

**PIPELINE SAFETY TRUST**

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# Fax

To: Chuck Moser	From: Greg Winter
Fax: 360.586.1172	Pages: 7 (including cover)
Phone: 425.747.9295	Date: January 16, 2003
Re: Olympic Pipeline Civil Penalty	CC:

**Comments**

## PIPELINE SAFETY TRUST

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Phone: (360) 676-6602 Fax: (360) 715-8434

The Honorable Norman Mineta  
Secretary  
U.S. Department of Transportation  
400 Seventh Street, SW, Room 10408  
Washington, D.C. 20590

January 16, 2004

Dear Secretary Mineta:

The Pipeline Safety Trust (PST) requests that the Department of Transportation Research and Special Programs Administration (RSPA) immediately take steps to assess and collect the \$3.05 million civil penalty it proposed against Olympic Pipeline Company on June 2, 2000. The fine was proposed for safety violations identified during RSPA's investigation of a fatal pipeline failure in Bellingham, Washington, on June 10, 1999.

The PST was established in 2003 as a nonprofit organization dedicated to improved fuel transportation safety. The PST strongly believes that safe pipeline operation depends on strict enforcement of pipeline safety regulations, particularly in cases where the failures are numerous and severe.

When RSPA proposed these civil penalties, pipeline safety advocates in Bellingham, and in communities nationwide, were heartened to hear that the Department of Transportation agreed that "[t]his civil penalty is one of a series of actions [DOT has] taken to help protect the people and environment along [the Olympic] pipeline." With great fanfare, the Transportation Secretary explained further, "In cases like this, where a pipeline operator fails to take appropriate actions to ensure safety, we will penalize the company to the fullest extent possible to ensure full compliance with federal safety rules."

RSPA and the Office of Pipeline Safety (OPS) have been widely criticized for lax enforcement by members of Congress, the National Transportation Safety Board, the General Accounting Office, and DOT's Inspector General. Bellingham and other interested communities saw RSPA's proposed civil penalty as a potential turning point in the agency's poor enforcement history.

So it was most distressing and disappointing to learn that RSPA has yet to assess the much-heralded civil penalty against Olympic or its owner companies. Following recent inquiries into the status of this enforcement action, I was referred to RSPA's Deputy Chief Counsel, Ms. Barbara Betsock.

Ms. Betsock informed me that RSPA is considering not assessing the civil penalty. We believe that RSPA's failure to assess the penalty would be a serious mistake. Such a move would signal an end to the agency's recent efforts to improve pipeline safety and oversight, and any increased public confidence earned recently by the Office of Pipeline Safety. We also agree with members of Congress, Tom Udall, Rick Larsen, and Stevan Pearce, who wrote to

you recently that, "when an agency distributes press releases about assessing fines, as OPS did...and then fails to collect them, it calls the agency's credibility into question."

In explaining RSPA's considerations in deciding whether or not to assess the civil penalty, Ms. Betsock referred to limited agency enforcement resources, the defendant's desire to "fight this tooth and nail", and the fact that the defendant has already been penalized through Justice Department (DOJ) actions.

We take serious issue with this analysis. First, RSPA and OPS should be devoting enforcement resources to the most serious operator failures that are higher profile cases so that the agency's enforcement actions become widely known, thus increasing their deterrent effect. Second, a defendant's resistance to enforcement action should not be a factor in deciding whether to collect a properly assessed fine, particularly when those failures have had such serious consequences as in the Bellingham case.

Third, it is incorrect that Olympic or its owners have already been penalized for the violations noted in OPS's Notice of Probable Violation and Proposed Civil Penalty.

In the DOJ proceedings, four of the defendants were convicted of violating 49 C.F.R. § 195.403, requiring that persons who operate pipelines be trained to do so.<sup>1</sup> Their plea agreements expressly noted that those training failures **were not the cause of the accident.**<sup>2</sup> The only other allegations settled by DOJ pertained to violations of water pollution laws. Therefore, the DOJ proceedings did not punish the defendants for the improper pipeline management behavior that caused the accident.

Furthermore, the plea agreements with Olympic and Equilon noted that they settled only the criminal allegations and did not limit the right of the United States to take civil or administrative action against the companies.<sup>3</sup> Hence, the DOJ proceedings do not prevent OPS from taking further administrative action.

The OPS Notice of Probable Violation made the following allegations that were not resolved by the DOJ proceedings and which, according to the NTSB,<sup>4</sup> **did contribute to the accident:** (1) 49 C.F.R. § 195.442 – damage prevention program; (2) 49 C.F.R. § 195.401 – correction of conditions that adversely affect the safe operation of a pipeline; and (3) 49 C.F.R. §

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<sup>1</sup> Note that only four of the five defendants were convicted of violating pipeline safety laws. Three defendants (Frank Hopf, Ronald Dean Brentson, and Olympic Pipe Line Co.) pled guilty to violating 49 C.F.R. § 195.403 which requires that persons operating pipelines be trained to do so. Equilon (now Shell) pled nolo contendere to the same charge. The fifth defendant, Kevin Scott Dyvig pled guilty to a violation of the Federal Water Pollution Control Act. See Plea Agreement at 1, U.S. v. Frank Hopf, Jr. (No. CR01-338R); Plea Agreement at 1, U.S. v. Ronald Dean Brentson (No. CR01-338R); Plea Agreement at 1, U.S. v. Olympic Pipe Line Co. (No. CR01-338R); Plea Agreement at 10, U.S. v. Equilon Pipeline Co., LLC (No. CR01-338); Plea Agreement at 1, U.S. v. Kevin Scott Dyvig (No. CR01-338R).

<sup>2</sup> See Plea Agreement at 4, U.S. v. Frank Hopf, Jr. (No. CR01-338R); Plea Agreement at 5, U.S. v. Ronald Dean Brentson (No. CR01-338R); Plea Agreement at 11, U.S. v. Olympic Pipe Line Co. (No. CR01-338R); Plea Agreement at 10, U.S. v. Equilon Pipeline Co., LLC (No. CR01-338).

<sup>3</sup> Plea Agreement at 11, U.S. v. Olympic Pipe Line Co. (No. CR01-338R) ("Nothing contained in this agreement is meant to limit the rights and authority of the United States to take further civil or administrative action against Olympic..."); Plea Agreement at 13, U.S. v. Equilon Pipeline Co., LLC (No. CR01-338) ("nothing contained herein is meant to limit the rights and authority of the United States to take further administrative or civil action against the defendant company...").

<sup>4</sup> Nat'l Transp. Safety Bd., Pipeline Rupture and Subsequent Fire in Bellingham, Washington June 10, 1999 71 (2002).


195.262 – testing pumps under conditions approximating actual operating conditions. To date, no sanction has been assessed for these failures.

In addition, two additional failures should be noted. First, the OPS alleged<sup>5</sup> that the company failed to maintain adequate records (49 C.F.R. § 195.404), because when OPS sought records of the pump discharge pressure at the time of the accident, Olympic explained that the recording chart had run out of paper the day before the accident. Second, according to the NTSB,<sup>6</sup> the Olympic employees were not tested for alcohol as required by DOT regulations because Olympic failed to inform the medical personnel that such tests were required. It is indeed disheartening to see OPS waive any enforcement action when even the most basic tasks are performed incorrectly.

Finally, the public looks to the Office of Pipeline Safety as the sole enforcer of interstate pipeline safety rules, hence, the only protector of community safety and environmental protection as it relates to the transport of hazardous liquids and gas. The agency's history of poor enforcement and the resulting erosion of public trust can only be corrected and repaired when it follows through on its explicit promises to use enforcement to protect public safety as the Secretary of DOT pledged on June 2, 2000.

Thank you for your attention to this matter.

Sincerely,



Marlene Robinson  
President, Board of Directors

Cc:

The Honorable Patty Murray	Senate Committee on Health, Education, Labor and Pensions
The Honorable Maria Cantwell	Senate Committee on Commerce, Science and Transportation; Senate Committee on Energy and Natural Resources
The Honorable John McCain	Chair, Senate Committee on Commerce, Science and Transportation
The Honorable Jeff Bingaman	Ranking Member, Senate Committee on Energy and Natural Resources
The Honorable Pete V. Domenici	Chair, Senate Committee on Energy and Natural Resources
The Honorable Ernest Hollings	Ranking Member, Senate Committee on Commerce, Science and Transportation
The Honorable John Dingell	Ranking Member, House Committee on Energy and Commerce

<sup>5</sup> OPS Notice of Probable Violation and Proposed Civil Penalty from Chris Hoidal, Director, Western Region, Office of Pipeline Safety, U.S. DOT to Carl Gast, Vice President and General Manager, Equilon Pipeline Company LLC and Olympic Pipeline Company (Jun. 2, 2000).

<sup>6</sup> Nat'l Transp. Safety Bd., Pipeline Rupture and Subsequent Fire in Bellingham, Washington June 10, 1999 13 (2002)

The Honorable Rick Larsen	House Committee on Transportation and Infrastructure
The Honorable Jennifer Dunn	House Committee on Ways and Means
The Honorable James Oberstar	Ranking Member, House Committee on Transportation and Infrastructure
The Honorable James Oberstar	Ranking Member, House Committee on Transportation and Infrastructure
The Honorable James Oberstar	Ranking Member, House Committee on Transportation and Infrastructure
The Honorable Steve Pearce	House Committee on Transportation and Infrastructure
The Honorable Tom Udall	House Committee on Resources
The Honorable Don Young	Chair, House Committee on Transportation and Infrastructure
The Honorable Jay Inslee	House Committee on Resources
Bonnie Leer	US General Accounting Office
The Honorable Gary Locke	Governor, Washington State
Carole Washburn	Executive Secretary, Washington Utilities and Transportation Commission
The Honorable Harriet Spanel	Senator, Washington State Legislature
The Honorable Dale Brandland	Senator, Washington State Legislature
The Honorable Doug Ericksen	Representative, Washington State Legislature
The Honorable Kelli Linville	Representative, Washington State Legislature
Chuck Mosher	Chairman, Washington State Citizen's Committee on Pipeline Safety

# Congress of the United States

Washington, DC 20515

November 7, 2003

The Honorable Norman Mineta  
Secretary  
U.S. Department of Transportation  
400 Seventh Street, SW, Room 10408  
Washington, D.C. 20590

Dear Secretary Mineta:

Recently we marked the third anniversary of the fatal pipeline accident near Carlsbad, New Mexico that claimed the lives of twelve New Mexicans, as well as the fourth anniversary of the Bellingham pipeline accident, which claimed three lives. Despite this lengthy period, it is our understanding that the Office of Pipeline Safety (OPS) has not yet collected the \$2.52 million fine assessed for the Carlsbad accident. In addition, it is our understanding that OPS has not yet collected the \$3.05 million fine assessed for the fatal Bellingham, Washington pipeline accident that occurred in June 1999. In view of the tragic nature of these accidents, we are extremely concerned that these fines have not been collected.

The statute of limitations to collect such fines is five years from the date the violation occurred. *3M Co. v. Browner*, 17 F.3d 1453, 1455 (1994). In that case, the D.C. Circuit Court of Appeals held that 28 U.S.C. § 2462 operated to preclude both judicial enforcement of civil fines as well as administrative collection of fines after five years had elapsed from the date of violation. Based on that holding, OPS will lack authority to collect the fines it has imposed after June 10, 2004 (Bellingham) or August 19, 2005 (Carlsbad). Only nine months remain to collect the Bellingham fine and more than half of the statute of limitations has run with respect to the Carlsbad fine. Given the fatalities that resulted and the seriousness of the violations alleged by the OPS in each instance, this is gravely troubling.

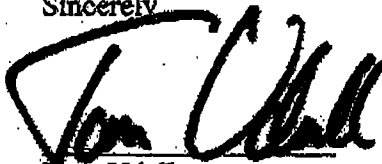
Raising our concern even further is the fact that on March 19, 2002, Ms. Ellen G. Engleman, Administrator of DOT's Research and Special Programs Administration (RSPA) testified to the House Committee on Energy and Commerce Subcommittee on Energy and Air Quality that RSPA is making "better use of all of our [enforcement] tools, including fines." Ms. Engleman testified that over \$9 million in civil penalties had been assessed in the last year and a half. Based on the timing of Ms. Engleman's testimony, the Carlsbad fine would have been included in her assertion that over \$9 million had been assessed in the prior year and a half. Under such circumstances, testifying to Congress about assessing fines when RSPA is not collecting those fines was misleading. Uncollected fines cannot possibly have any meaning as an enforcement tool.

When an agency distributes press releases about assessing fines, as OPS did in the cases of Bellingham and Carlsbad, and then, without fanfare, fails to collect them, it calls the agency's credibility into question. If the OPS has found that the companies did no wrong and has concluded that it will not collect the penalties, the agency owes the companies a public retraction and the public an explanation of its error. However, if OPS continues to have confidence in its original penalty assessment, it should collect the fines. A lack of action is unacceptable.

In view of these concerns, we would like to review the correspondence OPS has had with El Paso (Carlsbad) and with Equilon (Bellingham) on the subject of enforcing the civil assessed civil penalty. We are interested in learning what efforts OPS has made to collect these fines and what arguments the companies have offered against those fines.

Thank you for your attention and prompt reply to this request. Please feel free to contact us should you have any further questions.

Sincerely,



Tom Udall  
Member of Congress



Rick Larsen  
Member of Congress



Stevan Pearce  
Member of Congress