

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED CIVIL PENALTY**

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

March 5, 2019

Mr. Jerry Harman
Owner
Alaska Construction and Paving, Inc.
PO Box 874712
Wasilla, Alaska 99687

CPF 5-2019-0006E

Dear Mr. Harman:

On May 3, 2018, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.), investigated circumstances surrounding the July 3, 2017 damage to a natural gas pipeline located near 8251 Harmany Ranch Road, Eagle River, Alaska.

Background

On July 3, 2017, Alaska Construction and Paving, Inc. (ACP) acting as the excavator, damaged a 1-inch plastic service line. The location of the damaged service line was near 8251 Harmony Ranch Road, Eagle River, Alaska. The damage resulted in a release of natural gas without ignition or property damage. At the time of the damage, ACP performed a temporary repair by folding back the plastic 1-inch pipeline and taping it. An ENSTAR Natural Gas representative arrived at the site to perform a locate request and discovered the damaged service line.

Based on excavation activities investigated, it is alleged that you have committed probable violations in Part 196 of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (C.F.R.). The items investigated and the probable violations are:

1. **§ 196.103 What must an excavator do to protect underground pipelines from excavation-related damage?**

Prior to and during excavation activity, the excavator must:

(a)

(b) If underground pipelines exist in the area, wait for the pipeline operator to arrive at the excavation site and establish and mark the location of its underground pipeline facilities before excavating;

Alaska Construction and Paving, Inc. (ACP) failed to wait for ENSTAR Natural Gas to arrive at the excavation site and establish and mark the location of its underground pipeline facilities before excavating. The excavator opened a ticket with Alaska Digline on Thursday, June 29, 2017 at 12:44 pm. The pipeline operator, ENSTAR, arrived on site on Monday July 3, 2017 at approximately 10AM to mark the location of the underground pipeline and discovered the 1-inch service line had already been excavated and damaged.

2. § 196.107 What must an excavator do if a pipeline is damaged by excavation activity?

If a pipeline is damaged in any way by excavation activity, the excavator must promptly report such damage to the pipeline operator, whether or not a leak occurs, at the earliest practicable moment following discovery of the damage.

The excavator failed to report damage that they caused to the to the pipeline operator. ACP acknowledged to PHMSA in a May 3, 2018 telephone interview that ACP damaged the pipeline and attempted to crimp off and tape shut the 1-inch service line on July 3, 2017. However, ACP did not notify ENSTAR of the damage. ENSTAR's locator arrived on site later in the day on July 3, 2017 and discovered the damage.

3. § 196.109 What must an excavator do if damage to a pipeline from excavation activity causes a leak where product is released from the pipeline?

If damage to a pipeline from excavation activity causes the release of any PHMSA regulated natural and other gas or hazardous liquid as defined in part 192, 193, or 195 of this chapter from the pipeline, the excavator must promptly report the release to appropriate emergency response authorities by calling the 911 emergency telephone number.

The excavator failed to call the 911 emergency telephone number after the 1-inch pipeline was damaged resulting in a release of natural gas. ACP was aware natural gas was released from the pipeline, and ACP admitted to making a temporary repair by folding the pipe and taping it to stem the release. However, ACP did not call 911 following the release.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$213,268 per violation per day the violation persists, up to a maximum of \$2,132,679 for a related series of violations. For violations occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation

involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$12,100 as follows:

<u>Item number</u>	<u>Proposed Penalty</u>
1	\$12,100

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Third Party Excavators in Enforcement Proceedings*. Please refer to this document and note the response options. All material submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. § 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. § 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 C.F.R. § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from the receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 5-2019-0006E** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Chris Hoidal
Acting Director, Western Region
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Third Party Excavators in Enforcement Proceedings*

cc: PHP-60 Compliance Registry
PHP-500 J. Gano (#163984)