

March 28, 2022

VIA ELECTRONIC MAIL TO: skolassa@harvestmidstream.com

Mr. Sean Kolassa
President
Harvest Alaska, LLC
1111 Travis Street
Houston, Texas 77002

Re: CPF No. 5-2021-023-NOPV

Dear Mr. Kolassa:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a reduced civil penalty of \$73,900. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA
Mr. Andre Limmer, Vice President, Harvest Midstream Alaska,
alimmer@harvestmidstream.com
Mr. Harold Colgrove, Manager, Integrity & Regulatory Compliance, Harvest Midstream
Alaska, harold.colgrove@harvestmidstream.com

CONFIRMATION OF 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

**Harvest Alaska, LLC,
an affiliate of Harvest Midstream Co.,**

Respondent.

CPF No. 5-2021-023-NOPV

FINAL ORDER

From October 19, 2020, through January 22, 2021, 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 Harvest Alaska, LLC (Harvest Alaska or Respondent), an affiliate of Harvest Midstream Company. Harvest Midstream Company transports natural gas, crude oil, and natural gas liquids across more than 6,000 miles of pipeline in Alaska, Colorado, Louisiana, New Mexico, Ohio, Pennsylvania, and Texas.¹

As a result of the inspection, the Director, Western Region, Office of Pipeline Safety (Director), issued to Respondent, by letter dated August 20, 2021, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Harvest Alaska committed two violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$76,300 for the alleged violations. The Notice also included an additional three warning items pursuant to 49 C.F.R. § 190.205, which required no further action, but warned the operator to correct the probable violations or face possible future enforcement action

Harvest Alaska responded to the Notice by letter dated September 17, 2021 (Response).² Respondent contested several of the allegations, offered additional information in response to the Notice, and requested the civil penalty be reduced or withdrawn. Respondent did not request a hearing and therefore has waived its right to one.

¹ Our Services, HARVEST MIDSTREAM, <https://www.harvestmidstream.com/operations/> (last visited January 20, 2022).

² Response to PHMSA CPF No. 5-2021-023 Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order, dated September 17, 2021 (Response), on file with PHMSA.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.739(a), which states:

§ 192.739 Pressure limiting and regulating stations: Inspection and testing.

(a) Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is –

- (1) In good mechanical condition;
- (2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;
- (3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of § 192.201(a); and
- (4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

The Notice alleged that Respondent violated 49 C.F.R. § 192.739(a) by failing to inspect and test Pressure Safety Valve (PSV)-10056 and PSV-002 at the required intervals. Specifically, the Notice alleged that in two instances, calendar years 2017 and 2018, Respondent failed to inspect and test PSV-10056. Respondent's only record of testing and inspection of PSV-10056 was dated August 9, 2019. The Notice also alleged in one additional instance that Respondent failed to inspect and test PSV-002. The records showed inspections of PSV-002 occurred on January 9, 2019, and July 9, 2020, but no testing occurred in the 2018 calendar year or in the previous year.

In its Response, Harvest Alaska argued PSV-10056 is not needed to protect the Beluga Pipeline from the upstream producer; therefore, it is not subject to PHMSA regulations. Respondent explained that PSV-10056 is located on production piping upstream of the tie-in to the transmission system and is owned and operated by the upstream production operator. Respondent contended that the flow path is actually protected by PSV X-028 and all block valves between the production facility tie-in and PSV X-028 are locked open.

Having reviewed the record, I disagree with Harvest Alaska's argument that PSV-10056 is not subject to PHMSA regulation. PSV-10056 qualifies as a pressure limiting device and is therefore required to be inspected under § 192.739. While Respondent asserted that PSV X-028, located upstream from the Beluga River Unit (BRU) facility, protects the Beluga Transmission Pipeline from overpressure, I note that the Beluga Transmission Pipeline is a bi-directional pipeline. PSV X-028 is the primary overpressure protection for gas flows from the West CIGGS sources, and PSV-10056 is the primary overpressure protection for gas flow from the BRU Compressor. Respondent cannot rely solely on PSV X-028 by locking open all the transmission line block valves, because if there was an accidental closure of one of the pipeline block valves, which would be "some other type of failure" under § 192.195(a), PSV X-028 would not protect the pipeline as required by § 192.195(a). Transmission line block valves, which may be operated

for multiple reasons, do not fall under the pressure safety valve provisions of § 192.199. The overpressure protection of the Beluga Transmission Pipeline at Kaloa Junction is adequate from a capacity standpoint and protects the pipeline for its typical operational flow path from Kaloa Junction to BRU. But it does not protect the Beluga Transmission Pipeline when the BRU compression is operational. This protection is provided by PSV-10056. Therefore, PSV-10056 must be operational per § 192.169 and annually inspected per § 192.739.

