

November 22, 2016

Mr. Thomas Barrett
President & CEO
Alyeska Pipeline Service Company
P.O. Box 196660
Anchorage, AK 99519

Re: CPF No. 5-2015-5015

Dear Mr. Barrett:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, withdraws one alleged violation, and assesses a civil penalty of \$52,000. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid, 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,

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, Director, Western Region, OPS
Mr. Rod Hanson, Sr. Vice-President, Operations & Maintenance, Alyeska

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)	
)	
Alyeska Pipeline Service Company,)	CPF No. 5-2015-5015
)	
Respondent.)	
)	

FINAL ORDER

Between April 23, 2013 and March 27, 2014, 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 Alyeska Pipeline Service Company's (Alyeska or Respondent) Trans Alaska Pipeline System, known as TAPS. This inspection included site visits to Respondent's Pump Station 1 through Pump Station 12 and the Valdez Marine Terminal. In addition, operating and maintenance procedures and supporting implementation records were reviewed in Alyeska's Anchorage, Alaska office. Alyeska operates TAPS, an 800-mile-long pipeline that transports crude oil from Prudhoe Bay to Valdez, Alaska.¹

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated July 10, 2015, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Alyeska had violated 49 C.F.R. §§ 195.432, 195.412 and 195.573 and proposed assessing a civil penalty of \$104,500 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated August 13, 2015 (Response). The company did not contest the allegations of violations relating to §195.432 (Item 1) and § 195.573 (Item 3) and agreed to pay the proposed civil penalties for those items, totaling \$52,000, as provided in 49 C.F.R. § 190.227. The company contested the allegation related to § 195.412 (Item 2), offered additional information in response to the Notice, and requested that the proposed civil penalty relating to Item 2 be eliminated. Respondent did not request a hearing and therefore has waived its right to one.

¹ Pipeline Safety Violation Report (Violation Report), (July 10, 2015) (on file with PHMSA), at 1.

FINDINGS OF VIOLATION

In its Response, Alyeska did not contest the allegations in the Notice relating to Items 1 and 3, that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), which states:

§ 195.432 Inspection of in-service breakout tanks.

(a)

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Std 653 (except section 6.4.3, Alternative Internal Inspection Interval) (incorporated by reference, see §195.3). However, if structural conditions prevent access to the tank bottom, its integrity may be assessed according to a plan included in the operations and maintenance manual under §195.402(c)(3). The risk-based internal inspection procedures in API Std 653, section 6.4.3 cannot be used to determine the internal inspection interval.

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to perform monthly in-service inspections of low-pressure steel aboveground breakout tanks required by API Standard 653 section 6.3.1.2.² Specifically, the Notice alleged that during the inspection performed by PHMSA, and in additional discussions with Alyeska compliance personnel, Respondent's staff stated that monthly inspections had not been conducted at Pump Station 7 from August 2010 through September 2011. Furthermore, PHMSA staff learned that only quarterly inspections had been conducted at Pump Station 12 from July 2012 through March 2014. 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. § 195.432(b) by failing to perform monthly in-service inspections of low pressure steel aboveground breakout tanks required by API Standard 653 section 6.3.1.2.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(d), which states:

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

(a)

(d) *Breakout tanks.* You must inspect each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank to ensure that operation and maintenance of the system are in accordance with API RP 651 (incorporated by reference, see §195.3). However, this inspection is not required if you note in the corrosion control procedures established under §195.402(c)(3) why complying with all or certain operation and maintenance provisions of API RP 651 is not necessary for the safety of the tank.

² API Std 653, section 6.3.1.2 states that the interval of routine in-service inspections from the outside of the breakout tank shall be consistent with conditions at the particular site, but shall not exceed one month.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(d) by failing to inspect each of its cathodic protection systems used to control corrosion on the bottom of an aboveground breakout tank, so as to ensure that operation and maintenance of the system are in accordance with API Recommended Practice 651. Specifically, the Notice alleged that Alyeska could not provide tank cathodic protection potential survey records for the PS 12 breakout tank for 2010. Respondent could only provide such records for its PS12 breakout tank for 2011 and 2012. 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(d) by failing to inspect each of its cathodic protection systems used to control corrosion on the bottom of an aboveground breakout tank, so as to ensure that operation and maintenance of the system are in accordance with API Recommended Practice 651.

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

In its Response, Alyeska contested the allegation in the Notice relating to Item 2, that it violated 49 C.F.R. Part 195, as follows:

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.412(b), which states:

§ 195.412 Inspection of rights-of-way and crossings under navigable waters.

(a)

(b) Except for offshore pipelines, each operator shall, at intervals not exceeding 5 years, inspect each crossing under a navigable waterway to determine the condition of the crossing.

The Notice alleged that Respondent violated 49 C.F.R. § 195.412(b) by failing to inspect each crossing under a navigable waterway to determine the condition of the crossing at intervals not exceeding five years. Specifically, the Notice alleged that when requested to provide the inspection records for inspections of TAPS's buried navigable waterway crossings, Alyeska staff only provided a record for the Chena River crossing. The Notice alleged that TAPS contains several other buried pipelines that cross under navigable waterways, including, but not limited to, crossing under the Klutina River, Lowe River, and Salcha River. During the inspection, Alyeska staff allegedly stated that the Chena River crossing was the only waterway crossing Respondent inspected per § 195.412(b).

In its Response, Alyeska stated that it fully complied with § 195.412(b) because the Chena River Crossing is the only commercially navigable waterway crossed underneath by the TAPS. Alyeska asserted that a "navigable waterway" for the purposes of § 195.412(b) is a "commercially navigable waterway" and, therefore, the Chena River is the only "navigable waterway" for purposes of § 195.412(b) that the TAPS crosses.

Alyeska argued that it used PHMSA's preferred database, the National Waterways Network (NWN), to identify commercially navigable waterways that are potentially regulated under

§195.412.³ The NWN identified only two rivers that are crossed by Respondent – the Yukon River and the Chena River.⁴ Respondent eliminated the Yukon River because the pipe does not cross “under” the river, but rather crosses the river by bridge, leaving only the Chena River that is subject to § 195.412(b).⁵

Alyeska stated that PHMSA defines a “navigable waterway” as a “commercially navigable waterway” in a January 29, 2001 Letter of Interpretation.⁶ In that letter, in response to a request from a pipeline operator for clarification of the definition of “navigable waterways” for purposes of compliance with § 195.412(b), PHMSA stated that “navigable waterways” were waterways that had been designated as “commercially navigable waterways” by the NWN.⁷

Having reviewed the evidence, I find Alyeska correctly notes that § 195.412(b) does not define “navigable waterway” nor is it expressly defined anywhere in 49 C.F.R. Part 195.⁸ On September 8, 2000, PHMSA issued a rule addressing the abandonment of underwater pipeline facilities.⁹ In this rule, PHMSA defined “navigable waterways” as “commercially navigable waterways... where a substantial likelihood of commercial navigation exists.”¹⁰ The 2000 Rule also noted that “guidance in determining the affected waterways is available in a geographic database of navigable waterways in and around the United States...called the National Waterways Network (NWN).”¹¹ While the 2000 Rule addressed changes in §195.59, PHMSA has since issued guidance applying this definition of “navigable waterways” and the use of the NWN to §195.412.¹²

³ Respondent provided a copy of from the NWN listing the State of Alaska Waterways. Response, Ex. E.

⁴ Response at 4.

⁵ Response at 4.

⁶ Response at 4; *Marathon Ashland Pipeline LLC*, Letter of Interpretation, PL-01-0100 at 1 (Jan. 29, 2001), available at <http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnextoid=228571dd2f4a6410VgnVCM100000d2c97898RCRD&vgnnextchannel=2b9b34d513f95410VgnVCM100000d2c97898RCRD&vgnnextfmt=print>.

⁷ *Marathon Ashland Pipeline LLC*, Letter of Interpretation, PL-01-0100 at 1.

⁸ Response at 3.

⁹ *Pipeline Safety: Underwater Abandoned Pipeline Facilities*, Final Rule, 65 FR 54,440 (Sep. 8, 2000) (2000 Rule).

¹⁰ 2000 Rule at 54,442

¹¹ 2000 Rule at 54,442.

¹² *Operations and Maintenance Enforcement Guidance*, Part 195 Subpart F, § 195.412 at 51-56 (Dec. 1, 2014) (noting that “[t]he specific requirement for an underwater pipeline crossing inspection needs to be based on actual commercial water traffic in that area”); *Marathon Ashland Pipeline LLC*, Letter of Interpretation, PL-01-0100 at 1.

In the January 29, 2001 Letter of Interpretation, PHMSA stated that the “National Waterways Network (NWN) database is the basis we use to identify commercially navigable waterways. Our use of this database replaces the use of the referenced USCG designation.”¹³ It further stated that the waterway at issue was subject to §195.412 because it was “considered commercially navigable and that it will be included in the next annual release of the National Waterways dataset in March of 2001. Therefore, we will continue to regard this river as commercially navigable under the published classifications.”¹⁴ PHMSA’s *Operations & Maintenance Enforcement Guidelines*, published as a reference tool for operators, supports the incorporation of the 2000 Rule’s definition of “navigable waterways” in §195.412, stating that “[t]he specific requirement for an underwater pipeline crossing inspection needs to be based on actual commercial water traffic in that area.”¹⁵

In its Recommendation, OPS relied on a November 1973 Interpretation letter to define “navigable waterway”.¹⁶ This letter definition is broader than that of the 2000 Rule:

navigable waters of the United States shall be construed to mean those waters of the United States, including the territorial seas adjacent thereto, the general character of which is navigable, and which, either by themselves or by uniting with other waters, form a continuous waterway on which boats or vessels may navigate or travel between two or more States, or to or from foreign nations¹⁷

OPS argues that PHMSA’s preferred database defining “navigable waterways” is that the United States Coast Guard (USCG) database and that under the USCG, Respondent has an obligation to inspect far more crossings than the Chena River crossing.¹⁸

While OPS is correct that the 1973 Interpretation letter defined “navigable waterway,” I find that the 2000 Rule and PHMSA’s subsequent guidance delineate PHMSA’s current definition and treatment of a “navigable waterway.” It is therefore reasonable for operators to conclude that a “navigable waterway” is a “commercially navigable waterway.”

Applying this definition to Alyeska’s system, the Chena River is the only “navigable waterway” for purposes of § 195.412(b) under which the TAPS crosses because it is the only waterway crossing “where a substantial likelihood of commercial navigation exists.”

¹³ *Marathon Ashland Pipeline LLC*, Letter of Interpretation, PL-01-0100 at 1.

¹⁴ *Marathon Ashland Pipeline LLC*, Letter of Interpretation, PL-01-0100 at 1.

¹⁵ *Operations and Maintenance Enforcement Guidance*, Part 195 Subpart F, § 195.412 at 55.

¹⁶ Recommendation at 4. Note: the correct date of the letter of interpretation is November 16, 1973. *Colonial Pipeline Company*, Letter of Interpretation, PI-73-037 (Oct. 18, 1973). OPS also references a June 18, 1994 Letter of Interpretation. A copy of this letter was not provided and could not be located.

¹⁷ *Colonial Pipeline Company*, Letter of Interpretation, PI-73-037.

¹⁸ Recommendation at 2.

Accordingly, after considering all of the evidence, I find that Alyeska did not violate 49 C.F.R. § 195.412(b) by failing to inspect each crossing under a navigable waterway to determine the condition of the crossing at intervals not exceeding five years because the at issue waterways are not commercially navigable waterways. Based upon the foregoing, I hereby order that Item 2 be withdrawn.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 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; 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 \$104,500 for the violations cited above.

Items 1 and 3: The Notice proposed a civil penalty of \$52,000 for Respondent's violation of 49 C.F.R. § 195.432 for failing to perform monthly in-service inspections of low pressure steel aboveground breakout tanks required by API Standard 653 section 6.3.1.2, and Respondent's violation of 49 C.F.R. § 195.573 for failing to inspect each of its cathodic protection systems used to control corrosion on the bottom of an aboveground breakout tank, so as to ensure that operation and maintenance of the system are in accordance with API Recommended Practice 651. Respondent did not contest these violations and agreed to pay the proposed civil penalties. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$52,000 for violation of 49 C.F.R. §§ 195.432 and 195.573.

Item 2 has been withdrawn and, therefore, there is no civil penalty associated with Item 2.

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 **\$52,000**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to 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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S Macarthur Blvd, Oklahoma City, OK 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$52,000 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 Item 2 in the Notice for a violation of 49 C.F.R. § 195.412(b). 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.

Item 2 has been withdrawn, and therefore, the compliance terms proposed in the Notice for Item 2 are not included in this Order.

Under 49 C.F.R. § 190.243, 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 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. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. If Respondent submits payment of 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 service in accordance with 49 C.F.R. § 190.5.

November 22, 2016

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Date Issued