

April 26, 2023

VIA ELECTRONIC MAIL TO: wchristian@midalaska.com

Mr. Warren Christian
President
Mid-Alaska Pipeline, LLC
615 Bidwell Ave., Suite 100
Fairbanks, Alaska 99701

Re: CPF No. 5-2023-002-NOPV

Dear Mr. Christian:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$50,200. 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. Levi Frampton, Pipeline Director and Vice President, Mid-Alaska Pipeline, LLC,
lframpton@midalaska.com

CONFIRMATION OF RECEIPT REQUESTED

(4) Special requirements for scheduling remediation —

(i) Immediate repair conditions. An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce the operating pressure or shut down the pipeline until the operator completes the repair of these conditions. An operator must calculate the temporary reduction in operating pressure using the formulas referenced in paragraph (h)(4)(i)(B) of this section. If no suitable remaining strength calculation method can be identified, an operator must implement a minimum 20 percent or greater operating pressure reduction, based on actual operating pressure for two months prior to the date of inspection, until the anomaly is repaired. An operator must treat the following conditions as immediate repair conditions:

(C) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) that has any indication of metal loss, cracking or a stress riser.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h)(4)(i)(C) by failing to reduce pipeline operating pressure or shut down the pipeline after identifying an immediate repair condition. Specifically, the Notice alleged that Mid-Alaska failed to implement a 20 percent or greater operating pressure reduction until it repaired a one percent depth dent with metal loss which it detected on June 22, 2022. The Notice alleged that no operating pressure reduction occurred between the time of the discovery of the immediate repair condition on June 22 and the time of repair on June 25, 2022.

In its Response, Mid-Alaska did not contest the proposed violation, but instead provided information that it argued warrants a reduction in the amount of the penalty associated with the Item.¹ These arguments are summarized in the section below.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(h)(4)(i)(C) by failing to reduce pipeline operating pressure or shut down the pipeline after identifying an immediate repair condition.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.²

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,

¹ Response, at 1.

² These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223 for adjusted amounts.

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 \$50,200 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$50,200 for Respondent's violation of 49 C.F.R. § 195.452, for failing to reduce pipeline operating pressure or shut down the pipeline after identifying an immediate repair condition. The Respondent makes multiple arguments for a reduction in the civil penalty amount under this item. First, Mid-Alaska stated that, based on its discussions with inspection consultants, it concluded that the one percent depth dent with metal loss was a "stable" construction defect.³ However, the opinion of the operator or its consultants does not modify the regulatory obligation to shut down or reduce the pressure in a pipeline upon discovery of an immediate repair condition. Latent defects nonetheless pose risks to the safe operation of pipelines. Second, Mid-Alaska noted that the pipeline was already operating at 50-60 percent of its Maximum Operating Pressure (MOP), implying that the risk posed by the defect was low.⁴ However, § 195.452(h)(4)(i)(C) requires a 20 percent reduction in the actual operating pressure, not the MOP. Third, Mid-Alaska argued that it was unable to shut down its system or implement a pressure reduction without "significant disturbance" to its infrastructure and operations.⁵ However, the regulations are clear that pressure reductions and shutdowns are the required contingencies upon discovery of an immediate repair condition. If Mid-Alaska's systems are unable to withstand these contingency plans, it should modify its systems to include adequate pressure controls in case of future immediate repair conditions. After considering all of Respondent's arguments, I do not find a basis for reducing the civil penalty as proposed.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$50,200 for violation of 49 C.F.R. § 195.452(h)(4)(i)(C).

Payment of the civil penalty must be made within 20 days after receipt of this 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 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

³ Response, at 2.

⁴ *Id.*, at 2.

⁵ *Id.*, at 2.

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 2 and 3, the Notice alleged probable violations of Part 195, but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 195.579(c) **(Item 2)** — Respondent's alleged failure to inspect the internal surface of a pipe for evidence of corrosion upon removal from a pipeline; and

49 C.F.R. § 195.583(a) **(Item 3)** — Respondent's alleged failure to inspect the PetroStar Metering Inc. Station (PSIMS) portion of their pipeline system for atmospheric corrosion at the required intervals.

Mid-Alaska requested withdrawal of Item 2, because it claims that the removed valves were visually inspected and showed no evidence of an imminent hazard, requested withdrawal of Item 3 because it claims that the inspection was not recorded due to a clerical error by a third-party contractor, and presented information showing that it had taken certain actions to address the cited items. 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. The written petition must be received 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.

April 26, 2023

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued