



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

JUL 07 2009

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

Re: CPF No. 5-2004-5035

Dear Mr. Newton:

Enclosed is the Final Order issued in the above-referenced case. It withdraws two of the allegations of violation, makes a finding of violation on another, and assesses a reduced civil penalty of \$5,500. 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
Alex Gajdos, Plant Manager, GVEA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0046 9709]

**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,

Respondent.

CPF No. 5-2004-5035

FINAL ORDER

On May 5, 2004, pursuant to 49 U.S.C. § 60117, representatives 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 Golden Valley Electric Association (GVEA or Respondent) at its offices 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 November 18, 2004, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed certain violations of 49 C.F.R. §§ 195.452(a), 195.452(b)(1), and 195.452(b)(2), and proposed assessing a civil penalty of \$15,500 for the alleged violations.

Respondent responded to the Notice by letter dated December 13, 2004 (Response). Respondent did not contest the allegations of violation but offered an explanation of its actions and requested that OPS reconsider the proposed civil penalties. Respondent also provided information concerning the corrective actions it had taken. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION:

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

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

§ 195.452 Pipeline integrity management in high consequence areas.

(a) *Which pipelines are covered by this section?* This section applies to each hazardous liquid pipeline and carbon dioxide pipeline that could affect a high consequence area, including any pipeline located in a high consequence area unless the operator effectively demonstrates by risk assessment that the pipeline could not affect the area. (Appendix C of this part provides guidance on determining if a pipeline could affect a high consequence area.) Covered pipelines are categorized as follows:

- (1)
- (2) Category 2 includes pipelines existing on May 29, 2001, that were owned or operated by an operator who owned or operated less than 500 miles of pipeline subject to this part.

The Notice alleged that GVEA violated § 195.452(a) by failing to establish an Integrity Management Program (IMP) for its pipeline system. OPS asserted that GVEA was required to develop an IMP because its pipeline system lay entirely within High Consequence Areas (HCAs).¹

In its Response, GVEA explained that it had conducted an analysis in January 2003 that failed to show any of its pipeline system as being located within an HCA. On that basis, GVEA concluded that it did not need to prepare an IMP. GVEA also provided information showing that it had accessed the National Pipeline Mapping System (NPMS) website in January 2003 to determine the location of any HCAs near its pipeline system but that no HCA information was available. GVEA also indicated that it had used its knowledge of the local area in an attempt to identify HCAs near its pipeline system but that none were located.

During the May 2004 inspection, OPS personnel provided Respondent with NPMS information showing that GVEA's pipeline system could affect Drinking Water and Other Populated Area (OPA) HCAs. In its Response, GVEA agreed that it needed to prepare an IMP and would do so in 2005.

Based upon GVEA's good-faith efforts to identify HCAs prior to the inspection, I hereby withdraw this allegation of violation.

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

§ 195.452 Pipeline integrity management in high consequence areas.

- (a) . . .
- (b) *What program and practices must operators use to manage pipeline integrity?* Each operator of a pipeline covered by this section must:

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.

(1) Develop a written integrity management program that addresses the risks on each segment of pipeline in the first column of the following table not later than the date in the second column:

Pipeline	Date
Category 1	March 31, 2002.
Category 2	February 18, 2003.
Category 3	1 year after the date the pipeline begins operation.

The Notice alleged that GVEA violated § 195.452(b)(1) by failing to develop an IMP by the deadline of February 18, 2003. In its Response, Respondent explained that it did not develop an IMP because its analysis had showed that its pipeline systems could not affect an HCA. As discussed in Item 1(a) above, OPS provided NPMS data to Respondent during the May 2004 inspection showing that GVEA's pipeline system could indeed affect Drinking Water and OPA HCAs. In its Response, GVEA explained that it had begun developing an IMP and would complete that process in 2005.

GVEA's failure to timely develop an IMP was based on the conclusions it drew from good-faith efforts to identify HCAs, as discussed in Item 1(a) above. Based on the foregoing, I hereby withdraw this allegation of violation.

Item 1(c): The Notice alleged that Respondent violated 49 CFR § 195.452(b)(2), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a)

(b) *What program and practices must operators use to manage pipeline integrity?* Each operator of a pipeline covered by this section must:

(1)

(2) Include in the program an identification of each pipeline or pipeline segment in the first column of the following table not later than the date in the second column:

Pipeline	Date
Category 1	December 31, 2001.
Category 2	November 18, 2002.
Category 3	Date the pipeline begins operation.

The Notice alleged that GVEA violated § 195.452(b)(2) by failing to identify, by November 18, 2002, all pipeline segments that could affect an HCA. GVEA did not contest this allegation. In its Response, GVEA admitted that it did not conduct any IMP analysis until January 2003. Accordingly, I find that GVEA violated § 195.452(b)(2) by failing to identify by November 18, 2002, all pipeline segments that could affect an HCA.

This finding of violation will be considered a prior offense 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 a 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 \$15,500 for violations of 49 CFR §§ 195.452(a), 195.452(b)(1), and 195.452(b)(2).

Notice Items 1(a) proposed a civil penalty of \$5,000 for violation of 49 C.F.R. § 195.452(a), for Respondent's failure to establish an IMP for its pipeline system. As discussed above, I have withdrawn this allegation. Accordingly, I withdraw the proposed penalty for this Item.

Notice Item 1(b) proposed a civil penalty of \$5,000 for violation of 49 C.F.R. § 195.452(b)(1), for Respondent's failure to develop an IMP by February 18, 2003. As discussed above, I have withdrawn this allegation. Accordingly, I withdraw the proposed penalty for this Item.

Notice Item 1(c) proposed a civil penalty of \$5,500 for violation of 49 C.F.R. § 195.452(b)(2), for Respondent's failure to identify, by November 18, 2002, all pipeline segments that could affect an HCA. Even though segment identification was required by November 18, 2002, Respondent failed to conduct any IMP analysis until January 2003. Respondent failed to comply with a key regulatory deadline. Segment identification is important because it prioritizes those pipeline segments that present the greatest risk to people and the environment. Respondent has provided no arguments or evidence that would warrant a reduction in the civil penalty. Therefore, I hereby assess Respondent a civil penalty of **\$5,500** for violation of 49 C.F.R. § 195.452(b)(2).

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced total civil penalty of **\$5,500**.

Payment of the civil penalty 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-341), P.O. Box 269039, 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-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the **\$5,500** 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1(a), 1(b), and 1(c) in the Notice for violations of 49 C.F.R. §§ 195.452(a), 195.452(b)(1), and 195.452(b)(2), respectively. 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 already taken the following actions specified in the proposed compliance order:

- Respondent established an IMP on October 25, 2005.
- Respondent assessed all HCAs in the vicinity of the GVEA pipeline and determined that all pipeline segments were within HCAs.
- Respondent determined that, aside from its pipeline segments, it had no other pipeline facilities that could affect an HCA.

Accordingly, since compliance has been achieved with respect to the finding of violation, the compliance terms are not included in this Order.

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 received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issues. 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 shall be effective upon receipt.



Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

JUL 07 2009

Date Issued