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August 24, 2009

Government Letter No. 19276
APSC File No. 2.11

VIA FAX 202-366-7435 and CERTIFIED MAIL 7001 0320 0003 4250 5075

Ryan Posten, Enforcement Director
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
East Building, 2nd Floor
Washington, DC 20590

Re: CPF No. 5-2005-5023/ Petition for Reconsideration – Alyeska Pipeline Service Company

Dear Mr. Posten:

Pursuant to 49 CFR §190.215, Alyeska Pipeline Service Company (Alyeska) notifies you that it hereby files a Petition for Reconsideration and a Stay of the Final Order in CPF No. 5-2005-5023, which was issued on July 28, 2009, and received by Alyeska on August 3, 2009.

In brief, Alyeska complains that the Office of Pipeline Safety:

1. Inappropriately exercised jurisdiction over facilities not used in the transportation of hazardous liquid as stated in 49 CFR §195.0;
2. Failed to acknowledge electronic records as acceptable compliance with recordkeeping requirements under 49 CFR §195.404(c)(3);
3. Failed to acknowledge the operator's authority to designate which documents are official records for its compliance with 49 CFR §195.404(a);
4. Ignored the facts in the record and issued an arbitrary and capricious Final Order;
5. Ignored the performance-based initiative long espoused by the agency;
6. Issued the Final Order more than three (3) years after Alyeska submitted its May 26, 2006 Closing Statement as permitted by the hearing officer at the conclusion of the hearing, held March 28, 2006;
7. Violated 49 CFR §190.213(e) in failing to issue the Final Order within 45 days of receipt of the case file, and in failing to notify Alyeska of the reason for the substantial delay and date by which the Final Order was expected to be issued; and
8. Violated the Executive Order 12988 that directs agencies to "develop specific procedures to reduce delay in decision-making ... and to invest maximum discretion in fact-finding officers to encourage appropriate settlement of claims as early as possible." 61 Fed. Reg. 4729, 4732 (Feb. 7, 1996).

Specifically, Alyeska petitions for reconsideration and stay of the Final Order for Finding 8 regarding fire fighting equipment at Pump Station 8; Finding 6(c) regarding adequate controls and protective pressure equipment at Pump Station 9; Findings 5(b) and 5(c) regarding current maps and records for Pump Station 8, North Pole Metering Station, and Pump Station 10; and Findings 10(a) and 10(b) regarding cathodic protection testing at cased road crossings.

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Finding 8

In Finding 8, the Office of Pipeline Safety (OPS) inappropriately exercised jurisdiction over Pump Station (PS) 8 for failure to maintain adequate fire fighting equipment under 49 CFR §195.430. OPS does not have jurisdiction at PS 8 under Part 195. Alyeska is not arguing that there no jurisdiction under the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, 49 USC 60101 *et. seq.*, which has broader jurisdictional reach than Part 195. Part 195 prescribes safety standards for pipeline facilities *used in the transportation of hazardous liquids*. 49 CFR §195.0 (emphasis added). Pipeline facility means pipe, right-of-way, and any equipment, facility or building *used in the transportation of hazardous liquids*. 49 CFR §195.3 (emphasis added). Pipeline or pipeline system means all parts of a pipeline facility *through which a hazardous liquid moves in transportation*, including pumping units. 49 CFR §195.3 (emphasis added). PS 8 has been ramped down since 1996 with the review and approval of the Joint State and Federal Pipeline Office. Ramp down includes that the station piping and tanks were physically disconnected from the mainline pipe. The station branch piping was disconnected and blinded in the manifold building. At the time of the inspection in 2004 that resulted in this Finding, PS 8 had not been **used** in the transportation of hazardous liquid for approximately eight (8) years.

PHMSA stated that §195.430 contains no exception for non-operational pump stations and that the regulation requires Respondent to maintain adequate firefighting equipment at *each* pump station. Final Order at 6. However, neither §195.430 nor any other section of Part 195, applies to a facility that is not used for transportation of hazardous material. 49 CFR §195.0. A pump station that is physically disconnected from the mainline pipe is not a facility through which a hazardous liquid moves in transportation. PHMSA acknowledged the status of PS 8 by referring to "the out-of-service status of PS 8." Final Order at 2. PS 8 is not used for transportation of hazardous liquid. There is substantial evidence in the record that the station was not in use for transportation. Therefore, the decision in the Final Order is arbitrary and capricious. Alyeska petitions for reconsideration of the finding that PS 8, as a ramped down station, i.e. that is not used to transport hazardous liquid, is regulated under Part 195 and required to comply with §195.430.

Finding 6(c)

In Finding 6(c), OPS failed to acknowledge that Alyeska's electronic records of valve maintenance comply with the regulatory requirement to maintain records of tests and inspections required by Part 195. PHMSA's interpretation of its own regulations allows for electronic records to meet the record keeping requirements of Part 195. PHMSA stated that §195.404(c)(3) "does not prohibit operators from maintaining the required records on magnetic media" (computer hard drive or diskettes). #PI-92-015, dated April 6, 1992. While technology has advanced beyond magnetic media being limited to hard drives or diskettes, the concept is the same – electronically kept records meet the requirements of §195.404(c)(3). PHMSA goes on to state that "original hard-copy (paper) records need not be retained after their conversion to magnetic media." #PI-92-015. Alyeska has kept electronic records in compliance with Part 195 for over a decade, and yet, during inspections, OPS inconsistently accepts or rejects the electronic records, and requires paper field notes.

During the 2004 inspection, Alyeska provided electronic records of valve maintenance to the OPS inspector from its electronic work order system. These records accurately reflected the status of two relief valves at PS 9, 39-PICV-905A and 39-PICV-905B. Valve 905A was out of service for the period under inspection, 2002 and 2003, as shown on the printout from the electronic work order system, WO# 32026762 and WO# 33026548. See Exhibits 1 and 2. In November 2002, valve 905A is noted as "valve is out of service." See Exhibit 1. In October 2003, valve 905A is noted as "valve 905A is out of service pending replacement."

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See Exhibit 2. The OPS inspector acknowledged that these records demonstrate that valve 905A was out of service. NOPV at 4.

Valve 905B was in service for the period of the inspection, as shown on the printout from the electronic work order system, WO #32026763 and WO #33026549¹. See Exhibits 3 and 4. In November 2002, valve 905B is noted as "completed PM. No problems found." See Exhibit 3. In October 2003, valve 905B is noted as "followed PM without problems." See Exhibit 4. The OPS inspector did not accept these records as proof that valve 905B was in service. There is no evidence in the record supporting why the inspector did not accept these records. The inspector examined field notes from the valve maintenance, and concluded that valve 905B was out of service. NOPV at 4. Providing the printout of the electronic records should have been sufficient to demonstrate compliance. Alyeska Response to NOPV 5-2005-5023, dated December 2, 2005, Exhibits 17 and 18.

PHMSA concluded that the records "only refer to maintenance activities; the documents do not indicate whether Valve B was actually in service." Final Order at 4. The evidence shows that when a valve is out of service, the work order system records state that. See Exhibits 1 and 2. It follows logically that when the record states that the maintenance was completed without problems, the valve was in service, as the maintenance could not have been completed otherwise. See Exhibits 3 and 4. PHMSA cannot have it both ways and accept electronic records for one valve and not the other. The expectation, as stated in the Final Order, that regular planned maintenance would include a statement that the valve was "actually in service" is arbitrary and capricious during an inspection and is again, in the Final Order. Therefore, Alyeska petitions for reconsideration of the finding that 39-PICV-905B was out of service, and that Alyeska was out of compliance with 49 CFR §195.406(b).

Findings 5(b) and 5(c)

In Findings 5(b) and 5(c), OPS failed to acknowledge the operator's authority to designate which are official records to comply with Part 195. The requirement for maintaining current maps and records of a pipeline contains a list of information that must be included in those maps and records. 49 CFR §195.404(a). However, the regulation does not contain any specific requirement as to the type of record or map necessary to meet this requirement. The duty to designate which records are kept for meeting compliance requirements must be the duty of the operator; otherwise there is no credible method for operators and PHMSA to define the universe of compliance documents.

Alyeska has a number of records and maps that contain the requirements listed in §195.404(a). These records and maps can be found in Alyeska's Technical Document and Drawing Index (TDDI), as well as the project files that contain the as-built drawings from the completion of each project. The as-built drawings are kept in TDDI for access by any TAPS employee. During any OPS inspection, any as-built drawing necessary for the inspection, or otherwise requested by the inspector, can and will be made available for inspection.

The G-100s, by contrast, were and are used by TAPS employees as a rough guide to the pipeline. The G-100s were not updated frequently enough to be compliant with §195.404(a) and Alyeska did not rely on the G-100s as its method of compliance with §195.404(a). PHMSA concluded that "Respondent provided OPS with one set of drawings at the inspection but later indicated that other drawings were the current records

¹ These work orders were submitted as Exhibits 17 and 18 for Alyeska's Response to NOPV 5-2005-5023, dated December 2, 2005. Alyeska submits Petition Exhibits 3 and 4 as more legible printouts of the electronic work order system with exactly the same information as the original response Exhibits.

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required by §195.404." Final Order at 3. That conclusion is not supported by the facts in the record. When an OPS inspector specifically requests a copy of the G-100s during an inspection but does not ask for which records are the compliance records, Alyeska provides the requested document because it is not in a position to withhold the documents, albeit with whatever caveat or limitation may be stated regarding the status of the documents. The OPS inspectors assigned to TAPS include a retired Alyeska employee and a long term OPS employee who has only been assigned to inspect TAPS. Each of these inspectors is familiar with the broad number of Alyeska's drawings and documents that describe the pipeline. They specifically requested the G-100s during inspections, probably because of their familiarity with the pipeline. When the inspector provides a list of documents and records scheduled for review during inspection, Alyeska prepares for the inspection by gathering the compliance designated records pursuant to §195.404, including drawings from TDDI. Frequently, however, the inspector will request the G-100s to answer questions that arise during inspection. Cooperating with these requests does not change the fact that Alyeska did not designate nor use the G-100s as an official record for compliance with §195.404. Therefore, Alyeska petitions for reconsideration of the finding that Alyeska is required to update the G-100s and that Alyeska was out of compliance with §195.404(a).

Findings 10(a) and 10(b)

In Findings 10(a) and 10(b), PHMSA ignored the facts in the record to issue an arbitrary and capricious Final Order that is not supported by substantial evidence. OPS alleged in the findings that Alyeska had failed to conduct pipe-to-soil surveys on cased road crossings at several locations in 2003. NOPV at 5. The records provided by Alyeska demonstrate that the coupons in the vicinity of the cased road crossings for all the listed locations were read in 2003. Alyeska's Response to NOPV 5-2005-5023, dated December 2, 2005, Finding 10(a) at 4; Finding 10(b) at 4. This information was also presented at the hearing conducted on March 28, 2006. Alyeska Hearing Presentations, dated March 28, 2006, Finding 10(a) at 6; Finding 10(b) at 6.

PHMSA took three (3) full pages to discuss the function of casings in pipeline protection, Alyeska's procedures, and the regulatory connection between §195.573 and §195.575, made through the preamble to the final notice of rulemaking. Final Order at 7-10. However, PHMSA arbitrarily and capriciously ignored the factual evidence provided by Alyeska that, in spite of the confusion about which frequency was required by Alyeska's procedures, Alyeska had conducted the required tests in 2003. PHMSA stated "I find Respondent failed to comply with §195.573(a)(1) when it failed to test annually its road casings from isolation at the cited locations." Final Order at 9, 10. However, Alyeska provided evidence that it had conducted the required tests in 2003. In the Assessment of Penalty section, PHMSA continued "Respondent provided no information that would warrant reduction of the proposed penalty." Final Order at 13. Without a violation of the testing requirement in 2003, PHMSA should have withdrawn the proposed penalty. Therefore, Alyeska petitions for reconsideration of the finding that Alyeska failed to conduct cathodic protection testing of the cased road crossings in 2003.

Pursuant to 49 CFR §190.215(e), Alyeska requests it be given 90 days to fully brief these issues. If you should have any further questions, please do not hesitate to contact me at 907-787-8904.

Sincerely,



Sheila Doody Bishop
Counsel

Ryan Posten, Enforcement Director
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Attachments: Exhibit 1 – WO #32026762
 Exhibit 2 – WO #33026548
 Exhibit 3 -- WO #32026763
 Exhibit 4 -- WO #33026549

cc: Jeffrey D. Wiese
 Chris Hoidal
 Dennis Hinnah

EMIS - Work OrderTask Detail



Work Order Task Detail



W/O#: 32026763 **Task#:** 01
Title: K11,I,39-PICV-905B,DISCH RELIEF DOT FUNCT TEST
Type: PM **Priority:** 03
Status: CLOSED **StatusDate:** 09/26/2003
Planner: UAC7715 **Initiator:** UAC7715
Start Date: 11/30/2002 **End Date:** 11/30/2002
EquipName: PRES INDC CONTROL VALVE -
 MAINLINE DISCHARGE RELIEF **EquipNumber:** PICV-905B
Manuf: **Model:**
Location: MANIFOLD BUILDING

Task Instructions

Description	By	Date
Scope: The scope of this procedure is to perform the annual DOT	UFC5542	05/30/2002
discharge pressure relief valve task	UFC5542	05/30/2002
	UFC5542	05/30/2002
001 Function test discharge pressure relief valves PICV-X08A,B, & C	U183350	09/18/2002
per SMP-119-043	U183350	09/25/2002
	U183350	10/14/2002
NOTE: THIS WORK MUST BE PERFORMED OR SUPERVISED BY PERSONNEL QUALIFIED ON	U183350	10/14/2002
PC-PIT/003 OR PIT/026 PER 49CFR PART 195.	U183350	10/14/2002

Completion Comments

Notes	By	Date
Completed PM. No problems found.	U165860	11/30/2002

Attachments

No Attachments found.

Exhibit 3
 Alyeska Pipeline Service Company
 Petition for Reconsideration
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EMIS - Work OrderTask Detail



Work Order Task Details

W/O#: 33026549 **Task#:** 01
Title: K11.J.39-PICV-905B.DOT FUNC TEST,DISCH RELIEF VLV
Type: PM **Priority:** 03
Status: CLOSED **StatusDate:** 08/27/2004
Planner: UAC7715 **Initiator:** UAC7715
Start Date: 10/21/2003 **End Date:** 10/21/2003
EquipName: PRES INDC CONTROL VALVE -
 MAINLINE DISCHARGE RELIEF **EquipNumber:** PICV-905B
Manuf: **Model:**
Location MANIFOLD BUILDING

Task Instructions

Description	By	Date
Scope: The scope of this work order is to perform the annual DOT	U183350	11/04/2002
discharge pressure relief valve task	UFC5542	05/30/2002
.	UFC5542	05/30/2002
001: Function test discharge pressure relief valves PICV-X05A,B, & C	U183350	09/18/2002
per SMP-115-043, DOT Function Test on Mainline Discharge Relief	U183350	11/04/2002
Valves PICV-X05A, B and C.	U183350	11/04/2002
.	U183350	10/14/2002
NOTE: THIS WORK MUST BE PERFORMED OR SUPERVISED BY PERSONNEL QUALIFIED ON	U183350	10/14/2002
PC-PIT/003 OR PIT/026 PER 49CFR PART 195.	U183350	10/14/2002

Completion Comments

Notes	By	Date
Followed PM without problems	U165008	10/21/2003

Attachments

No Attachments found.

Exhibit 4
 Alyeska Pipeline Service Company
 Petition for Reconsideration
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