Respondent also argued that PSV-002's pigging separator was blinded out and not placed into service until the Beluga Pipeline ILI run in July 2019. Harvest Alaska provided additional documentation showing that PSV-002 was inspected on August 18, 2019.

Regarding PSV-002, the Region reviewed Respondent's argument and the document submitted in support of it. Based on this review, the Region recommended removing reference to PSV-002 from the violation and reducing the number of instances of the violation from three to two. I agree. Therefore, I withdraw the alleged violation with respect to PSV-002.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.739(a) by failing to inspect and test PSV-10056 at the required intervals.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.745, which states:

§ 192.745 Valve maintenance: transmission lines.

(a) Each transmission line valve that might be required during any emergency must be inspected and partially operated at intervals not exceeding 15 months, but at least once each calendar year.

The Notice alleged that Respondent violated 49 C.F.R. § 192.745 by failing to partially operate valve ID: X-002 (SDV-023) at Kaloa Junction during the inspections on June 29, 2017, and June 29, 2018.

In its Response, Harvest Alaska did not contest the allegation, but stated that it self-identified and rectified the non-compliance events of 2017 and 2018 prior to the 2019 inspection. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.745 by failing to partially operate valve ID: X-002 (SDV-023) at Kaloa Junction during the inspections on June 29, 2017, and June 29, 2018.

These findings of violation will be considered prior offenses 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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.³

³ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

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; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 \$76,300 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$37,600 for Respondent's violation of 49 C.F.R. § 192.739(a), for failing to inspect and test PSV-10056 and PSV-002 at the required intervals. Respondent requested the civil penalty be withdrawn or reduced on grounds that PSV-10056 and PSV-002 were not subject to the inspection requirement in § 192.739(a) at the time in question. As discussed above, with regard to PSV-10056, I disagree and found two instances of violation of § 192.739(a) for calendar years 2017 and 2018. However, with regard to PSV-002, I agree with Respondent and withdraw the single alleged instance of violation for that valve. Therefore, I reduce the number of instances of the violation from three to two. Respondent did not provide any additional arguments for mitigation. Based upon the foregoing, I assess Respondent a reduced civil penalty of \$35,200 for violation of 49 C.F.R. § 192.739(a).

Item 3: The Notice proposed a civil penalty of \$38,700 for Respondent's violation of 49 C.F.R. § 192.745, for failing to failing to partially operate valve ID: X-002 (SDV-023) at Kaloa Junction during the inspections on June 29, 2017, and June 29, 2018. Harvest Alaska did not request or provide argument for mitigation of the proposed penalty. Based upon the foregoing, I assess Respondent a civil penalty of \$38,700 for violation of 49 C.F.R. § 192.745.

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 **\$73,900**.

Payment of the civil penalty must be made within 20 days after receipt of the Final Order. 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, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$73,900 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.

WARNING ITEMS

With respect to Items 1, 4, and 5, the Notice alleged probable violations of Part 192, but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 192.614(c)(1) (**Item 1**) — Respondent’s alleged failure to include in its excavator mailing list excavators known to engage in excavation activities in the area;

49 C.F.R. § 192.937(b) (**Item 4**) — Respondent’s alleged failure to provide a comprehensive and in-depth examination of performance in its 2018 and 2019 Integrity Management Program Annual Effectiveness Reviews; and

49 C.F.R. § 192.939(a) (**Item 5**) — Respondent’s alleged failure to assesses the covered segment of ECIGGS within the prescribed interval.

Harvest Alaska requested withdrawal of Item 1, arguing that § 192.614 does not specify alignment between one-call tickets and the damage prevention mailing list, or define “normally” in “persons who normally engage in excavation activities in the area” for the purpose of their inclusion on an excavator mailing list. Respondent did not contest the warnings for Items 4 or 5. Under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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, no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must 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. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. 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.

March 28, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued