



US Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh St. S.W.
Washington, D.C. 20590

OCT 18

Mr. Robert Shoaf
Vice President, Regulatory Affairs
Alyeska Pipeline Service Company
900 East Benson Boulevard
Anchorage, Alaska 99508-4254

Re: CPF No. 54516 |

Dear Mr. Shoaf:

Enclosed is a Decision on the Petition for Reconsideration filed in the above-referenced case. The Associate Administrator for Pipeline Safety has denied the petition and therefore, payment of the \$72,500 civil penalty is due immediately. The penalty payment terms are set forth in the enclosed decision. Your receipt of this decision constitutes proper service under 49 C.F.R. § 190.5.

Sincerely, |

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure |

cc: Sheila Doody Bishop
Attorney-at-Law
Alyeska Pipeline Service Company
P.O. Box 60469
Fairbanks, Alaska 99706-0469

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of

Alycska Pipeline Service Company,

Respondent

CPF No. 54516

DECISION ON PETITION FOR RECONSIDERATION

On March 25, 1997, pursuant to 49 U.S.C. § 60112, my predecessor issued a Final Order in this case finding that Respondent had committed violations of 49 C.F.R. Part 195 and assessed a civil penalty of \$72,500 for two violations of 49 C.F.R. § 195.406(b)— Violations 2(a) and 2(b) of the Final Order. On April 21, 1997, Respondent filed a Petition for Reconsideration of the Final Order (Petition). In its Petition, Respondent did not contest the findings of Violations 1 and 2(a) and agreed to pay the assessed civil penalty for Violation 2(a).

With respect to Violation 2(b), Respondent requested that the violation be withdrawn and the associated civil penalty be withdrawn or reduced on several grounds. First, Respondent argued that it did not violate § 195.406(b) by failing to have adequate pressure controls. Second, Respondent contested the enforcement of Violation 2(b) in light of the civil penalty already assessed for violating the same regulation under Violation 2(a). Respondent further argued that Violation 2(b) was not a repeat offense as stated in the Final Order, and that the civil penalty wrongly exceeded \$25,000 under 49 U.S.C. § 60122. Lastly, Respondent argued that it was denied the benefit of its informal hearing because the Final Order was issued by someone other than the presiding hearing official. Respondent submitted further explanation of this concern by letter dated May 29, 1998.

1. Whether Respondent Violated § 195.406(b)

The Final Order found that on August 12, 1994, Respondent allowed the pressure at Mile Post (MP) 615.952 to reach at least 112 percent of maximum operating pressure (MOP). The Final Order also found that Respondent's controls and protective equipment were inadequate to control the line pressure within 110 percent of MOP. In its Petition, Respondent contested this second finding. Respondent argued that the language of § 195.406(b) does not specifically require that it have adequate pressure controls. Respondent also contested the finding that its pressure controls were inadequate.

Section 195.406(b) states that:

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.

According to Respondent, the second sentence of § 195.406(b) is not an additional freestanding requirement. Respondent argued that the sentence merely specifies how each operator is to keep from exceeding 110 percent of MOP. I find Respondent's interpretation unconvincing, as the language of the regulation clearly states each operator "must provide" adequate controls and protective equipment to control pipeline pressure increases.

On December 27, 1995, OPS issued an interpretation stating in part that "[u]nder §195.406(b), operators must have adequate controls and protective equipment to control pressure within the allowable limit." OPS has consistently enforced the requirement that operators have adequate controls. In fact, Respondent has previously been issued a Final Order (CPF No. 52511) for violating § 195.406(b) by failing to have adequate pressure controls. Accordingly, I find § 195.406(b) requires that Respondent have controls adequate to limit pressure increases within 110 percent of MOP.

Respondent also contested the finding that its pressure controls were inadequate. Respondent argued that its control system was technologically adequate, in full compliance with § 195.406(b). According to Respondent, pressure happened to exceed the applicable limit on August 12, 1994, because a technician mistakenly closed a valve. Respondent argued the technician's mistake did not violate § 195.406(b), because the concept of adequate controls covers only mechanical systems and "does not encompass the actions of personnel."

Contrary to Respondent's contention, Violation 2(b) is not based on the technician's mistake, even though the mistake may have led to the increase in pipeline pressure. Violation 2(b) is predicated on Respondent's failure to have a system of controls and protective equipment capable of properly controlling the increase in pressure that occurred.

To protect pipeline facilities from the stresses caused by surges in operating pressure, OPS requires that operators have mechanisms in place to prevent pipeline pressure from exceeding 110 percent of MOP. Adequate pressure controls will function automatically to maintain pressure within this limit, regardless of the cause of the pressure increase. As explained in the Final Order, Respondent's pressure controls did not function properly to control the pressure from increasing above 110 percent of MOP. Accordingly, the Final Order properly found that Respondent violated § 195.406(b) by failing to have adequate controls and protective equipment.

2. Whether Both Violations of § 195.406(b) May Be Enforced

Respondent requested withdrawal of Violation 2(b) on the grounds that Respondent had already been assessed a civil penalty for violating § 195.406(b) under Violation 2(a). Respondent argued that enforcement of Violation 2(b) would result in two violations of the same paragraph.

Although § 195.406(b) is a single paragraph, it comprises two separate requirements. The regulation is not unique in this respect, as many regulations contain more than one requirement in a single paragraph. Under § 195.406(b), Respondent must prevent pipeline pressure from exceeding 110 percent of MOP; and Respondent must have adequate controls and protective equipment to control pressure within this limit. Where the evidence indicates that Respondent violated both parts of § 195.406(b), Respondent may be cited for both violations. Accordingly, Violation 2(b) will not be withdrawn.

3. Whether Violation 2(b) was a Repeat Offense

The Final Order found Violation 2(b) was a repeat offense. Respondent admitted that it had previously been cited for violating § 195.406(b) in CPF No. 52511, but disagreed that Violation 2(b) was a repeat offense. Respondent argued that the circumstances of the two incidents differed such that the latter was not a repeat offense of the earlier violation. Respondent explained that the incident in CPF No. 52511 was caused by inadequate hardware, while the incident in the present case was caused by human error. Respondent contended that these circumstances are not comparable; therefore, Violation 2(b) is not a repeat offense.

Under § 195.406(b), Respondent is required to have adequate controls and protective equipment to control increases in pipeline pressure that may occur. Material to the finding of violation is the determination that Respondent's pressure controls were inadequate. Factual details about the particular cause of an increase in pressure are not material to the finding of violation. In some cases, a determination that controls are inadequate might not involve an increase in pressure at all. Therefore, these two violations are not distinguished merely because they involved different causes of pressure increase. Since Respondent has previously been cited for violating § 195.406(b) by having inadequate pressure controls, I find that Violation 2(b) was properly characterized as a repeat offense.

4. Whether the Civil Penalty Exceeded the Statutory Maximum

Violation 2(b) of the Final Order assessed a civil penalty of \$60,000 for Respondent's failure to have adequate pressure controls.¹ Respondent argued this amount exceeded the maximum

¹Although Respondent stated in its Petition that the Final Order assessed a civil penalty of \$25,000 for Violation 2(a) and \$47,500 for Violation 2(b), this was not explicitly stated in the Final Order. The record suggests the breakdown was actually \$12,500 for Violation 2(a) and \$60,000 for Violation 2(b).

civil penalty allowed under 49 U.S.C. § 60122. Section 60122 stated that an operator found to have violated a pipeline safety regulation “is liable to the United States Government for a civil penalty of not more than \$25,000 for each violation . . . for each day the violation continues.”² Respondent argued the civil penalty may not exceed \$25,000 pursuant to this statute.

An ongoing violation may be assessed a civil penalty of \$25,000 *per day* the violation continues. Respondent did not argue that its violation was limited to a single day, but claimed that the violation was based on a single instance of human error. As explained above, this is a mischaracterization of Violation 2(b). Respondent offered no evidence in its Petition challenging the finding in the Final Order that Respondent’s failure to have adequate pressure controls was an ongoing violation. Accordingly, I find no justification for reducing the assessed civil penalty.

5. Whether Respondent was Prejudiced by the Enforcement Procedures

Respondent explained that it had established at the hearing that Violation 2(b) was not a repeat offense. However, the Final Order issued two years later by someone other than the presiding official found that Violation 2(b) was a repeat offense. Respondent argued that because the author of the Final Order was not present at the hearing, Respondent had been denied the benefit of the hearing altogether.

Regulations governing this agency’s enforcement procedures are set forth in 49 C.F.R. Part 190. Under § 190.211(c), an attorney from the Office of the Chief Counsel, Research and Special Programs Administration, serves as the presiding official at an enforcement hearing. After the hearing, the presiding official prepares a written recommendation for final action in the case, which is forwarded to the Associate Administrator for final action.³ The Associate Administrator reviews the recommendation and the contents of the case file, and proceeds to issue the final order.⁴ While it is the policy of the agency to issue a final order within 45 days of the Associate Administrator’s receipt of the case file, this is not a requirement.⁵

In this case, the enforcement proceedings did not differ from this agency’s standard practices under Part 190. An attorney from the Office of the Chief Counsel served as the presiding official at the hearing; and the Associate Administrator issued the final order after reviewing the case file and recommendation for final action. The disadvantage Respondent believes

²49 U.S.C. § 60122 (1996). Section 60122 was amended in 2002 to increase the amount to \$100,000 per day for each violation.

³ 49 C.F.R. § 190.211(j).

⁴ § 190.213(c).

⁵ § 190.213(e).

existed would have been compensated for by the Associate Administrator's review of the materials in the file, which included Respondent's post-hearing brief summarizing Respondent's presentation at the hearing. Furthermore, in section (3) above, I address the merits of Respondent's argument that Violation 2(b) is not a repeat offense, and reject Respondent's contention. For these reasons, I find Respondent was not prejudiced by the administrative procedures in this case.

I have considered the arguments presented in Respondent's Petition for Reconsideration and do not find Respondent's assertions warrant the withdrawal of Violation 2(b) or reduction of the assessed civil penalty. Accordingly, Respondent's request for relief is denied.

Payment of the full civil penalty in the amount of \$72,500 must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this 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 (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 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.

Please be advised that this decision is the final administrative action in this proceeding.

William H. Gerard
for

Stacey Gerard
 Associate Administrator
 for Pipeline Safety

OCT 18 1991

Date Issued