

SEP 01 2009

Mr. Brian Newton
President and CEO
Golden Valley Electric Association
758 Illinois Street
Fairbanks, AK 99707-1249

Re: CPF No. 5-2007-5034

Dear Mr. Newton:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$20,000. 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.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Chris Hoidal, Director, Western Region, PHMSA
Dennis Hinnah, Deputy Director, Western Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5838]

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

_____))
In the Matter of))
))
Golden Valley Electric Association,) **CPF No. 5-2007-5034**
))
Respondent.))
_____))

FINAL ORDER

Between January 9 - 11, 2006, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of the facilities and records of Golden Valley Electric Association (GVEA or Respondent) in Fairbanks, Alaska. GVEA operates crude oil supply and return pipelines between the Trans Alaska Pipeline System (TAPS) North Pole metering facility and another metering facility that supplies crude oil to two refineries and the GVEA power plant. Total pipeline mileage is 4.6 miles. As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated September 12, 2007, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 195.452(f)(5), (j)(3) and (j)(4)(i) and proposed assessing a civil penalty of \$20,000 for the alleged violations.

GVEA failed to respond within 30 days after it had received the Notice. Respondent's failure to respond constitutes a waiver of their right to contest the allegations in the Notice and authorizes the entry of this Final Order.

FINDINGS OF VIOLATION

Respondent did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(j)(3), which states:

§ 195.452 Pipeline Integrity management in high consequence areas.

- (a) ...
- (j) *What is a continual process of evaluation and assessment to maintain a pipeline's integrity?*

(1) *General*. After completing the baseline integrity assessment, an operator must continue to assess the line pipe at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area.

(2) . . .

(3) *Assessment intervals*. An operator must establish five-year intervals, not to exceed 68 months, for continually assessing the line pipe's integrity. An operator must base the assessment intervals on the risk the line pipe poses to the high consequence area to determine the priority for assessing the pipeline segments. An operator must establish the assessment intervals based on the factors specified in paragraph (e) of this section, the analysis of the results from the last integrity assessment, and the information analysis required by paragraph (g) of this section.

The Notice alleged that GVEA violated § 195.452(j)(3) by failing to reassess its 14-inch crude oil pipeline within 68 months of the previous assessment. As evidence of that violation, the Notice stated that GVEA performed a baseline hydrostatic test on the line on August 12, 1998, but still had not reassessed the line as of January 11, 2006, the last day of the OPS inspection. GVEA's pipeline system, which could affect one or more High Consequence Areas,¹ is subject to the Integrity Management requirements of Subpart F. Accordingly, I find that Respondent violated 49 C.F.R. § 195.452(j)(3) by failing to reassess its 14-inch crude oil pipeline within 68 months of the previous assessment.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(j)(4)(i), which states:

§ 195.452 Pipeline Integrity management in high consequence areas.

(a)

(j) *What is a continual process of evaluation and assessment to maintain a pipeline's integrity?*

(1) *General*. After completing the baseline integrity assessment, an operator must continue to assess the line pipe at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area.

(2)

(4) *Variance from the 5-year intervals in limited situations-*

(i) *Engineering basis*. An operator may be able to justify an engineering basis for a longer assessment interval on a segment of line pipe. The justification must be supported by a reliable engineering evaluation combined with the use of other technology, such as external monitoring technology, that provides an understanding of the condition of the line pipe equivalent to that which can be obtained from the assessment methods allowed in paragraph (j)(5) of this section. An operator must notify OPS 270 days before the end

¹ An HCA is defined as: (1) A *commercially navigable waterway*, which means a waterway where a substantial likelihood of commercial navigation exists; (2) A *high population area*, which means an urbanized area, as defined and delineated by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile; (3) An *other populated area*, which means a place, as defined and delineated by the Census Bureau, that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area; (4) An *unusually sensitive area*. See 49 C.F.R. § 195.450.

of the five-year (or less) interval of the justification for a longer interval, and propose an alternative interval. An operator must send the notice to the address specified in paragraph (m) of this section.

The Notice alleged that GVEA violated § 195.452(j)(4)(i) by failing to properly notify OPS before the end of the maximum five-year reassessment interval of its justification for establishing a longer reassessment interval for a particular segment of line pipe. Specifically, the Notice alleged that Respondent scheduled its 14-inch crude oil pipeline for reassessment and evaluation in 2007, nearly a decade after the previous baseline assessment of August 12, 1998. The Notice further alleged that Respondent failed to provide OPS with notice 270 days before August 12, 2003, the end of the maximum five-year reassessment interval, of its justification for establishing that longer interval. The Notice also stated that GVEA had still not provided OPS with that notification as of January 11, 2006, the last day of the inspection. Accordingly, I find that Respondent violated 49 C.F.R. §195.452(j)(4)(i) by failing to notify OPS before the end of the maximum five-year reassessment interval of the justification for a longer interval.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative 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.

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: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$20,000 for the violations.

Notice Item 1 proposed a civil penalty of \$10,000 for violation of 49 C.F.R. § 195.452(j)(3), for Respondent's failure to reassess its 14-inch crude oil pipeline within 68 months of the previous assessment. Inspecting pipeline at the mandated intervals is a key part of maintaining pipeline safety and protecting the environment. Pipeline operators are obligated to assess and evaluate their pipeline as frequently as required, but no less often than every 68 months. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for violating 49 C.F.R. § 195.452(j)(3).

Notice Item 2 proposed a civil penalty of \$10,000 for violation of 49 C.F.R. § 195.452(j)(4)(i), for Respondent's failure to notify OPS before the end of the maximum five-year reassessment interval of its justification for establishing a longer interval. When a pipeline operator

establishes a reassessment interval that exceeds the mandated interval of five-years (or less), OPS must receive a timely notification of that decision. Moreover, the notification must include an adequate justification for that decision, one supported by a reliable engineering evaluation and the use of such other technology as may be appropriate. Timely notification that an operator will exceed the mandated pipeline reassessment intervals would reflect an operator's attempt to comply with pipeline safety regulations. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for violating 49 C.F.R. § 195.452(j)(4)(i).

GVEA has presented no information that would warrant a reduction in the civil penalty proposed in the Notice. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$20,000.

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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$20,000 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 a United States District Court.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590. 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 filing of the petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective upon receipt.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued