

MAR 21 2011

Mr. Mike Joynor
Senior Vice President
Alyeska Pipeline Service Company
900 East Benson Blvd.
P.O. Box 196660
Anchorage, AK 99519

Re: CPF No. 5-2008-5002

Dear Mr. Joynor:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$112,000, and withdraws one of the allegations of violation. It further specifies actions that need to be taken by Alyeska Pipeline Service Company to comply with the pipeline safety regulations.

The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Western Region, this enforcement action will be 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. Chris Hoidal, Director, Western Region, PHMSA
Mr. Dennis Hinnah, Deputy Director, Western Region, PHMSA
Ms. Sheila Doody Bishop, Esq., Counsel for Alyeska Pipeline Service Company

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7009 1410 0000 2472 2858]

an explanation of its actions regarding the other allegations, and requested that PHMSA withdraw certain items listed in the proposed compliance order. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Alyeska did not contest the following allegations in the Notice that it violated 49 C.F.R. Part 195:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.116(e), which states:

§ 195.116 Valves.

Each valve installed in a pipeline system must comply with the following....

(e) Each valve other than a check valve must be equipped with a means for clearly indicating the position of the valve (open, closed, etc.).

The Notice alleged that Alyeska violated 49 C.F.R. § 195.116(e) by failing to equip each valve with a means for clearly indicating the position of the valve. Specifically, the Notice alleged that during the inspection, MGV 10A, a manual gate valve, was found without a valve position indicator. OPS attached pictures to the Pipeline Safety Violation Report documenting the missing indicator. Alyeska did not contest this allegation of violation and stated that it had scheduled the installation of the valve position indicator. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.116(e) by failing to maintain a valve position indicator on MGV 10A.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. §195.401 (b), which states:

§ 195.401 General requirements.

(a)

(b) Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it shall correct it within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.

The Notice alleged that Alyeska violated 49 C.F.R. § 195.401(b) by failing to correct a condition that could adversely affect the safe operation of its pipeline system within a reasonable time. Specifically, the Notice alleged that due to internal corrosion Respondent installed a 15-foot non-pressure containment sleeve at MP 57.785 in 1989. The operator continued to operate the pipeline segment with the sleeve in place, even though an indeterminate amount of remaining pipe wall thickness existed under the sleeve. Such a condition could adversely affect the safe operation of TAPS because this type of structural sleeve will not stop crude oil from leaking onto the ground when internal corrosion has weakened the pipe wall. Alyeska was notified of this issue in January 2007 and scheduled work to repair it in 2007 and again in 2008. Respondent did

not correct this condition within a reasonable time. Alyeska did not contest this allegation of violation but requested that the OPS withdraw the proposed compliance order, as discussed below. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.401(b) by failing to correct a condition that could adversely affect the safe operation of its pipeline system within a reasonable time.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overflow protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once every calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Alyeska violated 49 C.F.R. § 195.428(a) by failing to inspect each pressure limiting device, relief valve, pressure regulator or other pressure control equipment within the interval required by the regulation. Specifically, the Notice alleged that Respondent installed a pressure transmitter (31-PT-013A) to protect its Kuparuk pipeline system from overpressure, yet failed to reference it in the company's procedure, "OM-1, Procedural Manual for Operations, Maintenance and Emergencies," Section 7, or include it in a list of such equipment requiring annual testing. Alyeska did not contest this allegation of violation but requested that OPS withdraw the proposed compliance order since the company had added the pressure transmitter to its manual after the inspection. Such request is discussed more fully below. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect a pressure transmitter on its Kuparuk pipeline system.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.573 (e), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with § 195.571:....

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by § 195.401(b)....

The Notice alleged that Alyeska violated 49 C.F.R. § 195.573(e) by failing to correct certain corrosion control deficiencies in accordance with § 195.401(b), quoted above in Item 2.³ Specifically, the Notice alleged that since 2002 Alyeska had been aware of low cathodic

³ 49 C.F.R. § 195.401(b) states that "whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it shall correct it within a reasonable time."

protection (CP) readings in the area of MPs 12.2-13.2, and that such readings indicated that the CP for this area did not meet the criteria set forth in § 195.571. Close Interval Surveys performed in 2003, 2004, 2005, and 2006 continued to reflect low readings in this area. Coupon readings collected between 2002 and 2006 also confirmed low CP in this area. These areas of low CP were first reported during an 2002 inspection.⁴ As of the date of the inspection, Alyeska had failed to correct these deficiencies. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(e) by failing to correct certain identified corrosion control deficiencies within the timeframe set by § 195.401(b).

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(c) and (e), which state:

§ 195.573 What must I do to monitor external corrosion control?

(a)

(c) *Rectifiers and other devices.* You must electrically check for proper performance each device in the first column at the frequency stated in the second column.

Device	Check frequency
Rectifier..... Reverse current switch. Diode. Interference bond whose failure would jeopardize structural protection.	At least six times each calendar year, but with intervals not exceeding 2 ½ months.
Other interference bond.....	At least once each calendar year, but with intervals not exceeding 15 months....

(e) *Corrective action.* You must correct any indentified deficiency in corrosion control as required by § 195.401(b)....

The Notice alleged that Alyeska violated 49 C.F.R. § 195.573(c) and (e) by failing to correct an identified deficiency in corrosion control of one its rectifiers. Specifically, the Notice alleged that a rectifier powered by wind was installed in October 2003 at MP 12.5, but that the rectifier only performed correctly on 11 out of 35 readings taken between October 2003 and July 2007. The Notice alleged that Alyeska failed to address this deficiency and Respondent did not contest the allegation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(c) and (e) by failing to correct an identified deficiency in corrosion control of one of its rectifier devices.

⁴ *In the Matter of Alyeska Pipeline Service Company*, Final Order, CPF No. 5-2003-5002, 2005 WL 5010121 (May 19, 2005) (cases are also available at www.phmsa.dot.gov/pipeline/enforcement).

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

WITHDRAWAL OF ALLEGATION

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.406, which states, in relevant part:

§ 195.406 Maximum operating pressure.

(a) Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following:....

(b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

The Notice alleged that Alyeska violated 49 C.F.R. § 195.406(b) by failing to provide adequate controls and protective equipment to ensure that the pressure in the company's meter piping at Pump Station 1 did not exceed 110 percent of the operating pressure limit established under paragraph (a) of this regulation. Specifically, the Notice alleged that the meter piping had a lower maximum operating pressure than the incoming piping. The incoming piping contained pressure shutdown switches at GC-1, FS-1 and FS-3. If these switches were used to control pressure, then they had to be maintained as DOT critical safety devices. However, Alyeska's operating manual did not list the required testing of these high-pressure switches at those locations.

In its Response, Alyeska argued that the connection piping was operated by Alyeska as a low-stress pipeline and thus was not regulated by PHMSA since it fell within the exception of § 195.1(b)(3)(i).⁵ At the time of the inspection, this section exempted certain onshore low stress pipelines from Part 195 requirements. A low-stress pipeline was defined in § 195.2 as a pipeline "operated in its entirety at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe." Respondent argued that the pipeline is normally operated at a level below 100 psi and never above 140 psi, which are both well below the 20 percent specified minimum yield strength (SMYS) levels of 250 psi and 333 psi for the pipeline in question. Alyeska also provided reasoning why the other requirements of § 195.1(b)(3)(i) were met. As a result, Respondent requested that PHMSA withdraw this allegation and the corresponding terms of the proposed compliance order.

⁵ At the time of the inspection, §195.1(b)(3)(i) was in effect. However, on June 3, 2008, PHMSA published a final rule amending 49 C.F.R. § 195.1, effective July 3, 2008. *See Pipeline Safety: Protecting Unusually Sensitive Areas From Rural Onshore Hazardous Liquid Gathering Lines and Low-Stress Lines* (2008), 73 Fed. Reg. 31644 (June 3, 2008). The current § 195.1 no longer includes the specific section cited herein.

I find Respondent's argument persuasive. The meter piping is non-jurisdictional because the lines meet the exceptions listed in § 195.1(b)(3)(i). Therefore, based upon a review of all of the evidence, I find that Respondent did not violate 49 C.F.R. 195.406(b) and withdraw Item 3 and the related portion of the proposed compliance order.

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. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must 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 \$112,000 for the violations cited above.

Item 5: The Notice proposed a civil penalty of \$56,000 for Respondent's violation of 49 C.F.R. § 195.573(e), for failing to correct the identified cathodic protection deficiencies at MP 12.2-13.2. Alyeska did not contest the proposed civil penalty and did not offer any evidence in its Response as to why the penalty amount should be reduced or eliminated based on the assessment criteria of 49 C.F.R. § 190.225. Instead, Respondent described its 2007 efforts to remedy the problem. These actions occurred after the inspection and therefore cannot be considered as a "good faith" basis for decreasing a proposed civil penalty. Further, I find that after recognizing in 2002 that the CP readings in this area were low, Alyeska still failed to address the problem for nearly 4 years. The low CP levels had first been reported during a 2002 inspection and documented in a previous enforcement case, CPF No. 5-2003-5002.

