

OCT 22 2009

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7004 2510 0003 6895 8792]

Mr. Randy Hillman
Vice President of Pipelines
General Manager of Logistics and Utilities
Alon USA, LP
P.O. Box 1311
Big Spring, TX 79721

RE: CPF No. 5-2004-5021

Dear Mr. Hillman:

Enclosed is this agency's decision denying your company's Petition for Reconsideration in this case. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Service of this decision by certified mail is complete upon mailing 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. Chris Hoidal, Director, Western Region, PHMSA

Ms. Melissa A. Hearne
DLA Piper LLP (USA)
500 8th Street, N.W.
Washington, DC 20004

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

_____)	
In the Matter of)	
)	
Alon USA, LP,)	CPF No. 5-2004-5021
)	
Respondent.)	
_____)	

DECISION ON PETITION FOR RECONSIDERATION

Alon USA, LP (Petitioner or Alon) is the operator of a crude oil refinery and associated pipeline systems in the State of Texas. In an August 6, 2009 Final Order, I found that Petitioner committed several violations of 49 C.F.R. § 195.452¹ in operating those facilities and assessed the company a \$200,000 civil penalty for those violations. The following month, on September 9, 2009, Alon filed this Petition for Reconsideration (Petition). Petitioner's sole argument is that PHMSA contravened the statute of limitations for commencing this enforcement proceeding by issuing the Final Order more than five years after the violations at issue occurred.²

While I agree that this agency's enforcement proceedings are subject to a five-year statute of limitations, I do not agree that PHMSA failed to comply with that deadline in this case. As a matter of law, our enforcement proceedings commence when an operator receives service of a notice of probable violation, not when the Associate Administrator issues a final order. Moreover, the facts of this case show that Alon received service of this notice of probable violation on or about July 14, 2004, and that all of the alleged had violations occurred within five years of that date. For these reasons, I am denying this Petition and affirming the Final Order without modification.

I. Discussion

A statute of limitations is generally defined as:

¹ That regulation requires the owner or operator of a hazardous liquid pipeline in a high consequence area to develop and implement a written pipeline integrity management program.

² 28 U.S.C. § 2462.

A law that bars claims after a specified period; specif[ically], a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued . . . The purpose of such a statute is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh.³

The Pipeline Safety Laws⁴ do not prescribe a specific time limit for initiating an enforcement proceeding.⁵ Therefore, those proceedings are subject to the default statute of limitations.⁶ The applicable provision, entitled “[t]ime for commencing proceedings,” states:

Except as otherwise provided by Act of Congress, *an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued* if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.⁷

This agency has previously determined that “[t]he plain language of th[is] statute requires only that enforcement actions be commenced, not concluded, within five years.”⁸ Moreover, our regulations state that “a Regional Director *begins* an enforcement proceeding by serving a notice of probable on a person charging that person with a probable violation of 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder.”⁹ Thus, for purposes of the five-year statute of limitations, PHMSA’s enforcement proceedings commence (or begin) when an operator is served with a notice of probable violation.¹⁰

³ Black’s Law Dictionary (8th ed. 2004).

⁴ 49 U.S.C. §§ 60101-60137.

⁵ PHMSA’s administrative procedures for enforcing the Pipeline Safety Laws are described in Subpart B, Part 190, Title 49, Code of Federal Regulations.

⁶ *See e.g., U.S. v. Banks*, 115 F.3d 916 (11th Cir. 1997) (holding that “[b]ecause the [Clean Water Act] does not specify a limitations period for enforcement actions under § 309 . . . , the default limitations provisions of 28 U.S.C. § 2462 apply to the government’s actions for civil fines or penalties.”); *U.S. v. C & R Trucking Company*, 537 F.Supp. 1080, 1083 (D. W. Va. 1982) (holding that “[s]ince the Clean Water Act does not contain a specific limitation on the commencement of an action to assess a civil penalty, this Court must resort to 28 U.S.C. s 2462”).

⁷ 28 U.S.C. § 2462 (italics added).

⁸ *In the Matter of Bridgemark Corporation*, CPF No. 5-2005-0018, Decision on Petition for Reconsideration, p. 4 (Jul. 28, 2009).

⁹ 49 C.F.R. § 190.207(a) (italics added).

¹⁰ 49 C.F.R. § 190.5 (prescribing the requirements for service).

In this case, the Office of Pipeline Safety (OPS) and Texas Railroad Commission (TRC) performed a joint inspection of Alon's refinery in Big Spring, Texas, in August 2003. The OPS and TRC inspectors discovered a number of deficiencies in Petitioner's Integrity Management Program (IMP), including its failure to comply with December 31, 2001 and March 31, 2002 deadlines for identifying the pipeline segments covered by § 195.452 and for developing, implementing, and following an adequate written program for managing the integrity of those pipelines.

Thereafter, the Director, Western Region, OPS, issued Alon a Notice of Probable Violation (Notice). The Notice, dated July 12, 2004, proposed finding that Petitioner committed several violations of § 195.452, assessing the company a civil penalty of \$215,000 for 10 of those violations, and ordering it to take certain actions to comply with the former regulation.

The following month, on August 13, 2004, PHMSA received Petitioner's written response (Response) to the Notice. In that Response, the company acknowledged its receipt of the Notice "[o]n or about July 14, 2004,"¹¹ disputed nearly all of the alleged violations, requested that the proposed civil penalty be reduced or eliminated, and argued that the proposed compliance order was not necessary.

This agency's enforcement proceedings commence (or begin) for purposes of the applicable statute of limitations when an operator is served with a notice of probable violation, and Alon received service of this Notice on or about July 14, 2004. Moreover, the statute of limitations only requires that a proceeding be commenced within five years of the date when a claim first accrued, and there is no dispute that all of the violations at issue here arose on or after July 14, 1999.¹² Accordingly, I find that PHMSA complied in all respects with the five-year statute of limitations for commencing this enforcement proceeding.¹³

¹¹ Response at 1.

¹² Petition at 2.

¹³ *C & R Trucking Company*, 537 F.Supp. at 1083 (holding that "the oil spill is alleged to have occurred on or about February 19, 1977[,] . . . [and that] [t]he Government instituted this action on November 27, 1981, within the five years prescribed by 28 U.S.C. s 2462[;] . . . therefore, . . . the Government is not barred from bringing this action [under the CWA] to assess a civil penalty against the Defendant.").

II. Conclusion

For the reasons stated in Part I of this decision, I am denying Alon's Petition for Reconsideration and affirming the Final Order without modification. This is the final administrative action in this proceeding.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued