



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

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

JUN 23 2003

Mr. Royce Ramsay  
Vice President-Operations  
Northern Natural Gas Company  
111 South 103<sup>rd</sup> Street  
Omaha, NE 68124-1091

RE: CPF No. 3-2003-1004

Dear Mr. Ramsay:

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 \$15,000. 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,

Gwendolyn M. Hill  
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, D.C. 20590**

In the Matter of

NORTHERN NATURAL GAS COMPANY

Respondent

CPF No. 3-2003-1004

**FINAL ORDER**

Pursuant to 49 U.S.C. § 60117, a representative of the Central Region, Office of Pipeline Safety (OPS) initiated an investigation of an incident involving a natural gas line operated by Northern Natural Gas Company (Respondent). The Director, Central Region, OPS, issued to Respondent, by letter dated February 19, 2003, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding Respondent in violation of 49 C.F.R. § 192.605(a) and proposed assessing a civil penalty of \$15,000 for the alleged violation.

Respondent responded to the Notice by letter dated February 26, 2003 (Response). Respondent contested the alleged violation, offered an explanation and requested reconsideration of the proposed civil penalty. Respondent did not request a hearing and therefore, has waived its right to one.

**FINDINGS OF VIOLATION**

The Notice alleges that Respondent violated 49 C.F.R. § 192.605(a), by failing to follow its manual of written procedures for conducting operations, maintenance activities and emergency response. Respondent's Damage Prevention Procedures Number 80.002 (5.4 and 5.5) state that Respondent will assign a company representative to be present when excavation activities occur within 25 feet of the pipeline. The manual also states that the depth of the pipeline at the location where it is to be crossed will be determined using a method that is reliable and produces results compatible with need. Generally, depth data is determined using electronic instruments and should be confirmed using a prod rod or the equivalent. However, Respondent's employee gave a third party excavator approval to dig during a telephone call and no company representative was present during the excavation. The third party damage resulted in a gas leak.

Respondent contested the alleged violation and explained that it promptly reported the incident to the National Response Center and submitted an Incident Form 7100.2 to OPS. Respondent further explained that the employee involved received proper training and understood Northern's line location procedures. Respondent argued that it should not be found in violation because of one employee's choice not to follow Northern's written procedures for line location.

An employer is ultimately responsible for the actions of its employees. This is a well-settled rule of law that comes into play when the employer has the right and ability to control or supervise the activities of an employee. On the morning of October 8, 2002, Respondent's employee visited the excavation site, flagged the pipeline and left with the understanding that the excavator would be in position to cross the pipeline the next day. However, the excavator phoned Respondent's employee in the evening on the same day seeking approval to cross the pipeline. During that phone conversation, Respondent's employee approved excavation activities within 25 feet of the pipeline without being present at the site and without determining the depth of the pipeline at the location where it was to be crossed. The excavator struck the pipeline causing a leak, \$133,900 in property damage and the evacuation of sixty people.

An employer is responsible for implementing the necessary training for its employees. Emphasis should be on achieving the required competencies for the appropriate level of response to a given situation, rather than on merely accumulating training hours. When an employee acts within the scope of his authority, as the employer's representative, and fails to take appropriate action, that failure is attributable to the employer. Respondent's employee approved excavation activities within 25 feet of the pipeline without being present at the site and without determining the depth of the pipeline at the location where it was to be crossed. Respondent failed to follow its manual of written procedures for conducting operations, maintenance activities and emergency response. Accordingly, I find Respondent violated 49 C.F.R. § 192.605(a).

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 assessing a penalty of \$15,000 for violation of 49 C.F.R. § 192.605(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.

Respondent requested reconsideration of the proposed civil penalty based on its prompt reporting of the incident to the National Response Center, submission of an Incident Form 7100.2 to OPS and discharge of the employee involved in the incident. Respondent argued that the incident would not have occurred but for the actions of one employee who had received proper training on line location procedures, and understood the procedures but made an individual choice not to follow them. Respondent further advised that it issued a safety bulletin concerning the incident to each of its employees ten days after the incident.

An employer is responsible for the actions of its employees at the workplace or while performing the duties and responsibilities of an employer at any location. If an employee is found to have acted inappropriately while performing his duties, his acts or omissions are properly attributable to the employer. An employee should have sufficient training or experience to demonstrate competency in understanding what the hazards are, their associated risks, and the potential outcomes. Operators are ultimately responsible for their own compliance with Pipeline Safety laws and regulations even in the face of mistakes, omissions or commissions that occur within its employee's scope of duties. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$15,000. A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue 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.** 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, SW, Washington, DC 20590-0001.

**Questions** concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$15,000 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 an United States District Court.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. However, if the civil penalty is paid, the case closes automatically and Respondent waives the right to petition for reconsideration. The filing of the petition automatically stays the payment

of any civil penalty assessed. 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 terms and conditions of this Final Order are effective on receipt.



Stacey Gerard

↖ Associate Administrator  
for Pipeline Safety

JUN 13 2008

Date Issued