

Mr. John S. Dayton
Senior Vice President
Operations and Engineering
Alyeska Pipeline Service Company
1835 South Bragaw Street
Anchorage, Alaska 99512

Re: CPF No. 55501

Dear Mr. Dayton:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$25,000. The penalty payment terms are set forth in the Final Order. The proposed compliance order has been withdrawn because the proposed terms of that order have been satisfied.

This enforcement action closes automatically upon payment of the assessed civil penalty.

Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: James Meason, Esq.
Hinshaw & Culbertson
220 East State St.
P.O. Box 1389
Rockford, IL 61105-1389

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
WASHINGTON, DC

In the Matter of)
)
)
 Alyeska Pipeline Service Company,) CPF No. 55501
)
 Respondent.)

FINAL ORDER

On May 30-June 4, June 18-22, June 20-24, June 29-30, August 18-22 and October 24-26, 1994 and February 5-6 and March 7-9, 1995, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted on-site pipeline safety inspections of Respondent's facilities and records at Anchorage and the Valdez Marine Terminal and from Pump Station #1 to Fairbanks and from Fairbanks to the Valdez Marine Terminal. OPS's Alaska technical officer also reviewed the final audit reports issued by the Trans Alaska Pipeline System Assessment Task Force and the Quality Technology Company. As a result of the inspections and reports' review, the Director, Western Region, OPS issued to Respondent, by letter dated May 23, 1995, a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 195.402(a) and 195.420 and proposed a civil penalty of \$55,000 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated June 29, 1995 (Response). Respondent contested the allegations and requested a hearing that was held in the Western Region, OPS on January 16, 1996. After the hearing, Respondent submitted a Closing Statement dated February 29, 1996 (Closing Response).

FINDINGS OF VIOLATION

Item 1 in the Notice alleged that Respondent had violated 49 C.F.R. § 195.402, which requires that an operator prepare and

follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. The Notice alleged that for five producer block valves, Respondent failed to follow its written procedure (Manual MS-31, sec. 3.11.1) requiring that each mainline valve be inspected at intervals not exceeding 7½ months, but at least twice each calendar year, to determine that it is functioning properly.¹ Instead, Respondent followed its Preventive Maintenance (PM) Task No. 161058/Y02 procedure, which required a 2-year schedule for testing ball and gate valves.

Item 2 alleged that Respondent violated 49 C.F.R. § 195.420 because since July 28, 1991, it had failed to perform preventive maintenance and function testing on the five valves.² Section 195.420(a) requires an operator to maintain each valve that is necessary for the safe operation of its pipeline system in good working order. Section 195.420(b) further requires an operator to inspect each mainline valve at intervals not exceeding 7½ months, but at least twice each calendar year to determine that each valve is functioning properly.

1. Allegation No. 1:

The valves at issue are located at Pump Station #1. They are on the suction end of the pump station in a manner that permits isolation of the pump station equipment in the event of an emergency. OPS and Respondent disagree whether these are mainline valves. Respondent provided numerous arguments why the five valves are not mainline valves, and thus, not subject to the inspections required by § 195.420 or by MS-31.

A. Classification

Respondent said that it considered the five valves producer block valves because they had none of the characteristics of those valves it classified as mainline valves. Respondent explained that these valves operate at low pressure of approximately 50 psi on 12-, 16-, and 36-inch pipe, have alternate valves within a few hundred feet both upstream and downstream, are in close proximity

¹ In 1982, OPS granted Respondent a waiver from 49 C.F.R. 195.420(b) permitting Respondent to inspect its mainline valves twice each calendar year, with intervals not to exceed 8-months. (47 Fed. Reg. 28729; June 21, 1982).

² Both allegations involve the same five gate valves: Valves No. 120BL(BP), 220BL(Arco), 320BL(Kuparuk), 420BL(Lisburne) and 520BL(Endcott).

to pump station personnel who perform daily surveillance and are able to manually operate the valves if necessary, and have a dynamic spill volume of one to two orders of magnitude less than the valves on its mainline. Respondent further said that because no streams or rivers are in the immediate vicinity of these valves, it is unlikely any oil from a release could reach a stream or river.

In comparison, Respondent explained that the valves it classifies as mainline valves are on its high pressure (1200 psi, 48-inch) pipeline, isolate huge volumes of crude oil, have no redundant backup system, and are in remote locations without personnel readily available to conduct daily surveillance of the valves or to manually operate them if a power loss occurs.

Because Respondent did not consider them mainline valves, Respondent said it did not follow its procedures for inspecting and testing mainline valves. Rather, Respondent said it always followed those procedures applicable to its classification of the valves, and that the procedures assured the valves were in good working order.

Respondent explained that until July 1993, it classified the valves as producer gate valves and checked them according to its PM task No. 161058/Y02 procedure, which required a 2-year schedule for testing ball and gate valves. Respondent said that in July 1993, it replaced PM 161058 with PM 141230, which called for maintenance every three months on all pump station motorized ball valves. From July to September 1993, Respondent treated the five valves as pump station motorized ball valves. Respondent said it inactivated PM 141230 in September 1993 and that from September 1993 to November 1994, it conducted daily visual inspections of the valves and generated a work order as needed.

B. Valving Plan Approval

Respondent claimed that OPS's prior approval of a valving plan precluded OPS from alleging that the five valves are mainline valves. Respondent explained that in December 1974, OPS had approved Respondent's valving plan in which 142 mainline valves had been identified between pumping stations, and that two of the five cited valves were in existence in 1974 but were not included among the 142. Respondent said that the remaining three valves are similar in operation to these two. Respondent further contended that because the valving plan had been published (39 Fed. Reg. 45311, Dec. 31, 1974), OPS cannot change its position on the valves without prior notice.

OPS approved Respondent's valving plan at Respondent's request. Respondent had developed a plan to limit static spillage from a pipeline failure to 50,000 barrels of crude oil, a limit the Department of the Interior had established in an Environmental Impact Statement it had issued for the pipeline. OPS reviewed the plan to see if it complied with the pipeline safety requirement that valves be placed on each side of a water crossing more than 100-feet wide from high-water mark to high-water mark, unless the Secretary of Transportation finds in a particular case that valves are not justified.

The 1974 plan covered valves on Respondent's 48-inch pipeline but as Respondent pointed out, the cited valves are not located on its 48-inch line. Even if two of the five cited valves were part of the original system, there is no evidence in the record that they were valves either approved or addressed in the 1974 plan. Respondent did not provide any evidence that the plan covered valves on the producer lines, or at the pump stations, or that Respondent and OPS had ever discussed how valves not on the 48-inch line should be treated. Moreover, three of the valves are on lines that were added after 1974. OPS has not approved any plan addressing how these valves would be treated.

OPS is not changing its position, without fair notice to Respondent, because it has not taken a position on the cited valves.

C. Previous Enforcement Action

Respondent referred to a prior compliance action (CPF No. 51506) where OPS had found Respondent in violation of 49 C.F.R. § 195.420(b) for not inspecting its mainline valves within the required eight-month intervals. That case involved 100 mainline valves on Respondent's 48-inch line. Because the five valves at issue in this action were not included in the previous compliance action, Respondent argued that this was evidence that OPS did not consider the valves mainline valves.³

Respondent did not provide any evidence that OPS had looked at the five valves when it initiated that compliance action. The 100 valves in that case were those that Respondent had classified as mainline valves on its 48-inch line. No evidence has been presented that OPS ever considered whether other valves in the

³ Although Respondent makes this argument with respect to allegation no. 2, I will address it in this section because of its similarity to the valving plan argument.

system, such as the valves at Pump Station #1, might also be mainline valves.

D. Executive Orders

Respondent argued that because OPS had not defined "mainline" or "mainline valve" in its regulations, it had violated two Executive Orders, and, therefore, must dismiss the allegations.

Respondent explained that Executive Order 12778, issued in 1991 addressing civil justice reform, required agencies to review their existing regulations and make every reasonable effort to ensure that their regulations defined key terms. Executive Order 12988, issued in 1996 addressing administrative adjudicatory processes, revoked Executive Order 12778, but again directed agencies to make every reasonable effort to ensure that their regulations defined key terms.

OPS has complied with both Executive Orders. Since 1992, OPS has undertaken extensive reviews of the pipeline safety regulations to identify those that need to be clarified, impede economic growth, cause unnecessary burden, or are no longer necessary. (See for example, 57 Fed. Reg. 39572, Aug. 31, 1992; 57 Fed. Reg. 53085, Nov. 6, 1992; 58 Fed. Reg. 14519, Mar. 18, 1993; 58 Fed. Reg. 59431, Nov. 9, 1993; 59 Fed. Reg. 33388, June 28, 1994; 61 Fed. Reg. 28770, June 6, 1996; 61 Fed. Reg. 50908, Sept. 27, 1996).

As well as conducting its own review, OPS also sought comment from the public on its regulations. Commenters from industry, state and federal public safety agencies, and trade associations responded but none of these commenters said the terms "mainline" or "mainline valve" should be defined. Nor did OPS's internal review find that the lack of these definitions had caused previous compliance difficulties.⁴

OPS continues to review and revise its regulations. However, OPS is not precluded from enforcing a safety regulation because it did not define a term that appears in its regulations.

F. Definition of Mainline

Respondent said it interpreted mainline to be its 48-inch transmission line. Because none of the five valves is on this 48-inch line, Respondent maintained that the valves are not mainline valves. Respondent said contemporary definitions found

⁴ The present action is the first instance of the lack of a mainline valve definition creating a compliance issue.

in industry standards and the dictionary supported its definition of mainline.⁵ As further support, Respondent pointed to § 195.260, which it said distinguishes between mainline and non-mainline valves.

Respondent explained that because neither the federal pipeline safety statute (49 U.S.C. § 60101 et seq.) nor implementing regulations in 49 C.F.R. part 195 define mainline, it relied on the ASME B31.4 Code, the industry standard for crude oil transmission lines. Respondent maintained that ASME B31.4 implies that a mainline begins and ends at a scraper or pig trap, and also specifies that mainline valves be installed at major river crossings, public water supply reservoirs, and pump stations. Respondent said that the pig launcher at Pump Station #1 is downstream from the valves; therefore, the five valves are not part of the 48-inch mainline.

Respondent said its interpretation of mainline was also supported by several dictionaries that define main as a principal pipe, conduit or line in a distributing or utility system.⁶

Respondent also maintained that § 195.260 distinguishes between mainline and other valves because of the six locations listed where valves are required, only subparagraph(c) mentions a mainline.

I will address Respondent's argument as two issues:

- i. what is a mainline?
- ii. once a mainline is defined, are only valves on that line mainline valves?

- i. What is a mainline?

Respondent is correct that neither the pipeline safety statute

⁵ One of Respondent's arguments is that the term "main" as used in Part 192 cannot be applied to Respondent's operations. I will not address this argument because OPS has never maintained that the term "main" as used in Part 192 has any application to this case.

⁶ Respondent provided definitions of "main" or "main line" from several dictionaries: Webster's New World Dictionary (1964), The American Heritage Dictionary (1972), and Merriam Webster's Collegiate Dictionary (1995).

nor part 195 regulations define a "mainline"⁷ or "mainline valve."

Respondent cited to ASME Code Para. 434.17.2, which provides that scraper traps that an operator installs at a mainline termination must be anchored in a particular manner. I do not read this provision as defining a mainline to begin or end at a scraper trap. Nonetheless, even if this provision implies such a definition, OPS is not questioning whether the 48-inch line is a mainline, where that mainline begins or ends, or if the cited valves are located on the 48-inch line. Rather, OPS's concern has been whether the valves function as mainline valves to the pipeline system and thus, should have been given the higher inspection priority Respondent gave to the valves on the 48-inch line.⁸

ii. Are only valves on a mainline mainline valves?

As for the second part of the argument, I do not find that the ASME B31.4 Code or § 195.260 supports the proposition that only a valve located on a mainline, however that term is defined, can be a mainline valve.

The ASME B31.4 Code provides that mainline valves are to be located at certain locations critical to the safe operation of a pipeline system. These include the upstream side of major river crossings and public water supply reservoirs (434.15.2(a)), and at mainline pump stations (434.15.2(b)).

Section 195.260 tracks the ASME Code in that it requires valves at certain critical locations in a pipeline system. One of these is on the suction end and the discharge end of a pump station in a manner that permits isolation of the pump station equipment. (§ 195.260(a)). Section 195.260(c) uses the term mainline but only to provide that valves located on a mainline have to be located at certain points along that line. This requirement does

⁷ I do not find the dictionary definitions of relevance here. The dictionary use of the term "main" is akin to how that term is used in Part 192 in defining a gas distribution system. As Respondent pointed out, this definition has no application to the issue in this case.

⁸ Although § 195.260(c) provides that valves must be installed on **each** mainline, recognizing that a system may have more than one mainline, OPS is not arguing that the lines where the five valves are located might also be mainlines.

not imply that only valves on a mainline are mainline valves.

Respondent's classification of a mainline valve, as a valve only on a mainline, is a narrow one. I agree that mainline valves are usually on a pipeline system's mainline. However, using Respondent's reasoning, if a valve were located at a major river crossing or public water supply, but not on a line an operator considered its mainline, the valves would not be mainline valves and could be given lower priority. Such an interpretation would not assure the integrity of the pipeline system.

Without a definition for a mainline valve, I must look at the purpose for the five valves, and their role in the pipeline system's operation. The five valves are located at Pump Station #1, a pump station that serves Respondent's 48-inch line, the line it considers its mainline. The valves are terminus valves for the five producer lines and are part of Pump Station #1's isolation system. They are located on the suction end and discharge end of the pump station and are used to safely isolate the pump station in an emergency. All crude oil production arriving at this pump station travels through the five valves. These valves see mainline pressure and flow. No evidence has been presented that other valves installed at the pump station serve the purpose these five valves serve.

In looking at the purpose these valves serve to the operation of the pipeline system, I do not find that these valves are any different from the valves on the 48-inch line that Respondent considers its mainline valves. They are integral to the safe operation of the pipeline system, especially to the 48-inch line, and should have been classified and treated as mainline valves.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.402 because for the five valves, it did not follow its procedures for inspecting mainline valves.

G. Current Operation

Respondent has since classified the five cited valves in its Procedural Manual for Operations, Maintenance and Emergencies as mainline valves and inspects the valves at eight-month intervals.

2. Allegation No. 2:

OPS alleged that because the five valves are mainline valves, Respondent was required to test them according to the requirements in 49 C.F.R. § 195.420.

Respondent repeated its arguments why the valves are not mainline valves. Because they are not mainline valves, Respondent argued that they did not have to be function-tested semiannually (per § 195.420(b)) but only had to be maintained in good working order (per § 195.420(a)).

A. Section 195.420(a) - Performance-based

Respondent contended that § 195.420 has two parts each requiring a different test for a different valve. Respondent explained that § 195.420(a) is performance-based, requiring an operator to maintain those valves necessary for the safe operation of the pipeline system in good working order at all times. Respondent agreed that the five valves are necessary for safe operation and asserted that it met this performance objective because its procedures for maintaining the valves have assured the valves' good working order. Respondent said its daily visual examinations, along with the valves' design, operational realities, periodic stroking, and isolation from the elements assured that the five valves were in good working order. Moreover, Respondent maintained that OPS had never alleged that the valves were not in good working order.

I agree that § 195.420(a) is written in performance language and that performance language does not require a particular set of tests. However, there needs to be evidence that the tests Respondent said it was performing to satisfy the performance standard, were in fact performed. No such evidence has been presented.

B. Record Keeping

Respondent did record its inspection of valves in 1991 under PM 161058. The next inspection was due in 1993, but this PM was canceled before the end of the 2-year cycle. The new PM 141230 called for quarterly inspections, but again, this PM was canceled and replaced before the end of the first three-month cycle. In 1993, when Respondent's new procedure called for daily visual examination, Respondent did not record its examinations. Rather, a record would be generated only if a problem was found and a work order was issued. Respondent argued that the regulation did not require a written record to demonstrate compliance. Respondent said that as long as the valves worked when needed, Respondent complied and OPS had to demonstrate that the valves were not in good working order. Respondent further argued that OPS had never provided notice to the public that a written record was required to demonstrate compliance.

Respondent said its daily visual inspections assured the valves worked. This may be the case, but there is no evidence that Respondent conducted these inspections. Simply saying that the valves have worked does not demonstrate that Respondent was complying with its procedures to conduct daily examination of the valves to assure their good working order. Some record, such as a checklist, or an entry kept by computer record, would suffice. A work order generated only if a valve problem was found is insufficient to show that a daily visual examination was being conducted.

Respondent is incorrect that the public had not been given fair notice of the requirement to keep records. Section 195.404(c)(3) provides that a record must be kept of each inspection and test required by subpart F (Operation and Maintenance requirements). This regulation has been in force since 1981. Respondent chose to conduct a daily visual examination to comply with § 195.420(a), a subpart F requirement. Respondent, therefore, had to maintain some type of record as evidence of its compliance.

C. Section 195.420(b)- function testing⁹

Respondent disputed OPS's assertion that because the valves fall within the scope of § 195.260, they must be inspected according to the requirements in § 195.420(b). Respondent explained that § 195.420(b) applies only to mainline valves and because the valves are not mainline valves (for all the previously discussed reasons), Respondent did not have to function test the five valves semiannually.

Although OPS, as well as the majority of the pipeline industry, may have interpreted the function testing requirement as applying to all valves within § 195.260, I agree that the way the regulation is written only mainline valves are required to be function tested at the specified intervals. Nonetheless, as discussed above, the five valves should have been classified as mainline valves and, therefore, inspected according to the requirements in § 195.420(b).

Accordingly, I find that Respondent violated 49 C.F.R. § 195.420(a) because there was no evidence that it was performing the tests and examinations called for in its procedures to maintain the valves in good working order at all times, and § 195.420(b) because it was not inspecting the valves at the

⁹ The regulation requires that mainline valves be inspected at specified intervals to determine that they are functioning properly. This is commonly referred to as function testing.

required intervals to determine that they were functioning properly.

Current procedures

Respondent's current procedures in its Operations, Maintenance and Emergencies Manual (OM-1, sec. 7.2.1, Nov. 10, 1994) state that "DOT regulation requires that valves required for safe operation be tested functionally twice each year, not to exceed 7½ months." Respondent said that it has included the five cited valves in its procedures for mainline valves and inspects the valves at eight-month intervals, not to comply with § 195.420(b), but to assure the valves are in good working order.

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 a civil penalty not to exceed \$25,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations. The Notice proposed a civil penalty of \$55,000.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

Respondent maintained that OPS is barred from assessing a civil penalty. Respondent argued that a prior enforcement case (CPF No. 51506), where Respondent was found to have violated 49 C.F.R. § 195.420(b) for not inspecting its mainline valves within the required intervals, should not be considered a similar prior violation because the case involved different issues and a different type of valve. Furthermore, Respondent said it was not culpable and conducted its operations in good faith. Respondent also gave several reasons why justice barred OPS from assessing a civil penalty.

If a finding of violation is made, OPS is well within its statutory authority to assess a civil penalty, after considering the assessment criteria. For the reasons previously discussed, Respondent should have classified the five valves as mainline

valves and inspected and tested them according to its procedures and the regulatory requirements for mainline valves. The record does not show that the lack of a definition for a mainline valve has confused the pipeline industry over whether particular valves integral to the safe operation of a pipeline system should be classified as mainline valves. I consider the previous enforcement action (CPF No. 51506) a prior violation because it involved late inspections of mainline valves.

Yet, I recognize that although Respondent should have inspected and tested the five valves at the same intervals as those valves Respondent had classified as mainline valves, nothing has been presented contradicting Respondent's assertion that the procedures it had in place for these valves assured their safety. Moreover, since 1994, Respondent voluntarily decided to treat the valves as mainline valves. Accordingly, I will reduce the proposed civil penalty to \$25,000.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this **payment 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.** After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel** (DCC-1), Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590-0001.

Questions concerning wire transfers should be directed to: **Valeria Dungee**, Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125; **(405) 954-4719**.

Failure to pay the \$25,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 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 an United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order. Respondent has since classified the five valves in its Operations, Maintenance and Emergencies Manual as mainline valves and inspects the valves at eight-month intervals. The Director, Western Region, OPS has accepted these measures as adequately fulfilling the requirements of the regulations and no further action is needed with respect to a compliance order.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. If Respondent pays the penalty, the case closes automatically and Respondent waives the right to petition for reconsideration. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. All other terms of the Order, including any required corrective action, shall remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.

/s/Richard B. Felder
Richard B. Felder
Associate Administrator
for Pipeline Safety

Date Issued _____