

APR 26 2011

Ms. Colleen Starring
President
ENSTAR Natural Gas Company
A Division of SEMCO ENERGY
3000 Spenard Road
Anchorage, Alaska 99519-0288

RE: CPF No. 5-2006-0014

Dear Ms. Starring:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws the allegations of violation. Therefore, this enforcement action is now closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided 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. Dave Bredin, Director of Operations, ENSTAR Natural Gas Company
Mr. Travis Renk, Operations Analyst, ENSTAR Natural Gas Company
Mr. Chris Hoidal, Director, Western Region, PHMSA

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 1160 0001 0075 9206]

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

In the Matter of)	
)	
ENSTAR Natural Gas Company,)	CPF No. 5-2006-0014
)	
Respondent.)	
)	

FINAL ORDER

On October 10-13, 2005, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of ENSTAR Natural Gas Company's (Respondent or ENSTAR) Mat-Su Valley Distribution System near Wasilla, Alaska. Respondent operates natural gas transmission and distribution systems throughout Southern Alaska. As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated May 3, 2006, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed certain violations of 49 C.F.R. Part 192. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated June 1, 2006 (Response). Respondent contested the allegations and requested a hearing. A hearing via telephone conference was held on August 29, 2007, with an attorney in the Office of Chief Counsel, PHMSA, presiding. After the hearing, Respondent was given 30 days to provide a post-hearing submission. OPS was given 20 days and did submit photos of the racks of pipe subject to the allegation in Item 2 below. Respondent submitted additional information on September 21, 2007.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.707(a)-(b), which states:

§ 192.707 Line markers for mains and transmission lines.

(a) *Buried pipelines.* Except as provided in paragraph (b) of this section, a line marker must be placed and maintained as close as practical over each

buried main and transmission line:

- (1) At each crossing of a public road and railroad; and
 - (2) Wherever necessary to identify the location of the transmission line or main to reduce the possibility of damage or interference.
- (b) *Exceptions for buried pipelines.* Line markers are not required for the following pipelines:
- (1) Mains and transmission lines located offshore, or at crossings of or under waterways and other bodies of water.
 - (2) Mains in Class 3 or Class 4 locations where a damage prevention program is in effect under § 192.614.
 - (3) Transmission lines in Class 3 or 4 locations until March 20, 1996.
 - (4) Transmission lines in Class 3 or 4 locations where placement of a line marker is impractical.

The Notice alleged that Respondent violated § 192.707(a)-(b) by failing to place and maintain line markers as close as practical over each buried main line at each crossing of a public road. Specifically, the Notice and Violation Report alleged that Respondent failed to install line markers on distribution mains in Class 1 and Class 2 areas at public road crossings. During the inspection, no line markers were found along Palmer Fishhook Road.

In its Response and at the hearing, ENSTAR presented three arguments in contesting the allegation of violation. First, Respondent argued that PHMSA's regulations should not be enforced under the facts of this case.¹ Second, Respondent explained that its distribution service area is a disconnected mix of Class 1, Class 2, and Class 3 areas and proposed a "risk based" approach. ENSTAR took issue with applying § 192.707 to distribution mains in Class 1 and Class 2 locations where the operator has a damage prevention program in place that covers all of its service area equally.² Third, Respondent contended that § 192.707 is not consistent with the principles underlying PHMSA's Damage Prevention and Public Awareness regulations. Respondent explained that 49 C.F.R. § 192.707(b)(2) exempts distribution mains in Class 3 locations from the need for pipeline markers if the operator has a damage prevention program in place.

¹ While ENSTAR agreed that pipeline markers have their place, it suggested "a 'risk based' approach to installing pipeline markers on distribution mains in rural areas is more appropriate." The company suggested, for example, that pipeline markers be required at road crossings on rural distribution mains only if they were 4" or more in diameter. Respondent reasoned that under such a "risk based" approach, line markers might be more appropriate for larger-diameter mains "that move large volumes of gas, feed hundreds of customers and are more problematic if damaged."

² Respondent advised that its current damage prevention program covers all of its service area equally, not just in Class 3 locations. Respondent also asserted that the implementation of its Public Awareness Program (RP 1162) created an even more heightened awareness of damage prevention in its entire service area than could be achieved through the use of line markers.

I have given full consideration to all of the evidence and arguments presented by OPS and Respondent. Although the regulations do not currently allow for any risk-based exceptions, this case has raised issues that require more in-depth policy and safety review. Accordingly, having considered all of the evidence and in the interest of fairness, this allegation of violation is withdrawn. PHMSA shall not be prejudiced, however, by this withdrawal nor precluded from alleging future violations of 49 C.F.R. §192.707 against ENSTAR or any other operator.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.321, which states:

§ 192.321 Installation of plastic pipe.

(a) . . .

(g) Uncased plastic pipe may be temporarily installed above ground level under the following conditions:

(1) The operator must be able to demonstrate that the cumulative aboveground exposure of the pipe does not exceed the manufacturer's recommended maximum period of exposure or 2 years, whichever is less.

The Notice alleged a violation of § 192.321 based on Respondent's storage of uncased plastic pipe for emergency repairs without demonstrating that the cumulative aboveground exposure of the pipe did not exceed the manufacturer's recommended maximum period of exposure or two years, whichever is less.

In Response, ENSTAR argued that the scope of the regulation is limited to the temporary use of uncased plastic pipe when installed above ground.

After considering the evidence and the allegations in the Notice, I find that there is insufficient notice of a violation of § 192.321 and no evidence in the record to support a finding of violation. As a matter of legal interpretation, § 192.321 restricts the temporary installation of uncased plastic pipe above ground unless it meets certain conditions, including less than two years of UV exposure. The Notice did not allege the temporary installation of uncased plastic pipe above ground. Further, there is no evidence in the record that ENSTAR installed, i.e. used, any of the UV-exposed pipe.³ Accordingly, this allegation of violation is withdrawn.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to Items 1 and 2 for violations of 49 C.F.R. Part 192. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of

³The issue of whether the pipe in question *could* have been safely stored outside for more than two years is moot. ENSTAR contended that PHMSA misinterpreted the code to limit the outdoor storage life of plastic pipe to two years. The agency's position is based on the regulation's intent to restrict the use of pipe that has been weakened by exposure to UV light and conclusion that this purpose would be thwarted if an operator installed UV weakened pipe in any application above ground.

gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Because I ordered that the allegations in Items 1 and 2 be withdrawn, the compliance terms proposed for those Items are not included in this order. This enforcement action is closed.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued