allegation, and requested that the proposed civil penalty be eliminated or reduced. Respondent did not request a hearing, and therefore has waived its right to one.

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a)(3). This regulation states that an operator may not operate a pipeline at a pressure that exceeds the maximum operating pressure (MOP). The Notice alleged that Respondent operated its pipeline at a pressure that exceeded MOP on December 26, 2002 at its Norwood Station, where the discharge pressure exceeded the engineering calculated MOP of 1,456 psi from approximately 2:40 p.m. to 4:10 p.m. During that time, pressure exceeded 1,460 psi and ranged up to 1,480 psi.

In its Response, Respondent admitted that the pressure exceeded MOP as alleged in the Notice. However, Respondent contended that it committed no violation because the pressure never exceeded 110 percent of MOP. Respondent also explained that it had protective equipment in place to ensure that pressure did not exceed 110 percent of MOP. In support of its contention that it committed no violation, Respondent cited § 195.406(b), which states that Respondent may not permit pressure to exceed 110 percent of MOP during surges or other variations from normal operations.

Although § 195.406(b) provides an allowance for excursions above MOP, the allowance only applies during a surge or other variation from normal operations. In its Response, Respondent did not contend that the pressure increase that occurred on December 26, 2002 was a surge or other variation from normal operations. To the contrary, the record indicates that the increase occurred during normal operations. The pressure excursion lasted for approximately 1.5 hours. Although Respondent was aware that pressure had exceeded MOP, Respondent did not take immediate corrective action to bring the pressure down to MOP. Instead, Respondent allowed the pipeline to operate above MOP until the excess pressure gradually decreased to MOP. Accordingly, I find Respondent violated § 195.406(a)(3) by operating its pipeline at a pressure that exceeded MOP.

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 civil penalty of \$25,000 for violation of § 195.406(a)(3).

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 requested that the proposed civil penalty be reduced or withdrawn based on Respondent's effort to comply with the pressure safety regulations. Respondent explained that prior to the event, control pressure had been set to less than MOP and operational shutdown had been set to prevent pressure from exceeding 110 percent of the control pressure. According to Respondent, operational shutdown was set at 1480 psi, so that pressure would be controlled within 103 percent of MOP. Respondent regarded this limit as "considerably less than the 110% allowed under 195.406(b)."

The efforts taken by Respondent were apparently directed at complying with § 195.406(b), which requires that Respondent control pipeline pressure within 110 percent of MOP during surges and other variations from normal operations. Respondent's efforts to comply with § 195.406(b) by limiting pressure to within 103 percent of MOP do not justify reducing the civil penalty proposed for violating § 195.406(a)(3), which requires that Respondent operate at or below MOP during normal operations.

MOP is calculated to ensure that product can be transported through a pipeline system without causing damaging stress to the integrity of the system. Operating at a pressure above MOP may increase the stress to a pipeline system and risk the release of product due to pipeline failure.

Respondent has had problems with exceeding MOP in the past. During a 2001 inspection, OPS identified several occasions when pressure had exceeded MOP for several hours at a time. Respondent was notified of this concern, although no enforcement action was taken. Respondent took corrective action to address the matter by recalculating MOP, and notified OPS of the corrective action by letter dated June 16, 2001. In the present case, Respondent again allowed its system to operate above MOP for approximately 1.5 hours. The length of the pressure excursion was due in part by Respondent's failure to take prompt remedial action to reduce the pressure.

Respondent also requested a reduction in the civil penalty based on the corrective action it has taken to ensure that a violation would not occur in the future. Respondent explained that it has upgraded its control equipment at the Norwood Station and added additional mechanisms to avoid future pressure increases. The upgrade was part of a system-wide program to improve control instrumentation at Respondent's pump stations. Respondent spent approximately \$72,600 on improvements to its instrumentation and control equipment at the Norwood Station. These actions are commendable. However, these measures do not justify reducing the civil penalty, as Respondent is obligated by the pipeline safety regulations to take action necessary to ensure that its system complies with operating pressure requirements.

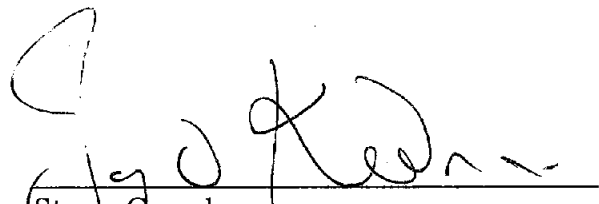
Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$25,000. A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business.

Payment of the civil penalty must be made within 20 days of service. 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) 954-8893.

Failure to pay the \$25,000 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. 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.



Stacey Gerard
Associate Administrator
for Pipeline Safety

OCT 21 2004

Date Issued