Failure to address inadequate cathodic protection for such a long period of time can result in a pipeline leak or rupture, thus threatening harm to life, property, and the environment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$56,000 for violation of 49 C.F.R. § 195.573(e).

Item 6: The Notice proposed a civil penalty of \$56,000 for Respondent's violation of 49 C.F.R. § 195.573(c) and (e), for failing to correct a corrosion control deficiency at the rectifier at MP 12.5. In its Response, Alyeska did not explicitly offer any evidence as to why the penalty amount should be reduced or eliminated based on the assessment criteria of 49 C.F.R. § 190.225. Instead, the company described its efforts in 2007 to install a new wind generator/rectifier to remedy the problem. These actions occurred after the inspection and therefore cannot be considered as a "good faith" basis for decreasing a proposed civil penalty. Further, after recognizing in 2002 that the rectifier was not operating correctly, Alyeska failed to address the problem for nearly 4 years. Alyeska's records demonstrated that the rectifier device performed correctly on only 11 out of 35 readings taken between October 2003 and July 2007. A failure to correct inadequate CP for such a long period of time can result in a pipeline leak or rupture, thus

threatening harm to life, property, and the environment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$56,000 for violation of 49 C.F.R. § 195.573(c).

In summary, having reviewed the record and considered the assessment criteria for each of the items cited above, I assess Respondent a total civil penalty of **\$112,000**.

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. The Financial Operations Division's telephone number is (405) 954-8893.

Failure to pay the \$112,000 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 district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, 3, 4, 5, and 6 in the Notice, for violations of 49 C.F.R. §§ 195.116(e), 195.401(b), 195.406(b), and 195.428(a), 195.573(e), and 195.573(c) and (e), respectively. As stated above, I have withdrawn the alleged violation listed in Item 3, and therefore the corresponding proposed compliance item is also withdrawn.

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director has indicated that Respondent has taken the following actions to address some of the cited violations:

With respect to **Item 2** in the Notice, Respondent has removed the sleeve and inspected the internal corrosion inside the pipe under the sleeve.

With respect to **Item 4**, Respondent has updated its O&M manual and included the pressure transmitter 31-PT-013A as a DOT critical safety device. This action satisfies the requirements of the proposed compliance order.

With respect to **Items 5 and 6**, Alyeska asserted that new corrosion control equipment was installed in 2007 and has been performing well since that time. The company provided convincing evidence that CP levels between Mile Posts 12.2 and 13.2 met the requirements of the pipeline safety regulations.

Accordingly, I find that compliance has been achieved with respect to these violations. Therefore, the compliance terms proposed in the Notice for Items 2, 4, 5, and 6 are not included in this Order.

As for the remaining compliance terms, pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.116(e) (**Item 1**), Alyeska Pipeline Service Company must install a valve position indicator on MV 10A.
2. Alyeska Pipeline Service Company must complete the above-listed requirements, and submit documentation of such completion within 180 days of receipt of the Final Order.
3. Alyeska Pipeline Service Company is requested to maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Chris Hoidal, Director, Western Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies, and analyses, and 2) total cost associated with replacements, additions, and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 7 and 8, the Notice alleged probable violations of 49 C.F.R. §§ 195.438 and 195.579(c), respectively, but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.438 (**Item 7**) — Respondent’s alleged failure to exhibit or maintain “no smoking” signs in each pump station and breakout tank area where there was a possibility of the leakage of a flammable hazardous liquid or of the presence of flammable vapors. During the inspection, “no smoking” signs were inadequate at the following valve locations: CKV 5, 8, 9, 10, 14, 16, 17, 18, 22, and MGV 5A and 10A.

49 C.F.R. § 195.579(c) (**Item 8**) — Respondent’s alleged failure to provide an inspection report for internal corrosion upon removal of piping associated with the Endicott meter run.

Respondent presented information in its Response showing that it had taken certain actions to address the cited items. Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. § 195.438 (Item 7) and 49 C.F.R. § 195.579(c) (Item 8) have occurred and Respondent is hereby advised to correct such conditions. In the event that OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

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: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued