

NOV 16 2011

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

_____)	
In the Matters of)	
)	
Alyeska Pipeline Service Company,)	CPF No. 5-2006-5018
)	CPF No. 5-2007-5041
Respondent.)	CPF No. 5-2008-5008
_____)	CPF No. 5-2009-5019

COMPROMISE AGREEMENT AND ORDER

The U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) and Alyeska Pipeline Service Company (Alyeska or Respondent) have engaged in settlement discussions regarding the resolution of the four enforcement actions listed above. Having concluded those discussions, PHMSA and Alyeska (collectively, Parties) agree that a settlement of these matters is in the best interests of the Parties and the public and will avoid further administrative proceedings or litigation. The Parties further agree that the entry of this Compromise Agreement and Order is the most appropriate means of accomplishing that objective.

I. Procedural History.

A. CPF No. 5-2006-5018

On April 19, 2006, PHMSA issued to Alyeska a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). Item 1 of the Notice alleged that Alyeska had violated 49 C.F.R. § 195.452(h)(2) and proposed assessing the company a civil penalty of \$260,000 for that violation. Item 2 of the Notice alleged that Alyeska had violated 49 C.F.R. §§ 195.452(h)(3) and (h)(4)(i)(C) and proposed assessing the company a civil penalty of \$90,000 for that violation. The Notice also proposed ordering Alyeska to complete certain corrective actions to address both violations.

On April 27, 2006, Alyeska submitted a written response to the Notice and requested an informal hearing. That hearing was held on January 18, 2007, with an Attorney Advisor from the Office of Chief Counsel, PHMSA, presiding.

On January 13, 2010, the Associate Administrator for Pipeline Safety, PHMSA, issued a Final Order in the case. The Final Order found that Alyeska had violated 49 C.F.R. § 195.452(h)(2) as alleged in Item 1 of the Notice and assessed a civil penalty of \$173,000. The Final Order further found that Alyeska had violated 49 C.F.R. §§ 195.452(h)(3) and (h)(4)(i)(C) as alleged in Item 2 of the Notice and assessed a civil penalty of \$90,000. The Final Order also ordered Alyeska to complete certain corrective measures.

On February 8, 2010, Alyeska submitted a Petition for Reconsideration (Petition) of the Final Order. The Petition sought, among other things, reconsideration of the civil penalty assessed against Alyeska for Item 1. On March 1, 2010, the Associate Administrator denied that part of the Petition in a Decision on Reconsideration (Decision).

On March 22, 2010, Alyeska made a payment of \$90,000 in full satisfaction of the civil penalty assessed for Item 2. On April 20, 2010, Alyeska submitted, to the Director, PHMSA Western Region (Director), information documenting full compliance with the corrective actions in the Final Order and the Decision. On July 29, 2010, Alyeska made another payment of \$173,000, under protest and with full reservation of rights, in full satisfaction of the civil penalty assessed for Item 1.

On August 3, 2010, Alyeska filed a complaint in the United States District Court for the District of Alaska, Case No. 3:10-CV-00177-JWS (Complaint). The Complaint alleged that the Associate Administrator (1) had assessed Alyeska an excessive civil penalty for Item 1; (2) had failed to comply with the procedural requirements in 49 C.F.R. § 190.213(e) in issuing his Final Order; and (3) had found Alyeska in violation of 49 C.F.R. § 195.452(h)(2) without substantial evidence. The Complaint sought, among other things, the return of the \$173,000 that Alyeska had paid to PHMSA for Item 1.

On October 20, 2011, PHMSA filed an answer (Answer) to the Complaint. The Answer denied all of Alyeska's allegations and asserted that the company had already admitted all of the facts necessary to affirm the Final Order.

B. CPF 5-2007-5041

On November 27, 2007, PHMSA issued to Alyeska a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). The Notice alleged that Alyeska had committed several violations of 49 C.F.R. Part 195 and proposed assessing the company a total civil penalty of \$817,000 for those violations. The Notice also proposed ordering Alyeska to complete certain corrective actions and issuing a warning that the company take appropriate action to address several other probable violations.

Alyeska responded to the Notice on February 26, 2008, requesting an informal hearing. That hearing was held on October 28, 2008, with an attorney from the Office of Chief Counsel, PHMSA, presiding.

C. CPF 5-2008-5008

On April 1, 2008, PHMSA issued to Alyeska a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). The Notice alleged that Alyeska had committed several violations of 49 C.F.R. Part 195 and proposed a total civil penalty of \$170,000 for those violations. The Notice also proposed ordering Alyeska to complete certain corrective actions to address several of those violations.

On May 22, 2008, Alyeska responded to the Notice and requested an informal hearing. That hearing was held on October 30, 2008, with an attorney from the Office of Chief Counsel, PHMSA, presiding.

D. CPF 5-2009-5019

On April 21, 2009, PHMSA issued to Alyeska a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). The Notice alleged that Alyeska had committed two violations of 49 C.F.R. Part 195 and proposed a civil penalty of \$43,800 for one of those violations. The Notice also proposed issuing a warning that the company take appropriate corrective action to address the other probable violation.

On May 21, 2009, Alyeska responded to the Notice, requesting an informal hearing. That hearing was held on October 21, 2009, with an attorney from the Office of Chief Counsel, PHMSA, presiding.

II. General Provisions.

1. Alyeska acknowledges that the company and its pipeline system, known generally as the Trans-Alaska Pipeline System (TAPS), are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Compromise Agreement and Order, Alyeska acknowledges that it received proper notice of PHMSA's actions in CPF 5-2006-5018, CPF 5-2007-5041, CPF 5-2008-5008, and CPF 5-2009-5019 (collectively, Enforcement Actions) and that the Notices, Final Orders, and Decisions issued in the Enforcement Actions all state claims upon which relief may be granted pursuant to 49 U.S.C. 60101, *et seq.*, and the regulations and orders issued thereunder.

2. By entry of this Compromise Agreement and Order, PHMSA neither vacates nor withdraws the Final Order and Decision issued in CPF 5-2006-5018. All provisions of the Final Order and Decision in CPF 5-2006-5018 shall remain in full force and effect, except as expressly modified by this Compromise Agreement and Order. Nothing in this Compromise Agreement and Order shall bar consideration of the findings of violation set forth in the Final Order and Decision in CPF 5-2006-5018 as prior offenses in any future PHMSA enforcement action.

3. Alyeska agrees to the issuance of this Compromise Agreement and Order and hereby waives any further procedural requirements with respect to its issuance. Alyeska waives all rights to contest the adequacy of the Notices, Final Orders, and Decisions issued in the Enforcement Actions and the validity of this Compromise Agreement and Order, including all rights to administrative or judicial hearings or appeals.

4. This Compromise Agreement and Order constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the Enforcement Actions and the issues embodied in this agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the amount or collection of any civil penalties other than those expressly contained in this agreement, except that the terms of this agreement may be construed by reference to any Notices, Final Orders, and Decisions issued in the Enforcement Actions.

5. Nothing in this Compromise Agreement and Order affects or relieves Alyeska of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this agreement alters PHMSA's right of access, entry, inspection, and information gathering, or its authority to bring any enforcement action against Alyeska pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

6. This Compromise Agreement and Order does not waive or modify any Federal, state, or local laws or regulations that are applicable to Alyeska's pipeline system. This agreement is not a permit or a modification of a permit under any Federal, State, or local laws or regulations. Alyeska remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

7. This Compromise Agreement and Order does not create rights in, or grant any cause of action to, any person not a party to this agreement. PHMSA is not liable for any injuries or damages to persons or property arising from acts or omissions of Alyeska or its officers, employees, or agents carrying out the work required by this agreement. PHMSA, its officers, employees, agents, and representatives are not liable for any cause of action arising from any acts or omissions of Alyeska or its contractors in carrying out any work required by this agreement.

8. This Compromise Agreement and Order shall apply to and be binding on Alyeska, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.

III. Finding of Violations.

9. With respect to CPF 5-2007-5041, the Parties mutually agree, and PHMSA hereby finds, that Alyeska committed the violations alleged in Items 1, 2, 3, 4, 6, 8, and 9 of the Notice. The Parties mutually agree, and PHMSA hereby finds that Alyeska had inadequate procedures as alleged in Items 5, 7, 16a, and 16b of the Notice.

10. With respect to CPF 5-2008-5008, the Parties mutually agree, and PHMSA hereby finds, that Alyeska committed the violations alleged in Items 1, 2, 3, 5, 6, and 7 of the Notice, but that the allegation in Item 4 of the Notice should be, and hereby is, withdrawn.

11. With respect to CPF 5-2009-5019, PHMSA hereby finds that the allegation in Item 1 of the Notice should be, and hereby is, withdrawn.

12. The findings of violation in Paragraphs 9, 10, and 11 will be considered prior offenses in any subsequent enforcement actions taken against Alyeska.

IV. Civil Penalty.

13. The Parties mutually agree, and PHMSA hereby orders, that the total civil penalty assessed for Items 1 to 9 and 16a to 16b of the Notice in CPF 5-2007-5041 and Items 1 to 3 and 5 to 7 of the Notice for CPF 5-2008-5008 is Six-Hundred-Thousand Dollars (\$600,000).

14. Alyeska will pay the civil penalty amount in Paragraph 13 within 30 days of signing of this Compromise Order and Agreement. Payment may be made by sending a certified check or money order, made 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, Oklahoma 73125. Payment may also be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury.

15. The Parties agree that the civil penalty assessed and collected in this proceeding will not be deductible for purposes of Federal taxes.

16. The Parties agree that the civil penalty assessed and collected in this proceeding will not be used in determining the amount of any civil penalty for any future enforcement action.

V. Compliance Order.

17. The Parties mutually agree, and PHMSA hereby finds, that Alyeska has satisfied the terms of all of the proposed compliance orders for the Enforcement Actions, except for the following:

A. CPF 5-2008-5008

- i. With respect to the violation of § 195.583 (Item 7), Alyeska must develop and implement a risk-based atmospheric corrosion control program for TAPS, as required under that regulation. Alyeska must submit, for

approval by the Director, documentation of the program within 180 days of the Effective Date of this Compromise Order and Agreement.

VI. Warning Items.

18. The Parties mutually agree, and PHMSA hereby orders, that Alyeska has received a warning for committing the probable violations in Items 10, 13, and 14 of the Notice in CPF 5-2007-5041 and Item 2 of the Notice in CPF 5-2009-5019, and that the company must take appropriate corrective actions or be subject to future enforcement action. PHMSA hereby finds that the warnings in Items 11, 12 and 15 of the Notice in CPF 5-2007-5041 should be, and hereby are, withdrawn.

VII. Dismissal of Complaint.

19. The Parties agree to sign, and that Alyeska will file, a voluntary "Stipulation for Dismissal of Action," in a form substantially similar to the document attached to this order as Exhibit A, in the United States District Court for the District of Alaska within thirty (30) days of Alyeska's payment of the civil penalty amount referenced in paragraph 13 of this Compromise Order and Agreement. Said dismissal will be with prejudice and without costs or fees for either of the Parties.

VIII. Dispute Resolution

20. PHMSA and Alyeska will attempt to resolve any disputes arising under this Compromise Agreement and Order on an informal basis. If Alyeska and PHMSA are unable to informally resolve the dispute within 15 days, Alyeska may request in writing, within 10 days, a written determination resolving the dispute from the Associate Administrator for Pipeline Safety. Such a request must include all of the information that Alyeska believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a final determination in writing. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this agreement during the pendency of the dispute resolution process, except as agreed by the Director or the Associate Administrator in writing.

IX. Enforcement

21. This Compromise Agreement and Order are subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101 *et seq.* and 49 C.F.R. Part 190, including the assessment of civil penalties as determined in accordance with the requirements of 49 U.S.C. § 60122 and 49 C.F.R. §§ 190.223 to 190.225, if PHMSA determines that Alyeska is not complying with the terms of this agreement, any determinations made by the Director, or, if appealed, with any decisions of the Associate Administrator. Failure to comply with the terms of this agreement may also result in referral to the Attorney General for appropriate relief in a United States District Court pursuant to 49 U.S.C. § 60120.

X. Effective Date.

22. The “Effective Date” is the date on which this Compromise Agreement and Order has been signed by both Alyeska and PHMSA.

XI. Modification.

23. The terms of this Compromise Agreement and Order may be modified by mutual agreement of the parties. Such modifications must be in writing and signed by both parties.

XII. Termination.

24. This Compromise Agreement and Order will terminate upon Alyeska’s payment of the civil penalty referenced in Paragraphs 13 and 14 and upon its completion of the terms set forth in Paragraph 17 of Section V, as determined, in writing, by the Director. Nothing in this agreement prevents Alyeska or PHMSA from completing any of the obligations earlier than the deadlines provided for in this agreement.

XIII. Ratification.

25. The Parties’ undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Compromise Agreement and Order and to execute and legally bind such party to this document.

26. The Parties hereby agree to all conditions and terms of this Compromise Agreement and Order:

For PHMSA:

For Alyeska:

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Michael W. Joynor
Senior Vice President of Operations
Alyeska Pipeline Service Company

Date

Date