U.S. Department of Transportation
Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

DEC 1 6 2009

Mr. Mike Joynor
Senior Vice President
Pipeline and Oil Movements
Alyeska Pipeline Service Company
900 E. Benson Blvd.
P.O. Box 196660
Anchorage, AK 99519-6660

Re: CPF No. 5-2005-5023

Dear Mr. Joynor:

Enclosed is this agency's decision granting, in part, and denying, in part, your company's Petition for Reconsideration in this case. Payment of the reduced civil penalty in the amount of $27,000 shall be made in accordance with the terms set forth in the Final Order. This enforcement action closes automatically upon payment. Service of this decision via certified mail is complete upon mailing 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
Shelia Doody Bishop, Counsel

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5074]

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. 5-2005-5023**
Respondent.	)	

DECISION ON PETITION FOR RECONSIDERATION

Alyeska Pipeline Service Company (Petitioner or Alyeska) is the operator of the Trans Alaska Pipeline System (TAPS), an 800-mile-long pipeline that transports crude oil from Prudhoe Bay to Valdez, Alaska.[1] On August 24, 2009, Alyeska filed this Petition for Reconsideration (Petition)[2] of a July 28, 2009 Final Order, which found that Petitioner had violated Part 195 of the Pipeline Safety Regulations in several respects and assessed the company a total Civil Penalty of $84,000 for those violations.[3]

Petitioner argues on reconsideration that all of the Findings of Violation in the Final Order that warranted a Civil Penalty must be withdrawn. For the reasons stated in Part I of this Decision, I agree that the Civil Penalty for Items 5(b) and 5(c) should be withdrawn and that a warning should be issued for both of those Findings of Violation. I further agree that the Finding of Violation, Civil Penalty, and Compliance Order for Item 6(c) should be withdrawn for lack of sufficient evidence. I do not, however, find Petitioner's remaining arguments persuasive.

Accordingly, as noted in Part II of this Decision, I am granting this Petition, in part, by modifying Items 5(b), 5(c), and 6(c) of the Final Order. The Final Order is otherwise affirmed without modification.

I. Discussion

A. Findings of Violation for Items 5(b) and 5(c)

[1] http://www.alyeska-pipe.com/pipelinefacts.html (accessed Oct. 20, 2009).

[2] 49 C.F.R. § 190.215 (authorizing the filing of petitions for reconsideration of a final order).

[3] 49 C.F.R. § 190.213 (authorizing issuance of Final Orders by Associate Administrator).

In the July 2009 Final Order, I found that Alyeska committed two violations of 49 C.F.R. § 195.404(a), the regulation that requires "each operator" of a hazardous liquid pipeline facility to "maintain current maps and records of its pipeline systems," including "information" on the "[l]ocation and identification of . . . [b]reakout tanks[,] [p]ump stations, [s]craper and sphere facilities[,] [p]ipeline valves[,] [f]acilities to which § 195.402(c)(9) applies[,] [r]ights-of-way[,] and [s]afety devices to which § 195.428 applies."[4] In making that finding, I noted that Alyeska had presented alignment drawings of the TAPS to an Office of Pipeline Safety (OPS) inspector in September 2004, drawings which did not accurately depict the location of certain facilities and equipment at two pump stations and a metering station. I also noted that Petitioner argued that those documents were for reference purposes only—and thus not subject to § 195.404(a)—and that the company maintained other sets of accurate records for purposes of satisfying that regulation.

However, I rejected those arguments and stated that by "maintain[ing] inconsistent maps and records, Respondent's employees, emergency responders, regulator and others viewing the drawings could be left with an incorrect understanding of the configuration of the pipeline." I further emphasized that "[o]ne purpose of maintaining current maps and records is to ensure that Respondent's employees and others have accurate and consistent documents upon which they can rely when conducting normal operations and maintenance, responding to emergencies, and in other circumstances[,] . . . [and that] [i]nconsistent records therefore pose a threat to pipeline safety." For those reasons, I found that Alyeska had violated § 195.404(a).

On reconsideration, Alyeska acknowledges that these alignment drawings "were and are still used by TAPS employees as a rough guide to the pipeline[,]" even though those records are "not updated frequently enough" to comply with § 195.404(a). Nevertheless, Petitioner argues that an operator can "designate which records are kept" for purposes of complying with the Pipeline Safety Regulations, and that the company had accurate maps and records of its pipeline system on-file at the time of the OPS inspection. Alyeska also notes that the OPS inspectors asked for the alignment drawings, rather than the "official record[s]" that the company keeps for compliance purposes.

I do not find Petitioner's arguments in favor of withdrawing these Findings of Violation persuasive.

Legitimate reasons may exist for maintaining and using maps and records that do not comply with the requirements of § 195.404(a), including for informational or historical purposes. That does not, however, preclude the Findings of Violation in this case. There is no dispute that Alyeska's alignment sheets were not marked as § 195.404(a)

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[4] § 195.404(a). Section 195.402(c)(9) requires operators to include a procedure in their operations and maintenance manuals for "facilities [that are] not equipped to fail safe," *id.*, and which "are located in areas that would require an immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned," 49 C.F.R. § 195.402(c)(4), or "that control receipt and delivery of the hazardous or carbon dioxide, detecting abnormal operating conditions by monitoring pressure, temperature, flow or other appropriate operational data and transmitting this data to an attended location." § 195.402(c)(9). Section 195.428 applies inspection, testing, and installation requirements to certain overpressure safety devices and overfill protection systems. § 195.428.

noncompliant at the time of the OPS inspection.[5] There is also no indication that Petitioner had a procedure in place for limiting the use and handling of those records.[6] In the absence of such precautions, OPS determined that someone who viewed the alignment sheets could mistakenly assume that they were fully compliant with § 195.404(a). Moreover, Petitioner's use of those records as a "rough guide" to the TAPS increases the likelihood of someone making that erroneous assumption.

In other words, while there are circumstances that justify an operator's maintenance and use of maps or records that do not comply with § 195.404(a), this fact must be made conspicuously known to those who might reasonably be expected to view or use those documents. As Alyeska failed to take such precautions in this case, I am rejecting Petitioner's request for reconsideration of the Findings of Violation for Items 5(b) and 5(c).

Nonetheless, I recognize that the assessment of a monetary penalty might not be appropriate in this case as a matter of policy.[7] For that reason, I am withdrawing the Civil Penalties for Items 5(b) and 5(c) and issuing a warning for each of those Findings of Violation.

B. Finding of Violation for Item 6(c)

In the July 2009 Final Order, I also found that Alyeska violated 49 C.F.R. § 195.406(b), the regulation that prohibits an operator from "permit[ting] the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of [maximum operating pressure (MOP)] . . ." and which requires "[e]ach operator" to "provide adequate controls and protective equipment to control the pressure within this limit."[8] As explained in the Final Order, the basis for that finding was Petitioner's failure to provide adequate overpressure controls and protective equipment for a pipeline segment located on the discharge-side of a TAPS pump station for an 11-month period of time.

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[5] After receiving the Notice of Probable Violation in this case, Alyeska sought to accomplish the former objective by marking the disputed drawings as "intended for general pipeline and facility location purposes only." Response to Probable Violations 5(b) and 5(c) at 2. However, there is still no indication that the company has adequate procedures in place for the safe handling and use of those maps and records.

[6] 49 C.F.R. § 195.402(c)(1) (stating that an operator's manual for operations, maintenance, and emergencies "must include procedures" for "[m]aking construction records, maps, and operating history available as necessary for safe operation and maintenance").

[7] *In the Matter of Butte Pipeline Co. (Butte)*, Final Order, CPF No. 5-2007-5008, p.4 (Aug. 17, 2009) (http://primis.phmsa.dot.gov/comm/reports/enforce/documents/520075008/520075008_Final%20Order_08172009.pdf?nocache=1644) (explaining that the "fair notice" requirement limits an agency's ability to assess criminal or civil penalties for novel regulatory interpretations in enforcement proceedings).

[8] 49 C.F.R. § 195.404(b). The MAOP of a hazardous liquid pipeline is determined by applying the formula prescribed in § 195.406(a). That formula uses several factors in making that determination, including internal design pressure of the line pipe and of any component, certain test pressures, and, in some circumstances, prior operating pressure. *Id.*

More specifically, I observed that the record showed that the pipeline on the discharge-side of that pump station had two pressure safety valves (PSVs), 39-PICV-905A (Valve A) and 39-PICV-905B (Valve B). I further noted that the undisputed evidence confirmed that Valve A was not in-service from January 2002 through April 2004, and that the OPS inspector reviewed field notes from an Alyeska technician which indicated that Valve B was also not in-service from November 2002 through October 2003.

I also stated that, according to Petitioner, the technician who prepared those field notes worked on both Valve A and Valve B and had erroneously marked the latter as out-of-service after working on the former. I also indicated that Alyeska sought to substantiate that argument by submitting documentation from its electronic records system, namely, the automatically-generated work order forms provided to the technician who worked on Valve A and Valve B in 2002 and 2003.

However, I concluded that Petitioner's evidence failed to establish the in-service status of Valve B during the disputed 11-month period. With regard to the work order forms Alyeska submitted from its electronic records system, I pointed out that the technician initialed all of the steps on the 2002 work order form for Valve B as complete, except for the two that specifically related to returning that valve to service. That omission, I explained, corroborated the allegation that Valve B was out of service.

Moreover, I rejected Petitioner's argument that even if Valve A and Valve B were both out of service for an 11-month period, its procedures still provided adequate overpressure protection. After noting that the regulation explicitly requires "adequate controls *and* protective equipment,"[9] I determined that Alyeska had not shown that its procedures could, or actually did, accomplish both of those objectives. For those reasons, I found that Alyeska violated § 195.406(b).

On reconsideration, Petitioner argues that I erred in failing to acknowledge that its electronic records for valve maintenance comply with Part 195 of the Pipeline Safety Regulations. Alyeska further argues that I erred in failing to find that those electronic records establish that Valve B was in-service from November 2002 through October 2003.

Petitioner's first argument is not persuasive. Nothing in the Final Order suggests that I refused to consider Alyeska's electronic valve maintenance records for lack of compliance with the Pipeline Safety Regulations. To the contrary, I carefully examined and discussed those records at length.

Nonetheless, I find on further review of the record that Petitioner's second argument has merit. OPS bears the burden of persuasion in an enforcement proceeding and must prove, by a preponderance of the evidence, that the facts necessary to sustain a probable violation actually occurred.[10] Moreover, the party which bears the burden of persuasion

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[9] 49 C.F.R. § 195.406(b).

[10] *Butte* at p.2, n.3 (Aug. 17, 2009); *see also, Schaeffer v. Weast*, 546 U.S. 49, 56-58 (2005).

on a material issue of fact in a proceeding "loses if the evidence is closely balanced[.]"[11] Thus, if the evidence for and against the occurrence of a fact necessary to show a violation of the Pipeline Safety Regulations is essentially equal, OPS cannot meet its burden of persuasion and the allegation of probable violation must be withdrawn.

The material issue of fact in this case is the operational (or nonoperational) status of Valve B from November 2002 through October 2003. The evidence in favor of OPS's position is the failure of Alyeska's technician to initial the steps on the 2002 work order form for returning that valve to service. However, Petitioner's official electronic records indicate that Valve B was in-service from November 2002 through October 2003, which tends to disprove the allegation in the Notice.

I am ultimately responsible for assessing the credibility and weight that should be afforded to the evidence of record in a proceeding.[12] However, the evidence for and against this material issue of fact here—i.e., whether or not Valve B was in-service for the 11-month period—is essentially equal. I must, therefore, find that OPS has not met its burden of persuasion. For that reason, I am withdrawing the Finding of Violation and Civil Penalty for Item 6(c) and modifying the Final Order to reflect that determination.

C. Finding of Violation for Item 8

In the July 2009 Final Order, I found that Alyeska violated the regulation that requires "[e]ach operator" of a hazardous liquid pipeline facility to "maintain adequate firefighting equipment at each pump station and breakout tank area," and to ensure that such equipment is "[i]n proper operating condition at all times[,] [p]lainly marked so that its identity as firefighting equipment is clear[,] and [l]ocated so that it is easily accessible during a fire."[13]

Specifically, I stated that Petitioner removed all of the firefighting equipment from a manifold building at one of the TAPS pump stations; that this manifold building contained a portion of the TAPS 48-inch mainline pipe, as well as two 48-inch ball valves and 42-inch and 36-inch blind flanges; and that the absence of any firefighting equipment would hinder Alyeska's ability to extinguish a fire within that building. I also noted that Petitioner argued that the pump station was not operational; that the manifold building was not heated and generally not occupied, and contained no combustible materials and few, if any sources ignition sources; and that Alyeska had, therefore, determined that the provision of fire extinguishers in the manifold building would be "superfluous".

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[11] *Schaeffer*, 546 U.S. at 56.

[12] *See Federal Trade Commission v. Pacific States Paper Trade Association*, 273 U.S. 52, 63 (1927) ("The weight to be given to the facts and circumstances admitted as well as the inferences reasonably to be drawn from them is for the Commission.").

[13] 49 C.F.R. § 195.430(a)-(c).

On reconsideration, Alyeska argues that PHMSA acted arbitrarily and capriciously in applying § 195.430 to the manifold building at this TAPS pump station. More specifically, Petitioner contends that while PHMSA could regulate such a facility under the Pipeline Safety Laws, Part 195 of the Pipeline Safety Regulations only applies to pump stations that are "used in the transportation of hazardous liquids" or "through which a hazardous liquid moves in transportation . . ." Citing the fact that this facility was taken out of service in 1996, a process that included physically disconnecting the station piping and tanks from the 48-inch mainline, Petitioner asserts that from that date forward this TAPS pump station was no longer used in the transportation of hazardous liquids or subject to any of the requirements of Part 195 Pipeline Safety Regulations.

I do not find this argument persuasive.

The Office of Pipeline Safety (OPS) inspected the TAPS in September 2004, and the Director, Western Region, OPS, issued Alyeska this Notice by letter dated July 19, 2005. One day later, on July 20, 2005, the Joint Pipeline Office (JPO) sent Petitioner a letter responding to the company's prior request "to rescind the 180-day restart requirement" for several "rampdown pump stations," including the one identified in the Notice. JPO explained it had imposed a 180-day restart requirement on those rampdown pump stations "to ensure that TAPS was capable of transporting increased North Slope production, if necessary." However, after reviewing Petitioner's recent reconfiguration of its pipeline operations, the JPO determined that the TAPS could maintain the necessary throughput without the rampdown pump stations. Therefore, the JPO agreed to rescind the 180-day restart requirement and ordered Alyeska to submit "a demobilization plan for the rampdown pump stations."

The foregoing confirms that the Pipeline Safety Regulations applied to the pump station and manifold building identified in the Notice at the time of the OPS inspection. Once a hazardous liquid pipeline facility is placed in service, that facility is subject to the requirements of Part 195 until it is abandoned, i.e., "permanently removed from service."[14] The JPO letter confirms that the disputed pump station was subject to a 180-day restart requirement through July 20, 2005, and thus only temporarily—but by no means permanently—removed from service prior to that time. In other words, that pump station and the manifold building were still "pipeline facilities used in the transportation of hazardous liquids" at the time of the OPS inspection.[15]

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[14] 49 C.F.R. § 195.2; *see In the Matter of Equistar Chemicals, LP*, PHMSA Interp. No. 08-003 (Apr. 6, 2009) (available at www.phmsa.dot.gov/pipeline/regs/interps) ("ceasing normal operation of a pipeline does not remove the pipeline from PHMSA's jurisdiction[;] [but] [i]f you have abandoned a Part 195 jurisdictional pipeline according to 195.402(c)(10), the requirements no longer apply[;] [however,] [t]he abandoned pipeline may not be returned to service unless the pipeline was maintained according to Part 195 requirements while it was abandoned, or meets the requirements of a newly designed and constructed pipeline.")

[15] 49 C.F.R. § 195.0 (prescribing the scope of Part 195).

For these reasons, I find that the requirements of Part 195 of the Pipeline Safety Regulations, including § 195.430, applied to the pump station and manifold building at all times relevant to this proceeding. I am, therefore, denying Petitioner's request for reconsideration of the Finding of Violation for Item 8 and affirming that part of the Final Order without modification.

D. Findings of Violation for Items 10(a) and 10(b).

Finally, I found in the July 2009 Final Order that Alyeska violated 49 C.F.R. 195.573(a)(1), the regulation that requires an operator to monitor the external corrosion control on cathodically-protected pipelines by "[c]onducting tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months."[16] Specifically, I stated that Petitioner's records showed that the company had not tested the cathodic protection on the TAPS mainline at numerous cased-road crossings for more than two years, i.e., from June 2002 until September 2004, the date of the OPS inspection.

I also noted that Alyeska conceded the allegation that no cathodic protection testing had occurred during the 27-month period, but argued that § 195.575 was the only regulation that applied to cased pipeline segments and therefore, it could not have violated § 195.573(b). I further observed that Alyeska argued, in the alternative, that §195.573 requires that buried pipelines be electrically isolated, but does not prescribe a specific interval for testing the adequacy of that electrical isolation. Consequently, Petitioner argued it had the discretion to adopt and follow a three-year test interval, rather than an annual test interval.

However, I found neither of these arguments persuasive. First, I observed that at the time of the OPS inspection, Petitioner's written procedures called for annual testing of the electrical isolation of the TAPS mainline at cased-road crossings, and that company's decision to adopt a triennial testing interval only occurred after the inspection. I further stated that the adequacy of a pipeline's cathodic protection cannot be determined without annual testing of the actual pipeline within the casing. In particular, I explained that simply testing the cathodic protection of the pipeline at either end of a casing may not reveal an inadequacy affecting the segment within that casing, and that this situation if left undetected, increased the likelihood of external corrosion and a resulting failure. Moreover, I also stated that the purpose of § 195.575 is to the ensure adequacy of electrical isolation at initial installation, but that "all post-installation inspections and tests of cathodic protection facilities are covered by final § 195.573."[17] Accordingly, I found that the annual testing requirement of 49 C.F.R. 195.573(a)(1) applies to pipeline segments at cased-road crossing, and that Alyeska failed to comply with that requirement.

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[16] 49 C.F.R. § 195.573(a)(1).

[17] 66 Fed. Reg. 66994, 67000 (Dec. 27, 2001).

On reconsideration, Petitioner argues that the latter finding is arbitrary and capricious, as the evidence of record shows that the company checked the corrosion-control coupons "in the vicinity of the[se] cased road crossings . . . in 2003." As noted in the Final Order, simply testing the cathodic protection of a pipeline "in the vicinity" of a cased road crossing does not establish compliance with § 195.753(a)(1). To the contrary, an operator must actually test the cathodic protection for the pipeline within the casing on annual basis, and the evidence of record does not show that such testing occurred. Accordingly, I am denying Petitioner's request for reconsideration of the Findings of Violation for Items 10(a) and 10(b) and affirming that part of the Final Order without modification.

II. Conclusion

For the reasons stated in Part I of this decision, I am modifying the Final Order in the following respects: the $1,000 Civil Penalty for Item 5(b) and the $1,000 Civil Penalty for Item 5(c) are withdrawn; a Warning is issued for Item 5(b) and Item 5(c); and the Finding of Violation, $55,000 Civil Penalty, and Compliance Order for Item 6(c) are all withdrawn. Petitioner must pay the reduced civil penalty in the amount of $27,000 in accordance with the terms set forth in the Final Order. The Final Order is affirmed in all other respects without modification.

This decision on reconsideration is the final administrative action in this proceeding.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

12/16/09
Date Issued