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

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. Their plea agreements expressly noted that those training failures were not the cause of the accident. 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. 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, 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. § 195.403.

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1 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. CR01-338).


3 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…”).

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\(^5\) 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,\(^6\) 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

\(^5\) 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).

(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