

AUG 17 2011

U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

_____)	
In the Matter of)	
)	
Alyeska Pipeline Service Company,)	CPF No. 5-2011-5001S
)	
Respondent.)	
_____)	

CONSENT AGREEMENT

On February 1, 2011, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), issued a Notice of Proposed Safety Order (Notice) to Alyeska Pipeline Service Company (Alyeska or Respondent). Alyeska operates a transmission pipeline known as the Trans-Alaska Pipeline System (TAPS) that transports crude oil from production fields in Prudhoe Bay, Alaska, to the company’s marine transfer facilities in Valdez, Alaska. The Notice alleged that multiple conditions exist on TAPS that, without corrective measures, would pose a pipeline integrity risk to public safety, property, or the environment. Specifically, the Notice alleged that such conditions caused a loss of system integrity and a hazardous liquid leak that began on January 8, 2011, at the company’s Pump Station 1 facility, demonstrating the presence of integrity risks on TAPS.

On February 15, 2011, pursuant to 49 C.F.R. § 190.239(b)(2), Alyeska submitted a request for informal consultation in response to the Notice. On February 17, 2011, a meeting was held in Lakewood, Colorado, to begin the process, which has continued to date. Alyeska and PHMSA (Parties) have engaged in good-faith discussions regarding the Notice and have agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement (Agreement) is the most appropriate means of resolving the Notice without adjudication of any issue of fact or law. While Alyeska disputes some of the Preliminary Findings in the Notice, the Parties agree that the Preliminary Findings in the Notice will be used to construe the terms of this Consent Agreement. The Parties agree as follows:

I. General Provisions

1. Alyeska acknowledges, as operator of TAPS, that Alyeska and its pipeline system are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. §§ 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Agreement, Alyeska acknowledges that it received proper notice of PHMSA’s action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. §§ 60101, *et seq.*, and the regulations and orders issued thereunder.

2. Alyeska agrees, for purposes of this Agreement, to address the integrity risks identified in the Notice by completing the actions specified in Section II of this Agreement (Work to be Performed). These actions, including any work plans and schedules, shall automatically be incorporated into this Agreement upon approval by PHMSA. This Agreement does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement.

3. After Alyeska returns a signed original of this Agreement, PHMSA's representative will present it to the Associate Administrator for Pipeline Safety (Associate Administrator), recommending that he adopt the terms of this Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by Alyeska and the Associate Administrator. Upon the date on which this Consent Order is issued, any request for a hearing submitted by Alyeska shall be automatically withdrawn.

4. Alyeska consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Alyeska waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals.

5. This Agreement shall apply to and be binding upon PHMSA and its successors and upon Alyeska, its officers, directors, and employees, and its successors, assigns, owners, or other entities or persons otherwise bound by law. Alyeska agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of Alyeska's officers, employees, owners and agents whose duties might reasonably include compliance with this Agreement.

6. All references to "Director" in this Consent Agreement shall refer to the persons named below. Approval from either of the persons named below will satisfy any requirement for approval by the Director. Information, reports, and notifications required by this Agreement shall be submitted to the following persons:

- a. Director, Western Region, PHMSA Office of Pipeline Safety, 12300 West Dakota Avenue, Suite 110, Lakewood, CO 80228; and
- b. Deputy Director, Western Region, PHMSA Office of Pipeline Safety, 188 West Northern Lights Blvd., Suite 520, Anchorage, AK 99503.

7. For all transfers of ownership interests or operating responsibility of TAPS, Alyeska shall provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer and simultaneously provide written notice of the prospective transfer to the Director.

8. Nothing in this Agreement affects or relieves Alyeska of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. §§ 60101, *et seq.*, and

the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering or its authority to bring enforcement actions against Alyeska pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

9. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Alyeska's pipeline systems. This Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Alyeska remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

10. This Agreement does not create rights in, or grant any cause of action to, any third person not a party to this Agreement. The U.S. Department of Transportation (DOT) is not liable for any injuries or damages to persons or property arising from acts or omissions of Alyeska or its officers, employees, or agents carrying out the work required by this Agreement. Alyeska agrees to indemnify and hold harmless DOT, its agencies, officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Alyeska or its contractors in carrying out the work required by this Agreement.

II. Work to be Performed

11. Alyeska agrees to perform all actions set forth below in paragraphs 12-21. The plans required below shall be revised as necessary to incorporate new information obtained during the evaluations and remedial activities performed under the plans. Alyeska will submit any such plan revisions to the Director for prior approval, who may approve plan elements incrementally.

12. On February 15, 2011, Alyeska submitted to PHMSA a written plan for a third-party investigation of the leak site at PS-1 that included conducting appropriate tests, analyses, and evaluations to establish the probable cause of the leak. The Director approved the selection of the third-party contractor by letter dated February 22, 2011. The investigation plan called for collection of samples of sediments, deposits, bacteria, and preservation of the pipe for forensic analysis, the shipment of any removed samples and pipe to a laboratory approved by PHMSA for analysis, and a third-party analysis regarding leak cause. Alyeska agreed to complete the work required by this investigation plan and to provide the results to PHMSA by July 15, 2011. Alyeska submitted Government Letter #23939 on July 15, 2011, and the submission is currently being reviewed by the Director.

13. Alyeska will replace or remove any hazardous liquid piping along TAPS which cannot be assessed using in-line inspection tools (or other suitable assessment methods approved by the Director) and which would compromise the safe operation of TAPS upon failure. The Director will approve assessment methods that provide an assessment of 100% of the length and circumference of the pipeline and that are capable of detecting internal and external corrosion features and other damage and determining the percentage metal loss, areal extent, and geometry of any damage. Alyeska performed a documented evaluation to determine the piping to be replaced. Alyeska agreed to submit a listing of such piping being replaced or removed and a written plan and timeline for replacement by July 15, 2011, to the Director for approval.

Alyeska submitted Government Letter #23939 on July 15, 2011, and the submission is currently being reviewed by the Director.

14. The Low Flow Study Team is an independent team composed of external consultants and Alyeska engineers that recently produced a report on the impacts of reduced throughput on TAPS. On June 15, 2011, Alyeska submitted to the Director the Low Flow Study Team's assessment of the need for additional permanent pig launchers and receivers. This report takes into account the anticipated continued reduction in TAPS throughput and includes a recommendation for the installation of an additional permanent pig launcher and receiver. Alyeska agreed to submit for approval by the Director a written plan and proposed timeline for installing an additional permanent pig launcher and permanent pig receiver between PS-5 and PS-10 by July 15, 2011. Alyeska submitted Government Letter #23939 on July 15, 2011, and the submission is currently being reviewed by the Director. Alyeska will complete installation according to the approved timeline. This launcher and receiver will be equipped to handle both routine maintenance pigs and in-line inspection tools.

15. Alyeska will perform a documented evaluation of the need for increased tank capacity at pump stations to mitigate the consequences of a cold weather shutdown. The evaluation will include the possibility of bringing existing tanks back into service. Alyeska will submit this documented evaluation to the Director by September 30, 2011. Based upon the results of the evaluation, Alyeska will submit a recommendation regarding projects related to tank capacity for approval by the Director by September 30, 2011. The recommendation will explain whether and how these projects will mitigate the consequences of a cold weather shutdown. Alyeska will develop a plan and timeline for recommended projects, if any, in consultation with the Director by December 31, 2011. Alyeska will complete the plan according to the schedule.

16. The "Cold Restart Plan" is a procedure that has been developed by Alyeska to mitigate the risks of restarting TAPS following a shutdown of the pipeline during cold weather conditions. Alyeska certifies that all equipment needed for the Cold Restart Plan was positioned at the facility where it would need to be utilized according to the company's existing version of the Cold Restart Plan from January 16, 2011, to May 1, 2011. The equipment was assembled and protected so that the time to implement a cold restart was minimized.

17. Alyeska agreed to submit to PHMSA a revised Cold Restart Plan (Revised Cold Restart Plan) by July 15, 2011. Alyeska submitted Government Letter #23939 on July 15, 2011, and the submission is currently being reviewed by the Director. Alyeska will apply for any regulatory permits necessary to implement the Revised Cold Restart Plan (e.g., an Operating Permit under Title V of the Clean Air Act) by August 31, 2011. The company will also:

- a. Utilize lessons learned and data collected during the January 2011 incident and any other research or lessons learned to date to support revisions to the Cold Restart Plan;
- b. Ensure that all key pressure transducers at Remote Gate Valves 36, 65, 98, and 121 are maintained and operational under cold weather conditions and restricted or reduced flow;

- c. Pre-position all cold restart equipment according to the Revised Cold Restart Plan and provide pre-designated flange connection points for all cold restart equipment by October 31 of each year. This equipment and connection points are to remain in place through May 1 of the following year; and
- d. Conduct an engineering review of all procedures and equipment needed for the Revised Cold Restart Plan to ensure they meet the PHMSA pipeline safety regulations and submit this engineering review for approval by the Director by August 1, 2011.

18. Alyeska will demonstrate to the Director the operational status of the equipment needed for the Revised Cold Restart Plan by October 1, 2011. A PHMSA inspector will make a field visit to see that the necessary operator-qualified individuals and equipment are available to implement the Revised Cold Restart Plan. The final steps of the Revised Cold Restart Plan will not be actually demonstrated, as that would require a shutdown of the entire system.

19. Alyeska will evaluate the minimum allowable temperature of crude oil needed to ensure safe operation of the pipeline, including safe restart following the effects of a prolonged shutdown, and submit this written evaluation to the Director by August 1, 2011.

20. Alyeska has proposed several projects which are aimed at maintaining crude oil temperatures on the pipeline at a level that will allow safe cold-weather operations. Based on current operational conditions, including crude oil characteristics, Alyeska will develop a plan and timeline for implementation and completion of proposed projects designed to create sufficient time to allow for safe restart or implementation of the Revised Cold Restart Plan, and safe ongoing cold weather operations. The projects will be designed to maintain the crude oil temperatures at or above the minimum allowable temperature, as determined by the evaluation in Item 19, in the event of a prolonged shutdown during cold weather conditions. The length of the shutdown and the cold weather conditions to be considered will be based on historic records of Alyeska's repair times and winter weather conditions. Alyeska will submit its initial plan and timeline for approval by the Director no later than October 1, 2011. Changes to the plan are anticipated as new information is gathered and as project results are evaluated. After approval, Alyeska will provide a technical explanation to the Director for any decision to modify or cancel a project and will explain how such modifications do not increase the risks posed by oil characteristics and pipeline operating conditions. Planned projects may not be cancelled solely for financial reasons.

21. Alyeska agrees to submit quarterly reports to the Director that: (1) include all available data and results of the testing and evaluations required by the work plan; and (2) describe the progress of the repairs or other remedial actions being undertaken. Alyeska submitted an interim report on May 31, 2011. Alyeska submitted the first quarterly report for the period from April 1, 2011, through June 30, 2011, on July 15, 2011, in Government Letter #23938. The submission is currently being reviewed by the Director.

22. The Director may grant an extension of time for completion of any of the work to be

performed upon a written request timely submitted demonstrating good cause for an extension.

III. Review and Approval Process

23. With respect to any submission under Section II of this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission; (b) approve the submission on specified conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the foregoing. In the event of such approval, Alyeska will proceed to take all actions required by the submission as approved by the Director. In the event that the Director disapproves all or any portion of a submission, Alyeska will be provided with a written notice of the deficiencies. Alyeska will correct all deficiencies within the time specified by the Director and resubmit it for approval.

IV. Dispute Resolution

24. Alyeska may appeal any decision made by the Director under this Agreement to the Associate Administrator. Decisions of the Associate Administrator shall be final. The existence of any dispute or PHMSA's consideration of matters placed in dispute shall not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of such dispute resolution process, except as agreed upon in writing by the Director or the Associate Administrator.

V. Enforcement

25. This Agreement, as adopted by the Consent Order, is subject to all enforcement authorities available to PHMSA under 49 U.S.C. §§ 60101, *et seq.*, and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. § 60122, of up to \$100,000 per violation for each day the violation continues. This shall include any failure of Alyeska to comply with the terms of this Agreement, including determinations made by the Director, or, if appealed under Paragraph 24 above, by the Associate Administrator. All work plans and associated schedules set forth or referenced in Section II shall be automatically incorporated into this Agreement and are enforceable in the same manner.

VI. Recordkeeping and Information Disclosure

26. Alyeska agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, Alyeska may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 C.F.R. Part 7. Any claim of confidentiality shall be marked in writing on each page, and shall include a statement specifying the grounds for each claim of confidentiality. PHMSA will determine release of any information submitted pursuant to this Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

VII. Entire Agreement; Modification

27. This Consent Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement, and the Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement, except that the terms of this Agreement will be construed by reference to the Notice.

28. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications will be in writing and signed by both Parties.

VIII. Termination

29. This Agreement will terminate upon the completion of all terms set forth in Section II above. Alyeska may request written confirmation from PHMSA when this Agreement is terminated. To the extent ongoing monitoring is required, PHMSA may terminate this Agreement with respect to all other requirements with the exception of such monitoring. Nothing in this Agreement prevents Alyeska from completing any of the obligations earlier than the deadlines provided for herein.

IX. Ratification

30. The Parties’ undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

31. The Parties hereby agree to all conditions and terms of this Agreement:

For PHMSA:

For Respondent:

Chris Hoidal
Director, Western Region
Office of Pipeline Safety
PHMSA

Michael W. Joynor
Senior Vice President of Operations
Alyeska Pipeline Service Company

Date

Date