

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5579]

Mr. Hank A. True III
President
Belle Fourche Pipeline Company
455 North Poplar Street
P. O. Box 2360
Casper, WY 82602

RE: CPF No. 5-2004-5010

Dear Mr. True:

Enclosed is this agency's decision on the Petition for Reconsideration filed by Belle Fourche Pipeline Company in the above-referenced case. For the reasons stated in the decision, the Petition is granted in part and denied in part. When the terms of the Compliance Order have been completed, as determined by the Director, Western Region, this enforcement action will be closed. Your receipt of this decision constitutes service under 49 C.F.R. § 190.5.

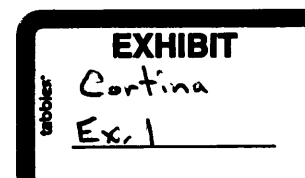
Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure:

cc: Mr. Manuel A. Lojo, Esq., Belle Fourche Pipeline Company
Mr. Chris Hoidal, Director, Western Region, PHMSA



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

_____))
In the Matter of))

))
Belle Fourche Pipeline Company,))

CPF No. 5-2004-5010

))
Petitioner.))
_____)

DECISION ON PETITION FOR RECONSIDERATION

On December 11, 2006, pursuant to 49 C.F.R. § 190.213, the Acting Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), issued a Final Order finding that Belle Fourche Pipeline Company (Belle Fourche or Petitioner) had violated various pipeline safety regulations,¹ assessing Petitioner a total civil penalty of \$61,500 for four of the violations, and ordering the company to take certain actions to comply with the pertinent regulations.

On December 18 and 22, 2006, Belle Fourche received personal service of the Final Order,² and on December 29, 2006, the company paid the entire penalty. Six weeks later, on February 16, 2007, Belle Fourche filed this Petition for Reconsideration (Petition) pursuant to 49 C.F.R. § 190.215. By letter dated February 17, 2009, PHMSA granted Petitioner an additional 60 days to supplement the record, and Belle Fourche did so by letter dated April 15, 2009.

Petitioner seeks reconsideration of only two of the seven Findings of Violation in the Final Order. First, Belle Fourche contests the finding in Item 3 that Belle Fourche incorrectly applied 49 C.F.R. § 195.303, the regulation providing a risk-based alternative to the pressure-testing requirements of 49 C.F.R. § 195.302, as applied to three of Belle Fourche's pipeline segments constructed with pre-1970 electric resistance-welded and lapwelded (ERW) pipe. Second, Petitioner contests the finding in Item 10 that Belle Fourche incorrectly applied 49 C.F.R.

¹ 49 C.F.R. §§ 195.1(a), (b)(1)-(4), 195.50(b), 195.54(a), 195.303, 195.402(a), 195.406, 195.408, 195.428(a), 195.432(b), and 195.436.

² On December 18, 2006, Mr. Greg Vineyard signed a U.S. Postal Service Domestic Return Receipt, PS Form 3811, at Petitioner's official corporate mailing address, acknowledging receipt of the Final Order on behalf of Mr. Manual A. Lojo, counsel for Belle Fourche. <https://wyobiz.wy.gov/Ecommerce/Common/FilingDetail.aspx?FilingNum=1980-000073155> (corporate information on Belle Fourche obtained on January 21, 2009, from official website of the Wyoming Secretary of State). On December 22, 2006, Mr. Vineyard signed another PS Form 3811, at Petitioner's Casper, Wyoming office, acknowledging receipt of the Final Order on behalf of Mr. Hank A. True III, president of Belle Fourche.

§ 195.406(a)(1) in establishing the maximum operating pressure (MOP) of two other pipeline segments because the company lacked adequate documentation of the design specifications or materials testing of the pipe in those segments. The Final Order assessed Belle Fourche a civil penalty of \$20,000 for Item 10 and directed it to take certain actions to correct the violations found in both Items 3 and 10. No penalty was assessed for Item 3.

As provided in 49 C.F.R. § 190.215(a)-(e), the pipeline safety regulations afford a respondent the opportunity to file a petition with the Associate Administrator for reconsideration of a final order. The purpose of this procedure is not to provide a right of appeal or de novo review, but to allow for the presentation of previously unknown or unavailable information or arguments and to permit the agency to reconsider and correct any errors in the final order. Consistent with these principles, the regulations provide that the Associate Administrator is not obliged to consider repetitious information, arguments, or petitions, and that a petitioner must provide valid reasons why any additional facts or arguments were not presented in a timely manner.

It is clear from the record in this case that the Petition could be summarily dismissed as untimely filed. Under the controlling regulation, a petition must be “received no later than 20 days after service of the final order upon the respondent.”³ PHMSA did not receive the Petition in this case until approximately seven weeks after the president of Belle Fourche and its counsel received personal service of the Final Order. Furthermore, Petitioner has not offered any valid reason why the additional evidence and arguments raised in this Petition were not submitted prior to issuance of the Final Order. Despite these deficiencies, I have reviewed the entire record of these proceedings as a matter of administrative discretion and concluded that the case presents a significant legal question that should be addressed. Based upon such review and for the reasons cited below, I am granting the Petition in part and denying it in part.

I. Discussion

A. Item 3 - Belle Fourche's Violation of 49 C.F.R. § 195.303

Item 3 of the Final Order found that Belle Fourche failed to comply with 49 C.F.R. § 195.303, as applied to three pipeline segments constructed with pre-1970 ERW pipe. Before discussing the specific circumstances of Petitioner's request for reconsideration, I will provide some useful background information on 49 C.F.R. § 195.302, the regulation that imposes a pressure-testing requirement on all hazardous liquid pipelines, and 49 C.F.R. § 195.303, the regulation that establishes an elective, risk-based alternative to such testing.

³ 49 C.F.R. § 190.215(a).

Section 195.302 prohibits the operation of a hazardous liquid pipeline that has not been subjected to a valid pressure test.⁴ However, that regulation includes certain exemptions, two of which are relevant to this proceeding. First, an interstate hazardous liquid pipeline constructed before January 8, 1971, may be operated without a pressure test, so long as the operator of that line established its MOP under 49 C.F.R. § 195.406(a)(5) on or before December 7, 1998.⁵ This exemption ensures that an adequate margin of safety exists in the absence of a pressure test⁶ by limiting the MOP of such a line to no more than “80 percent of the test pressure or highest operating pressure to which the pipeline was subjected for 4 or more continuous hours that can be demonstrated by recording charts or logs made at the time the test or operations were conducted.”⁷

Second, older hazardous liquid pipelines, including those constructed with pre-1970 ERW pipe, may be operated without a pressure test if the operator elects to use the risk-based alternative provided in 49 C.F.R. § 195.303 and a pressure test is not otherwise required under the criteria specified in that regulation.⁸ Those criteria require that each pipeline segment be classified on the basis of several risk indicators, such as location, product, volume, and probability of failure,⁹ and that a pressure test be performed on any segment constructed with pre-1970 ERW pipe unless a supplementary engineering analysis shows that the line is not susceptible to longitudinal seam failure.¹⁰

In this case, the Final Order found that Petitioner elected to use the 49 C.F.R. § 195.303 risk-based alternative to pressure testing for three pipeline segments constructed with pre-1970 ERW pipe.¹¹ It also found that while Belle Fourche had performed a metallurgical seam evaluation on samples from one of those lines (i.e., the Donkey Creek to Guernsey line), Petitioner was not able to adequately document that the pipe used throughout that line was qualitatively similar to the samples tested. The Final Order further found that Petitioner had not completed an adequate seam analysis of the Alzada to Belle Creek or the Belle Creek to Highway 14-16 pipeline segments. Therefore, the Final Order

⁴ Specifically, that regulation provides that “no operator may operate a pipeline unless it has been pressure tested under this [Subpart E] without leakage.” 49 C.F.R. § 195.302(a). The specific terms and conditions that must be followed in conducting such tests, including test-pressure and time requirements, are prescribed in 49 C.F.R. §§ 195.304-310.

⁵ 49 C.F.R. § 195.302(b)(1)(i), (c)(1)(ii).

⁶ Department of Transportation, Research and Special Programs Administration, Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines, 59 Fed. Reg. 29379 (Jun. 7, 1994) (providing reasons or bases for the adoption of 49 C.F.R. § 195.302).

⁷ 49 C.F.R. § 195.406(a)(5).

⁸ 49 C.F.R. § 195.302(b)(4).

⁹ 49 C.F.R. § 195.303(a)-(b).

¹⁰ 49 C.F.R. § 195.303(c)-(d).

¹¹ Those pipeline segments were the 8-inch Alzada to Belle Creek line, the 10-inch Belle Creek to Highway 14-16 line, and the 12-inch Donkey Creek to Guernsey line.

concluded that Belle Fourche violated § 195.303 as applied to each of these three segments.

While not entirely clear, Petitioner appears to seek reconsideration of these findings on the basis of 49 C.F.R. §§ 195.302(b)(1)(i) and (c)(1)(ii). In particular, Petitioner contends that the three segments in question were all constructed prior to January 8, 1971, thereby qualifying for the § 195.302(b)(1)(i) exception to mandatory pressure testing. On April 15, 2009, Belle Fourche also submitted a pressure chart from October 14, 2000, showing that “the Donkey Creek line” was continuously operated on that date at 1440 psi for more than four hours. Petitioner therefore argues that the “lawful” MOP of that line under §§ 195.302(b)(1)(i), (c)(1)(ii) and 195.406(a)(5) is 1150 psi (or 80% of 1440 psi), and that Item 3 of the Final Order should be withdrawn.

Petitioner’s argument, however, is not persuasive. First, Belle Fourche elected *not* to seek an exemption from the mandatory pressure-testing requirement under §§ 195.302(b)(1)(i) and (c)(1)(ii) for the three segments at issue.¹² Therefore, Petitioner’s compliance with those regulations is not relevant to whether it violated the requirements of § 195.303, the regulation that Belle Fourche *chose* to apply to these three pipeline segments.

Second, even if §§ 195.302(b)(1)(i) and (c)(1)(ii) were somehow relevant to Petitioner’s violation of § 195.303, Belle Fourche has not shown that it established the MOP of the Donkey Creek line under § 195.406(a)(5) on or before December 7, 1998. On the contrary, Petitioner’s pressure chart for that line is dated October 14, 2000, nearly two years *after* the deadline for establishing MOP on the basis of the highest continuous 4-hour operating pressure. Accordingly, Belle Fourche has not shown that it complied with §§ 195.302(b)(1)(i) and (c)(1)(ii), even if those regulations were applicable.

In sum, an operator is not required to use the risk-based alternative provided in § 195.303. However, if an operator *elects* to use that alternative and the segment in question is constructed with pre-1970 ERW pipe, then a valid engineering analysis must be performed to rebut the presumption that the line is susceptible to longitudinal seam failure and therefore requires pressure testing.¹³ There is no factual dispute here that the three segments at issue were all constructed, at least in part, with pre-1970 ERW pipe,¹⁴ and that Petitioner elected to use the § 195.303 risk-based alternative to pressure testing for those lines. Since the record does not reflect any valid engineering analysis to rebut the presumption of longitudinal seam failure for any of the three lines, I must deny

¹² Belle Fourche’s written procedures at the time of the inspection, attached as Exhibit 4 to the OPS inspector’s original violation report, state that the company had “elected to follow the risk-based alternative to pressure testing per 195.303” for these three lines.

¹³ 49 C.F.R. § 195.303(c)-(d).

¹⁴ The record indicates that the Alzada to Belle Creek line was constructed in 1966 with ERW pipe, that the Belle Creek to Highway 14-16 line was constructed in 1966 with ERW pipe, and that the Donkey Creek to Guernsey line was constructed in 1968 with ERW pipe.

Petitioner's request for reconsideration of Item 3 of the Final Order and affirm the finding that Belle Fourche violated 49 C.F.R. § 195.303.

B. Item 10 - Belle Fourche's Violation of 49 C.F.R. § 195.406

Item 10 of the Final Order found that Petitioner failed to comply with 49 C.F.R. § 195.406 in calculating the MOP of two lines constructed with pre-1970 ERW pipe. Specifically, it found that Belle Fourche lacked adequate documentation of the specified minimum yield strength (SMYS) and other material specifications of the pipe in the Twentymile to Guernsey line and the Highway 450 Station to 12-inch Junction line. The Final Order also found that as a result of such inadequate documentation, Petitioner had to use certain default values in establishing the MOP for those two lines under § 195.406(a)(1), the regulation that limits MOP on the basis of the internal design pressure of the pipe. Because the company had exceeded the MOP that PHMSA concluded should have been calculated on the basis of these default values, the Final Order concluded that Belle Fourche violated 49 C.F.R. § 195.406.

Having carefully reviewed the entire record, I conclude that the Finding of Violation in Item 10 cannot be sustained, yet not for the reasons cited by Petitioner.¹⁵ Section 195.406(a)(1) limits the MOP of hazardous liquid pipelines on the basis of their internal design pressure, a value that is determined by using a formula set forth in 49 C.F.R. § 195.106.¹⁶ However, PHMSA has previously determined that pipelines designed, constructed, and installed prior to April 1, 1970, are not subject to the requirements of § 195.406(a)(1).

Specifically, in response to a request from the American Petroleum Institute on the relationship between 49 C.F.R. §§ 195.106 and 195.406(a)(1) and the potential retroactive application of those regulations to existing pipelines, PHMSA's predecessor agency, the Materials Transportation Bureau, issued a formal letter of interpretation.¹⁷ Dated October 15, 1976, the letter states that "§ 195.406(a)(1) only applies to pipelines to which § 195.106 applies (i.e., pipelines which are constructed, relocated, or otherwise changed on or after April 1, 1970, the effective date of [section] 195.106)."¹⁸ It also states that "[w]here § 195.406(a)(1) is inapplicable, one of the other standards in [section] 195.406(a) would govern the maximum

¹⁵ In its Petition, Belle Fourche asserts arguments previously considered and rejected in the Final Order. First, Petitioner argues that it has shown through credible evidence that the SMYS of the pipe used in one of the disputed lines is 60,000 psi, and that the SMYS of the pipe used in the other line is 42,000 psi. Petitioner also introduces, as Exhibit 2 to its Petition, an affidavit from the company's long-time superintendent of operations, Mr. Lyle Sessions, to corroborate the evidence previously submitted with its Response, including a construction map that allegedly shows the SMYS and other specifications of the pipe used in the two segments in question. Given the ultimate disposition of the Finding of Violation in Item 10, further consideration of this evidence is unnecessary.

¹⁶ Under 49 C.F.R. § 195.106, the internal design pressure of a pipe is calculated by inputting certain specific criteria into a predetermined formula.

¹⁷ Operating Pressure for Platform Piping; Interpretation, Department of Transportation, Materials Transportation Bureau, Docket No. OPSO-35 (Oct. 15, 1976).

¹⁸ *Id.*

allowable operating pressure.” This 1976 letter of interpretation remains valid today and is consistent with the long-standing statutory prohibition, currently codified at 49 U.S.C. § 60104(b), on the retroactive application of design, construction, and initial testing standards to pipelines in existence when such standards are adopted.¹⁹

It is undisputed that the Twentymile to Guernsey line and Highway 450 Station to 12-inch Junction line were both designed, constructed, and installed in 1968, several years before the effective dates of 49 C.F.R. §§ 195.406(a)(1) and 195.106.²⁰ Therefore, in accordance with the 1976 letter of interpretation and the statutory prohibition on retroactive application of design and construction standards, I find that Belle Fourche had no obligation to consider § 195.406(a)(1) in establishing the MOP of these two pipeline segments. Accordingly, I grant the Petition as to Item 10 of the Final Order and withdraw the Finding of Violation with respect to 49 C.F.R. § 195.406.

Relief Granted

Based on the information provided in the Petition, a review of the relevant portions of the record, and for the reasons stated above, I find that Belle Fourche did not violate 49 C.F.R. § 195.406 in calculating the MOP for the Twentymile to Guernsey and Highway 450 Station to 12-inch Junction lines. Therefore, I withdraw Item 10 of the Final Order, the \$20,000 civil penalty associated with that Finding of Violation, and the compliance actions related to that finding and outlined in paragraph 3 of the Compliance Order. The Final Order is otherwise affirmed.

A copy of this Final Order shall be forwarded to the Federal Aviation Administration for the proper disposition and refund of the \$20,000 penalty that was assessed and collected for Item 10 of the Final Order.

This decision on reconsideration is the final administrative action in this proceeding.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued

¹⁹ 49 U.S.C. § 60104(b) (“Nonapplication.—A design, installation, construction, initial inspection, or initial testing standard does not apply to a pipeline facility existing when the standard is adopted.”); *see also*, *Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 208-09 (1988) (holding that regulations are presumed not to apply retroactively).

²⁰ The Final Order did not consider whether any of the lines in question had been replaced, relocated, or otherwise changed on or after the date that the applicable standards were adopted. If so, Belle Fourche would be required to comply with 49 C.F.R. §§ 195.106 and 195.406(a)(1) in establishing the MOP of those lines.

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

_____)
In the Matter of)

Belle Fourche Pipeline Company,)

Respondent)
_____)

CPF No. 4-2004-5030

FINAL ORDER

Between May 17 and 19, 2004, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) Office of Pipeline Safety conducted an on-site pipeline safety inspection of Respondent's integrity management program (IMP) in Casper, Wyoming. As a result of the inspection, the Director, Western Region, PHMSA issued to Respondent, by letter dated September 30, 2004, a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Notice of Amendment (Notice).¹ In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$50,000 for one of the alleged violations, and proposed that Respondent take certain measures to correct another of the alleged violations. The Notice also alleged inadequacies in Respondent's IMP and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. § 195.452.

Respondent failed to respond within 30 days after it had received the Notice. Under 49 C.F.R. § 190.209(c), Respondent's failure to respond constitutes a waiver of Respondent's right to contest the allegations in the Notice and authorizes the entry of this Final Order.

FINDINGS OF VIOLATION

Respondent did not contest the alleged violations in the Notice. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Part 195 as more fully described in the Notice:

¹ Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) succeeded Research and Special Programs Administration as the agency responsible for regulating safety in pipeline transportation and hazardous materials transportation. See, section 108 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). See also, 70 Fed. Reg. 8299 (February 18, 2005) re delegating the pipeline safety authorities and functions to the PHMSA Administrator.

Item 2(a)—49 C.F.R. § 195.452(c)—failing to establish a baseline integrity assessment schedule prioritizing its pipeline segments based on all risk factors that reflect the risk conditions on each segment; and

Item 2(b)—49 C.F.R. § 195.452(c)—failing to include a seam failure susceptibility analysis on all pipeline segments containing low frequency electric resistance welded pipe (ERW) and lap welded pipe to determine which segments are susceptible to seam failure prior to selecting baseline integrity assessment methods for applicable segments.

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 \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

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.

Item 2(a) of the Notice proposed a civil penalty of \$50,000.00 for violation of 49 C.F.R. § 195.452(c). Respondent violated 49 C.F.R. § 195.452(c) in that it did not develop a BAP that uses risk factors in establishing the base line assessment methods and schedule. Prioritizing pipeline segments for integrity assessments by risk is a key step in managing pipeline integrity. Respondent did not provide information that would warrant a reduction in the civil penalty amount proposed in the Notice.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$50,000 for violation of 49 C.F.R. § 195.452(c). Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business.

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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$50,000 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 in referral of the matter to the Attorney General for appropriate action in a United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 2(b) in the Notice. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under Chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to Item 2(b) of the Notice, perform a seam failure susceptibility analysis on all pipeline segments containing low-frequency (ERW) and lap welded pipe to determine which segments are susceptible to seam failure. This analysis must conclude which assessment methods are capable of addressing their specific seam issues;
2. Document the costs associated with fulfilling this Compliance Order and submit the documentation to the Director, Western Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 12300 West Dakota Ave, #110, Lakewood, Colorado 80228. Please refer to CPF No. 5-2004-5030 on all correspondence; and
3. Complete the above items within 60 days of receipt of this Final Order and submit the required documentation and procedures to the Director, Western Region, Office of Pipeline Safety.

The Director, Western Region, may grant an extension of time to comply with any of the required items upon a written request timely submitted by Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in the assessment of civil penalties of not more than \$100,000 per day and in referral to the Attorney General for appropriate relief in a United States District Court.

AMENDMENT OF PROCEDURES

Items 1(a-d), 2(c-d), 3(b), 4, 5(a-b), 6, 7(a-d), 8(a-f), 9(a-d), 10(a-b), and 11 of the Notice alleged inadequacies in Respondent's IMP and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. § 195.452.

Respondent did not contest the Notice of Amendment. Accordingly, I find that Respondent's procedures as described in the Notice are inadequate to ensure safe operation of its pipeline

system. Pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. §190.237, Respondent is ordered to make the following revisions to its procedures:

1. Amend its IMP to include an evaluation of each individual pipeline facility to determine whether a release incident could affect a High Consequence Area (HCA). This analysis must include potential facility release volumes;
2. Amend its IMP to properly define the boundaries of those segments that could affect a HCA. A properly defined pipeline segment could affect a HCA at any location between its end points;
3. Amend its IMP to include technical justification showing that their use of the one mile area of impact for on-land spills is conservative;
4. Amend their IMP to include technical justification for the assumption that any segment of pipeline that crosses a stream with a HCA is considered to affect that HCA;
5. Amend its IMP BAP so that it consolidates all portions of Respondent's system and includes: 1) the required assessment schedule; 2) an explanation of assessment methods selected and; 3) the risk analysis results used to establish the schedule;
6. Amend its IMP BAP to include a process for revising the BAP and appropriately documenting those revisions;
7. Amend its IMP baseline assessment schedule to ensure that 50% of Category 2 pipe are assessed by the applicable regulatory deadline;
8. Amend its IMP to include a process for the incorporation of changes that may cause new segments of its pipeline to affect a HCA;
9. Amend its IMP to include training and qualification requirements for personnel performing key integrity management functions (e.g., review of assessment results, risk analysis);
10. Amend its IMP to include criteria for: 1) vendor in-line-inspection (ILI) tool tolerances; 2) vendor reporting requirements; 3) operator/vendor process for resolution of variances and problems; 4) vendor ILI assessment personnel qualifications. One possible solution is to develop vendor specifications;
11. Amend its IMP to include a process to correlate ILI indications with other data such as cathodic protection (CP) monitoring, one-call records, etc;
12. Amend its IMP to include processes for validating assessment results and for making tool tolerance adjustments resulting from validation activities;

13. Amend its IMP to include a method for determining the amount of immediate repair pressure reduction, or provide guidance to use an alternate 20% pressure reduction, when ASME/ANSI B31.4 451.7 does not apply;
14. Amend its IMP to include a process for the prioritization and scheduling of remediation activities resulting from assessment activities [Ref. §192.452(h)(3)];
15. Amend its IMP to include procedures to notify PHMSA if the remediation schedule can not be met and safety can not be provided through a temporary reduction in pressure;
16. Amend its IMP risk analysis process to ensure risk factors reflect the risk conditions on the pipeline segment. The factors an operator must consider include, but are not limited to all of the risk factors listed under § 195.452(e)(1);
17. Amend its IMP risk analysis process to ensure that the dominant causes of risk are readily identifiable;
18. Amend its IMP risk analysis process to ensure that probability of failure (POF) categories are not weighted equally, but instead properly reflect system-specific and industry threat history;
19. Amend its IMP risk analysis process to ensure that consequence of failure (COF) categories weight public safety and environmental considerations appropriately and that do not over emphasize non-safety considerations such as business impacts;
20. Amend its IMP risk analysis process to ensure that the application of the risk analysis process is to pipeline segments that could affect a HCA and not to pipeline sections that have in their length one or more pipeline segment(s) that could affect HCAs;
21. Amend its IMP risk analysis process to include the application of the risk analysis process to all pipeline facilities;
22. Amend its IMP preventative and mitigative measures to include a determination of the likelihood of a pipeline release occurring and how such a release could affect a HCA. At a minimum the following risk factors shall be considered; terrain surrounding the pipeline segment, including drainage systems such as small streams and other smaller waterways that could act as a conduit to the HCA, elevation profile, characteristics of the product transported, amount of product that could be released, possibility of a spillage in a farm field following the drain tile into a waterway, ditches along side a roadway the pipeline crosses, physical support of the pipeline segment such as by a cable suspension bridge, exposure of the pipeline to operating pressure exceeding established maximum operating pressure;

23. Amend its IMP to include an evaluation of potential preventative and mitigative measures to prevent or minimize the likelihood of a pipeline release. The preventative and mitigative measures may include, but are not limited to; implementing damage prevention best practices, better monitoring of CP where corrosion is a concern, establishing shorter inspection intervals, installing emergency flow restriction devices (EFRDs) on the pipeline segment, modifying the systems that monitor pressure and detect leaks, providing additional training to personnel on response procedures, conducting drills with local emergency responders and adopting other management controls;
24. Amend its IMP preventative and mitigative measures to include a process to evaluate the capability of leak detection on their system and a process to modify their leak detection capability, as necessary, to protect HCAs. The evaluation process must, at least, consider, the following factors—length and size of the pipeline, type of product carried, the pipeline's proximity to the HCA, the swiftness of leak detection, location of nearest response personnel, leak history, and risk assessment results;
25. Amend its IMP preventative and mitigative measures to include an analytical process for determining if an EFRD is needed on a pipeline segment to protect a HCA in the event of a hazardous liquid pipeline release. At a minimum this analysis shall consider the following factors—the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline segment and the HCA, and benefits expected by reducing the spill size;
26. Amend its IMP to include processes for the technical justification of the reassessment interval for each assessment section. Five years is not a default reassessment interval. The reassessment interval must be justified;
27. Amend its IMP to include provisions for notifications to PHMSA for: 1) reassessment variances and 2) the use of other technology, as needed;
28. Amend its IMP to include a monitoring and evaluation process for determining the program's effectiveness in assessing and evaluating the integrity of each pipeline segment in protecting the HCAs; and
29. In complying with each of these items in this Amendment of Procedures section, ensure that the required processes and procedures have the four characteristics identified as (a) through (d) below. The items all relate to the need for Respondent to improve its IMP documentation. PHMSA recognizes that a number of program elements are still in the development stage, and that documentation will continue to evolve as methods are fully developed and defined. However, these procedures as well as the management and analytical process guidance used to implement the program must be of sufficient detail and specificity to:

- a. Clearly articulate the necessary steps to perform each program element and ensure repeatability,
 - b. Describe the key input information sources,
 - c. Define the process output products, their documentation (including the justification for decisions), and document retention requirements, and
 - d. Specify organizational responsibilities for performing key process steps.
30. Submit the amended procedures and technical justifications to the Director, Western Region, PHMSA within 30 days following receipt of this Order Directing Amendment.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by Respondent demonstrating good cause for an extension.

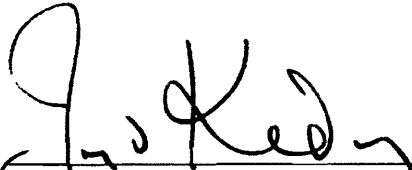
Failure to comply with this Order Directing Amendment may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

WARNING ITEM

The Notice did not propose a civil penalty or corrective action for Item 3(a). Therefore, this is considered to be a warning item. Respondent is warned that if it does not take appropriate action to correct this item, enforcement will be taken if a subsequent inspection reveals a violation.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. 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 and amendment of procedures, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective on receipt.

for



 Stacey Gerard
 Associate Administrator
 for Pipeline Safety

JUL 10 2006

 Date Issued



U S Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

400 Seventh Street, S W
Washington, D C 20590

JAN - 9 2007

Mr. Hank A. True III
President
Bridger Pipeline LLC
455 N. Poplar
Casper, WY 82602

Re: CPF No. 5-2005-5017

Dear Mr. True:

Enclosed is the Final Order issued by the Acting Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$100,000, and specifies actions to be taken to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the Compliance Order, as determined by the Director, Western Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
PHMSA-Office of Pipeline Safety

Enclosure

cc: Mr. Manuel A. Lojo, Esq., Bridger Pipeline LLC
Mr. Chris Hoidal, P.E., Director, Western Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

In the Matter of

Bridger Pipeline LLC,

Respondent

CPF No. 5-2005-5017

FINAL ORDER

On December 7, 2004, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration's (PHMSA's)¹ Office of Pipeline Safety conducted an on-site pipeline safety inspection of Respondent's Operator Qualification (OQ) Program, including records and procedures, in Casper, Wyoming. As a result of the inspection, the Director, Western Region, PHMSA, issued to Respondent, by letter dated March 15, 2005, 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 committed violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$100,000 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated April 21, 2005 (Response). Respondent contested the allegations, offered information in explanation of the allegations, and requested that the proposed civil penalty be rescinded. Respondent did not request a hearing, and therefore has waived its right to one.

¹ Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) succeeded Research and Special Programs Administration as the agency responsible for regulating safety in pipeline transportation and hazardous materials transportation. See, section 108 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). See also, 70 Fed. Reg. 8299 (February 18, 2005) re-delegating the pipeline safety authorities and functions to the PHMSA Administrator.

FINDINGS OF VIOLATION

(Contested)

Item 1 in the Notice alleged Respondent violated 49 C.F.R. § 195.505 (a-g) by failing to have a written qualification program in affect to meet the above regulations at the time of the inspection. Respondent purchased the pipeline facilities from Shell Pipeline Company LP (Shell). Although Bridger retained former Shell employees to operate and maintain the pipeline system, Respondent did not incorporate the qualification records of these individual workers into an OQ Program that is implemented by Respondent. Therefore, at the time of inspection, Respondent did not have and were not following its own OQ Plan.

In its Response, Respondent disagreed with the allegations in the Notice. Respondent purchased the pipeline system on or about December 1, 2003 and retained many employees from the previous owner/operator.² These employees may have been qualified under the previous employers OQ Plan but this does not relieve Respondent from having and implementing its own OQ Plan. Furthermore, Respondent contends that its OQ Plan was complete except for the individual covered task list; this is moot because Respondent had not yet adopted nor implemented the contractor written OQ Plan.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.505 (a-g) by failing to have and follow its own written qualification program.

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 \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

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. The Notice proposed a total civil penalty of \$100,000 for violation of 49 C.F.R. § 195.505 (a-g).

Item 1 of the Notice proposed a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.505 (a-g), as more fully described in the Notice and as discussed above, in that Respondent failed to have an OQ Plan at the time of the inspection. Company and contract employees were

² At PHMSA Western Region's request, Respondent submitted supplemental information after the inspection, which included a January 4, 2005 cover letter and December 17, 2004 draft plan that had yet to be reviewed completely within Respondent's organization as stated in the cover letter

performing covered tasks without the existence or guidance of Respondent's own implemented current compliant OQ Plan. At the time of inspection, Respondent had been out of compliance with the regulations for about one year.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$100,000. Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business.

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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$100,000 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 in referral of the matter to the Attorney General for appropriate action in a United States District Court.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to Item 1 in the Notice. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under Chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations. Respondent must complete the following elements of the OQ Program—

1. Within 30 days following receipt of the Final Order, complete a covered task list. In accordance with the requirements of 49 C.F.R. § 195.505, identify covered tasks and develop a covered task list. Refer to 49 C.F.R. § 195.501(b) for a description of covered tasks;
2. Within 90 days following receipt of the Final Order, complete the 49 C.F.R. § 195.503 defined evaluation and qualification of individuals performing covered tasks and submit the process for the evaluation of individuals performing covered tasks to the Western Region Office;
3. Within 30 days following receipt of the Final Order, develop a process to allow individuals that are not qualified pursuant to 49 C.F.R. Part 195 Subpart G—Qualification of Pipeline Personnel—to perform a covered task if directed and

observed by a qualified individual and submit that process to the Western Region Office;

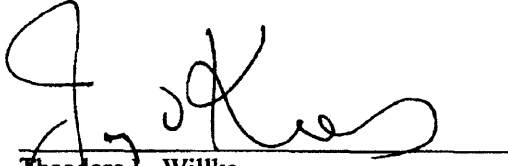
4. Within 30 days following receipt of the Final Order, develop a process to evaluate an individual if Respondent has reason to believe that the individual's performance of a covered task contributed to an accident as defined in 49 C.F.R. Part 195 and submit that process to the Western Region Office;
5. Within 30 days following receipt of the Final Order, develop a process to evaluate an individual if the operator has reason to believe that the individual is no longer qualified to perform a covered task and submit that process to the Western Region Office;
6. Within 30 days following receipt of the Final Order, develop a process to communicate changes that affect covered tasks to individuals performing those covered tasks and submit the process to the Western Region Office;
7. Within 30 days following receipt of the Final order, develop a process to identify those covered tasks and the intervals at which evaluation of the individual's qualifications are needed and submit that process to the Western Region Office;
8. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Director, Western Region, PHMSA. Costs shall be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure; and
9. When appropriate actions have been completed and supporting records provided in regard to the respective item as indicated above in this Compliance Order, submit documentation of procedures, costs and evidence of actions taken to the Director, Western Region, Pipeline and Hazardous Materials Safety Administration, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228. Please refer to CPF No. 5-2005-5017 on any correspondence or communication in these matters.


The Director, Western Region, may grant an extension of time to comply with any of the required items upon a written request timely submitted by Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. 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, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective on receipt.



 Theodore L. Willke
Acting Associate Administrator
for Pipeline Safety

JAN - 9 2007

Date Issued



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Ave., S.E.
Washington, DC 20590

JUL 14 2008

VIA OVERNIGHT COURIER AND FACSIMILE TO: (303) 866-0200

Mr. Hank True
President
Belle Fourche Pipeline Company
455 N. Poplar St.
Casper, WY 82601-1783

Re: CPF No. 5-2007-5002

Dear Mr. True:

Enclosed is the decision on the petition for reconsideration filed by Belle Fourche Pipeline Company in the above-referenced case. For the reasons specified therein, the decision affirms the Final Order and denies your request for a stay. However, the deadline for completion of the Compliance Order has been extended to 40 days from receipt of the decision.

This decision is the final administrative action in this proceeding. Your receipt of the document constitutes service under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Colin G. Harris, Esq.
Holme Roberts & Owen LLP
1801 13th St., Ste 300
Boulder, CO 80302-5387
Fax: (303) 866-0200

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

_____)
In the Matter of)

Belle Fourche Pipeline Company,)

Petitioner.)
_____)

CPF No. 5-2007-5002

DECISION ON RECONSIDERATION

In accordance with 49 U.S.C. § 60118 and 49 C.F.R. § 190.213, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Final Order in this matter on April 28, 2008, finding that Belle Fourche Pipeline Company (Belle Fourche or Petitioner) committed certain violations of the agency's hazardous liquids pipeline safety regulations. Specifically, the Final Order found that Belle Fourche had violated § 195.110(a), relating to a lack of proper supports for external loads and vibration on its pipeline facilities (Item 1), and § 195.583, relating to a failure to perform inspections for atmospheric corrosion (Item 8). In addition, it found that Belle Fourche had committed 10 other probable violations and advised the company to correct them or face possible future enforcement action. Finally, the Final Order included a compliance order for Items 1 and 8 but did not seek any civil penalties.

Under § 190.215, a respondent may file a petition for reconsideration of a final order issued pursuant to § 190.213, requesting that the Associate Administrator reconsider his decision. Although the Associate Administrator does not consider repetitious information, arguments or petitions, a respondent may request consideration of additional facts or arguments, provided that the company submits the reason they were not presented prior to issuance of the final order. § 190.215. The purpose of this rule is to allow a respondent to present information or arguments that were unavailable or unknown prior to issuance of the final order, as well as to allow the agency to correct any error in the final order, but not to provide the operator an appeal or *de novo* review. Belle Fourche's Petition for Reconsideration in this case does not request consideration of additional facts but presents a mixture of legal issues, some of which are based upon alleged errors in the Final Order. Petitioner's arguments are discussed in greater detail below.

Item 1: The Final Order found that Petitioner violated 49 C.F.R. § 195.110(a) by failing to provide for anticipated external loads, vibration, thermal expansion, and contraction in the design of certain facilities that had been constructed in 2000. Petitioner contends that PHMSA erred in stating in the Final Order that Belle Fourche did not "contest" this allegation. Belle Fourche also contends that the agency failed to meet its burden of proving the allegation.

As for the first contention, it is true that Petitioner did not admit the allegations set forth in the Notice and, in fact, presented evidence that it had taken efforts to address the issue of temporary supports by making certain repairs. The statement in the Final Order that Belle Fourche did not “contest” the allegation merely reflected the fact that the company had not presented any evidence disputing the basic factual allegation that, as of the date of the inspection, Belle Fourche’s facilities at the Sussex pump station and breakout tank still had temporary supports, which failed to meet the requirements of § 195.110(a).

I have reconsidered the record and still can find no indication that Belle Fourche presented any evidence that would contradict the allegations in the Notice. In Belle Fourche’s March 8, 2007 Response, the company simply stated, “This matter has been addressed.” Response at 3. In its October 11, 2007 Post-Hearing Submittal (Brief), Belle Fourche addressed Item 1 only by stating, “OPS also alleged that Belle Fourche was using temporary blocks as supports at a station. As the testimony demonstrated, this matter has been corrected.” Brief at 14. Finally, in its Petition, Belle Fourche noted that it had submitted “both direct testimony and an affidavit regarding this matter. Specifically, Belle Fourche’s live witness . . . testified that the supports at the Sussex station were repaired after OPS’ inspection that identified the issue.” Petition at ¶ 2.

All of these statements and evidence speak to the company’s efforts to address the noncompliant condition *after* PHMSA had already identified it. Regardless of whether or not Petitioner “contested” the allegation, Petitioner’s only evidence consisted of statements concerning subsequent actions to remedy the violation, which are irrelevant to the issue of whether or not a violation occurred in the first place.

As for the second contention that PHMSA did not meet its burden of proving this violation, I have reconsidered the record and find that the agency has indeed met its burden of proving the allegations in Item 1. The evidence showed that during the agency’s 2005 inspection, the PHMSA inspector observed that the company was still using temporary supports for pipeline facilities that had been constructed in 2000. The inspector photographed the areas at issue and those photos are in the record. Belle Fourche was using stacked wooden and concrete block supports that were not securely fastened to the ground or other permanent feature. Excessive vibration could cause such temporary wooden and concrete blocks to topple.

For the reasons stated above, I find no reason to alter the finding in the Final Order that Belle Fourche violated § 195.110(a). The finding of violation and terms of the compliance order associated with the violation remain in effect, subject to the revised deadline set forth below.

Item 8: The Final Order also found that Petitioner violated 49 C.F.R. § 195.583 by failing to inspect each pipeline or portion of pipeline exposed to the atmosphere for evidence of atmospheric corrosion, with particular attention given to pipe surfaces at pipe supports. Petitioner contends, first, that because the proposed compliance order in the Notice contained a typographical error that referenced “Item 9” instead of “Item 8,” there was no valid compliance term associated with Item 8 in the Final Order. Furthermore, Petitioner contends that PHMSA would be required to amend the Notice in order to obtain such relief, but that to allow such an amendment at this point would violate the company’s due process rights and be arbitrary,

capricious, and contrary to law. Second, Belle Fourche contends that PHMSA is apparently willing to accept only written “documentation” of Belle Fourche’s actions regarding this Item and unwilling to consider direct testimony or other forms of relevant and reliable evidence. These two issues warrant separate discussion.

Procedural Issue. The Notice contained eight probable violations (Items 1 – 8). Each probable violation included a “[s]tatement of the . . . regulations . . . which the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based,” as required by § 190.207. The probable violation identified as “Item 8” in the Notice alleged that Belle Fourche violated § 195.583 by failing to inspect its pipeline for atmospheric corrosion. The proposed compliance order in the Notice specified that Belle Fourche would be required to inspect its pipeline for atmospheric corrosion to come into compliance.

The proposed compliance order, however, mistakenly referred to this alleged violation as “Item 9” instead of “Item 8.” Notice at 6. This error was compounded elsewhere in the Notice when Item 8 was included in a list of warning items for which the agency “decided not to conduct additional enforcement.” Notice at 4. There were several indications early in the proceeding that this was a typographical error. First, the subject matter of the proposed compliance order (atmospheric corrosion inspections) was clearly associated with the allegation in Item 8 stating that Belle Fourche had violated § 195.583 by failing to inspect its pipeline for atmospheric corrosion. Second, there was no probable violation listed as “Item 9” in the Notice. Third, an earlier Notice of Probable Violation issued to Belle Fourche on February 21, 2006, had charged the company with the same violation of § 195.583 and had proposed a compliance order (without an error); that Notice was withdrawn and reissued in the form of the present Notice.¹ Finally, on April 24, 2007, roughly four months prior to the hearing, PHMSA provided Belle Fourche with a copy of the agency’s Violation Report that indicated on pages 4 and 5 that PHMSA had proposed a compliance order for the alleged violation of § 195.583.

Upon receipt of the Notice, Belle Fourche apparently recognized the typographical error and acknowledged the proposed compliance terms in its Response, stating, “There is no ‘Item 9’ to the NPV. Accordingly, this purported remedial requirement is a nullity. On the other hand, to the extent the order requires the requested relief, and assuming a violation existed . . . [the corrective action is unnecessary or excessive].” Response at 3. If there were still any confusion as to whether Item 8 was an allegation of violation with a proposed compliance order, PHMSA brought up the issue at the hearing and explained that the alleged violation of § 195.583 was not merely a warning but included the proposed corrective action mistakenly ascribed to “Item 9” in the proposed compliance order. At that point, Belle Fourche was given an opportunity to respond to the allegation, both at the hearing and through written materials submitted after the hearing.

Belle Fourche took advantage of both opportunities. Discussion at the hearing and testimony by the company’s witnesses concerned Belle Fourche and the other co-respondents’ compliance

¹ The original notice of probable violation was withdrawn and reissued to Belle Fourche and two other companies in response to objections by Belle Fourche that the proper entities had not been named. Final Order at 1.

with § 195.583 without distinguishing between them.² Petitioner's counsel also filed a joint Post-Hearing Submittal on behalf of Belle Fourche and the other respondents. Although he neglected to mention Belle Fourche by name in his discussion of § 195.583, the statements and evidence put forward in the Post-Hearing Submittal were found by PHMSA to be applicable in Belle Fourche's defense because they repeated the same discussion that took place at the hearing regarding all three companies' compliance with § 195.583 and because the allegations against all three companies raised the same factual questions about whether or not the companies' *single* manual of procedures was compliant and whether the companies' personnel actually performed the required inspections.³

The Final Order found that Belle Fourche had been provided actual notice of the proposed compliance terms for Item 8 despite the typographical error in the Notice and had "availed itself of the opportunity to contest the allegation" by submitting evidence and statements to defend against the charge it violated § 195.583. Final Order at 3. The evidence and statements submitted by Belle Fourche were fully considered and duly reflected in the Final Order.

Petitioner nevertheless argues that since the Notice contained a typographical error, the issue of compliance with § 195.583 was not a subject of the proceeding. Petitioner further argues that the only way such a defect can now be cured is for PHMSA to amend the Notice. Since PHMSA has not amended the Notice, Petitioner argues that any decision on the issue at this point would violate its right to due process. On the contrary, I am aware of no legal requirement that PHMSA must formally amend a Notice to correct a typographical error that has been pointed out by the agency in a timely manner and acknowledged by the respondent. PHMSA regulations state, "The Associate Administrator, OPS may amend a notice of probable violation at any time prior to issuance of a final order," but do not specify the circumstances under which amendment is required. § 190.207(c). Nor does the Administrative Procedure Act set forth any procedural requirements that apply to this informal adjudication, because the Federal pipeline safety laws do not require that this adjudication be "on the record" pursuant to 5 U.S.C. § 554(a).

Belle Fourche claims that the issuance of the Final Order without formal amendment would violate due process but cites no authority to support its position. Federal courts have held the contrary, stating that "technical flaws in a notice can be cured if the actual conduct of the administrative proceedings provides notice to the participants of that which is under consideration." Nat'l Steel & Shipbuilding Co. v. Office of Workers' Comp. Programs, 616 F.2d 420, 421 (9th Cir. 1980), citing, among other cases, Golden Grain Macaroni Co. v. FTC, 472 F.2d 882 (9th Cir. 1972). In Golden Grain, the court held there was no due process violation even though the complaint did not explicitly allege a violation of the law the respondent was ultimately found to have violated. An examination of the proceedings by the court showed "that

² The hearing concerned Belle Fourche and two separate cases against related companies. All three respondents were charged with the same violation of § 195.583 because they shared both the same manual of written procedures, as well as certain employees whose actions served as the basis for the alleged violations. A single hearing was held and the companies jointly submitted a single Post-Hearing Submittal.

³ In fact, Petitioner acknowledges in its Petition that the evidence presented at the hearing was put forward in Belle Fourche's defense, stating, "In the consolidated hearing, Belle Fourche provided direct testimony . . . about compliance with 49 C.F.R. § 195.583, based on . . . personal knowledge, and submitted [an] affidavit on the same point." Petition at ¶ 11.

while there was some confusion as to the nature of the charge, all facts relevant to the alleged unlawful acts were fully litigated.” *Id.* at 886. As stated by the court, “[T]here is no due process violation, if the party proceeded against understood the issue and was afforded full opportunity to justify its conduct.” *Id.* at 885 (internal citations omitted).

The record in this case reflects that Belle Fourche received actual notice of the nature of the allegation in Item 8 and of the nature of the proposed compliance terms in the mislabeled “Item 9” of the proposed compliance order. Petitioner was given ample opportunity to defend itself throughout the proceeding and actually presented evidence on the facts relevant to the alleged violation in Item 8. Therefore, I find there has been no violation of law or regulation arising out of the typographical error in the Notice.

Evidentiary Issue. With respect to Item 8, Petitioner further disputes “the apparent finding in the NPOV [*sic*] that the only relevant or reliable evidence to defend against liability is ‘documentation.’” Petition at ¶ 11. Petitioner cites the Federal Rules of Evidence and PHMSA’s procedural regulations in support of its argument that evidence other than documentation must be accepted. Petitioner notes that it provided testimony at the hearing about compliance with § 195.583 and submitted an affidavit based on a witness’s personal knowledge. Belle Fourche concludes, “To allow OPS to prevail because Respondent did not spoon-feed OPS some unarticulated form of ‘documentation’ that Respondent can only guess at would turn the burden of proof on its head.” Petition at ¶ 11.

Contrary to Petitioner’s assertion, PHMSA does not require operators to “spoon-feed OPS some unarticulated form of documentation,” but requires each operator to “maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test” required by § 195.583 for a period of at least 5 years. § 195.589(c). Also contrary to Petitioner’s suggestion that PHMSA appears willing to consider only documentary evidence (or lack thereof), I have carefully reviewed and weighed *all* of the evidence submitted by Belle Fourche in accordance with the agency’s regulations. PHMSA’s regulation governing informal hearings provides that a respondent “may offer any facts, statements, explanations, documents, testimony or other items which are relevant to the issues under consideration.” § 190.211(f). In addition, pursuant to § 190.213 and prior to the issuance of a final order, I review all materials submitted by a respondent, including materials submitted by the respondent during and after a hearing.

Petitioner’s reliance on the Federal Rules of Evidence is misplaced because those rules govern proceedings in the courts of the United States and other judicial proceedings, not informal adjudications before this agency. In the present case, I have considered all of the evidence presented to the presiding official at the hearing and each written document, including affidavits, submitted by Belle Fourche throughout this proceeding. Upon reconsideration of all such evidence and legal arguments, I affirm that the evidence supports finding Petitioner violated § 195.583 by failing to perform inspections for atmospheric corrosion.

This evidence included various forms of evidence. During the PHMSA inspection, Belle Fourche could not produce any record that it had performed atmospheric corrosion inspections. The PHMSA inspector documented a statement made by Petitioner’s lead engineer to the inspector that the company had no plans to perform inspections for atmospheric corrosion. Areas of

Petitioner's pipeline facility were photographed showing atmospheric corrosion that appeared to have been there for a significant length of time. At the hearing and in an affidavit, Petitioner's lead engineer acknowledged that "specific external corrosion inspection procedures were not necessarily written down," although the company's operations and maintenance (O&M) manual included a "reference to external corrosion." Brief Ex. 6 at ¶ 28. The witness stated further that "any significant external corrosion that was found [during routine O&M inspections] would have been addressed." Brief Ex. 6 at ¶ 28.

The fact that Petitioner has no record of inspecting for or discovering atmospheric corrosion on its pipeline facility is indicative of a failure to perform the required inspections, particularly in light of this other evidence. Furthermore, I find unpersuasive the statements by Petitioner's lead engineer that the company's routine O&M inspections complied with § 195.583. Although he stated the company performed routine inspections, he never stated explicitly that the company always inspected for atmospheric corrosion. Instead, he merely indicated that if the company found any external corrosion during routine inspections, it would have been addressed. Brief Ex. 6 at ¶ 28.

There is a marked difference between purposefully inspecting for atmospheric corrosion and merely performing routine general inspection. In the latter, an operator may not find a condition the operator is not specifically looking for. If an operator's procedures do not require checks for atmospheric corrosion, employees may not necessarily look for and record such conditions. This appears to have been the situation in this case. Petitioner did not have any procedures for performing atmospheric corrosion inspections and photographs of Petitioner's facility showed that atmospheric corrosion had apparently been present but ignored for a significant period of time in the course of Petitioner's routine inspections.

Having reconsidered all of the evidence concerning Belle Fourche's compliance with § 195.583, I find that PHMSA put forth sufficient evidence of noncompliance to meet its burden of proof and that the greater weight of evidence supports the finding that Belle Fourche violated the regulation as alleged. Accordingly, the finding of violation and terms of the compliance order remain in effect, subject to the revised deadline set forth below.

Request for Stay or for Extension of Time. Belle Fourche requested a stay of the terms of the compliance order because "Belle Fourche believes that this case presents unique circumstances, created by OPS, that have the potential to severely prejudice Belle Fourche." Petition at ¶ 12. Petitioner provides no rationale or evidence to support this assertion but claims that it would be "manifestly unjust" to compel compliance actions "based on a claim that was never pled." Petition at ¶ 12. I find that Petitioner has failed to make an adequate showing as to why the terms of the Final Order should be stayed. Accordingly, I deny Petitioner's request for a stay.

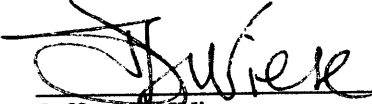
In the alternative, Petitioner requested "at least 120 days to investigate and address the issue of compliance with 49 C.F.R. § 195.583, rather than the 60 days allowed in the Final Order." Petition at ¶ 13. As set forth in the Final Order, an extension of time to comply with any of the required corrective action items may be granted upon a written request timely submitted demonstrating good cause for an extension. Again, Petitioner has not demonstrated any good reason why an extension should be granted. Belle Fourche has had more than two years and four

months since the first Notice of Probable Violation was issued in February 2006 to “investigate and address” the compliance issues set forth in this matter and, more recently, over 10 months since the hearing was held in August 2007. Nothing has prevented the company from investigating and addressing the issues during this time.

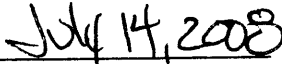
Notwithstanding the lack of merit in Petitioner’s request, I believe it would be fair and not inconsistent with pipeline safety to allow Petitioner a reasonable period of time to comply with the terms of the Final Order, upon issuance of this decision. Therefore, I hereby modify the terms of the compliance order in order to allow Petitioner additional time to achieve compliance. The applicable terms of the compliance order are amended to read as follows:

4. Complete each of the above items and submit documentation of compliance within 40 days of receipt of the *Decision on Reconsideration*

This Decision on Reconsideration is the final administrative action in this proceeding.



Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety



Date Issued

PIPELINE AND HAZARDOUS MATERIALS SAFETY
ADMINISTRATION
OFFICE OF CHIEF COUNSEL
1200 NEW JERSEY AVE, SE WASHINGTON, DC 20590
ROOM E26-122

Fax: (202) 366-7041

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 303. 866. 0200

To: *Mr. Colin J. Harris Esq.*
Of: *Holmes Roberts + Owen LLP*
From: *Kia Gaskins*
Client/Matter: *Belle Fourche Pipeline Co.*
Date: *July 14, 2008*

DOCUMENTS	NUMBER OF PAGES*
<i>Decision on Reconsideration</i>	(Including Cover Sheet)
	9

COMMENTS:

Thank you Mr. Harris.



* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (202) 366-4400.

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PIPELINE AND HAZARDOUS MATERIALS SAFETY
 ADMINISTRATION
 OFFICE OF CHIEF COUNSEL
 1200 NEW JERSEY AVE, SE WASHINGTON, DC 20590
 ROOM E26-122

Fax: (202) 366-7041

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 303.866.0200

To: *Mr. Colin Sp. Dennis Coy*
 Of: *Robins Roberts & Dixon LLP*
 From: *Kia Graham*
 Client/Matter: *Belt Forward Pipeline Co.*
 Date: *July 14, 2008*

DOCUMENTS	NUMBER OF PAGES*
<i>Decision on Recommendation</i>	<i>(Including Cover Sheet)</i>
	<i>9</i>

COMMENTS:

Thank you Mr. Dennis.

[Signature]

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001	885	303-866-0200	02:33:29 p.m. 07-14-2008	00:02:45	9/9	1	EC	HS	CP28800

Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	TU: Terminated by user
HR: Host receive	PR: Polled remote	CP: Completed	TS: Terminated by system
WS: Waiting send	MS: Mailbox save	FA: Fail	RP: Report
			G3: Group 3
			EC: Error Correct



U.S. Department
of Transportation
**Pipeline and
Hazardous Materials Safety
Administration**

12300 W Dakota Ave , Suite 110
Lakewood, CO 80228

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

February 2, 2007

Mr. Hank True
President
Belle Fourche Pipeline Company
895 W. River Cross Road
Casper, WY 82602

SENT TO COMPLIANCE REGISTRY
Hardcopy Electronically
of Copies 1 / Date 2/10/07

CPF No. 5-2007-5002

Dear Mr. True:

Between June 6-10, 2005, July 18-21, 2005, and August 15-18, 2005, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected your of Belle Fourche Pipeline Company's (BFPL) Belle Fourche pipeline systems in Montana and Wyoming. This inspection included a review of supporting Operation and Maintenance (O&M) records for all systems in Casper and New Castle, Wyoming and Baker, Montana.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. **§195.110. External loads**
 - (a) **Anticipated external loads (e.g.), earthquakes, vibration, thermal expansion, and contraction must be provided for in designing a pipeline system. In providing for expansion and flexibility, §419 of ASME/ANSI B31.4 must be followed.**

The Sussex pump station and breakout tank was constructed in 2000 and still has temporary wooden and concrete blocks used as supports under the pig trap and receiver as well as supports for the tank booster pump piping.

2. **§195.402 Procedural manual for operations, maintenance, and emergencies.**

(a) General. Each operator shall 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. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

- a. During the interim time period when BFPL was developing a combined manual of operation and maintenance procedures for BFPL and the Bridger Pipeline Company, BFPL was using their old manual for day to day operations and maintenance procedures. The BFPL manual that was used during the interim period exceeded the required review period between January 23, 2004 when the BFPL manual was last reviewed and July 2005 when the new combined manual was adopted, a period of 17.3 months.
- b. BFPL procedures require periodic review of work done by the operator to determine the adequacy of procedures used in normal operations and maintenance. BPL has not completed any of these reviews.
- c. BPL procedures require periodic review of work done by the operator to determine the adequacy of procedures used in controlling abnormal operations. BPL has not completed any of these reviews.

3. **§195.402 Procedural manual for operations, maintenance, and emergencies.**

(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(12) Establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication.

BFPL liaison activity efforts do not insure that local responders, including those at remote locations, understand how to respond to a pipeline emergency for the Belle Fourche pipeline system.

§195.403 Emergency Response Training.

(b) At the intervals not exceeding 15 months, but at least once each calendar year, each operator shall:

(1) Review with personnel their performance in meeting the objectives of the emergency response training program set forth in paragraph (a) of this section; and

(c) Each operator shall require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under 195.402 for which they are responsible to ensure compliance.

- a. BFPL does not review with personnel, once each calendar year not to exceed 15 months, their performance in meeting the objectives of the emergency response training program.
- b. BFPL does not verify that their supervisors have adequate knowledge of emergency response procedures.

4. §195.404 Maps and Records.

(b) Each operator shall maintain for at least 3 years daily operating records that indicate-

(2) Any emergency or abnormal operation to which the procedures under §195.402 apply.

There is no documentation of abnormal operations and actions taken in response to those abnormal operations for the Belle Fourche pipeline system.

5. §195.410 Line markers.

(a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:

(1) Markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known.

During this inspection several markers were down along the Belle Fourche system's Bicentennial line.

6. §195.420 Valve maintenance.

(c) Each operator shall provide protection for each valve from unauthorized operation and from vandalism.

Neither the vault nor the block valve on Belle Fourche system's Bicentennial line west of Wibaux, Montana was locked to prevent unauthorized operation.

7. §195.440 Public awareness

Each operator shall establish a continuing educational program to enable the public, appropriate government organizations and persons engaged in excavation-related activities to recognize a hazardous liquid or a carbon dioxide pipeline emergency and

to report it to the operator or the fire, police, or other appropriate public officials. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of non-English speaking population in the operator's operating areas.

BFPL Public Awareness Program does not provide adequate pipeline information to the general public.

8. §195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located: Then the frequency of inspection is:

Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months
Offshore	At least once each calendar year, but with intervals not exceeding 15 months

(b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(c) If you find atmospheric corrosion during an inspection, you must provide protection against the corrosion as required by Sec. 195.581.

BFPL has not completed or documented any of their atmospheric corrosion inspections. BFPL has no plan for examining those pipe surfaces that are in contact with concrete saddles.

Proposed Compliance Order

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to BFPL. Please refer to the *Proposed Compliance Order* that is enclosed and made a part of this Notice.

Warning Items

With respect to items 2a, 2b, 2c, 3, 4a, 4b, 5, 6, 7, and 8 we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Be advised that failure to do so may result in BFPL being subject to additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 5-2007-5002** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



Chris Hoidal
Director, Western Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

cc: PHP-60 Compliance Registry
PHP-500 (G. Davis 114331, 114330, 114253)

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to BFPL a Compliance Order incorporating the following remedial requirements to ensure the compliance of BFPL with the pipeline safety regulations:

1. With respect to Item 1 of the Notice, BFPL must:
Remove and replace all existing temporary supports on above ground pipeline appurtenances at the Sussex pump station and replace with adequate permanent supports.

Provide PHMSA documentation showing the replacement of all temporary supports at the Sussex pump station.
2. With respect to Item 9 of the Notice BFPL must:
Complete an atmospheric corrosion inspection of all exposed piping on the Poplar, Butte, and Belle Fourche pipelines. These inspections shall include but not be limited to the soil to air interfaces and under pipe supports.

Document all of the above inspections.

Provide protection for all areas of corrosion found during the above inspections.
3. Within 60 days of issuance of the Final Order, Belle Fourche Pipeline Company must complete the above items, and submit the required documentation and procedures to the Director, Western Region, Office of Pipeline Safety, Pipelines and Hazardous Materials Administration, Lakewood, Colorado 80228.
4. BFPL must maintain documentation of the costs associated with fulfilling this compliance order and submit the total to the Director, Western Region, Office of Pipeline Safety.
5. BFPL shall maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to, Director, Western Region, Pipeline and Hazardous Materials Safety Administration. Costs shall be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

DEC 11 2006

RECEIVED

DEC 15 2006

Mr. Hank A. True III
President
Belle Fourche Pipeline Company
895 W. River Cross Road
Casper, WY 82602

Re: CPF No. 5-2004-5010

Dear Mr. True:

Enclosed is the Final Order issued by the Acting Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws one of the allegations of violation, makes findings of violation and assesses a civil penalty of \$61,500. The Final Order also specifies actions to be taken to comply with the pipeline safety regulations and revision of certain operating and maintenance procedures. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the Compliance Order and Amendment of Procedures are completed, as determined by the Director, Western Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
PHMSA-Office of Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, P.E., Director Western Region, PHMSA
Mr. Manuel A. Lojo, Esq.
P.O. Drawer 2360
Casper, WY 82602

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

In the Matter of)	
Belle Fourche Pipeline Company,)	
Respondent)	CPF No. 5-2004-5010

FINAL ORDER

Between August 18 and 22, 2003, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration's (PHMSA's)¹ Office of Pipeline Safety conducted an on-site pipeline safety inspection of Respondent's hazardous liquid pipeline facilities in Montana and Wyoming and supporting Operation and Maintenance records in Casper, Wyoming. As a result of the inspection, the Director, Western Region, PHMSA, issued to Respondent, by letter dated May 19, 2004, a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$67,500 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its procedures/plans.

Respondent responded to the Notice in a letter dated June 24, 2004, later supplemented in a letter dated November 2, 2004 per PHMSA's request for additional information (Response). Subsequently, PHMSA issued an Amendment to the Notice on April 5, 2005. Respondent responded to the amended Notice in a letter dated May 3, 2005 (May 3, 2005 correspondence included in "Response"). Respondent contested many of the allegations, offered information to explain the allegations, and requested that the proposed civil penalty be reduced. Respondent did not request a hearing, and therefore has waived its right to one.

¹ Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) succeeded Research and Special Programs Administration as the agency responsible for regulating safety in pipeline transportation and hazardous materials transportation. See, section 108 of the Norman Y Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat 2423-2429 (November 30, 2004)) See also, 70 Fed Reg 8299 (February 18, 2005) re delegating the pipeline safety authorities and functions to the PHMSA Administrator

FINDINGS OF VIOLATION

Item 1 in the Notice alleged Respondent violated 49 C.F.R. § 195.1(a), (b)(1-4) and § 195.402(a) in that Respondent did not include the 8-inch line segment that connects its 10-inch diameter pipeline at the Elk Creek pump station to its 12-inch diameter pipeline at the Donkey Creek pump station in its operations, maintenance, and emergency procedures manual as required by 49 C.F.R. §195.402(a).

In its June 24, 2004 letter, Respondent indicated that the 8- and 10-inch pipelines at issue had been purged and abandoned. PHMSA then requested that Respondent provide a map showing the location of those abandoned pipelines. In its November 2, 2004 letter, Respondent provided a map that depicts only a portion of the pipeline at issue as having been abandoned. The balance that has not been abandoned is depicted on its map as being 8- and 10-inch gathering only. Since a portion of this line is depicted as being 10-inch, it cannot be a gathering line as per the definition in 49 C.F.R. §195.2 that states "Gathering line means a pipeline 219.1 mm (8 5/8 in) or less nominal outside diameter that transports petroleum from a production facility." With the changes to this pipeline system, the Compliance Order below is amended to address Respondent's operational changes.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.1 (a), (b)(1-4) and § 195.402(a) in the Notice.

Item 2 of the Notice proposed a civil penalty of \$25,500 for violation of 49 C.F.R. §§ 195.50(b) and 195.54(a) in that Respondent failed to report a 120-barrel spill that occurred at its Alzada pump station pig launching facilities on June 10, 2003 within the required 30-day period. This accident was not reported for 86 days, which was 56 days beyond the 30 days allowed by Federal regulation.

In its June 24, 2004 letter, Respondent stated that it did not contest the violation but that it requested the penalty be substantially reduced. In support of the reduction, Respondent stated that the spill was wholly contained within a containment dike and has been used as an opportunity to underscore to employees the importance of timely reporting of all spills. Here, the Respondent did not report the spill until a PHMSA inspector observed the spill, which was 86 days after the spill and 56 days after the latest that it should have been reported.

Accordingly, I find that Respondent violated 49 C.F.R. §§ 195.50(b) and 195.54(a) in the Notice.

Item 3 in the Notice alleged Respondent violated 49 C.F.R. § 195.303 in that Respondent incorrectly applied the Risk-based alternative to pressure testing for the following pipelines:

1. 8-inch segment between Alzada and Belle Creek built in 1966;
2. 10-inch line from Belle Creek to Highway 14-16 built in 1966; and
3. 12-inch line from Donkey Creek to Guernsey built in 1968.

Respondent did a metallurgical seam evaluation on samples of the 12-inch line in May of 2000, but it did not have sufficient construction documentation to verify that all of the 12-inch line was of the same quality as the pipe samples tested. For the 8-inch segment between Alzada and Belle Creek and the 10-inch line from Belle Creek to Highway 14-16, Respondent did not complete a metallurgical seam evaluation nor did it hydro test these pipeline segments.

In its June 24, 2004 letter, Respondent stated that the Elk Creek line was removed from service on March 1 and that the Donkey Creek Line has been operating recently at a MOP of less than 1152.

Although some of Respondent's pipe has been taken out of service, substantial sections of pipeline manufactured from pre-70 electric resistance weld pipe still have not been hydrostatically tested. Respondent's metallurgical analysis of these sections of pipeline is not statistically sufficient nor does Respondent have sufficient construction records to substantiate that the entire pipeline installed is similar to the pipe that received a metallurgical analysis.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.303 in the Notice.

Item 10 in the Notice Amendment alleged Respondent violated 49 C.F.R. § 195.406 in that Respondent has not been able to provide adequate records certifying the yield strength (SMYS) of 60,000 psi for the pipe used in construction of its 12.75-inch, .219 inch wall thickness pipeline section between Twentymile Station and Guernsey. Respondent has determined the MOP of this line section, using 49 C.F.R. §195.106 with a SMYS of 60,000 psi, to be 1440 psig. Without adequate records or materials testing that certifies the actual material strength of the pipe, Respondent cannot use a SMYS any greater than 24,000 psi, which results in a MOP no greater than 593.6 psig. Additionally, Respondent's records show that the pressure shutdown switch at the Twentymile station is set at 1440 psig, which is 243% of the design pressure lacking any pipeline material certification. Respondent normally operates this segment between 900 psig and 1100 psig.

Respondent could not provide adequate records certifying the SMYS of 42,000 psi for the pipe used in construction of its 12.75-inch, .25 inch wall thickness pipeline section between Highway 450 Station and the 12-inch mainline Junction. Respondent has determined the MOP of this line section, using 49 C.F.R. §195.106 with a SMYS of 42,000 psi, to be 1390 psig. Without adequate records or materials testing that certifies the actual material strength of the pipe, Respondent cannot use a SMYS any greater than 24,000 psi, which results in a MOP no greater than 677.6 psig. Additionally, Respondent's records show that the pressure shutdown switch at the South Hilight station is set at 1300 psig, which is 192 % of the design pressure lacking any pipeline material certification. Respondent normally operates this segment between 300 psig to 800 psig.

In its November 2, 2004 letter to PHMSA, Respondent provided a township/section map depicting the pipeline rights-of-way as a solid line with an arrow labeled "333,055' 12 3/4 .219X60 29.31#" pointing to that solid line. Respondent contends that this is a copy of an original construction map and it shows that the pipeline section in dispute is made from X-60

pipe and not X-52 pipe. Subsequently, it contends that this pipeline was correctly listed as having a MOP of 1440 psig.

Since Respondent could not provide further evidence substantiating the material strength of the pipe used in the construction of either pipeline section originally cited, PHMSA issued an Amendment to the May 19, 2004 Notice, dated April 5, 2005. That Amendment changed the violation from incorrectly calculating the MOP for the two pipeline sections to a violation of using a SMYS of 60,000 psi for calculating the MOP on one pipeline section and using a SMYS of 42,000 psi for the other pipeline section without having sufficient records or materials testing or to verify the SMYS of the pipe used in construction of either pipeline.

Respondent responded to the Amended Notice in a letter dated May 3, 2005. In that response, Respondent contends that it is permitted to operate at 80 percent of the highest operating pressure to which the pipeline was subjected to for four or more continuous hours that can be demonstrated by recording charts of logs made at the time the operations were conducted. It maintains that the Twentymile to Guernsey pipeline has been operated at 1440 psig for four or more continuous hours and it will be retrieving those documents to support this argument. Respondent asserts this would allow them to establish a MOP of 1152 which is 80% of 1440 psig. Additionally, Respondent contends that it has pressure tested its Highway 450 section to a pressure of 1500 psig in 1994 and again in 2005.

49 C.F.R. § 195.106, using Hooke's law, governs how pressure is to be determined under the code. Respondent may use 80 percent of the highest operating pressure recorded for four or more continuous hours in lieu of a pressure test. However, an operator may not operate a pipeline at a pressure that exceeds either 80 percent of the highest operating pressure or the test pressure recorded for four or more continuous hours, the design pressure of the pipe, or the pressure rating of any component. Though it may have adequate records to allow them to use 80% of an operating pressure in lieu of pressure test, it may not exceed the design pressure of the pipeline. Without adequate construction records or statistically viable metallurgical testing, it cannot use a SMYS any higher than 24,000 psi.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.406 in the Notice.

Item 11 in the Notice alleged Respondent violated 49 C.F.R. § 195.408(a) and (b)(1) in that Respondent does not attend or monitor its Highway 14-16 pump station, which receives crude oil from tankage.

In its June 24, 2004 Response, Respondent stated that the Highway 14-16 Station is a gathering line and it has been since March 1, 2004.

It appears that the Highway 14-16 Station injects crude oil into what Respondent labeled on a map transmitted to PHMSA as "8 inch and 10 inch segments in gathering service only as of March 2004." Since the line that the Highway 14-16 Station injects crude into has pipe that is 10-inch, this pipeline appears to be transmission and not gathering as per the definition in 49 C.F.R. § 195. Therefore, because the Highway 14-16 Station appears to control the delivery

of crude oil into jurisdictional pipeline, this station must meet the requirements of 49 C.F.R. § 195.408.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.408(a) and (b)(1) in the Notice.

Item 13 in the Notice alleged Respondent violated 49 C.F.R. § 195.428(a) in that Respondent's pressure shutdown switches only receive a functional test which does not ensure that these switches will operate at the correct pressure. Pressure transducers do not receive annual calibration to insure it is transmitting correct pressures.

Respondent responded to this issue in its June 24, 2004 letter by stating that new procedures would be written and implemented. It provided no documentation showing that all of its pressure control equipment had been properly tested and inspected, including calibration if necessary.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.428(a) in the Notice.

Item 14 in the Notice alleged Respondent violated 49 C.F.R. § 195.432(b) in that Respondent is required by API 653 Section 4.3.1.2 to conduct a routine in-service inspection once each month. Respondent only does a routine inspection of its Sussex breakout tank once each year. During the inspection, Respondent's engineer informed the PHMSA inspector that it did not do monthly inspections.

In its June 24, 2004 correspondence, Respondent submitted its Sussex Station reports in response to this allegation. Respondent directs our attention to the far right column labeled "Signature" in these reports where there are employee initials and a handwritten "VI." Respondent contends that the "VI" stands for "Visual Inspection" and asserts that this indicates compliance with the requirements of section 4 of API Standard 653, claiming that the inspections took place on a basis more frequently than once per month. Although Respondent may rely on the handwritten "VI" markings as evidence that the tank had been visually inspected on a basis more frequently than once a month, there was not a specific column in Respondent's Sussex Station reports to indicate that the tank had been inspected.

The evidence does not support an argument that the tank was inspected in accordance with API 653 Section 4. Respondent must still include a monthly inspection that will incorporate and document the condition of those items listed under of API 653 Section 4.3.1.3 for the Sussex breakout tank.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.432(b) in the Notice.

Item 16 in the Notice alleged Respondent violated 49 C.F.R. § 195.436 in that there is no security fencing at the Elk Creek pump station and the Alzada pump station and pig launcher facilities. The controls and facilities at these pump stations are unmanned and readily accessible by the public via state highways that are adjacent to these two stations.

The June 24, 2004 response to this issue was that both Alzada station and Elk Creek station had been abandoned. In its November 2, 2004 Response, Respondent provided evidence to support that the pipeline from Alzada to Elk Creek had been abandoned.

It appears that because the Alzada station is associated with the upstream end of this pipeline section it should be considered abandoned. However, the Elk Creek station may still be injecting crude oil into Respondent's "8-inch and 10-inch segments in gathering service only as March 2004." Since part of this line is 10-inch at least, that portion that is 10-inch is considered to be transmission. It appears that the Elk Creek station injects into this pipeline system and therefore it is considered to be a jurisdictional facility. Therefore, the Elk Creek station should have increased security provided.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.436 in the Notice.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

WITHDRAWAL OF ALLEGATION

Item 17 in the Notice alleged that Respondent had violated 49 C.F.R. § 195.567 by failing to install an adequate number of test stations or demonstrate that test stations are at sufficient intervals to indicate the adequacy of the cathodic protection system. In its Response, Respondent provided a cathodic protection monitoring procedure that requires test leads to be spaced from between one to two miles. The exception to this is only allowed if one of the following has been met: 1) close interval survey has been performed, 2) operating history demonstrates no leaks nor evidence of external corrosion, or 3) pipeline inspection logs, assume for ILI, demonstrate no wall loss. If one of these exceptions is met, then Respondent's procedures assume that sufficient cathodic protection exists. In its Response, Respondent's submission of this procedure appears to have met the intent of 49 C.F.R. § 195.567. Based on this information demonstrating compliance with the regulation, I am withdrawing this allegation of violation.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

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. The Notice proposed a total civil penalty of \$67,500 for the violations.

Item 2 of the Notice proposed a civil penalty of \$25,500 for violation of 49 C.F.R. §§ 195.50(b) and 195.54(a) in that Respondent failed to report a 120-barrel spill that occurred at its Alzada

pump station pig launching facilities on June 10, 2003 within the required 30-day period. This accident was not reported for 86 days, which was 56 days beyond the 30 days allowed by Federal regulation. In its June 24, 2004 letter, Respondent stated that it did not contest the violation but that it requested the penalty be substantially reduced. In support of the reduction, Respondent stated that the spill was wholly contained within a containment dike and has been used as an opportunity to underscore to employees the importance of timely reporting of all spills. Here, the Respondent did not report the spill until a PHMSA inspector observed the spill, which was 86 days after the spill and 56 days after the latest that it should have been reported. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$25,500 for the violation.

Item 10 of the Notice proposed a civil penalty of \$20,000 for violation of 49 C.F.R. §195.406, as fully described in the Amendment to the Notice and as discussed above, in that Respondent used a SMYS of 60,000 psi for calculating the MOP on the pipeline section between Twentymile Station and Guernsey and used a SMYS of 42,000 psi for the pipeline section between Highway 450 Station and the 12-inch mainline Junction without having sufficient records or materials testing to verify the SMYS of the pipe used in construction of either pipeline. As discussed above, although Respondent replied to the May 3, 2005 Amendment, it did not provide adequate construction records or statistically viable metallurgical testing that supports a SMYS higher than 24,000 psi. The segment of the pipeline that crosses the North Platte River could have an environmental or public impact. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$20,000 for the violation.

Item 12 of the Notice proposed a civil penalty of \$10,000 for violation of 49 C.F.R. §195.410 in that Respondent failed to maintain an adequate number of pipeline markers to accurately determine the pipeline location. Furthermore, when the PHMSA representative called the emergency phone number shown on the pipeline markers for the Montana/Dakota pipeline, he received a disconnected phone message with no forwarding phone number. In its June 24, 2004 Response, Respondent notes a typographical error in the Notice. Since the body of the Notice addresses Respondent's alleged violation and the paragraph on civil penalties lists Notice Item 12 as a proposed civil penalty, the typographical mistake is a harmless error. Respondent requested that no penalty be assessed since it intends to continue installing additional correct markers. However, Respondent has not presented any information that would warrant a reduction or withdrawal of the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for the violation.

Item 14 of the Notice proposed a civil penalty of \$12,000 for violation of 49 C.F.R. §195.432(b) in that Respondent is required by API 653 Section 4.3.1.2 to conduct a routine in-service inspection once each month. Respondent only does a routine inspection of its Sussex breakout tank once each year. As discussed above, Respondent's Response does not support that the Sussex tank was inspected in accordance with API 653 Section 4; however, it appears that the tank was minimally looked at periodically, which supports a reduced penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$6,000 for the violation.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$61,500. Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business.

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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$61,500 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 in referral of the matter to the Attorney General for appropriate action in a United States District Court.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to Items 1, 3, 10, 11, 13, 14, and 16 in the Notice (Notice Item 17 was withdrawn). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under Chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations. Respondent must-

1. With respect to Item 1 of the Notice, incorporate into its operations, maintenance, and emergency manual as required by 49 C.F.R. § 195.402(a) all pipeline from the Donkey Creek pump station upstream to the upstream end of the furthest upstream segment of 10-inch pipe;
2. With respect to Item 3 of the Notice, pressure test all pipeline segments that have not been previously pressure tested in accordance with 49 C.F.R. § 195 Subpart E;
3. With respect to Item 10 of the Notice, reduce the MOP of the following line segments so that the MOP of these segments are in accordance with 49 C.F.R. § 195.406:
 - a. The Twenty Mile station to Guernsey station section;
 - b. The Highway 450 to 12" Junction section; and
 - c. All other line sections that do not have adequate records to certify the yield strength of the pipe contained in each section.

Reduce the set pressure for all pressure control devices that protect each of the above

line sections to a pressure that is commensurate with the MOP;

4. With respect to Item 11 of the Notice, either attend or monitor the Highway 14-16 station during operation per the requirements of 49 C.F.R. § 195.408(b)(1);
5. With respect to Item 13 of the Notice, test and calibrate all pressure control devices per the requirements of 49 C.F.R. § 195.428, using proper pressure sensing equipment;
6. With respect to Item 14 of the Notice, begin monthly inspection, for the Sussex breakout tank, as per section 4 of API Standard 653, incorporating a checklist of those items listed under paragraph 4.3.1.3 of section 4 API Standard 653. Maintain records of all such inspections as required under 49 C.F.R. Part 195;
7. With respect to Item 16 of the Notice, provide increased security at the Elk Creek station per requirements of 49 C.F.R. § 195.436;
8. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Director, Western Region, PHMSA. Costs shall be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure; and
9. Within 60 days of receipt of the Final Order, submit documentation of procedures, costs and evidence of actions taken to the Director, Western Region, Pipeline and Hazardous Materials Safety Administration, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228. Please refer to CPF No. 5-2004-5010 on any correspondence or communication in these matters.

The Director, Western Region, may grant an extension of time to comply with any of the required items upon a written request timely submitted by Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in the assessment of civil penalties of not more than \$100,000 per day and in referral to the Attorney General for appropriate relief in a United States District Court.

AMENDMENT OF PROCEDURES

Items 5(a-b), 6(a-g), 7(a-d), 8, and 9 of the Notice alleged inadequacies in Respondent's procedures/plans and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. §§ 195.266(a), 195.302(a), 195.402(c)(3, 7, 8, 11,13), 195.403(b)(1), 195.404(a)(1), 195.422(a-b), 195.559(a-f), 195.561(a-b), 195.563(a-e), 195.567(a-c), 195.573(e), 195.583(a-c), and 195.589(c). Respondent did not contest the Items in the Notice of Amendment with the exception of Items 6(d) and 7(b).

In its Response, Respondent submitted copies of its amended procedures or information with respect to Notice Items 5(a), 6 (c-d), 7(d), and 8, which Western Region, PHMSA, reviewed. Accordingly, based on the results of this review, I find that Respondent's procedures as described in the Notice were inadequate to ensure safe operation of its pipeline system, but that respondent has provided information and/or corrected the identified inadequacies. No need exists to issue an Order Directing Amendment with respect to Items 5a, 6(c-d), 7d, and 8.

However, with respect to Notice Items 6(a-b, f), 7(a), and 9, Respondent's Response indicated that these Notice Items were not yet complete and submissions were not included in the Response. With respect to Notice Items 5b, 6(e,g), 7(b-c), although Respondent submitted amended procedures/plans to the Western Region, PHMSA, these procedures/plans do not address all of the inadequacies described in the Notice. Accordingly, I find that Respondent's procedures as described in the Notice are inadequate to ensure safe operation of its pipeline system. Pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. §190.237, Respondent is ordered to make the following revisions to its procedures:

1. Amend its procedures to adequately list pressure test requirements (Notice Item 5b);
2. Amend its corrosion control procedures to adequately address coating requirements (Notice Item 6a);
3. Amend its corrosion control procedures to adequately address the inspection of pipe prior to lowering it into the ditch (Notice Item 6b);
4. Amend its corrosion control procedures to adequately describe how and when external corrosion control deficiencies must be corrected (Notice Item 6e);
5. Amend its corrosion control procedures to adequately address atmospheric corrosion monitoring frequency (Notice Item 6f);
6. Amend its corrosion control procedures to adequately address appropriate records retention time (Notice Item 6g);
7. Amend its startup procedures to adequately describe startup and shutdown processes (Notice Item 7a);
8. Amend its procedures to require attendance or monitoring of the Highway 14-16 pump station during startup and shut-in operations (Notice Item 7b);
9. Amend its procedures to minimize the likelihood of accidental ignition near areas identified under 49 C.F.R. §195.402(c)(4). Its procedures should define areas that would require immediate response in the case of failure or malfunction. It must have procedures for preventing accidental ignitions at those locations. Ignition sources may include but are not limited to: operating internal combustion engines; activities that could generate static electricity or electrical arcing; welding, cutting, and other

hot work; using certain non-approved electric equipment (flashlights, power tools/equipment, etc.); working on motors or appurtenances; working inside pipeline buildings; use of spark-producing hand tools; engine exhaust stack temperatures. Respondent should maintain restricted access to hazardous areas, including safety zones for vehicular and air space domains (Notice Item 7c);

- 10. Amend its maps and records to ensure that the location and identification of pipeline facilities are updated and complete (Notice Item 9); and
- 11. Within 30 days following receipt of this Order, submit the amended procedures to the Director, Western Region, PHMSA.

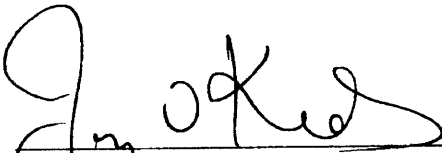
The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by Respondent demonstrating good cause for an extension.

Failure to comply with this Order Directing Amendment may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

WARNING ITEMS

The Notice did not propose a civil penalty or corrective action for Notice Items 4 (49 C.F.R. §§ 195.402(a) and 195.569), 15 (49 C.F.R. § 195.434), and 18 (49 C.F.R. § 195.583); therefore, these are considered warning items. Respondent is warned that if it does not take appropriate action to correct these items, enforcement will be taken if a subsequent inspection reveals a violation.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. 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 and amendment of procedures, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective on receipt.

for 

Theodore L. Willke
Acting Associate Administrator
for Pipeline Safety

DEC 11 2008

Date Issued



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

JUL 10 2006

Mr. Hank A. True III
President
Belle Fourche Pipeline Company
895 W. River Cross Road
Casper, WY 82602

Re: CPF No. 5-2004-5030

Dear Mr. True:

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 \$50,000. The Final Order also specifies actions to be taken to comply with the pipeline safety regulations and requires the revision of certain of your operating and maintenance procedures. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the Compliance Order and Amendment of Procedures are completed, as determined by the Director, Western Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

_____)	
In the Matter of)	
)	
Bridger Pipeline, LLC,)	CPF No. 5-2009-5034
)	
Respondent.)	
_____)	

CONSENT AGREEMENT AND ORDER

The U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), and Bridger Pipeline, LLC (Bridger or Respondent), have engaged in settlement discussions regarding the resolution of the enforcement action listed above. Having concluded those discussions, PHMSA and Bridger (collectively, Parties) agree that a settlement of this matter 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 Consent Agreement and Order (Agreement) is the most appropriate means of accomplishing that objective.

I. Procedural History.

On September 1, 2009, PHMSA issued to Bridger a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). The Notice alleged that Bridger had committed eight violations of 49 C.F.R. Part 195 and proposed assessing an administrative civil penalty of \$70,000 for two of the alleged violations. The Notice also proposed ordering Bridger to complete certain corrective actions to address seven of the violations.

On October 29, 2009, and May 6, 2010, Bridger submitted a written response to the Notice and requested an informal hearing. A hearing was subsequently held on May 18, 2010, with an attorney from the Office of Chief Counsel, PHMSA, presiding.

On August 30, 2012, the Associate Administrator for Pipeline Safety, PHMSA, issued a Final Order in the case. The Final Order found that Bridger had violated 49 C.F.R. §§ 195.202 (Item 2), 195.302(a) (Item 3), 195.402(a) (Item 4), 195.402(c)(13) (Item 5), 195.402(d)(5) (Item 6), and 195.402(e)(9) (Item 7), assessed a reduced civil penalty of \$63,800, and ordered Bridger to complete certain corrective measures.

On September 24, 2012, Bridger submitted a Petition for Reconsideration (Petition) of the Final Order, seeking reconsideration of the findings of violation for Items 2-7 and the civil penalties assessed for Items 4 and 7. On December 31, 2012, the Associate Administrator issued a Decision on the Petition for Reconsideration (Decision), withdrawing Items 2 and 3 but denying any further relief.

On February 15, 2013, Bridger filed a petition for review in the United States Court of Appeals for the Tenth Circuit challenging the Associate Administrator's findings of violation for Items 4, 5, 6, and 7 in the Decision, in a case styled Bridger Pipeline, LLC v. Pipeline and Hazardous Materials Safety Administration, Case No. 13-9517 (Petition). Under the terms and conditions set forth in this Agreement, the Parties have now resolved the issues underlying the Notice and Petition, and Bridger will dismiss its Petition as provided in Paragraph 16 of this Agreement.

II. General Provisions.

1. Bridger acknowledges that the company and its pipeline system, known generally as the Poplar Pipeline and located in eastern Montana, is 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 Agreement, Bridger acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U. S.C. § 60101, et seq., and the regulations and orders issued thereunder.

2. Bridger agrees to the issuance of this Agreement and hereby waives any further procedural requirements with respect to its issuance. Bridger waives all rights to contest the adequacy of the Notice, Final Order, and Decision issued in this proceeding and the validity of this Agreement, including all rights to administrative or judicial hearings or appeals.

3. This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to this proceeding 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.

4. Nothing in this Agreement affects or relieves Bridger 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 Bridger pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

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

6. This Agreement 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 Bridger 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 Bridger or its contractors in carrying out any work required by this Agreement.

7. This Agreement shall apply to and be binding on PHMSA and Bridger, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.

III. Findings of Fact and Violations.

8. By entry of this Agreement, PHMSA vacates and withdraws the Final Order and Decision previously issued in this proceeding.

9. Respondent acknowledges that even though the Final Order and Decision are hereby withdrawn, Items 4, 5, 6, and portions of Item 7 from the Notice may be considered by PHMSA to be prior offenses in any future PHMSA enforcement action brought by the agency against Bridger. Except as provided under Paragraph 10 below, this Agreement does not constitute a finding of violation of any Federal law or regulation and, therefore, may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement or in future PHMSA enforcement actions against Bridger.

10. Respondent acknowledges, and PHMSA hereby finds, that Bridger violated 49 C.F.R. § 195.402(e)(9) (Item 7), as alleged in the Notice, by failing to demonstrate that it had provided for a post-accident review of its employee activities no later than 45 days after the accidental hazardous liquid release that occurred on its Poplar pipeline on January 5, 2006, and was no longer an emergency, as required by its manual of written procedures for conducting operations, maintenance and emergencies.

IV. Civil Penalty.

11. The Parties mutually agree, and PHMSA hereby orders, that the total civil penalty assessed in connection with the Notice is Forty-Five Thousand Dollars (\$45,000.00).

12. Bridger will pay the civil penalty amount in Paragraph 11 within 30 calendar days of signing this Agreement. Payment shall be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury.

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

14. The Parties agree that the civil penalty assessed and collected under this Section IV will not be used in determining the amount of any civil penalty for any future enforcement action against Bridger.

V. Compliance Order.

15. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent agrees to take (or has taken) the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

- A. With respect to the violation of § 195.402(a) alleged in Item 4 of the Notice, Bridger must:
 - 1. Review its manual of written procedures for normal operation and maintenance, for handling abnormal operations, and for responding to emergencies and must make changes to those procedures that are not effective.
 - 2. Maintain documentation in accordance with Part 195 for all procedure modifications and retraining of personnel.
- B. With respect to the violation of § 195.402(c)(13) alleged in Item 5 of the Notice, Respondent must:
 - 1. Revise its Normal Operating Procedures, Section 3.8, to require the periodic review of work done by Bridger personnel and unsupervised contractors to determine the effectiveness of the procedures used in normal operation and maintenance and to require corrective action where deficiencies are found. Such procedures must provide for periodic written reviews that are separate and apart from Bridger's annual employee performance reviews;
 - 2. Such procedures must be submitted to the Director, Western Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration (Director) for review; and
 - 3. Upon review of the revised procedures under subparagraph 1 above, Respondent must submit completed written reviews of the work performed by Bridger personnel and unsupervised contractors to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found. Such reviews must comply with the procedures revised in accordance with this Paragraph 15(B).
- C. With respect to the violation of § 195.402(d)(5) alleged in Item 6 of the Notice, Respondent must submit completed written reviews it has performed for Bridger personnel and contractors to determine the effectiveness of the procedures used in abnormal operations and for taking corrective action where deficiencies are found.
- D. Respondent must submit documentation that it has reviewed or revised its procedures pursuant to Paragraphs 15.A.1 and 15.B.1 above, within 90 calendar days from the Effective Date of this Agreement.

- E. Respondent must submit documentation that it has reviewed personnel performance pursuant to Paragraphs 15.B.3 and 15.C. above within 180 calendar days from the date its revised procedures have been reviewed and deemed to satisfy the terms of this order by the Director.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension. Upon receipt of the revised procedures required under Paragraphs 15.A and 15.B above, the Director will promptly respond in writing and indicate the expected completion date for his review. With respect to the procedures required to be submitted for review under Paragraphs 15.A.1 and 15.B.1 above, the Director may: (a) approve, in whole or in part, the procedures; (b) approve the procedures on specified conditions; or (c) disapprove the procedures, specifying the basis for disapproval. Bridger may seek review by the Associate Administrator if Bridger disagrees with the Director regarding any Director decision on a submission, and the decision by the Associate Administrator shall constitute final agency action.

VI. Dismissal of Petition for Review.

16. Within three (3) business days after the Effective Date of this Agreement, the Parties shall file a Stipulation to Dismiss the petition pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure, specifying that the Parties will bear their costs on appeal.

VII. Enforcement.

17. This Agreement is 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 Bridger is not complying with the terms of this Agreement or any determination made by the Director under Paragraph 15 above. 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.

VIII. Effective Date.

18. The "Effective Date" is the date on which this Agreement has been signed by both Bridger and PHMSA.

IX. Modification.

19. The terms of this Agreement may only be modified by mutual agreement of the Parties. Such modifications shall be in writing and signed by both parties.

X. Termination.

20. With the exception of Sections 9 and 10 of this Agreement, which shall survive termination, the remaining terms and conditions of this Agreement shall terminate upon: (a) Bridger's payment of the civil penalty set forth in Paragraph 11; and, (b) Bridger's satisfactory completion of the compliance terms set forth in Paragraph 15, pursuant to the submittal and

review procedures set forth therein. Nothing in this Agreement precludes Bridger or PHMSA from completing any of the obligations earlier than the deadlines provided for in this Agreement.

XI. Ratification.

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

For PHMSA:

Handwritten signature of Jeffrey D. Wiese

Jeffrey D. Wiese
Associate Administrator
For Pipeline Safety

10/25/13

Date:

For Bridger:

Handwritten signature of H. A. True III

H. A. True III, Managing Member
Bridger Pipeline, LLC *ML*

10/23/13

Date:



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

12300 W. Dakota Ave., Suite 110
Lakewood, CO 80228

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

September 1, 2009

Mr. Tad True
Vice President True Oil
Bridger Pipeline, LLC
895 W. River Cross Road
P.O. Drawer 2360
Casper, WY 82602

CPF 5-2009-5034

Dear Mr. True:

On June 15 to June 20, 2008, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, inspected your Poplar pipeline in eastern Montana.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. **§195.54 Accident reports.**
 - (a) **Each operator that experiences an accident that is required to be reported under §195.50 shall as soon as practicable but not later than 30 days after discovery of the accident, prepare and file an accident report on DOT Form 7000-1, or a facsimile.**
 - (b) **Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000-1, it shall file a supplemental report within 30 days.**

Bridger Pipeline (BPL) failed to provide all the information required by DOT Form 7000-1 for a spill that occurred on April 23, 2008. DOT Form 7000-1 for accident report 20080161 – 7153 reported the information regarding this spill on May 13, 2008. The report was designated as a “final” report yet the form is missing a lot of key accident information.

2. **§195.202 Compliance with specifications or standards.**
Each pipeline system must be constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of this part.

BPL did not document that the recent construction of regulated piping between the Poplar pipeline and the Poplar station breakout tanks were conducted in accordance with written specifications or standards that are consistent with the requirements of 49 CFR Part 195. BPL installed above ground piping for their breakout tanks (BOTs) at their Poplar station in either 2007 or early 2008, but they were unable to locate the inspection, welding, or material certifications for this project.

3. **§195.302 General requirements.**
(a) Except as otherwise provided in this section and in §195.305(b) , no operator may operate a pipeline unless it has been pressure tested under this subpart without leakage. In addition, no operator may return to service a segment of pipeline that has been replaced, relocated, or otherwise changed until it has been pressure tested under this subpart without leakage.

BPL failed to perform a pressure test on the Poplar station BOT piping installed in 2007 or early 2008. BPL has no records or knowledge of a pressure test ever being conducted for the Poplar station BOT piping installed during this period.

4. **§195.402 Procedural manual for operations, maintenance, and emergencies.**
(a) General. Each operator shall 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. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

BPL did not review at the required frequency their manuals of written procedures for normal operation and maintenance, handling abnormal operations, and responding to emergencies. It

appears that no procedural manual reviews were completed from February 2005 until June 2008. This interval between reviews exceeded the maximum allowed interval by 25 months. Further, interviews with BPL personnel as well as revision dates shown at the bottom of the pages for the BPL manuals reflect that there has not been a review of BPL procedures since 2005.

5. **§195.402 Procedural manual for operations, maintenance, and emergencies.**
 - (c) **Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:**
 - (13) **Periodically reviewing the work done by operator to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.**

BPL failed to periodically review the work done by their personnel and contractors in order to determine the effectiveness of procedures used in normal operation and maintenance. BPL Normal Operating Procedures Section 3.8 requires that BPL perform annual reviews of personnel performance to determine the effectiveness of normal operation and maintenance procedures. BPL could not provide any records showing that the required annual reviews were completed.

6. **§195.402 Procedural manual for operations, maintenance, and emergencies.**
 - (d) **Abnormal operation. The manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded;**
 - (5) **Periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.**

BPL failed to periodically review the procedures used by their personnel and contractors to control abnormal operation and take corrective action where deficiencies are found. BPL Abnormal Operating Procedures Section 6.3 requires a review of personnel responses to abnormal operations to determine the effectiveness of abnormal operating procedures. BPL could not provide records showing there has been periodic review of personnel response to abnormal operations to determine the effectiveness of abnormal operating procedures. Interviews indicate that this has been done informally but there have not been any records kept of these reviews.

7. **§195.402 Procedural manual for operations, maintenance, and emergencies.**
(e) Emergencies. The manual required by paragraph (a) of this section must include procedures for the following to provide safety when an emergency condition occurs;
(9) Providing for a post accident review of employee activities to determine whether the procedures were effective in each emergency and taking corrective action where deficiencies are found.

BPL did not perform post accident reviews of their employees' response activities after four (4) accidental releases of hazardous liquid from their Poplar pipeline reported to PHMSA between February 2, 2006 and November 17, 2006. BPL procedures require that post accident reviews be conducted 45 days after an accident is no longer considered an emergency. BPL, however, did not complete any such reviews of the four accidental releases of hazardous liquid noted above.

8. **§195.420 Valve maintenance.**
(b) Each operator shall, at intervals not exceeding 7 1/2 months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

BPL was unable to provide documentation that their Glendive station valves had been inspected in the second half of 2006. To date, BPL has not been able to provide inspection records for seven (7) Glendive station valves that were to be inspected in the latter half of 2006. BPL personnel state that they did complete these inspections but the electronic records had been lost during computer upgrades.

9. **§195.432 Breakout tanks.**
(b) Each operator shall inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to section 4 of API Standard 653. However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under §195.402(c)(3).

Bridger Pipeline, LLC (BPL) did not complete an "out of service" inspection of Tank 403 at the Poplar station after they learned there may be significant corrosion inside this tank. BPL has knowledge that Tank 403 previously stored fluids with high levels of bacteria that potentially can cause corrosion. It appears that storage of these liquids may have been for a substantial period of time and without the use of corrosion inhibitors. API Standard 653 Section 6.2.1 states several factors must be considered when determining inspection intervals for storage tanks including the nature of the product stored. Additionally API Standard 653 Section 6.2.2 states, "The interval between inspections of a tank (both internal and external) should be determined by its service history unless special reasons indicate that an earlier

inspection must be made.” Knowledge that this tank was exposed to a highly corrosive environment should be considered a special reason for conducting an “out-of-service”, internal inspection per API 653.

- 10. §195.440 Public awareness (c) Maintenance and normal operations.**
(i) The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies.

BPL did not implement their public awareness program. BPL did not develop lists of emergency and public organization contact personnel within the vicinity or along their pipeline's route. BPL's Public Awareness Program Supplement A requires that a list of emergency and public organizations be developed for those organizations that are along the route of the pipeline. This list must include those organization's contact personnel with emergency and business phone numbers and addresses. At the time of inspection, BPL had not yet developed these lists for the Poplar pipeline.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$70,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
4	\$35,000
7	\$35,000

Warning Items

With respect to items 1 and 8, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Be advised that failure to do so may result in Bridger Pipeline, LLC (BPL) being subject to additional enforcement action.

Proposed Compliance Order

With respect to items 2, 3, 4, 5, 6, 9, and 10, pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to BPL. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 5-2009-5034** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



Chris Hoidal
Director, Western Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

cc: PHP-60 Compliance Registry
PHP-500 G. Davis (#120774)

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Bridger Pipeline, LLC (BPL) a Compliance Order incorporating the following remedial requirements to ensure the compliance of BPL with the pipeline safety regulations:

1. In regard to Item Number 2 of the Notice pertaining to not having inspection or materials documentation showing that the Poplar Station breakout tank (BOT) piping was constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of 49 CFR Part 195, BPL must either: 1) provide documentation verifying that the BOT piping was constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of this 49 CFR Part 195, or 2) they must re-construct this piping and document that the piping is constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of this 49 CFR Part 195.
2. In regard to Item Number 3 of the Notice pertaining to not pressure testing BOT piping at the Poplar station, BPL must perform and document a pressure test of the BOT piping in accordance with 49 CFR Part 195 Subpart E.
3. In regard to Item 4 of the Notice pertaining to BPL failure to review their manuals of written procedures for normal operation and maintenance, for handling abnormal operations, and for responding to emergencies since February 2005 until the time of this inspection. BPL must review all of their manuals of written procedures for normal operation and maintenance, for handling abnormal operations, and for responding to emergencies and make changes to those procedures that are not effective. BPL must also ensure that records are kept of these reviews as required by Part 195.
4. In regard to Item Number 5 of the Notice pertaining to BPL's failure to periodically review the work done by their personnel and contractors to determine the effectiveness of procedures used in normal operation and maintenance and taking corrective action where deficiencies are found, BPL must immediately review the work done by their personnel and contractors to determine the effectiveness of their operation and maintenance procedures. If deficiencies are found BPL must take corrective action. BPL must document all such reviews and corrective actions taken.
5. In regard to Item Number 6 of the Notice pertaining to BPL's failure to periodically review the response by their personnel and contractors to determine the effectiveness of procedures controlling abnormal operation and taking corrective action where deficiencies are found, BPL must immediately review

the response to emergencies by their personnel and contractors to determine the effectiveness of their emergency response procedures. If deficiencies are found BPL must take corrective action. BPL must document all such reviews and corrective actions taken.

- 6. In regard to Item Number 9 of the Notice pertaining to not completing an “out of service” inspection of Tank 403 at the Poplar station, BPL must complete an “out of service” inspection in accordance with API Standard 653.**
- 7. In regard to Item Number 10 of the Notice pertaining to not developing a list of fire, police and other public officials for the purpose of contacting for liaison activities as required by BPL procedures, BPL must develop a list of all local fire, police and other public officials for the purpose of liaison along their Poplar pipeline.**
- 8. BPL shall maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Chris Hoidal, Director, Western Region, Pipeline and Hazardous Materials Safety Administration. Costs shall be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.**

Response Options for Pipeline Operators in Compliance Proceedings

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

a. When the Notice contains a proposed CIVIL PENALTY* --

1. If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to issue an order making findings of violation and upon confirmation that the payment has been received PHMSA will close the case with prejudice to the respondent. Payment terms are outlined below;
2. If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order assessing a penalty amount up to the amount proposed in the Notice. Refer to 49 C.F.R. § 190.225 for assessment considerations, which include the respondent's ability to pay and the effect on the respondent's ability to stay in business, upon which civil penalties are based;
3. If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination or mitigation of the proposed civil penalty; or
4. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

b. When the Notice contains a proposed COMPLIANCE ORDER* --

1. If you are not contesting the compliance order, notify the Regional Director that you intend to take the steps in the proposed compliance order;
2. If you are not contesting the compliance order but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and issue a compliance order;
3. If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part; or
4. Request a hearing as described below to contest the allegations and/or proposed compliance order items.

c. When the Notice contains a WARNING ITEM --

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. Procedures for Responding to a NOTICE OF AMENDMENT*--

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. If you are not contesting the Notice, notify the Regional Director of your plans to address the inadequacies identified in the Notice;
- b. If you are not contesting the Notice but wish to submit written explanations, information, or other materials you believe warrant modification of the Notice of Amendment in whole or in part, or you seek clarification of the terms of the

Notice of Amendment, you may submit such materials. This authorizes PHMSA to make findings and issue an Order Directing Amendment;

- c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or
- d. Request a hearing as described below to contest the allegations in the Notice.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

III. **Procedure for Requesting a Hearing**

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

IV. **Extensions of Time**

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

V. **Freedom of Information Act**

Any material provided to PHMSA by the respondent, and materials prepared by PHMSA including the Notice and any order issued in this case, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If you believe the information you are providing is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption

provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to http://www.sba.gov/ombudsman/dsp_faq.html.

VII. **Payment Instructions**

Civil Penalty Payments of Less Than \$10,000

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration
Mike Monroney Aeronautical Center
Financial Operations Division (AMZ-341) P.O. Box 269039
Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

Civil Penalty Payments of \$10,000 or more

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) <u>RECEIVER ABA NO.</u> 021030004	(2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank)
(3) <u>SENDING BANK ABA NO.</u> (Provided by sending bank)	(4) <u>SENDING BANK REF NO.</u> (Provided by sending bank)
(5) <u>AMOUNT</u>	(6) <u>SENDING BANK NAME</u> (Provided by sending bank)
(7) <u>RECEIVER NAME</u> TREAS NYC	(8) <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)
(9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> BNF = /ALC-69-14-0001	(10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

Block #7 - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/ALC-69-14-0001". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - "AC-payment for PHMSA Case # / To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

NOTE: A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

February 2009



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

12300 W Dakota Ave , Suite 110
Lakewood, CO 80228

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

February 2, 2007

Mr. Hank True
President
Bridger Pipeline Company LLC
455 North Poplar Street
Casper, WY 82601

SENT TO COMPLIANCE REGISTRY
Hardcopy Electronically
of Copies 1 / Date 2/9/07

CPF No. 5-2007-5003

Dear Mr. True:

Between June 6-10, 2005, July 18-21, 2005, and August 15-18, 2005, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected your of Bridger Pipeline Company's (BPL) Poplar pipeline system in Montana. This inspection included a review of supporting Operation and Maintenance (O&M) records for all systems in Casper and New Castle, Wyoming as well as Glendive and Baker, Montana.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. **§195.49 Annual report**
Beginning no later than June 15, 2005, each operator must annually complete and submit DOT form RSPA F 7000-1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year. A separate report is required for crude oil, HVL (including anhydrous ammonia), petroleum products, and carbon dioxide pipelines. Operators are encouraged, but not required, to file an annual report by June 15, 2004, for calendar year 2003.

Data is incorrect on the Annual Report for Calendar Year 2004 for the Poplar pipeline. The Poplar pipeline report does not state all of the miles of electronic resistance weld pipe installed between 1950 and 1959.

2. **§195.204 Inspection - General.**

Inspection must be provided to ensure the installation of pipe or pipeline systems in accordance with the requirements of this subpart. No person may be used to perform inspections unless that person has been trained and is qualified in the phase of construction to be inspected.

Records for the Poplar pipeline integrity repair work in 2005 do not adequately document construction and welding inspection. Additionally records did not include qualifications of construction and welding process inspectors.

3. **§195.214 Welding procedures**

(a) Welding must be performed by a qualified welder in accordance with welding procedures qualified under Section 5 of API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code (ibr, see § 195.3) . The quality of the test welds used to qualify the welding procedure shall be determined by destructive testing.

(b) Each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.

Butt weld and fillet weld procedures used for the Poplar pipeline integrity repairs completed in 2005 were not qualified using destructive testing.

4. **§195.230 Welds: Repair or removal of defects.**

(a) Each weld that is unacceptable under §195.228 must be removed or repaired. Except for welds on an offshore pipeline being installed from a pipe lay vessel, a weld must be removed if it has a crack that is more than 8 percent of the weld length.

(b) Each weld that is repaired must have the defect removed down to sound metal and the segment to be repaired must be preheated if conditions exist which would adversely affect the quality of the weld repair. After repair, the segment of the weld that was repaired must be inspected to ensure its acceptability.

Records show that weld number XR 11 made during a short segment replacement project on the Poplar pipeline was rejected for a pinhole. There is no record that this weld was repaired and re-inspected. This weld XR 11 is not the same weld XR 11 that was part of the 17,000 foot repair project on the Poplar Pipeline.

5. **§195.402 Procedural manual for operations, maintenance, and emergencies.**

(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1) Making construction records, maps, and operating history available as necessary for safe operation and maintenance.

Alignment sheets reviewed in Glendive for the Poplar pipeline have been redlined to reflect new crossings and other changes. BPL reported that this set of alignment sheets are the only updated copy for the Poplar pipeline.

6 §195.402 Procedural manual for operations, maintenance, and emergencies.
(a) General. Each operator shall 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. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

- a. BPL procedures require periodic review of work done by the operator to determine the adequacy of procedures used in normal operations and maintenance. BPL has not completed any of these reviews.
- b. BPL procedures require periodic review of work done by the operator to determine the adequacy of procedures used in controlling abnormal operations. BPL has not completed any of these reviews.

7. §195.402 Procedural manual for operations, maintenance, and emergencies.
(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

- (12) Establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication.**

BPL liaison activity efforts do not insure that local responders, including those at remote locations, understand how to respond to a pipeline emergency for the Poplar, and Butte pipeline systems.

8. §195.403 Emergency Response Training.
(b) At the intervals not exceeding 15 months, but at least once each calendar year, each operator shall:

(1) Review with personnel their performance in meeting the objectives of the emergency response training program set forth in paragraph (a) of this section; and

(c) Each operator shall require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under 195.402 for which they are responsible to ensure compliance.

- a. BPL does not review with personnel, once each calendar year not to exceed 15 months, their performance in meeting the objectives of the emergency response training program.
- b. BPL does not verify that their supervisors have adequate knowledge of emergency response procedures.

9. §195.410 Line markers.

(a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:

(1) Markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known.

During this inspection several markers were down along the Poplar pipeline segment that is north of Glendive just south of the Highway 254 crossing.

10. §195.422 Pipeline Repairs.

(a) Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.

None of the several type B repair sleeves installed on the Poplar pipeline in 2005 were NDTed at the sleeve to pipe fillet welds. Operator's records do not appear to indicate if these welds were visually examined. Industry practice has been to use some type of NDT inspection of all sleeve to pipe fillet welds to insure that repairs are made in a safe manner to prevent damage to persons or property during and after repairs.

11. §195.428 Overpressure safety devices and overfill protection systems

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

BPL does not, once each calendar year not to exceed 15 months, test or calibrate pressure transducers that transmit data to the SCADA center on the Poplar pipeline. Pressure transmitters that send pressure data to manned SCADA centers are part of the pressure control system and as such must be tested once each calendar year not to exceed 15 months.

12. §195.440 Public awareness

Each operator shall establish a continuing educational program to enable the public, appropriate government organizations and persons engaged in excavation-related activities to recognize a hazardous liquid or a carbon dioxide pipeline emergency and to report it to the operator or the fire, police, or other appropriate public officials. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of non-English speaking population in the operator's operating areas.

BPL's Public Awareness Program is inadequate at providing pipeline information to the general public.

13. §195.579 What must I do to mitigate internal corrosion?

(c) Removing pipe. Whenever you remove pipe from a pipeline, you must inspect the internal surface of the pipe for evidence of corrosion. If you find internal corrosion requiring corrective action under Sec. 195.585, you must investigate circumferentially and longitudinally beyond the removed pipe (by visual examination, indirect method, or both) to determine whether additional corrosion requiring remedial action exists in the vicinity of the removed pipe.

There is no documented internal inspection of pipe upstream or downstream of pipe replacements that were part of the integrity repairs for the Poplar Pipeline.

14. §195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months
Offshore	At least once each calendar year, but with intervals not exceeding 15 months

(b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(c) If you find atmospheric corrosion during an inspection, you must provide protection against the corrosion as required by Sec. 195.581.

BPL has not completed or documented any of their atmospheric corrosion inspections BPL has no plan for examining those pipe surfaces that are in contact with concrete saddles.

Proposed Compliance Order

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to BPL. Please refer to the *Proposed Compliance Order* that is enclosed and made a part of this Notice.

Warning Items

With respect to item(s) 1, 2, 6a, 6b, 7, 8a, 8b, 9, 12, and 13 we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these item(s). Be advised that failure to do so may result in BPL being subject to additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 5-2007-5003** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



Chris Hoidal
Director, Western Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

cc: PHP-60 Compliance Registry
PHP-500 (G. Davis #114331, #114330, #114253)

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to BPL a Compliance Order incorporating the following remedial requirements to ensure the compliance of BPL with the pipeline safety regulations:

1. With respect to Item 3 of the Notice BPL must:
Ensure that all weld procedures used for pipeline construction, repairs, and operation and maintenance have been qualified using destructive testing

Provide PHMSA records of all the above welding procedures to include the qualification records.

2. With respect to Item 4 of the Notice BPL must:
Excavate and examine XR 11 on a short replacement project on the Poplar pipeline not to be confused with weld XR 11 that was part of the 17,000 foot repair project on the Poplar pipeline.

If defects are found then those defects shall be repaired.

Document all inspection and repair activities and provide those records to PHMSA.

3. With respect to Item 5 of the Notice BPL must.
Update all Poplar pipeline alignment sheets used by operations and maintenance personnel to accurately reflect the location of breakout tanks, pump stations, scraper and sphere facilities, pipeline valves, facilities to which §195.402(c)(9) applies, rights-of-way, safety devices to which §195.428 applies, all crossings of public roads, railroads, rivers, buried utilities and foreign pipelines, the maximum operating pressure of each pipeline, and the diameter, grade, type and nominal wall thickness of all pipe.

Ensure that appropriate operations personnel receive copies of these revised drawings.

Provide a copy of those updated alignment sheets to PHMSA.

4. With respect to Item 10 of the Notice BPL must:
Excavate and nondestructively test 50% of all sleeve to pipe fillet welds made as part of the Poplar pipeline integrity repairs of 2004 and 2005.

If any of the excavated welds shows indications of cracking then the balance of all welds will be excavated and nondestructively tested.

Provide documentation of all weld inspections and any associated repairs to PHMSA.

5. With respect to Item 11 of the Notice BPL must:
Test all pressure transducers that are used for operations of the Poplar pipeline including those transducers that are part of the computational pipeline monitoring (CPM) system.

Ensure that all pressure transducers that are used for operations of the Poplar pipeline, including those transducers that are part of the CPM system, are tested and inspected once each calendar year not to exceed 15 months.

Provide documentation of tests for all pressure transducers that are used for operations of the Poplar pipeline including those transducers that are part of the CPM system.

6. With respect to Item 14 of the Notice BPL must:
Complete an atmospheric corrosion inspection of all exposed piping on the Poplar and pipeline. These inspections shall include but not be limited to the soil to air interfaces and under pipe supports.

Document all of the above inspections

Provide protection for all areas of corrosion found during the above inspections.

7. Within 60 days of issuance of the Final Order, Bridger Pipeline Company (BPL) must complete the above items, and submit the required documentation and procedures to the Director, Western Region, Pipeline and Hazardous Materials Administration, 12300 West Dakota Ave, #110, Lakewood, Colorado 80228.
- 8 BPL shall maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Director, Western Region, Pipeline and Hazardous Materials Safety Administration. Costs shall be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

APR 2 2009

1200 New Jersey Ave., SE
Washington, DC 20590

VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED [7005 0390 0005 6163 7459]

Mr. Hank True
President
Bridger Pipeline Company, LLC
455 N. Poplar Street
P.O. Drawer 2360
Casper, WY 82602

Re: CPF No. 5-2007-5003

Dear Mr. True:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions that need to be taken by Bridger to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Western Region, this enforcement action will be closed. Your receipt of this Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Chris Hoidal
Director, Western Region, PHMSA

Colin G. Harris, Esq.
Holme Roberts & Owen LLP
1801 13th St., Ste 300
Boulder, CO 80302-5387
Fax: (303) 866-0200

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

In the Matter of)	
)	
Bridger Pipeline Company, LLC,)	CPF No. 5-2007-5003
)	
Respondent.)	
)	

FINAL ORDER

On June 6-10, July 18-21, and August 15-18, 2005, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration's Office of Pipeline Safety (PHMSA) conducted a safety inspection of the hazardous liquid pipeline systems operated by Bridger Pipeline Company, LLC (Bridger or Respondent), and several related companies in Montana and Wyoming.¹ Bridger operates crude oil transmission pipelines in Montana and North Dakota. As a result of the inspection, the Director, Western Region (Director), issued a combined notice of probable violation and proposed compliance order (CPF No. 5-2006-5004) by letter dated February 21, 2006, to one of the companies (Belle Fourche), alleging violations of the hazardous liquid pipeline safety regulations with respect to the inspected facilities. By letters dated May 26 and December 26, 2006, Belle Fourche objected to the notice on the grounds that the individual companies were separate and distinct legal entities and should be named separately.

In response to those objections, the Director withdrew the original charges on February 2, 2007, and, on the same date, issued separate enforcement documents to each company, including a Notice of Probable Violation and Proposed Compliance Order (Notice) issued to Bridger in this case.² In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Bridger had committed certain violations of 49 C.F.R. Part 195 and proposed that Bridger take measures to correct the alleged violations. In addition, pursuant to 49 C.F.R. § 190.205, the Notice advised Respondent to take appropriate corrective action to address several warning items or face future potential enforcement action.

¹ The companies inspected were Bridger Pipeline Company, LLC, Belle Fourche Pipeline Company (Belle Fourche), and Butte Pipeline Company (Butte). These companies share the same manual of operating procedures and some of the same employees and officers.

² The Director issued separate notices to Belle Fourche (CPF No. 5-2007-5002) and Butte (CPF No. 5-2007-5008). This Final Order concerns only the Notice issued to Bridger. Final agency action has already been taken in the case involving Belle Fourche. The case involving Butte is still pending at this time.

Bridger responded to the Notice by letter dated March 8, 2007 (Response). In its Response, the company contested the allegations of violation and requested a hearing. In accordance with 49 C.F.R. § 190.211, a combined hearing was held on August 31, 2007, in Lakewood, Colorado, with an attorney from the Office of Chief Counsel, PHMSA, presiding. Bridger, Belle Fourche, and Butte were jointly represented by counsel at the hearing. After the hearing, the companies submitted a single post-hearing brief (Brief) on October 11, 2007, and additional information by letter dated December 21, 2007. To the extent that the issues raised at the hearing and in the Brief relate to Bridger, they are addressed below.

As a preliminary matter, the parties agree that in making "Findings of Violation," PHMSA carries the burden of proving the allegations set forth in the Notice.³ This includes both the burden of production and the burden of persuasion. *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). The standard of proof is the traditional preponderance-of-the-evidence standard. *Steadman v. SEC*, 450 U.S. 91, 102 (1981). Respondent argues in its Brief that PHMSA failed to meet its burden of proof on all contested Items in the Notice (i.e., Items 3, 4, 5, 10, 11, and 14). As discussed more fully below, I find that PHMSA did in fact meet its burden of proof on all the charges.

FINDINGS OF VIOLATION

The Notice alleged that Respondent committed violations of 49 C.F.R. Part 195, as follows:

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.214, which provides:

§ 195.214 Welding procedures.

(a) Welding must be performed by a qualified welder in accordance with welding procedures qualified under Section 5 of API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code (incorporated by reference, *see* §195.3). The quality of the test welds used to qualify the welding procedure shall be determined by destructive testing.

(b) Each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.

The Notice alleged that Bridger violated § 195.214 by failing to perform welding in accordance with procedures that had been qualified by the use of test welds determined to be of acceptable quality through destructive testing. Specifically, the Notice alleged that butt weld and fillet weld procedures used by Respondent for integrity repairs on the Poplar pipeline in 2005 had not been qualified through the use of destructive testing. During the inspection, the PHMSA inspector

³ Under the Administrative Procedure Act, "the proponent of a rule or order has the burden of proof A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence." 5 U.S.C. § 556(d).

noted that Respondent's welding procedures did not include results from destructive testing that were required in order to qualify the procedures. Violation Report at 2 (Feb. 7, 2008).⁴

Bridger contended that testimony at the hearing showed the company "used procedures that had been qualified by a predecessor operator of the pipeline. In any event, Bridger now has its own qualified welding procedures." Brief at 14. However, I can find no evidence in the record to substantiate this claim. Both Respondent's procedures and the procedures of the previous operator are in the record, but neither includes any record of qualifications using destructive testing. While Respondent stated in its Brief that testimony at the hearing showed Bridger used procedures that had been qualified, the hearing officer noted that Respondent did not introduce any evidence at the hearing to support this statement, and I find none in the record. Even if I were to assume the previous operator did indeed qualify the procedures properly through the use of destructive testing, the fact remains that Bridger failed to present any tangible evidence of these tests and failed to retain any records of such tests, as required under § 195.214(b). Finally, Bridger's statements concerning its efforts to qualify the procedures *after* PHMSA's inspection are irrelevant to the determination of whether or not the company was in compliance at the time of the inspection.

Accordingly, after considering all of the evidence, I find Respondent violated 49 C.F.R. § 195.214 by failing to perform welding in accordance with welding procedures that had been qualified using test welds of acceptable quality, as determined by destructive testing.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.230, which states:

§ 195.230 Welds: Repair or removal of defects.

(a) Each weld that is unacceptable under § 195.228 must be removed or repaired. Except for welds on an offshore pipeline being installed from a pipe lay vessel, a weld must be removed if it has a crack that is more than 8 percent of the weld length.

(b) Each weld that is repaired must have the defect removed down to sound metal and the segment to be repaired must be preheated if conditions exist which would adversely affect the quality of the weld repair. After repair, the segment of the weld that was repaired must be inspected to ensure its acceptability.

The Notice alleged that Respondent violated § 195.230 by failing to repair and re-inspect a weld that was "unacceptable" under § 195.228. Specifically, the Notice alleged that Bridger rejected weld XR-11 because it had a pinhole defect but failed to repair and re-inspect it.⁵ Evidence in the record included an inspection form utilized by Bridger's radiographer that shows he had determined this particular weld to be unacceptable. Violation Report Ex. 2. When questioned about this during the PHMSA inspection, Respondent's personnel were unable to produce any record of the weld ever having been repaired and re-inspected. Violation Report at 3.

⁴ The inspector provided copies of Respondent's procedures, dated February 2005, for the record. Violation Report Ex. 1.

⁵ This weld was performed by Respondent's personnel during a short segment replacement project on the Poplar pipeline. It is not the same "weld XR-11" that was part of a 17,000-foot repair project on the same pipeline.

In its written submissions and at the hearing, Respondent presented several arguments why it had not violated § 195.230. First, it argued that weld XR-11 should not be considered “unacceptable.” Brief at 3-4. Second, it argued that even if PHMSA now deemed the weld to be unacceptable, Bridger had already repaired the weld. Brief at 4. Third, it argued that Bridger did not have fair notice of the agency’s interpretation and application of this standard. Response at 4.

As for Bridger’s first argument that weld XR-11 should not be considered “unacceptable,” the company contends that neither the criteria for the acceptability of welds in § 195.228 nor Section 9 of American Petroleum Institute Welding Standard 1104 (API 1104), which is incorporated therein, specify that pinholes are unacceptable. Respondent’s engineer testified in an affidavit that “[s]ection 9.3 [of API 1104] lists and explains the defects that . . . may warrant rejection in connection with radiographic testing. A ‘pinhole’ is not one of them.” Brief Ex. 6 at ¶ 26. In addition, Respondent’s consultant expressed the opinion that “[t]he list of unacceptable defects [in Section 9 of API 1104] does not include a ‘pinhole.’ Therefore . . . the mere fact that a radiographer found a ‘pinhole’ . . . does not mean that the weld failed the acceptability criteria of API-1104.” Brief Ex. 7 at ¶ 12. Because a pinhole is not listed as an unacceptable defect in § 195.228 or Section 9 of API 1104, Bridger argues that § 195.230 does not require that it be repaired. Brief at 3.

Respondent is correct that neither §§ 195.230, 195.228, nor Section 9 of API 1104 expressly states that a “pinhole” is an unacceptable weld defect.⁶ Section 9, however, does provide that a company may reject a weld for any reason other than those explicitly referenced in Section 9.3. Section 9.2 states:

All nondestructive test methods are limited in the information that can be derived from the indications they produce. The company may therefore reject any weld that appears to meet these acceptance standards if, in its opinion, the depth of an imperfection may be detrimental to the weld.

Accordingly, an operator may reject a weld if the company finds an imperfection that it considers “detrimental to the weld,” even if the type of imperfection is not explicitly enumerated in Section 9 of API 1104.

This is precisely what Bridger did. The record clearly shows that the inspection was performed by Bridger’s welding inspection contractor and that the contractor’s radiographer noted his rejection of this particular weld on his inspection form. The form included a column labeled “Weld Acceptability” and two columns beneath that column with headings of “Yes” and “No.” Violation Report Ex. 2. The radiographer marked the “No” column under the “Weld Acceptability” heading for weld XR-11, indicating that he had determined the weld was unacceptable.

The radiographer also recorded, under the column entitled “Type of Defects in Rejectable Welds,” that the defect type was a pinhole. In his affidavit submitted by Respondent, the radiographer acknowledged that he had “indicated that weld XR-11 was not acceptable.” Brief

⁶ In this case, radiographic testing was used by Respondent to examine weld XR-11. Brief at 3. Section 9.3 of API 1104 specifies acceptance standards for weld imperfections located by radiographic testing.

Ex. 5. Since it was Bridger's own contractor who determined that XR-11 was "unacceptable" under § 195.228 and API 1104, the company was required under § 195.230 to repair and re-inspect the weld to ensure integrity.

As for Respondent's second argument that the company had in fact repaired the weld, Bridger acknowledged that it did not have a record of the repair and that such lack of documentation was most likely due to a clerical error. Response at 4. The company argued, however, that normal company practice was to grind down and repair pinhole imperfections in welds. *Id.* Bridger also submitted several affidavits of persons familiar with the matter who attested that weld XR-11 had "likely" been repaired. The affidavit of the radiographer who personally examined weld XR-11 indicated that he "believe[s] that weld XR-11 was repaired."⁷ Brief Ex. 5. The testimony and affidavit of another employee, who had spoken to the weld foreman of the repair project, indicated:

He [the weld foreman] informed me that it was the practice on this project to grind down any "pinhole" anomalies, at which point the weld was not [*sic*] longer considered to be rejectable by T&K. [He also] informed me that it was likely that XR-11 was ground down, and mistakenly not noted in writing by the inspector on the applicable T&K worksheet or any subsequent document.

Brief Ex. 6 at 4.⁸

While such statements may be helpful in determining the company's standard practices, I find them unpersuasive in this case. First, there is no definitive statement in the record that the repair was actually made. More importantly, Bridger has no documentation of the repair having been made, even though the company was or should have been fully aware of its obligation under 49 C.F.R. § 195.266 to maintain a complete record of all girth welds, including the disposition of each rejected weld. The absence of any record of a repair and re-inspection in this case, when coupled with the lack of other tangible evidence or conclusive testimony, is telling.

Finally, Respondent argued that PHMSA is attempting to punish the company for violating a standard without providing fair notice of the agency's prospective interpretation or application of such standard. According to Bridger, it would violate due process to hold the company liable under PHMSA's interpretation of § 195.230 without fair notice. Response at 4.

Respondent is correct that governmental agencies may not violate a person's right of due process by depriving such person of property without providing a minimum level of "fair notice" as to what may constitute a violation of law. "Due process requires that parties receive fair notice before being deprived of property In the absence of notice—for example, where the regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing civil or criminal liability." *Gen. Elec. Co. v. U.S. EPA*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995) (citations omitted) (internal quotation marks omitted). *See also, United States v. Chrysler Corp.*, 158 F.3d 1350, 1354 (D.C. Cir. 1998);

⁷ In its Brief at 4, Bridger misidentified this individual as "the welder who made weld XR-11" when in fact the individual was the *inspector* of the weld, according to the individual's own affidavit.

⁸ It is not clear from the record how long ago the witness actually spoke to the weld foreman. Respondent was not able to locate the foreman to offer testimony in this case. Brief at 8.

Trinity Broad. of Fla., Inc. v. FCC, 211 F.3d 618, 628 (D.C. Cir. 2000). When an agency interprets a regulation through enforcement rather than pre-enforcement efforts, the issue of notice rests on “whether the regulated party received, or should have received, notice of the agency’s interpretation in the most obvious way of all: by reading the regulations. If, by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ‘ascertainable certainty,’ the standards with which the agency expects parties to conform, then the agency has fairly notified a petitioner of the agency’s interpretation.” *Gen. Elec. Co.*, 53 F.3d at 1329.⁹

In this case, I find, as a matter of law, that Bridger received fair notice of the conduct that was required of the company. Section 195.230 is clear on its face and provided Bridger with adequate notice that each unacceptable weld must either be removed or repaired and re-inspected. Section 195.228, and Section 9 of API 1104, incorporated therein, are also quite clear that a company may deem a weld unacceptable on its own or for a variety of explicitly enumerated reasons. In this case, Bridger itself determined that weld XR-11 was unacceptable; therefore, the company was required to address the weld accordingly. Having considered all of the evidence and issues presented, I find Respondent violated 49 C.F.R. § 195.230 by failing to repair a weld that the company had determined was unacceptable.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(1), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall 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 [A]ppropriate parts shall be kept at locations where operations and maintenance activities are conducted

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1) Making construction records, maps, and operating history available as necessary for safe operation and maintenance

The Notice alleged that Respondent violated § 195.402 by failing to make updated maps and alignment sheets available as necessary for safe operation and maintenance of the Poplar pipeline. Specifically, the Notice alleged that Bridger maintained only one set of updated alignment sheets, which showed new crossings and other changes to the facility, and kept those documents at the Glendive office rather than making them available to personnel performing operations and maintenance functions in the field. It was impractical for PHMSA’s inspector to include a copy of the alignment sheets in the record, but he noted that Bridger’s supervisor

⁹ Such “ascertainable certainty” may not be possible where an agency has given conflicting public interpretations of a regulation. In addition, even in those situations where an “agency does not issue contradictory public statements, it may fail to give sufficient fair notice to justify a penalty if the regulation is so ambiguous that a regulated party cannot be expected to arrive at the correct interpretation using standard tools of legal interpretation, must therefore look to the agency for guidance, and the agency failed to articulate its interpretation before imposing a penalty.” *United States v. Lachman*, 387 F.3d 42, 57-58 (1st Cir. 2004) (citation omitted).

informed him that the set of alignment sheets at the Glendive office was the only updated (i.e., accurate) copy for the Poplar pipeline. Violation Report at 4.

In its Response, the company stated only that “[a]lignment sheets have been disseminated and Bridger is engaged in an ongoing process of updating.” Response at 5. In its Brief, Respondent contended that the requirements of the regulation were met by keeping the updated maps at the Glendive office, “where pipeline operations and maintenance are based.” Brief at 14.

Under § 195.402(a) and (c)(1), as quoted above, persons performing operations and maintenance activities in the field, such as excavation activities that require precisely locating underground facilities, must have current maps of the pipeline facility on hand when those activities are being conducted. Performing such activities without any maps or with outdated or inaccurate maps increases the chances that a pipeline will be struck and damaged, causing a release of product harmful to the public and environment. The evidence shows that Bridger had only one set of current alignment sheets and that set did not leave the Glendive office. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(1) by failing to make current maps available as necessary for the safe operation and maintenance of the Poplar pipeline.

Item 10: The Notice alleged that Respondent violated 49 C.F.R. § 195.422(a), which states:

§ 195.422 Pipeline repairs.

(a) Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.

The Notice alleged that Respondent violated § 195.422(a) by failing to ensure that integrity repairs performed on the Poplar pipeline in 2005 were made in a safe manner. Specifically, it alleged that Bridger failed to use a nondestructive testing (NDT) method to examine sleeve-to-pipe fillet welds associated with type-B repair sleeves. The Notice also alleged that industry practice has been to use NDT to ensure that type-B repair sleeves are installed in a safe manner. The Notice alleged further that Respondent’s repair records did not even indicate whether visual examinations of such welds had been performed.

During the PHMSA inspection, the inspector noted that Bridger had made repairs using type-B sleeves, but there was no record that such repairs had been visually inspected or tested using NDT. The inspector documented statements made by two of Respondent’s employees that the company had visually inspected the welds but did not need to perform NDT because such testing had been performed on two sleeve repairs on another pipeline operated by a sister company and that such tests had been successful. Violation Report at 5.

Bridger raised several defenses to Item 10. First, it contended that the company ensured type-B repair sleeves were installed in a safe manner by using fully qualified welders and procedures, by visually inspecting the welds, and by performing a post-repair hydrostatic test of the pipeline. Response at 6. Second, it argued that PHMSA failed to provide the company with fair notice of the agency’s interpretation and application of this NDT standard.

As for Bridger's first defense that the company ensured the repairs were made in a safe manner, the company presented one of its engineers, who stated that he had been told by the welding foreman that all of the welds were visually inspected. Brief Ex. 6 at ¶ 9.¹⁰ The witness also testified that, to his knowledge, the company had used qualified welders and procedures and that the company had performed a hydrostatic test on the pipeline. *Id.* at ¶¶ 8 and 10. Respondent maintained these measures constituted compliance with § 195.422 and American Society of Mechanical Engineers (ASME) Standard B31.4, which Respondent referred to as "the relevant professional code governing pipeline transportation systems." Response at 5. In particular, Respondent contended that Section 451.6.3 of ASME B31.4 "allows for 'other methods' along with visual inspection" to ensure the safety of repair welds and that Respondent chose hydrostatic testing in addition to visual inspection. Response at 6.

With regard to the use of qualified workers and procedures, Respondent is correct to point out that these are critical for ensuring repairs are made in a safe manner. However, the use of qualified workers and procedures is not a substitute for post-repair examination. The use of qualified workers and procedures only serve prospectively to make it more likely that repairs *will be* made safely in the future. The use of post-repair examinations is also needed to ensure that repairs *were in fact* made safely. Moreover, I have found that Bridger did not use qualified welding procedures when performing fillet welds on the Poplar pipeline in 2005 (*see* Item 3 of this Order).

With regard to the visual examinations and hydrotest, I find little support in the record for Respondent's assertion that it conducted visual examinations of these repair welds, other than second-hand accounts and hearsay. Even if visual examinations were performed, they do not provide enough information on their own to determine whether repair welds were properly performed. For that reason, another type of post-repair examination method is required. While Respondent asserted that the leading industry standard accepts the use of hydrostatic testing in addition to visual examinations in such circumstances, the standard actually states that "[w]elds should also be examined by at least one other *nondestructive examination* method" in addition to visual examinations. ASME B31.4 § 451.6.3(b) (2002) (*emphasis added*). Rather than utilize another method of NDT, as recommended in the leading industry standard, Respondent instead chose to hydrotest the pipeline.

At the hearing, the Director explained that hydrostatic testing is not a suitable process for determining the soundness of a type-B sleeve repair. This is because hydrotests are not capable of testing the integrity of the fillet welds on a type-B repair sleeve. In fact, Respondent informed PHMSA, by letter dated December 21, 2007, that it had recently performed NDT on several type-B repair sleeves from the 2005 repair project at issue in this case and found some sleeves had cracks in the pipe-to-sleeve fillet weld that had not been detected by Bridger during any of its previous post-repair examination methods, including the hydrostatic test. Respondent also determined that six of the twelve excavated repairs were not made in their intended locations. The cracks in the repair welds and the incorrect locations of the repair sleeves are further indications that the repairs were not performed in a safe manner.

¹⁰ The date this witness spoke to the foreman is not evident in the record, but it was likely years ago, since Respondent was not able to locate the foreman to testify. Brief at 8.

While NDT may be an appropriate method to ensure type-B repair sleeves are installed in a safe manner, the text of § 195.422(a) does not explicitly require the use of NDT to determine the safety of such repairs. As Respondent correctly notes, § 195.422(a) is a performance-based regulation that requires a specified minimum level of safety for pipeline repairs but does not prescribe a specific process or method to be used for each type of repair. With regard to the repairs at issue in this case, the question is whether Respondent used an evaluation process capable of ensuring that type-B repair sleeves were installed in a safe manner. For the reasons expressed above, I find the methods used by Respondent to determine the safety of those repairs were inadequate to comply with § 195.422(a).

As for Bridger's second argument that PHMSA failed to provide fair notice of its interpretation and application of this regulation to require NDT, Respondent argued that it "could not have reasonably ascertained that OPS now considers NDT to be a mandatory requirement under 49 C.F.R. § 195.422(a)," because the regulation, on its face, imposes no such requirement. Brief at 10.

Bridger has clearly misinterpreted the agency's application of § 195.422 in this case. As explained above, PHMSA does not take the position that NDT, specifically, is a mandatory requirement of the regulation. Rather, the agency notes the industry practice has been to use NDT to meet the performance-based regulation for the type of pipeline repair at issue in this case. It is clear from the text of § 195.422(a) that in order to ensure a particular pipeline repair has been made in a safe manner, an operator must use an evaluation method that is capable of making that determination. As a matter of law, therefore, I find that Bridger had fair notice of the requirement within § 195.422(a) that it use an evaluation method capable of determining type-B sleeve repairs were made in a safe manner. Unfortunately, for the reasons expressed above, the methods of evaluation used by Bridger were insufficient to comply with this requirement.

Respondent's assertion that the company was not aware NDT was the "industry standard" is specious, as Bridger itself cited the ASME B31.4 standard, which states explicitly that repair welds should be examined by NDT. Whether or not NDT is the industry standard, however, is ultimately irrelevant because § 195.422(a) does not bind Respondent to the industry standard. Respondent may comply with the regulation by using one or more evaluation methods capable of determining that "the repairs are made in a safe manner;" but the operator must be able to demonstrate the chosen method is capable of making such a determination. In this case, I find Bridger's chosen evaluation method was not capable of demonstrating the repairs were made safely.

Accordingly, after considering all of the evidence and arguments presented, I find Respondent violated 49 C.F.R. § 195.422(a) by failing to ensure that type-B repairs sleeves were completed in a safe manner.

Item 11: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overfill protection systems.

(a) [E]ach operator shall, at intervals not exceeding 15 months, but at least once each calendar year . . . inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to

determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated § 195.428(a) by failing to inspect and test certain pressure control equipment on the Poplar pipeline to determine that such equipment was functioning properly, was in good mechanical condition, and adequate in terms of capacity and reliability of operation. Specifically, the Notice alleged that Bridger failed to test or calibrate “transducers that transmit data” to the company’s Supervisory Control and Data Acquisition (SCADA) center. The Notice alleged that such devices were part of the company’s pressure control system and therefore had to be inspected and tested periodically under § 195.428(a). The Director’s Violation Report also referenced an enforcement action brought against the previous operator of the Poplar pipeline in 2004 for the same issue. Violation Report at 6.¹¹

Bridger raised several defenses to Item 11. First, the company argued that the requirements in § 195.428(a) do not apply to pressure “transmitters,” which the company termed the equipment at issue in the Notice. Response at 7. Second, the company argued that Bridger did not have fair notice of this interpretation and application of § 195.428(a). *Id.*

As a general matter, the parties discussed at the hearing whether a distinction could be drawn between the terms “transducer” and “transmitter” and, if so, whether that distinction had any bearing on the allegation. A “transducer” is a generic term referring to a device that reads data in one form (for example, pipeline pressure measured in pounds) and translates that data into an electronic signal that can be transmitted, usually by wire. A “transmitter” is an electronic assembly with a transducer at the front end and that transmits the signal. Although there is a technical distinction between the two terms, in this case the terms refer to the same piece of equipment that, for ease of discussion, I will refer to simply as a “pressure transmitter.”

The company offered several reasons why § 195.428(a) does not apply to pressure transmitters. First, it explained that Bridger’s pipeline uses on-site devices that are “hard-wired to mechanically shut down the system locally and independently of the SCADA system” when pressure reaches a certain level. Brief at 12. Respondent distinguished those devices from pressure transmitters that send pressure data to a SCADA center, arguing that the regulation only applies to local mechanical devices and not to pressure transmitters.

While Respondent is correct to point out that local mechanical pressure control equipment is covered by § 195.428(a), the regulation is not so limited as to exclude other types of devices used to monitor and control operating pressure on a pipeline. By its terms, § 195.428(a) requires “each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment” to be tested and inspected at specified intervals. The regulation does not explicitly define “pressure control equipment,” but the ordinary meaning of those terms would include devices used to control pipeline operating pressure. The requirements within § 195.428(a) do not distinguish between local and remote control devices, nor does the regulation differentiate between devices used to control emergency overpressures and those used to control pressure during normal operations.

¹¹ *In the Matter of Shell Pipeline Company L.P.*, CPF No. 5-2004-5020, Warning Letter (Sept. 23, 2004).

Regulated hazardous liquid pipelines have controls and protective equipment to control pressure during emergency pressure surges and other variations from normal operations. *See* § 195.406(b). A pipeline operator may establish set points for the activation of emergency shutdown and overpressure devices as high as 110% of the established maximum operating pressure (MOP) of a pipeline. *Id.* During normal operations, however, pipeline operators utilize electronic pressure monitoring equipment to assist in operating the pipeline within the established MOP. When pressure transmitters are used to monitor pipeline pressure, the transmitters send pressure data to a program logic computer or SCADA control center where persons and computers make operational decisions based on such data. Safe operation of a pipeline facility depends on the accuracy of the pressure data being transmitted.

If pressure transmitters are not calibrated, they may send inaccurate pressure data to the program logic computer or SCADA center, potentially resulting in the operation of a pipeline at a pressure higher than intended, perhaps even higher than the MOP, without the controller's knowledge. In fact, erroneous pressure data may result in a pipeline being operated at an unsafe pressure as high as 110% of MOP without the controller's knowledge and without triggering any automatic remote or local emergency overpressure protection devices. Regular operation of a pipeline above MOP is a significant safety risk to the public, employees, and the environment, and is not permitted by the pipeline safety regulations. *See* § 195.406(a). For these reasons, regular testing and calibration of pressure transmitters that send pressure signals to on-site devices and to off-site locations that control pipeline pressure is important for public safety and is a requirement under § 195.428(a).

Second, Respondent argued that PHMSA's interpretation of § 195.428(a) to include pressure transmitters would logically require the agency to extend the applicability of the regulation to all other SCADA-related equipment, such as computers, software, alarms, displays, databases, and even satellite communications. Brief at 12. PHMSA has never suggested or actually applied the regulation so broadly as to require annual testing of all SCADA-related equipment. In addition, it would be neither logical nor necessary to extend the application of the regulation to every component arguably associated with a SCADA system. On the other hand, pressure transmitters that actually monitor pipeline pressure, convert such data to electronic signals, and transmit such data to an operator's SCADA system reasonably fall within the scope of the regulation. For these reasons, I find Respondent's argument unpersuasive.

Third, Respondent argued that PHMSA's position on testing pressure transmitters "contradict[s]" other pipeline regulations. Brief at 12. Respondent's argument is based on language within the proposed compliance order in the Notice that would require Bridger to test all pressure transmitters, including those that are "part of the computational pipeline monitoring (CPM) system." Respondent argued that CPM systems, including associated pressure transmitters, are required to be tested under § 195.444 and that subjecting such devices to both §§ 195.428(a) and 195.444 would result in conflicting requirements. Brief at 12-13.

This is incorrect. Section 195.444 regulates CPM *leak detection systems*. A CPM leak detection system may use a variety of techniques for detecting leaks, including physical inspections, hydrocarbon detection sensors, software-based monitoring, and SCADA monitoring. *See* API standard 1130, incorporated by reference at § 195.444. If an operator uses SCADA monitoring as a part of its CPM leak detection system regulated under § 195.444, that does not negate or conflict with the requirement under § 195.428(a) to test pressure transmitters if they also

function as part of a pressure control device. The proposed compliance order likely used the term “CPM system” to cover pressure transmitters that send signals to a SCADA system or other device that controls pressure. Moreover, Respondent did not offer any evidence demonstrating that compliance with both regulations was somehow inconsistent or impracticable. Accordingly, I find this argument unconvincing. To avoid further confusion, however, I have replaced “CPM system” with “device or a SCADA system that controls pressure” in the compliance order.

Finally, Respondent argued that PHMSA failed to provide the company with fair notice of its interpretation and application of § 195.428(a) to require testing of SCADA pressure transmitters. Brief at 13. In particular, Bridger argued that the company could not have reasonably ascertained that § 195.428(a) applies to SCADA pressure transmitters because “the industry understanding and custom was that such devices were not considered to be the sort of mechanical ‘pressure control equipment’ that the regulation was intended to cover.” *Id.*

On the contrary, Bridger had abundant notice that § 195.428(a) has been interpreted to include pressure transmitters sending signals to a SCADA system or other device that controls pressure. The language of the regulation itself is broadly worded to apply generally to equipment used to control pipeline pressure. Moreover, the agency’s interpretation of the regulation with regard to pressure transmitters has been communicated to the regulated pipeline industry through various enforcement actions over a number of years.¹²

Furthermore, in this case, the agency also provided actual notice of its interpretation to Bridger’s sister company, Belle Fourche Pipeline Company, and to the previous operator of Bridger’s Poplar pipeline, Shell Pipeline Company. On May 19, 2004, the Director notified Belle Fourche that it had allegedly violated § 195.428(a) by failing to calibrate pressure transmitters to make sure that accurate data was being transmitted.¹³ In addition, the Director issued an enforcement action on September 24, 2004, to Shell Pipeline Company, warning the operator that failure to produce documentation showing the company had tested and inspected SCADA pressure

¹² See, e.g., *In the Matter of BP Transportation (Alaska) Inc.*, CPF No. 5-2002-5011W, Warning Letter (Apr. 30, 2002); *In the Matter of Cenex Harvest States*, CPF No. 5-2003-5029, Warning Letter (Nov. 18, 2003); *In the Matter of Kinder Morgan Energy Partners*, CPF No. 2-2004-6008M, Notice of Amendment (Apr. 15, 2004); and *In the Matter of ExxonMobil Pipeline Company*, CPF No. 5-2005-5008, Notice of Probable Violation, Proposed Compliance Order, Proposed Civil Penalty, and Notice of Amendment (Feb. 18, 2005), Final Order (Jan. 9, 2007), *pending reconsideration on other grounds*.

In *ExxonMobil*, the operator argued that pressure transmitters sending pressure and flow rate signals to control logic devices or a remote operating control center were not pressure control equipment. The Final Order found, however, that “a pressure transmitter . . . sending signals to another device or a SCADA system that controls pressure . . . is considered to be a pressure control device and as such must be tested and inspected and the data . . . recorded once each calendar year not to exceed 15 months in accordance with 49 C.F.R. § 195.428(a)” because “these devices are integral in the control of pressures for the . . . pipeline.”

¹³ *In the Matter of Belle Fourche Pipeline Company*, CPF No. 5-2004-5010, Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Notice of Amendment (May 19, 2004), Final Order (Dec. 11, 2006), *pending reconsideration on other grounds*. Belle Fourche is a separate legal entity from Respondent; however, the two companies share many of the same employees and officials. For example, Bridger’s lead engineer was the official addressee in the 2004 Belle Fourche enforcement action. The companies also share the same president, who was the official recipient of both the Final Order issued in the 2004 Belle Fourche case and the present enforcement action against Bridger.

transmitters for the Poplar pipeline constituted a probable violation of § 195.428(a).¹⁴ Bridger was or should have been aware of the aforementioned enforcement actions by which PHMSA stated publicly that pressure transmitters were covered by the testing requirements of § 195.428(a). Accordingly, I find, as a matter of law, Bridger had fair notice of the agency’s interpretation and application of this requirement.

Respondent did not refute the factual allegation in the Notice that it had failed to test or calibrate the SCADA pressure transmitters on the Poplar pipeline at intervals not exceeding 15 months, but at least once each calendar year. Therefore, upon consideration of all of the evidence and issues discussed above, I find that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test the pressure transmitters on the Poplar pipeline at specified intervals.

Item 14: The Notice alleged that Respondent violated 49 C.F.R. § 195.583, which states:

§ 195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months

(b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(c) If you find atmospheric corrosion during an inspection, you must provide protection against the corrosion as required by § 195.581.

The Notice alleged that Respondent violated § 195.583 by failing to perform documented atmospheric corrosion inspections. Specifically, that Bridger did not have records of any completed atmospheric corrosion inspections and that none of the pipe supports appeared to have been inspected. Violation Report at 14. When the PHMSA inspector asked company officials whether Bridger planned to inspect pipe surfaces that were in contact with concrete supports, Respondent’s lead engineer indicated that the company did not have procedures to examine those pipe surfaces and had not documented any external corrosion inspections. Violation Report at 14. The inspector photographed a pipe at a support location at Glendive and included the photograph as evidence in the record. Violation Report Ex. 5.

At the hearing, Respondent’s lead engineer stated that while the company had not used specific forms to document its atmospheric corrosion inspections, the company did perform generic inspections and identified corrosive surfaces at times. In its Brief, Bridger introduced an affidavit from the same person, stating that “specific external corrosion inspection procedures were not necessarily written down,” but that the company had “routine inspection procedures for pipelines,” and that “any significant external corrosion that was found would have been addressed appropriately.” The witness also stated that the company had a reference to external corrosion in its operations and maintenance (O&M) manual. Brief Ex. 6 at ¶ 28. Respondent

¹⁴ *In the Matter of Shell Pipeline Company L.P.*, CPF No. 5-2004-5020, Warning Letter (Sept. 23, 2004).

contended that “Bridger [was] in material compliance, *or* [has] been addressing the alleged deficiencies.” Brief at 13-14 (emphasis added).

While Bridger’s lead engineer testified that the company performed “routine” O&M inspections, the company could not state explicitly how or when these inspections occurred, whether such inspections occurred at the requisite intervals under the regulation, whether the company always checked for atmospheric corrosion during such inspections, or whether such inspections specifically checked pipe surfaces that were in contact with concrete supports—all requirements under § 195.583. Bridger was also unable to produce any records of having performed such inspections, which the company is required to keep under § 195.589(c). Furthermore, a photograph taken at Respondent’s pipeline facility indicates that atmospheric corrosion had gone undetected, further evidence that Bridger had not performed atmospheric corrosion inspections within the required intervals.

Finally, Respondent’s statements concerning efforts to improve its forms and procedures *after* the PHMSA inspection are not relevant to the determination of whether or not Respondent was in compliance at the time of the inspection. Accordingly, after considering all of the evidence, I find Bridger violated 49 C.F.R. § 195.583 by failing to perform documented atmospheric corrosion inspections, particularly at pipe surfaces in contact with concrete supports.

Freedom of Information Act (FOIA) Issue: Respondent objected generally to the setting of a hearing in this proceeding while the company still had a FOIA request for documents pending with the agency. Bridger argued in its Brief that PHMSA’s decision to go forward with the hearing, despite the company’s FOIA request and over its objections, constituted “a violation of Respondent’s due process rights.” Brief at 14. Respondent did not present any evidence or cite any legal authority in support of this claim.

PHMSA has specific procedures in place to guarantee a respondent’s procedural due process rights in informal adjudications. *See* 49 C.F.R. Part 190. In accordance with those procedures, PHMSA provided Bridger with all of the materials from the agency’s case file well in advance of the date set for the hearing.¹⁵ Therefore, Bridger cannot reasonably assert that its procedural due process rights were violated.

Furthermore, the law is quite clear that an agency may proceed with an adjudication despite a respondent’s filing of a FOIA request. As the Supreme Court has stated, “[I]nterference with the agency proceedings opens the way to the use of the FOIA as a tool of discovery, over and beyond that provided by the regulations issued.” *Renegotiation Bd. v. Bannerkraft Clothing Co.*, 415 U.S. 1, 24 (1974); *see also, Columbia Packaging Co. v. U.S. Dep’t of Agric.*, 563 F.2d 495, 499-500 (1st Cir. 1977) (stating that “FOIA was not enacted to provide litigants with an additional discovery tool” and that “discovery in the different types of agency litigation is primarily a matter either for agency regulation or separate Congressional determination”).

Based upon the foregoing, I find Respondent’s due process rights were not violated by the setting of a hearing in this proceeding while Bridger’s FOIA request for documents was still pending.

¹⁵ *See* 49 C.F.R. § 190.211(e). It should also be noted that PHMSA responded to Bridger’s FOIA request on March 7, 2007, approximately six months prior to the hearing. The agency responded to the company’s FOIA appeal on October 2, 2008.

The findings of violation contained in this Order will be considered prior offenses in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 3, 4, 5, 10, 11, and 14 in the Notice for violations of §§ 195.214, 195.230, 195.402(c)(1), 195.422(a), 195.428(a), and 195.583, respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids by pipeline or who owns or operates a hazardous liquid pipeline facility is required to comply with the applicable safety standards established under chapter 601.

With respect to several of the proposed compliance order items, Respondent argued that “a grant of jurisdiction to require remedial measures is not an absolute duty to do so under any circumstances,” and that a “cost-benefit assessment” of the proposed compliance terms shows that they would be “unnecessary or excessive.” Response at 4 and 6–8. At the hearing, Respondent argued that the proposed compliance terms would be very expensive and the cost would far exceed any benefit gained from the remedial measures.

While PHMSA considers expected costs and benefits when promulgating new safety regulations, each operator must comply with them once they become final unless the company has requested and received a waiver. 49 U.S.C. § 60118(a) and (c). PHMSA does not permit the noncompliant operation of a pipeline facility merely because it would be expensive for the operator to adhere to the established set of safety standards. Furthermore, it is entirely possible that Respondent realized an economic *benefit* by avoiding certain activities otherwise required by the regulations. Accordingly, I reject Respondent’s argument that PHMSA should refrain from ordering the company to come into compliance with applicable safety regulations.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is hereby ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.214 (Item 3), Bridger shall submit to the Director for approval its welding procedures and supporting documentation showing that such procedures have been qualified using destructive testing in accordance with § 195.214. The procedures must address welding that may be performed during construction, operations, and maintenance activities, including the installation of in-service repair sleeves.
2. With respect to the violation of § 195.230 (Item 4), Bridger shall submit to the Director documentation that weld XR-11 has been excavated, examined, and removed or repaired, as appropriate, in accordance with § 195.230.
3. With respect to the violation of § 195.402(c)(1) (Item 5), Bridger shall submit to the Director for approval its written procedures for ensuring that construction records, maps, and operating history are made available to persons needing them in the field

and any other location as necessary for safe operations and maintenance. Bridger shall update all maps and alignment sheets of the Poplar pipeline used by operations and maintenance personnel so that each document accurately reflects the location of the following: breakout tanks; pump stations; scraper and sphere facilities; pipeline valves; facilities to which § 195.402(c)(9) applies; rights-of-way; safety devices to which § 195.428 applies; all crossings of public roads, railroads, rivers, buried utilities; and foreign pipelines. Each document shall also indicate the following: maximum operating pressure of each pipeline; and diameter, grade, type, and nominal wall thickness of all pipe. Submit documentation of compliance, including a copy of the updated alignment sheets, to the Director.

4. With respect to the violation of § 195.422(a) (Item 10), pursuant to the Notice of Proposed Compliance Order, and based upon Bridger's post-hearing disclosure dated December 21, 2007 (which revealed that certain excavated sleeve-to-pipe fillet welds associated with type-B repair sleeves installed on the Poplar pipeline in 2005 were found to have "toe cracks"), Bridger shall excavate and examine all sleeve-to-pipe fillet welds associated with type-B repair sleeves installed on the Poplar pipeline as part of the referenced integrity repairs of 2005. The method of examination shall be NDT unless Bridger submits to the Director for prior approval a proposal to use another method of examination capable of complying with § 195.422(a). Each excavated weld that has an indication of cracking or other cause for repair must be repaired in accordance with procedures that comply with 49 C.F.R. Part 195 and that have been submitted to the Director for prior approval. Documentation of each excavation, examination, and repair must be maintained and submitted.
5. With respect to the violation of § 195.428(a) (Item 11), Bridger shall ensure that each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment, including pressure transmitter sending signals to another device or a SCADA system that controls pressure, has been inspected and tested in accordance with § 195.428(a) to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used. Develop procedures to ensure future inspections and tests take place at the requisite intervals. Submit documentation of completion, including inspection and test results and developed procedures.
6. With respect to the violation of § 195.583 (Item 14), Bridger must develop and follow procedures for performing atmospheric corrosion inspections of all piping exposed to the atmosphere, giving particular attention to pipe surfaces at soil-to-air interfaces and at pipe supports, among other locations, in accordance with § 195.583. Remediate any atmospheric corrosion found during the inspection in accordance with § 195.583. Documentation of these actions must be maintained and submitted.
7. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and report the cost as follows: (a) total cost associated with preparation, revision of plans and procedures, and performance of studies and analyses; and (b) total cost associated with physical changes to the pipeline infrastructure, including replacements and additions.

8. Documentation of compliance with each item shall be submitted within 60 days of receipt of this Final Order to the Director, Western Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 12300 W. Dakota Ave. # 110, Lakewood, CO 80228-2585.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 1, 2, 6(a), 6(b), 7, 8(a), 8(b), 9, 12, and 13, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.49 (Notice Item 1) – Respondent’s alleged failure to submit an accurate form RSPA F 7000-1.1 for calendar year 2004. The report submitted did not report the correct number of electronic resistance weld pipe miles installed between 1950 and 1959.

49 C.F.R. § 195.204 (Notice Item 2) – Respondent’s alleged failure to perform documented inspections of construction and weld repairs in 2005 to ensure they were performed as required by regulation; also, the company’s alleged failure to utilize inspectors who were properly trained and qualified in construction and welding processes.

49 C.F.R. § 195.402(a) (Notice Item 6a) – Respondent’s alleged failure to follow its own written procedures for conducting periodic reviews of work completed to determine the adequacy of the company’s written procedures for *normal* operations and maintenance.

49 C.F.R. § 195.402(a) (Notice Item 6b) – Respondent’s alleged failure to follow its own written procedures for conducting periodic reviews of work completed to determine the adequacy of the company’s written procedures for *abnormal* operations.

49 C.F.R. § 195.402(c)(12) (Notice Item 7) – Respondent’s alleged failure to establish and maintain liaison with local emergency responders, including those at remote locations, to learn their responsibilities and resources when responding to pipeline emergencies and to acquaint the officials with Respondent’s ability in responding to emergencies and means of communication.

49 C.F.R. § 195.403(b)(1) (Notice Item 8a) – Respondent’s alleged failure to review with personnel at intervals not exceeding 15 months, but at least once each calendar year, their performance in meeting the objectives of Respondent’s emergency response training program.

49 C.F.R. § 195.403(c) (Notice Item 8b) – Respondent’s alleged failure to verify that its supervisors have a thorough knowledge of the emergency response procedures for which they are responsible to ensure compliance.

49 C.F.R. § 195.410(a) (Notice Item 9) – Respondent’s alleged failure to maintain several line markers that were discovered to be down along the Poplar pipeline segment north of Glendive and just south of the Highway 254 crossing.

49 C.F.R. § 195.440 (Notice Item 12) – Respondent’s alleged failure to establish an adequate public education program that enables the general public to recognize a pipeline emergency and to report it to the operator or appropriate emergency responders.

49 C.F.R. § 195.579(c) (Notice Item 13) – Respondent’s alleged failure to inspect the internal surface of pipe upstream and downstream of pipe replacements that were part of integrity repairs for the Poplar pipeline.

Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. § 195.49 (Notice Item 1), § 195.204 (Notice Item 2), § 195.402(a) (Notice Item 6a), § 195.402(a) (Notice Item 6b), § 195.402(c)(12) (Notice Item 7), § 195.403(b)(1) (Notice Item 8a), § 195.403(c) (Notice Item 8b), § 195.410(a) (Notice Item 9), § 195.440 (Notice Item 12), and § 195.579(c) (Notice Item 13) have occurred and Respondent is hereby advised to correct such conditions. In the event that PHMSA finds a violation for any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. 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 terms of the order, including any required corrective action, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.

William H. Giese
for

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

APR 2 2009

Date Issued



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

12300 W. Dakota Ave., Suite 110
Lakewood, CO 80228

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

December 30, 2009

Mr. Tad True
Vice President, True Oil
Belle Fourche Pipeline Company
895 W. River Cross Road
P.O. Drawer 2360
Casper, WY 82602

CPF 5-2009-5042

Dear Mr. True:

On August 24-28, 2008, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, inspected two of your company's pipeline systems, the Belle Fourche Pipeline and Sussex Diesel Pipeline in Casper, Wyoming.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. **§195.402 Procedural manual for operations, maintenance, and emergencies.**
(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operation and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year,

and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

BFPL records as well as conversations with BFPL personnel showed that the company had not reviewed or revised its O&M Manual from 2005 to 2008. An operator is required to perform those reviews and make appropriate changes once each calendar year, but at intervals not exceeding 15 months.

2. §195.402 Procedural manual for operation, maintenance, and emergencies.

(a) General. Each operator shall 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. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

(c) Maintenance and Normal Operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(12) Establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication.

BFPL had not established and maintained liaison with fire, police or other appropriate public officials along its pipeline system in Wyoming. BFPL's Public Awareness Program stated that the company would compile data (names, addresses, phone numbers, etc.) pertaining to local fire, police, and other emergency and public officials that could be involved with a response to a hazardous liquid pipeline emergency involving a BFPL pipeline. However, BFPL had no documentation showing that the company had collected such data or performed the required liaison activities. BFPL was issued a warning for a similar citation in CPF 5-2007-5002.

3. §195.402 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall 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. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(13) Periodically reviewing the work done by operator to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

BFPL had not been periodically reviewing the work completed by its personnel to determine the effectiveness of their Pipeline Operations and Maintenance Manual (O&M Manual). BFPL had a procedure for performing such reviews in Section 3.8 of the "Organization and Responsibilities" section of the BFPL O&M Manual. Nonetheless, the company had no record of those reviews at the time of the inspection. Section 195.404 requires that an operator maintain a record of each inspection and test required by subpart F of Part 195 for at least 2 years or until the next inspection or test is performed, whichever is longer. The absence of any records is a violation of the pipeline safety regulations and BFPL's own procedures. It also indicates that the required inspections did not occur, which is consistent with statements made by the company's operating personnel at the time of the inspection.

4. §195.404 Maps and Records.

(b) Each operator shall maintain for at least 3 years daily operating records that indicate-

(1) The discharge pressure at each pump station;

BFPL did not have a pressure recording device at the Guernsey Pump Station and the company did not maintain any pressure discharge records for that facility. Each operator is required to maintain at least 3 years' worth of records documenting the daily discharge pressures at each pump station.

5. §195.404 Maps and Records.

(c) Each operator shall maintain the following records for the periods specified;

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

BFPL's tank data sheets showed that the Sussex breakout tank received an API Standard 653 out-of-service internal inspection in 2001. However, an inspection report was not in BFPL's files or otherwise available for review at the time of the inspection. The operator is required to keep a complete record of inspections per Section 6 of API 653 until the next inspection of its type is performed.

6. §195.406 Maximum operating pressure.

(b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

BFPL had no safety device(s) installed at the Guernsey Pump Station to prevent overpressuring of the pumping equipment and piping installed at that facility or of the pipeline located downstream from that station. Each pipeline operator must provide adequate controls and protective equipment to control the pressure within the maximum operating pressure (MOP) during normal operations and 110% of MOP during abnormal operations.

7. §195.412 Inspection of rights-of-way and crossings under navigable waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate mean of traversing the right-of-way.

BFPL did not inspect its pipeline right-of-way at the appropriate time intervals for the Montana portion of the Bicentennial Line. The evidence shows that the required interval was exceeded between March 24 and April 21, 2008, and between June 4 and July 5, 2008. BFPL had records of over-flights occurring between these dates, but those records indicate that the Montana portion of the Bicentennial line was not over-flown. In addition, the recordkeeping process for right-of-way inspections made it difficult for BFPL to keep track of inspection intervals for the various segments of its pipeline system, thereby increasing the probability that a right-of-way inspection could be missed. An operator is required to patrol all of their pipelines at an interval not exceeding 3 weeks but at least 26 times per year and to maintain a record of those patrols.

8. §195.420 Valve maintenance.

(b) Each operator shall, at intervals not exceeding 7 1/2 months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

BFPL failed to inspect numerous mainline valves at the required frequency from 2006 to 2007. BFPL records confirm the following 25 mainline valves were not inspected twice during the 2006 calendar year:

Area	Valve Designation	Area	Valve Designation
Shilight/Kaye	010-011	Donkey Creek	010-002
Shilight/Kaye	015-005	Donkey Creek	010-003
Shilight/Kaye	015-004	Donkey Creek	010-001
Shilight/Kaye	015-005	Donkey Creek	010-101
Shilight/Kaye	015-002	Sussex Products	069-0001
Shilight/Kaye	Poison Draw 6" Tie In	Sussex Products	069-0006 (6")
Shilight/Kaye	Poison Draw Line 8"	Sussex Products	069-0006 (4")
Shilight/Kaye	010-0056	Sussex Products	069-0007 (6")

Shilight/Kaye	101-006	Sussex Products	069-0007 (4")
Shilight/Kaye	015-001	Sussex Products	069-0008
Shilight/Kaye	015-011		
Shilight/Kaye	015-012		
Shilight/Kaye	101-008		
Shilight/Kaye	101-009		
Shilight/Kaye	010-010		

In addition, BFPL records show that inspections for the following 22 mainline valves exceeded the 7 ½ month maximum inspection interval:

Valve Designation	Period	Days in excess of 7 ½ months
010-001	June 1, 2006 to January 14, 2007	2
010-101	June 1, 2006 to January 14, 2007	2
015-002	June 7, 2006 to January 25, 2007	7
6" Tie In	June 7, 2006 to January 25, 2007	7
8" Poison Draw Line	June 7, 2006 to January 25, 2007	7
010-005	June 7, 2006 to January 25, 2007	7
010-006	June 7, 2006 to January 25, 2007	7
015-001	June 8, 2006 to January 25, 2007	6
010-008	May 23, 2006 to January 22, 2007	19
010-009	May 23, 2006 to January 22, 2007	19
010-010	May 23, 2006 to January 22, 2007	19
069-0001	April 20, 2006 to January 11, 2007	41
069-0003	October 8, 2006 to July 13, 2007	53
Incoming Trap	October 8, 2006 to July 13, 2007	53
069-0004	March 2, 2006 to December 17, 2006	65
Outgoing Launcher	March 2, 2006 to December 17, 2006	65
069-0005	March 2, 2006 to December 17, 2006	65

069-0007	April 10, 2006 to January 9, 2007	49
Iberline Incoming Trap	April 10, 2006 to January 9, 2007	49
069-0007	April 10, 2006 to January 9, 2007	49
Iberline Outgoing Launcher	April 10, 2006 to January 9, 2007	49
069-0008	April 10, 2006 to January 4, 2007	44

Each operator must inspect each mainline valve at least twice each calendar year at intervals not exceeding 7 ½ months and maintain records of such inspections for at least 2 years.

9. §195.428 Overpressure safety devices and overfill protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7 ½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

BFPL records established that a number of its pressure limiting devices were not inspected and tested at the required frequency between the years 2006 to 2008. An operator is required to inspect and test each item of pressure control equipment once each calendar year not to exceed 15 months.

- Donkey Creek and Hwy 450 stations pressure controls were not tested and inspected in the 2007 calendar year. Additionally, BFPL exceeded the 15-month interval for testing and inspecting pressure controls at these stations by 68 and 98 days, respectively.
- Seiler station pressure controls exceeded the 15-month interval for testing and inspecting in the 2007 calendar year by 120 days.
- At the time of this inspection, BFPL had not yet tested and inspected Sussex pump station and Guernsey terminal for the 2008 calendar year, resulting in BFPL exceeding the 15-month interval by a minimum of 145 and 105 days, respectively.

10. §195.428 Overpressure safety devices and overfill protection systems

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7 ½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

(d) After October 2, 2000, the requirements of paragraphs (a) and (b) of this section for inspection and testing of pressure control equipment apply to the inspection and testing of overfill protection systems.

Conversations with BFPL personnel confirmed that the high-level alarms on the following three breakout tanks associated with the Sussex Diesel Line had never been tested at the prescribed intervals

- Sussex Pump Station Breakout Tank
- Davis Station (Tank 74) Breakout Tank
- Hawk Point Terminal Breakout Tank

Each operator must inspect and test overfill protection system on each breakout tank at least once each calendar year at intervals not to exceed 15 months, and maintain records of those inspections and tests for at least two years.

11. §195.432 Inspection of in-service breakout tanks.

(a) Except for breakout tanks inspected under paragraphs (b) and (c) of this section, each operator shall, at intervals not exceeding 15 months, but at least each calendar year, inspect each in-service breakout tank.

(b) Each operator shall inspect the physical integrity of in-service atmospheric and low pressure steel aboveground breakout tanks according to section 4 of API Standard 653. However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under §195.402(c)(3).

BFPL's tank data sheets verified that BFPL had never performed an External Tank Inspection on the Sussex Breakout Tank. Because it appears this tank received an internal inspection in 2001 this tank should have received an external inspection no later than 2006, as well as the 5-year interval prescribed in API 653 Section 6.3.2.

12. §195.436 Security of facilities.

Each operator shall provide protection for each pumping station and breakout tank area and other exposed facility (such as scraper traps) from vandalism and unauthorized entry.

BFPL had no security fencing installed around the Donkey Creek Pump Station. Also 4.5 to 5 foot high security fencing around the Sussex Pump Station and Sussex Breakout Tank was only made of 4 foot high 6 inch grid woven steel wire with 2 strands of barbed wire above it. This type of fence will keep livestock out of the facility but it is not adequate to prevent vandalism and unauthorized entry to the facility.

13. §195.577 What must I do to alleviate interference currents?

(a) For pipelines exposed to stray currents, you must have a program to identify, test for, and minimize the detrimental effects of such currents.

BFPL's cathodic protection monitoring records for the 12" Donkey Creek Pipeline in the area in and around Guernsey station and Ft Laramie station for the 2006 calendar year showed several test stations with high off levels. High off levels indicate that cathodic

protection interference currents may be adversely affecting a pipeline. Nonetheless, at the time of the inspection, BFPL had not taken the appropriate steps to perform an interference study to determine if there were interference currents on their pipeline or to mitigate any of the interference currents that might exist. The Pipeline Safety Regulations require an operator to identify, test for, and minimize the detrimental effects of stray currents.

14. §195.579 What must I do to mitigate internal corrosion?

(a) General. If you transport any hazardous liquid or carbon dioxide that would corrode the pipeline, you must investigate the corrosive effect of the hazardous liquid or carbon dioxide on the pipeline and take adequate steps to mitigate internal corrosion.

Since 2006, BFPL has experienced at least three leaks due to internal corrosion, a condition that may be the result of the corrosive effects of the crude oil that is being shipped through its pipeline system. The Pipeline Safety Regulations require an operator who transports a hazardous liquid that could corrode a pipe to investigate and take adequate steps to mitigate that condition. Nonetheless, at the time of the inspection, BFPL had not conducted such an investigation or taken any steps to mitigate that condition.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$221,200 as follows:

<u>Item Number</u>	<u>PENALTY</u>
1	\$37,100
5	\$17,100
8	\$30,800
9	\$62,100
10	\$30,800
11	\$43,300

Warning Items

With respect to items 7 and, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these item(s). Be advised that failure to do so may result in Belle Fourche Pipeline Company being subject to additional enforcement action.

Proposed Compliance Order

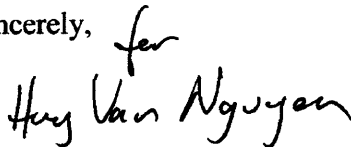
With respect to items 2, 3, 4, 6, 10, 11, 12, 13, and 14 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Belle Fourche Pipeline Company. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 5-2009-5042** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

The signature is handwritten in black ink and reads "Chris Hoidal".

Chris Hoidal
Director, Western Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

cc: PHP-60 Compliance Registry
PHP-500 G. Davis (#120773)

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Belle Fourche Pipeline Company (BFPL) a Compliance Order incorporating the following remedial requirements to ensure the compliance of BFPL with the pipeline safety regulations:

1. In regard to Item Number 2 of the Notice pertaining to the lack of the development of a list of local fire, police, and other emergency and public officials:
BFPL must develop a list of local fire, police, and other emergency and public officials that could potentially respond to an emergency associated with BFPL's hazardous liquid pipelines in Wyoming. BFPL must then conduct periodic liaison activities with these entities to accomplish the following:
 - Learn the responsibilities and resources of each entity.
 - Acquaint each agency with BFPL's ability in responding to a hazardous liquid pipeline emergency.
 - Understand the means of communication that could be used between BFPL and each entity in the event of a pipeline emergency.
2. In regard to Item Number 3 of the Notice pertaining to BFPL not reviewing the work done by its personnel to determine the effectiveness of procedures:
BFPL must review the work done by its employees to determine the effectiveness of their procedure and they must document such reviews.
3. In regard to Item Number 4 of the Notice pertaining to the lack of a pressure recording device at the Guernsey Pump Station:
BFPL must install a pressure recording device at the Guernsey Pump Station to record the discharge pressure of the station. BFPL must then retain the pressure records for a minimum of three years.
4. In regard to Item Number 6 of the Notice pertaining to the lack of a safety device that prevents overpressuring of pumping equipment at the Guernsey Pump Station:
BFPL must install an overpressure protection device at the Guernsey Pump Station that prevents the Maximum Operating Pressure (MOP) of the piping at the station and the pipeline downstream from the station from being exceeded.
5. In regard to Item Number 10 of the Notice pertaining to the lack of inspection and testing of high level alarms on three breakout tanks on the Sussex Diesel Line:
BFPL must inspect and test the high level alarms on the following tanks:
 - Sussex Pump Station Breakout Tank (BOT)
 - Davis Station (Tank 74) BOT
 - Hawk Point Terminal BOT
6. In regard to Item Number 11 of the Notice pertaining to exceeding the maximum interval of 5 years for an API Standard 653 External Inspection of the Sussex diesel BOT:
BFPL must conduct an API Standard 653 External Inspection on their Sussex diesel BOT.

7. In regard to Item Number 12 of the Notice pertaining to the lack of security fencing around the Donkey Creek Pump Station and the inadequate security fencing around the Sussex Pump Station and Sussex BOT:
BFPL must install security fencing around the Donkey Creek Pump Station that is a minimum of six feet high and includes a minimum of 3 strands of barbed wire above the fencing. Appropriate warning signs and operator contact information must be installed on the fencing and all gates must be adequately locked.
In addition, BFPL must replace the security fencing around the Sussex Pump Station and Sussex Breakout Tank with security fencing that is a minimum of six feet high and includes a minimum of 3 strands of barbed wire above the fencing. Appropriate warning signs and operator contact information must be installed on the fencing and all gates must be adequately locked.
8. In regard to Item Number 13 of the Notice pertaining to High "Off" CP levels on the 12" Donkey Creek Pipeline located between Guernsey station and Ft Laramie station:
BFPL must perform an interference study on the Donkey Creek Pipeline between Guernsey station and Ft Laramie station and remediate any stray currents that are found.
9. In regard to Item Number 14 of the Notice pertaining to potentially corrosive crude oil being shipped through the Belle Fourche Pipeline System may be causing internal corrosion of the pipeline system:
BFPL must conduct an investigation to determine if crude oil being shipped through their pipeline system is causing internal corrosion. If the investigation determines that the crude oil is in fact causing internal corrosion, BFPL must take appropriate remedial actions to prevent internal corrosion from continuing to occur in their pipeline system.
10. BFPL must complete the items described above within 60 days of receipt of the Final Order.
11. Belle Fourche Pipeline Company shall maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Chris Hoidal, Director, Western Region, Pipeline and Hazardous Materials Safety Administration. Costs shall be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Response Options for Pipeline Operators in Compliance Proceedings

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

a. When the Notice contains a proposed CIVIL PENALTY* --

1. If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to issue an order making findings of violation and upon confirmation that the payment has been received PHMSA will close the case with prejudice to the respondent. Payment terms are outlined below;
2. If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order assessing a penalty amount up to the amount proposed in the Notice. Refer to 49 C.F.R. § 190.225 for assessment considerations, which include the respondent's ability to pay and the effect on the respondent's ability to stay in business, upon which civil penalties are based;
3. If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination or mitigation of the proposed civil penalty; or
4. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

b. When the Notice contains a proposed COMPLIANCE ORDER* --

1. If you are not contesting the compliance order, notify the Regional Director that you intend to take the steps in the proposed compliance order;
2. If you are not contesting the compliance order but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and issue a compliance order;
3. If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part; or
4. Request a hearing as described below to contest the allegations and/or proposed compliance order items.

c. When the Notice contains a WARNING ITEM --

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. Procedures for Responding to a NOTICE OF AMENDMENT*--

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. If you are not contesting the Notice, notify the Regional Director of your plans to address the inadequacies identified in the Notice;
- b. If you are not contesting the Notice but wish to submit written explanations, information, or other materials you believe warrant modification of the Notice of Amendment in whole or in part, or you seek clarification of the terms of the

Notice of Amendment, you may submit such materials. This authorizes PHMSA to make findings and issue an Order Directing Amendment;

- c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or
- d. Request a hearing as described below to contest the allegations in the Notice.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

III. **Procedure for Requesting a Hearing**

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

IV. **Extensions of Time**

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

V. **Freedom of Information Act**

Any material provided to PHMSA by the respondent, and materials prepared by PHMSA including the Notice and any order issued in this case, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If you believe the information you are providing is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption

provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to http://www.sba.gov/ombudsman/dsp_faq.html.

VII. **Payment Instructions**

Civil Penalty Payments of Less Than \$10,000

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration
Mike Monroney Aeronautical Center
Financial Operations Division (AMZ-341) P.O. Box 269039
Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

Civil Penalty Payments of \$10,000 or more

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) <u>RECEIVER ABA NO.</u> 021030004	(2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank)
(3) <u>SENDING BANK ABA NO.</u> (Provided by sending bank)	(4) <u>SENDING BANK REF NO.</u> (Provided by sending bank)
(5) <u>AMOUNT</u>	(6) <u>SENDING BANK NAME</u> (Provided by sending bank)
(7) <u>RECEIVER NAME</u> TREAS NYC	(8) <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)
(9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> BNF = /ALC-69-14-0001	(10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

Block #7 - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/ALC-69-14-0001". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - "AC-payment for PHMSA Case # / To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

NOTE: A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

February 2009

NOV 21 2011

Mr. Tad True
Vice President
Belle Fourche Pipeline Company
455 North Popular
Casper, WY 82601

Re: CPF No. 5-2009-5042

Dear Mr. True:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, withdraws several allegations, assesses a reduced civil penalty of \$131,900, and specifies actions that must be taken by Belle Fourche to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Western Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety
Mr. Chris Hoidal, Director, Western Region, PHMSA

Mr. Colin Harris, Holme Roberts & Owen LLP
1801 13th Street, Suite 300, Boulder, CO 80302-5259

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [71791000164202826396]

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

_____)
In the Matter of)

Belle Fourche Pipeline Company,)

Respondent.)
_____)

CPF No. 5-2009-5042

FINAL ORDER

On August 24 through 28, 2008, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Belle Fourche Pipeline Company (BFPL or Respondent) in Casper, Wyoming. Belle Fourche operates approximately 600 miles of pipeline in Montana, North Dakota, and Wyoming transporting crude oil and refined petroleum products.¹

As a result of the inspection, the Director, Western Region, PHMSA (Director), issued to Respondent, by letter dated December 30, 2009, 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 committed 13 violations of 49 C.F.R. Part 195 and proposed a civil penalty of \$221,200 for the alleged violations. The Notice also proposed to order that Respondent take certain measures to correct the alleged violations.

BFPL responded to the Notice by letters dated February 19 and August 30, 2010 (collectively, Response). The company contested several of the allegations and requested a hearing. In accordance with 49 C.F.R. § 190.211, a hearing was held on September 9, 2010, in Lakewood, Colorado, with an attorney from the Office of Chief Counsel, PHMSA, presiding. After the hearing, Respondent provided additional written material for the record by letter dated October 11, 2010 (Brief).

FINDINGS OF VIOLATION

The Notice alleged that Respondent committed violations of 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

¹ This information is reported by Respondent pursuant to 49 C.F.R. § 195.49.

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall 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. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated § 195.402(a) by failing to review or revise its operations and maintenance (O&M) manual at least once each calendar year from 2005 to 2008. BFPL's O&M manual obtained during the PHMSA inspection in August 2008 was dated February 2005 and stamped "Rev. 1.0," suggesting the company had not revised the document since 2005. Respondent's compliance coordinator stated during the inspection that BFPL had not reviewed or revised the O&M manual since 2005.²

At the hearing, Respondent explained that the revision number and date on the O&M manual were oversights and that statements by the employee during the agency's inspection were misinformed and erroneous. Respondent presented a witness who testified that he had personally performed annual reviews of BFPL's O&M manual in accordance with § 195.402(a) since 2006. Respondent also introduced completed "Revision Request Forms," which show that annual reviews were performed, and as a result of those reviews, that certain determinations were made to revise the procedures.³

The Director stated at the hearing that he recommended withdrawing Item 1 based on the company's assertions and submissions. For this reason, Respondent provided no additional information regarding Item 1 in its post-hearing Brief.⁴

After considering all of the evidence and the explanation provided by BFPL that the company conducted annual reviews and made revisions to its O&M manual during the period in question, the Director has recommended this allegation of violation be withdrawn. Accordingly, I am withdrawing this allegation of violation.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) and (c)(12), which state:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations

² Violation Report at 3.

³ Respondent Hearing Exhibit 11.

⁴ Brief at 2.

and maintenance activities and handling abnormal operations and emergencies

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations: . . .

(12) Establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication.

The Notice alleged that Respondent violated § 195.402(a) and (c)(12) by failing to follow the company's written procedures for liaison with fire, police, and other appropriate public officials. Specifically, the Notice alleged that BFPL's written procedures for public awareness required the compilation of certain data, including the names, addresses, and phone numbers of local emergency officials who would respond to a hazardous liquid pipeline emergency. During the inspection, Respondent had no documentation that it had collected such data and performed the required liaison activities. The Notice further alleged that BFPL had previously been issued a warning for this issue.⁵

The evidence in the record includes the portion of Respondent's O&M manual requiring the company to "Compile data (Organizations, names of contact personnel, phone no's (emergency and regular No's), and addresses of all Emergency Officials within the vicinity (area of jurisdiction) of the pipeline route or facility[sic]."⁶

At the hearing and in its Brief, Respondent did not contest the allegation of violation, but provided information to demonstrate that the company has now prepared a list of all the relevant police and fire departments, county emergency managers, and public officials in order to maintain liaison. Respondent said that it has also become a member of the relevant state pipeline associations, which affords the company an opportunity to maintain liaison with required emergency responders and public officials.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) and (c)(12) by failing to follow its written procedures for establishing and maintaining liaison with fire, police, and other appropriate public officials.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) and (c)(13), which state:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations

⁵ *In the Matter of Belle Fourche Pipeline Co.*, Final Order, CPF No. 5-2007-5002, at 5, 2008 WL 1981035 (Apr. 28, 2008).

⁶ Violation Report, Exhibit B.

and maintenance activities and handling abnormal operations and emergencies

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations: . . .

(13) Periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

The Notice alleged that Respondent violated § 195.402(a) and (c)(13) by failing to follow the company's written procedures for reviewing the work done by personnel to determine the effectiveness of O&M procedures and to take corrective action to address deficiencies. Specifically, the Notice alleged that Section 3.8 of BFPL's O&M manual required the company to periodically review the work done by personnel, but at the time of the inspection, Respondent had no records that such reviews had ever been conducted.

The evidence in the record includes Section 3.8 of BFPL's O&M procedures, which provides that Respondent will "review the performance of personnel and the contents of this manual at intervals not to exceed 15 months, but at least once each calendar year, to ensure the effectiveness of this manual."⁷ The Violation Report also notes that BFPL's compliance coordinator stated that he did not think there had ever been a formal review of personnel work to determine the effectiveness of the O&M procedures.⁸

In its Response, Respondent stated that it believed field employees had conducted the required reviews, although the company had not yet located any specific record of such reviews. At the hearing, Respondent presented a witness who testified that he had performed periodic review of work done by personnel as part of the company's operator qualification (OQ) program. During that process, the witness explained, employees were trained to perform certain tasks, and once qualified, would then be observed performing the task. If any issues arose during their performance of such tasks, including deficiencies in the procedures themselves, the company would take corrective action to change the procedures accordingly.

BFPL also introduced into evidence an affidavit by the same witness, who attested as follows:

I have periodically reviewed the work performed by Belle Fourche Pipeline Company employees to determine the effectiveness of the procedures found in the O&M Manual. In compliance with 49 C.F.R. § 195.402(c)(13), I interact with the employees and advise them on their performance on a day to day basis, and assure that corrective action is taken when necessary.

⁷ Violation Report, Exhibit C.

⁸ Violation Report at 6.

During the hearing, the Director recommended withdrawing Item 3 based on the company's assertions and submissions at the hearing. For this reason, Respondent provided no additional information regarding Item 3 in its post-hearing Brief.⁹

After considering the evidence and the explanation provided by BFPL that the company followed its procedures, the Director has recommended this allegation of violation be withdrawn. Accordingly, I am withdrawing this allegation of violation.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(b)(1), which states:

§ 195.404 Maps and records.

- (a)
- (b) Each operator shall maintain for at least 3 years daily operating records that indicate—
 - (1) The discharge pressure at each pump station; . . .

The Notice alleged that Respondent violated § 195.404(b)(1) by failing to maintain daily discharge pressure records at the Guernsey Pump Station for at least 3 years. The Notice further alleged the company did not have a pressure recording device at that pump station. Included in the record as evidence of the violation is a photograph of the Fort Laramie pipeline and pump at Guernsey Station, showing an absence of either a pressure recording chart or related instrumentation for recording the discharge pressure of the pump.¹⁰ The Violation Report also noted that Respondent's Guernsey Station manager told the inspector that the company did not have any pressure records for its Fort Laramie pipeline.¹¹

At the hearing and in its Brief, Respondent contended that the regulation does not require the company to install or use a pressure recording device at its pump station. Rather, BFPL argued that the regulation only requires operators to maintain daily records of discharge pressure if the company collects such information.¹² BFPL explained that since it does not collect daily pressure information for the Guernsey station, the company did not violate § 195.404(b)(1) by not maintaining daily discharge pressure records. Respondent also explained that the pump at Guernsey station is insufficient to exceed maximum operating pressure (MOP) during normal or abnormal operations, and that the operator had previously determined that the discharge pressure could only reach 182 pounds per square in gauge (psig), less than 20% SMYS, based on the pump curves.¹³ The company had concluded that it did not need a pressure recording device because there was no risk of overpressure.

Section 195.404(b)(1) requires that operators maintain "daily operating records that indicate . . . [t]he discharge pressure *at each pump station*."¹⁴ The regulation does not contain any

⁹ Brief at 4.

¹⁰ Violation Report, Exhibit D.

¹¹ Violation Report at 7.

¹² Brief at 5.

¹³ A pump curve is a graphical description of a centrifugal pump's performance, that is the pump head (or pressure) versus the flow rate, expressed in feet of head (or feet of water) units. One foot of "head" equates to approximately 0.433 psig of "pressure." BFPL submitted for the record the pump curve. Respondent Hearing Exhibit 15.

¹⁴ (emphasis added).

exemptions for pumps that will not exceed MOP, or for pumps that do not have recording devices installed. Respondent has therefore suggested an interpretation of § 195.404(b)(1) that is not supported by the language of the rule. Under the regulation, BFPL must have the means to record the discharge pressure at each pump station and must maintain daily records of that information, regardless of the particular characteristics of the pump station. The evidence demonstrates that BFPL did not maintain daily discharge pressure records at the Guernsey Pump Station for at least 3 years.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(b)(1) by failing to maintain daily discharge pressure records at the Guernsey Pump Station for at least 3 years.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(c)(3), which states:

§ 195.404 Maps and records.

(a)

(c) Each operator shall maintain the following records for the periods specified . . .

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

The Notice alleged that Respondent violated § 195.404(c)(3) by failing to maintain records of a breakout tank inspection until the next inspection. Specifically, the Notice alleged that BFPL's tank data sheets indicated that it performed an API Standard 653 out-of-service internal inspection of the Sussex breakout tank in 2001, and had not yet performed the next internal inspection. The Notice further alleged that the company did not have any records from the 2001 internal inspection required to be maintained pursuant to § 195.404(c)(3). The evidence in the record of the violation includes BFPL's tank data sheet showing that an internal inspection of the Sussex Breakout Tank was conducted in June 2001.

In its Response, BFPL explained that while it did perform some work on the breakout tank in 2001, it did not perform an API Standard 653 internal inspection and therefore did not maintain a record of the work. At the hearing, Respondent presented testimony from its Area Supervisor responsible for operations of the tank in 2001 who testified that the company did not perform an API Standard 653 internal inspection in 2001. The witness stated that the record cited in the Notice, which was the basis for the allegation, was actually an error, created years after 2001 as an intended summary of historical inspections. The company further explained that the tank had just been installed in 1997, and therefore it would not have been reasonable for the company to perform such an in-depth internal inspection after only 4-5 years when the interval for such inspections can be up to 20 years under the API Standard.

After considering all of the evidence in the record, I find the evidence demonstrates that it was more likely that BFPL did not perform an API Standard 653 internal inspection in 2001 and that the company's record provided to PHMSA during the inspection was in error. Of particular relevance is that the tank in question was constructed in 1997 and would not have been due for an API Standard 653 internal inspection in 2001. Given the BFPL employee's sworn testimony that no such inspection occurred in 2001, and that the entry was in error, I find the evidence

supports withdrawing this allegation of violation. Accordingly, I am withdrawing this allegation of violation.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b), which states:

§ 195.406 Maximum operating pressure.

(a)

(b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

The Notice alleged that Respondent violated § 195.406(b) by failing to have protective equipment at the Guernsey Pump Station to control pressure from exceeding 110 percent of the MOP during surges either at the station or on the pipeline downstream from the station. Included in the record as evidence of the violation are photographs that show the absence of an overpressure safety device at the Guernsey Station and on the pipeline downstream from the pump. In addition, during the PHMSA inspection, Respondent's station operator stated that overpressure control devices are not needed on the Fort Laramie line because the pump curves prove that pressure cannot exceed MOP.¹⁵

At the hearing and in its Brief, Respondent argued that the company's pump curve demonstrates that the Guernsey Pump Station cannot produce pressure exceeding 182 psig on the Ft. Laramie line, which is less than 20% of the MOP of the pipeline. A witness also testified at the hearing that the geography and flat terrain would not contribute to surges in the line. Since the pipeline cannot exceed MOP, even during surges, BFPL argued that it is not required to provide any additional "controls and protective equipment" to control the pressure within 110% of MOP under the regulation. BFPL acknowledged that it could not submit for the record any documented analysis supporting its determination that pressure could not exceed MOP other than the pump curve.

At the hearing, the Director acknowledged that it may be conceivable for an operator to demonstrate through a documented analysis that no additional protective pressure controls are necessary for a pipeline based on certain characteristics of the line, such as MOP, the physical limitations of the pump, and geography. In such a situation, however, the Director explained that PHMSA would normally expect a rigorous surge pressure analysis and documentation to demonstrate that no additional protective pressure controls are necessary. Both parties agreed that pipelines can at times experience surges in pressure beyond the levels created by the pump alone.

As explained above, a pump curve is a graphical description of a centrifugal pump's performance, that is, pump head (or pressure) versus flow rate. The pump curve submitted by Respondent demonstrates the maximum head pressure that can be produced by the Guernsey Station pump. At a zero discharge flow rate, the pump would produce a head pressure of approximately 450 feet of water (approximately 195 psig). In addition, there is an elevation drop

¹⁵ Violation Report at 9.

of approximately 225 feet from Guernsey Station to the Ft. Laramie pipeline terminus. Considering the elevation change, the pump could conceivably produce a pressure at the pipeline terminus of approximately 675 feet of water (450 + 225), or approximately 292 psig (195 + 97), which is far less than the 1468 psig design pressure of the pipeline.

In addition to the static condition (zero flow or “dead head”), an operator usually would also be expected to perform an actual surge analysis to demonstrate maximum pressure that could be reached in a transient condition, such as during a sudden valve closure or pump shutdown. During a surge, the pressure in the line could conceivably be higher for a short period of time than the zero flow condition described above. This is due to the pressure wave that travels inside the pipeline during a rapid transient. In the present case, I find it that even at transient conditions, pressure in the pipeline could not reach the design pressure of the pipeline. Therefore, there is no need for additional controls or protective equipment under the current operating configuration (i.e., only the current pump provides pressure to the segment).

After considering the evidence and the explanation provided by BFPL, the Director has recommended this allegation of violation be withdrawn. Accordingly, I am withdrawing this allegation of violation.

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b), which states:

§ 195.420 Valve maintenance.

(a)

(b) Each operator shall, at intervals not exceeding 7½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

The Notice alleged that Respondent violated § 195.420(b) by failing to inspect mainline valves at least twice during the 2006 calendar year and at intervals not exceeding 7½ months between 2006 and 2007. Included in the record as evidence of the violation are 17 pages of valve inspection records from 2005 through 2008, which the Notice alleged demonstrate that BFPL missed either or both of the maximum inspection intervals on 47 occasions during the period in question.

At the hearing and in its Brief, Respondent acknowledged some of the violations occurred as alleged in the Notice.¹⁶ Specifically, BFPL acknowledged 16 instances of valves not being inspected during the 2006 calendar year,¹⁷ and 10 instances of valves not being inspected at 7½-month intervals.¹⁸ Respondent contested the remaining 21 instances of missed valve inspections, arguing that: 15 had been inspected at the proper intervals during quarterly pigging activities; 2 had been inspected at the proper intervals, but PHMSA miscalculated the 7½-month interval; 2 were valves not subject to the pipeline safety regulations; and 2 were duplicate entries on the list.

¹⁶ See Respondent Hearing Exhibit 17.

¹⁷ Those 16 instances involve the following valves: 010-001; 010-002; 010-003; 010-0056; 010-010; 010-011; 010-101; 015-001; 015-002; 015-004; 015-005; 101-006; 101-008; 101-009; 6-inch Tie In; and Poison Draw 8-inch.

¹⁸ Those 10 instances involve the following valves: 010-005; 010-006; 010-008; 010-009; 010-010; 015-001; 015-002; 069-0005; 6-inch Tie In; and Poison Draw 8-inch.

One of BFPL's arguments, that PHMSA miscalculated the 7½-month interval, is based on the assertion that the agency simply added 225 days to the prior valve inspection date. BFPL contended that because the regulation establishes the maximum interval as "7½ months," not 225 days, it was permissible for the company to perform inspections up to the 15th day of the 8th month following the most-recent inspection. The company contended that two instances of the alleged violations were inspections that actually occurred within this interval.¹⁹ BFPL also introduced evidence to support its assertions with regard to the other contested instances, including charts and pigging logs.

After reviewing the evidence in the record, I find Respondent has demonstrated the validity of its claims. Namely, Respondent has demonstrated that of the 21 instances of alleged violations that Respondent contested: 17 had been inspected at the proper intervals; 2 were valves on unregulated gathering lines not subject to this pipeline safety requirement; and 2 were duplicate entries on the list. Accordingly, these allegations of violation are hereby withdrawn. Furthermore, I find the regulation does not preclude Respondent's method of calculating the 7½-month maximum inspection interval. For this reason, Respondent has demonstrated that its noncompliance with respect to 10 of the other instances of violations lasted, on average, for only 12 days.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect mainline valves at the mandated intervals on 26 occasions.

Item 9: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overfill protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year . . . inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated § 195.428(a) by failing to inspect and test pressure limiting devices at five different locations within intervals not exceeding 15 months, but at least once each calendar year. Specifically, the Notice alleged that: (1) BFPL failed to inspect and test station pressure controls at the Donkey Creek and Hwy 450 stations during the 2007 calendar year; (2) that inspection intervals of those same controls exceeded 15-month intervals by 68 days and 98 days, respectively; (3) that BFPL exceeded the 15-month interval for inspecting and testing pressure controls at the Seiler station by 120 days in 2007; and (4) that BFPL exceeded the 15-month interval for inspecting and testing pressure controls at the Sussex pump station and Guernsey terminal in 2008 by 145 days and 105 days, respectively.

The Violation Report includes nine pages of Safety Device Inspection Forms from 2006 through 2008 demonstrating that Respondent had performed inspections and tests of the pressure limiting

¹⁹ Also as a result of this calculation, Respondent maintained that certain other inspections were missed by an average of only 12 days, not 16 days as implied in the Notice.

devices at intervals that exceeded the maximum 15-month interval or that were not at least once per calendar year.²⁰

With regard to the alleged violation pertaining to the Donkey Creek facility, Respondent contested the allegations on the grounds that new devices had been installed at the station in 2007. At the hearing and in its Brief, the company explained that in October 2007, it replaced Pumps 1, 2, and 3 and added a new Pump 4 at the station, effectively restarting the inspection intervals for those pressure controls.

The Director contended at the hearing that Respondent never demonstrated the new pumps were actually inspected and tested (e.g., calibrated) when they were installed in 2007. In its Brief, however, Respondent submitted additional documentation to validate that the new pumps had been inspected and tested as part of the installation process.

After reviewing the evidence in the record, I find that Respondent has demonstrated the validity of its claim that the Donkey Creek station was reconfigured in 2007 by replacing and adding pumps. The pressure limiting devices installed as part of that reconfiguration were tested and inspected as part of the installation process in October 2007, roughly 13 months after the previous test of pressure limiting devices at Donkey Creek. For this reason, I find the evidence supports withdrawing the alleged violation pertaining to the Donkey Creek facility.

With regard to the remaining allegations, Respondent initially argued in its Response that the Notice failed to identify the precise equipment at issue, the equipment is not subject to § 195.428(a), and the regulation is impermissibly vague. At the hearing, however, Respondent acknowledged that it understood the precise equipment at issue in the allegations and that the devices are indeed pressure limiting devices subject to the inspection and testing requirements in § 195.428(a). The company also stated that it could not provide records to rebut the alleged violation. In its Brief, BFPL acknowledged that it did not fully comply with this requirement.²¹

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test pressure limiting devices at the Hwy 450 and Seiler stations in 2007, and at the Sussex pump station and Guernsey terminal in 2008. The allegations with regard to the Donkey Creek station are withdrawn.

Item 10: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(d), which states:

§ 195.428 Overpressure safety devices and overflow protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year . . . inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used

²⁰ Violation Report, Exhibit H.

²¹ Brief at 16.

(d) After October 2, 2000, the requirements of paragraphs (a) and (b) of this section for inspection and testing of pressure control equipment apply to the inspection and testing of overfill protection systems.

The Notice alleged that Respondent violated 49 C.F.R. § 195.428(d) by failing to inspect and test certain overfill protection systems (i.e., high level alarms) at intervals not exceeding 15 months, but at least once each calendar year. Specifically, the Notice alleged that BFPL had never inspected and tested the high level alarms at three breakout tanks associated with the Sussex Diesel Line: the Sussex Pump Station Breakout Tank; Davis Station Breakout Tank (Tank 74); and Hawk Point Terminal Breakout Tank.

Evidence in the record includes the PHMSA inspector's notes from the inspection, during which BFPL could not provide any records to demonstrate the high-level alarms had been inspected and tested since 2001. In addition, the PHMSA inspector interviewed BFPL personnel who stated that they did not think the high-level alarms had been inspected and tested at any frequency.²²

Respondent initially argued in its Response that the Notice failed to identify the precise equipment at issue, the equipment is not subject to § 195.428(d), and the regulation is impermissibly vague. At the hearing, however, Respondent acknowledged that overfill protection (high level) alarm devices existed on the three tanks identified in the Notice, and that the company did not have records to demonstrate the devices had been tested at the required intervals under the regulation. The company explained, however, that it could provide records of "hand gauging" the tanks every month to verify the accuracy of the levels displayed by the SCADA system.

The Director explained at the hearing that hand gauging would not have tested the mechanical-electrical high alarm switches on the tanks, but would only test the accuracy of the SCADA tank level indications. In its Brief, however, Respondent contended that hand gauging resulted in "substantial compliance" with § 195.428(d), explaining again that the company verified that tank levels were consistent with SCADA read-outs. The company contended that it had also "visited" each breakout tank at least once daily.

The overfill protection (high level) alarm devices on the three tanks identified in the Notice send an alarm to personnel when product in the tank is approaching a level that is close to overfilling or when the tank has been overfilled. Respondent's hand gauging to verify the accuracy of SCADA tank level indicators never actually inspected and tested the overfill alarm devices to determine they were functioning properly and were adequate for the service in which they were to be used. Therefore the hand gauging practice did not achieve compliance with § 195.428(d). There is also no evidence that daily "visits" to the tanks achieved compliance.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.428(d) by failing to inspect and test the overfill protection systems at three breakout tanks.

Item 11: The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), which states:

§ 195.432 Inspection of in-service breakout tanks.

²² Violation Report at 16.

(a)

(b) Each operator shall inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to section 4 of API Standard 653²³

The Notice alleged that Respondent failed to inspect the physical integrity of certain in-service breakout tanks according to Section 4 of API Standard 653. Section 4 provides for the evaluation of the suitability of existing tanks for continued service and for making decisions involving repairs. Section 4 references the tank inspection intervals contained in Section 6 of the API Standard.

Specifically, the Notice alleged that Respondent failed to perform an external inspection of the Sussex Breakout Tank within the 5-year interval prescribed in API Standard 653, Section 6.3.2. Evidence in the record of the violation includes tank data sheets that fail to document any external inspections of the tank between 2001 and 2006.²⁴

This Item is related to Item 5, which alleged that Respondent failed to maintain a record of the internal inspection of the Sussex breakout tank in 2001. In Item 5, I found that Respondent never performed an internal inspection of the tank in 2001 based on a preponderance of the evidence. In its Brief, BFPL characterized the separate alleged violation of § 195.432(b) in Item 11 as “premised on the mistaken assumption by PHMSA that an API 653 Internal Inspection occurred in 2001. Since no such inspection occurred, there was no obligation to conduct the cited external inspection.”²⁵

Respondent’s contention, however, is not an accurate characterization of either the alleged violation in Item 11 or the requirement in § 195.432(b). This allegation is that Respondent failed to perform an external inspection of the Sussex Breakout Tank at the interval set forth in API Standard 653, Section 6.3.2, which provides: “All tanks shall be given a visual external inspection by an authorized inspector. This inspection shall be called the external inspection and must be conducted at least every 5 years.” The requirement to perform an external (in-service) inspection of “all tanks” every 5 years is independent of the separate requirement in API Standard 653 to perform internal (out of service) tank inspections. Regardless of whether or not Respondent completed an internal inspection in 2001, the regulation still mandated that it conduct an external inspection at the maximum interval of 5 years. Since the evidence in the record demonstrates that Respondent never conducted an external inspection in the 5-year period between 2001 and 2006, BFPL failed to comply with this requirement.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of the breakout tank according to API Standard 653.

²³ Section 195.432(b) was amended after the inspection. It presently reads: “Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Standard 653” Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Edits, 75 Fed. Reg. 48,593, 48,607 (Aug. 11, 2010).

²⁴ Violation Report, Exhibit E.

²⁵ Brief at 19.

Item 12: The Notice alleged that Respondent violated 49 C.F.R. § 195.436, which states:

§ 195.436 Security of facilities.

Each operator shall provide protection for each pumping station and breakout tank area and other exposed facility (such as scraper traps) from vandalism and unauthorized entry.

The Notice alleged that Respondent violated § 195.436 by failing to provide adequate protection from vandalism and unauthorized entry for each pump station and breakout tank. Specifically, the Notice alleged that BFPL had not installed any perimeter fencing around the Donkey Creek Pump Station. The Notice further alleged that BFPL had only installed 4.5-foot high woven steel grid wire fence with 2 strands of barbed wire around the Sussex Pump Station and Sussex Breakout Tank, which were not adequate to prevent vandalism and unauthorized entry to the facility.

The evidence in the record includes photographs that show the absence of fencing around Donkey Creek Pump Station and a representative portion of the type of fencing at the Sussex Pump Station and Breakout Tank.²⁶ The Violation Report further noted that Respondent's compliance coordinator stated during the inspection that security fencing was not necessary for either facility because of the remote location and presence of personnel at the Donkey Creek facility.²⁷

At the hearing and in its Brief, Respondent contested the allegation of violation, stating there is adequate protection at Donkey Creek through 24/7 staffing and because the location of the station is two miles away from the closest public road. As to the Sussex facility, BFPL argued that the facility has a security fence as documented in the Notice and is located five miles from the closest public road.

Respondent also asserted that § 195.436 does not specify a uniform standard, and that protection for each station may differ depending on the unique circumstances of the facility. BFPL cited to a previous agency interpretation that the company argued states that fencing is not required.²⁸ Respondent also claimed that during a previous PHMSA inspection, agency inspectors had accepted that the remoteness of the facilities contributed to the adequacy of the security.

At the hearing, the Director argued that the previous agency interpretation established that adequate security fencing or continuous surveillance is required under § 195.436 to protect against vandalism and unauthorized entry. The Director also explained that at Donkey Creek, the on-site person has job duties other than surveillance, including operation of the pipeline.

Although not cited by either party during the hearing, PHMSA has previously issued final orders deciding this issue of contention.²⁹ As those cases demonstrate, PHMSA has routinely rejected

²⁶ Violation Report, Exhibit I.

²⁷ Violation Report at 20.

²⁸ Brief at 20 (citing OPS Hearing Exhibit 7: Interpretation of 49 C.F.R. § 195.436 (Aug. 13, 1980)).

²⁹ See, e.g., *In the Matter of Sunoco Pipeline, L.P.*, Final Order, CPF No. 4-2007-5040, 2010 WL 5761108 (Dec. 16, 2010); *In the Matter of Plains Pipeline, L.P.*, Final Order, CPF No. 4-2009-5005, 2010 WL 2228553 (Apr. 6, 2010);

the argument that § 195.436 permits a lower level of protection merely because a facility is located in a remote area. PHMSA has also rejected the argument that livestock fencing provides adequate protection from vandalism and unauthorized entry. The 1980 interpretation cited by both parties states that while “fencing is not necessarily required, one of the ways to comply with this regulation would be to construct a fence adequate to protect the facility from vandalism and unauthorized entry.”³⁰ The interpretation explains further that either a simple four-strand, barbed wire livestock fence or an eight-foot chain link fence with no barbed wire are both inadequate to meet the requirements of the regulation. In addition, surveillance that consisted of only hourly inspections also did not meet the requirements.

The evidence in the record demonstrates that Respondent’s Donkey Creek facility has no perimeter fencing and no other means of protecting the facility from vandalism and unauthorized entry. While there is staffing at the facility, the mere presence of an individual is not sufficient to provide continuous security when that person has primary duties other than security surveillance, including such duties as operating the pipeline facility.

With regard to the Sussex Pump Station and Breakout Tank, the evidence in the record demonstrates that it is surrounded by a fence 4.5 feet high, comprised of wire grid, concrete reinforced panels with two strands of barbed wired above the panels. Based on the examples of inadequate security fencing from the 1980 interpretation and prior cases, I similarly find this fence to be inadequate because it is only 4.5 feet high and has large grid openings that would be easy hand or foot holds with which to climb. The remoteness of either facility does not, by itself, constitute additional security precautions. In fact, remoteness could make such a facility more attractive to vandalism or unauthorized entry.

For the above reasons, I find that Respondent violated 49 C.F.R. § 195.436 by failing to provide adequate protection from vandalism and unauthorized entry for the Donkey Creek Pump Station and the Sussex Pump Station and Breakout Tank.

Item 13: The Notice alleged that Respondent violated 49 C.F.R. § 195.577(a), which states:

§ 195.577 What must I do to alleviate interference currents?

(a) For pipelines exposed to stray currents, you must have a program to identify, test for, and minimize the detrimental effects of such currents.

The Notice alleged that Respondent violated § 195.577(a) by failing to have and implement a program to identify, test for, and minimize the detrimental effects of stray currents. Specifically, the Notice alleged that BPFL’s cathodic protection monitoring records for the 12-inch Donkey Creek Pipeline in the area of Guernsey and Ft. Laramie stations for the 2006 calendar year show several test stations with high “off” levels, commonly indicative of cathodic protection interference currents adversely affecting a pipeline. The Notice alleged that BFPL had not taken steps to perform an interference study to determine if there were interference currents or to mitigate any interference currents that existed.

and *In the Matter of Jayhawk Pipeline, L.L.C.*, Final Order, CPF No. 3-2002-5021, 2003 WL 25429861 (Dec. 11, 2003).

³⁰ OPS Hearing Exhibit 7.

The evidence in the record includes the cathodic protection survey records for the pipeline from January 2006 to December 2008.³¹ In addition, during the inspection, BFPL's Wyoming Corrosion Supervisor stated that performing interference current investigations was problematic because BFPL could not get cooperation from other pipeline operators in the area.³²

In response to the allegation, Respondent contended both that the pipeline was not exposed to stray currents, and that even if the pipeline had been exposed to stray currents, BFPL had a program in place to identify, test for, and minimize the detrimental effects of such currents. At the hearing, Respondent contended that the readings referenced in the Notice did not indicate there were any detrimental stray currents because BFPL knew the source of the currents was other parties' pipelines, and that the source was not deleterious to Respondent's pipeline. In its Brief, BFPL explained that the pipelines in the area "are tied together with either piping, electrical grounding between the different pipeline companies in the area, or by bonds." In addition, BFPL explained that the readings relied upon by PHMSA were not accurate because not all rectifiers had been interrupted, which gave "higher structure IR readings than if all the rectifiers tied to this line were interrupted." Respondent also submitted evidence that in July 2009, the company performed a close interval survey (CIS) for the pipeline, which confirmed that no "detrimental stray currents" were impacting BFPL pipeline facilities in that area.

The evidence in the record of the cathodic protection survey readings for Respondent's pipeline indicate there were certain areas with high "off" levels. Even if not all rectifiers had been interrupted, as Respondent contended, the indication by the readings was that there were interference currents in the area of Respondent's pipeline. At a minimum, Respondent was required to have a program to identify and test those indications of interference currents.

Respondent's defense to the allegation is based on its contention that it understood the source of these interference currents and believed they were not detrimental. Whether or not Respondent knew the source of interference currents in the area of its pipeline, or believed the source of those currents was not detrimental, § 195.577 still requires BFPL to have a program to identify and address those stray currents. The company's belief that interference currents were not detrimental does not excuse it from the requirement to have a program for identifying and testing to ensure they are indeed not detrimental.

The third-party who performed a CIS for Respondent in 2009 stated in a follow-up letter that, "Immediately prior to performing the CIS, potentials were measured at several representative test stations in the test area. Foreign CP Systems in the vicinity were then cycled to determine if they affected the subject pipeline. Current interrupters were then installed at Foreign CP Systems which were found to affect the pipeline segment along with all Company CP Systems."³³ This statement confirms there were stray currents in the area of Respondent's pipeline, that is, currents from foreign sources were affecting the cathodic protection system on the pipeline. Since all indications were that Respondent's pipeline was being exposed to stray currents, BFPL was required to have a program to identify, test for, and minimize the detrimental effects of such currents.

³¹ Violation Report, Exhibit J.

³² Violation Report at 21.

³³ Respondent Hearing Exhibit 8.

Respondent further contended that it had a program in place to identify, test for, and minimize the detrimental effects of such currents. BFPL claimed the reports used by PHMSA in support of the allegation demonstrated this program was in place and implemented.

After reviewing this evidence, however, I fail to find how these cathodic protection survey readings could constitute “a program to identify, test for, and minimize the detrimental effects of such currents.” The records are merely cathodic protection survey readings and contain no indication of stray current identifications, documentation of any testing of such currents for detrimental effects, or discussion of any efforts to minimize detrimental effects. Nor do I find any other evidence in the record that Respondent ever identified, tested for, or took actions to minimize the detrimental effects of any stray currents at that location until after PHMSA’s inspection of the facility in August 2008.

Contrary to Respondent’s contention, the fact that BFPL took measures to investigate the stray currents after PHMSA’s inspection does not demonstrate that BFPL was in compliance at the time of PHMSA’s inspection. Prior to the PHMSA inspection, BFPL had merely assumed there were no problems in the area of its pipeline despite indications of stray currents, and never prepared and followed written procedures for determining the accuracy of its assumption. It was not until PHMSA identified the issue during an inspection that BFPL contracted for a third-party to study the issue.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.577(a) by failing to have and implement a program to identify, test for, and minimize the detrimental effects of stray currents.

Item 14: The Notice alleged that Respondent violated 49 C.F.R. § 195.579(a), which states:

§ 195.579 What must I do to mitigate internal corrosion?

(a) *General.* If you transport any hazardous liquid or carbon dioxide that would corrode the pipeline, you must investigate the corrosive effect of the hazardous liquid or carbon dioxide on the pipeline and take adequate steps to mitigate internal corrosion.

The Notice alleged that Respondent violated § 195.579(a) by failing to investigate the corrosive effect of the hazardous liquid transported by its pipeline and to take steps to mitigate internal corrosion. Specifically, the Notice alleged that BFPL had experienced at least three pipeline leaks since 2006 due to internal corrosion, but never conducted an investigation of the corrosive effect of the hazardous liquid or took steps to mitigate the condition.

The evidence in the record includes documentation of the following four leaks on BFPL’s pipeline system that were attributed to internal corrosion: (1) on April 30, 2006, near McKenzie, North Dakota, 25 barrels of crude oil were released during a failure; (2) on December 22, 2007, near Gillette, Wyoming, 40 barrels were released during a failure; (3) on July 15, 2008, near Gillette, Wyoming, 550 barrels were released during a failure; and (4) on March 18, 2009, near Moorcroft, Wyoming, 32 barrels were released during a failure of a non-regulated gathering line. The first three failures were required to be reported under 49 C.F.R. § 195.50.

The record also includes accident report forms filed by Respondent for each of the three reportable accidents. All three forms show that Respondent determined the cause of each failure

to be internal corrosion.³⁴ The Violation Report noted that during the PHMSA inspection, BFPL's DOT Compliance Coordinator stated that the company had not conducted an internal corrosion investigation in accordance with § 195.579(a).³⁵

At the hearing and in its Brief, Respondent argued there is a discrepancy between the allegation in the Notice and the actual regulatory requirement. While the Notice alleged that Respondent was required to investigate corrosive effects if the product in its pipeline “*could* corrode a pipe,”³⁶ BFPL contended that the regulation states that investigation of corrosive effects is only required when an operator transports a hazardous liquid that “*would* corrode the pipeline.”³⁷ BFPL argued the later requires a higher “threshold level of information or evidence to trigger the requirement” represented by prior knowledge or a reasonable belief on the part of the operator that the product would indeed corrode the pipeline.³⁸

BFPL contended further that it never had knowledge or a reasonable belief that the product transported would corrode the pipeline. The various leaks identified in the Notice, Respondent asserted, did not cause the company to know or reasonably believe there was a risk of internal corrosion because the leaks were unrelated to one another, happened in two different states, involved different crude, occurred at different times, and two of them occurred on inactive line segments where there could have been standing oil or water in the pipe. Since Respondent did not know or reasonably suspect that the product transported would corrode the pipeline, BFPL maintained that it did not have a regulatory duty to investigate the product for corrosive effects.³⁹

PHMSA has publicly communicated to pipeline operators that § 195.579(a) requires operators to determine if the hazardous liquids transported could corrode the pipeline, and the agency has never implied, as Respondent suggests, that there must first be confirmed knowledge or reasonable belief on the part of the operator that the product will cause internal corrosion. For example, PHMSA published an Advisory Bulletin in the Federal Register reminding operators that the regulations “require operators to determine if the hazardous liquids they are transporting could corrode the pipeline.”⁴⁰ In addition, the original agency rulemaking that promulgated § 195.579(a) explained in the preamble that the standard “requires operators to investigate the effects of transporting hazardous liquid or carbon dioxide which could corrode the pipeline, and take adequate steps to mitigate corrosion.”⁴¹

³⁴ Violation Report, Exhibit K.

³⁵ Violation Report at 22.

³⁶ Notice at 8 (emphasis added).

³⁷ § 195.579(a) (emphasis added).

³⁸ Brief at 24.

³⁹ In its initial Response, Belle Fourche claimed the regulation is also “impermissibly and unconstitutionally vague and ambiguous” because PHMSA has not defined in the regulation the circumstances when an operator must investigate the corrosive effect of a hazardous liquid. BFPL did not raise this constitutional argument at the hearing or in its Brief. For the reasons set forth in this decision, I find the regulation is not “impermissibly and unconstitutionally vague and ambiguous,” and that the agency has also provided additional guidance to operators regarding the applicability of this safety standard.

⁴⁰ Advisory Bulletin on the Proper Identification of Internal Corrosion Risk, 73 Fed. Reg. 71,089 (Nov. 24, 2008).

⁴¹ Final Rule on Controlling Corrosion on Hazardous Liquid and Carbon Dioxide Pipelines, 66 Fed. Reg. 66,994, 67,000 (Dec. 27, 2001).

PHMSA has applied the regulation in the same manner. In a prior enforcement decision that is similar in many respects to the present case, PHMSA determined that a pipeline operator violated § 195.579(a) when it failed to investigate the corrosive effect of the product transported after experiencing several leaks caused by internal corrosion.⁴² The leaks occurred on a dead leg and on a lateral pipeline used for inputting trucked barrels of crude oil. Even though the operator had investigated the corrosive effects of the product on its mainline pipe, the operator violated § 195.579(a) when it failed to perform the same investigation for such non-mainline pipes where the leaks had occurred.

BFPL's situation is similar in that the company has experienced multiple leaks on its pipeline system due to internal corrosion, some of which occurred on idle or non-mainline pipe. In this case, however, there is no evidence that Respondent ever investigated the corrosive effects of the product, even on its mainline pipeline. The company may not ignore information about internal corrosion leaks on its pipeline merely because it does not consider the leaks to be related in time or location. Likewise, the fact that leaks occurred on idle lines or dead legs is no excuse not to investigate the corrosive effects.

Internal corrosion may be caused by the corrosive effects of product being transported through a pipeline system. Even if an operator believes that the commodity it transports is not normally corrosive, PHMSA has found that contaminants can be introduced to noncorrosive products during production and manufacturing processes, such as during upset conditions at a processing plant or refinery. During upset conditions, untreated product may bypass the treatment process and enter the pipeline, introducing corrosive materials.

Given the pipeline failures caused by internal corrosion, BFPL was required under § 195.579(a) to investigate the corrosive effects of the hazardous liquid transported in its pipeline system. The evidence demonstrates that BFPL failed to perform such an investigation.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.579(a) by failing to investigate the corrosive effects of the hazardous liquid transported by its pipeline.

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 an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

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, including adverse impact on the environment; the degree of Respondent's culpability; the history

⁴² *In the Matter of Sunoco Pipeline, L.P.*, Final Order, CPF No. 4-2007-5040, 2010 WL 5761108 (Dec. 16, 2010).

of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. 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 \$221,200 for the violations in Items 1, 5, 8, 9, 10, and 11. Since Items 1 and 5 have been withdrawn, penalties are not assessed for these items.

Item 8: The Notice proposed a civil penalty of \$30,800 for Respondent's violation of 49 C.F.R. § 195.420(b). As discussed above, I found that BFPL failed to inspect mainline valves on 26 occasions at the maximum intervals required by regulation. I also withdrew allegations that Respondent violated the regulation on 21 additional occasions.

In its Brief, Respondent argued that the penalty should be reduced for several reasons. First, Respondent contended, and I agree, that the circumstances of the violation warrant a reduction to the civil penalty to reflect that I have withdrawn 21 of the 47 instances of the alleged violation.

Second, Respondent argued there was a "lack of any risk to health or safety" by the violation. I disagree with this contention. Properly functioning mainline valves are essential to the safe operation of hazardous liquid pipeline systems; they are used to limit the volume of product released in the event of a spill. One purpose of the mandatory valve inspection interval set forth in § 195.420(b) is to ensure that valve problems are identified and corrected before they impact the safety of the pipeline system. BFPL failed to inspect approximately 21 mainline valves at proper intervals on 26 occasions. Accordingly, I find BFPL's failure to perform these timely inspections presented a pipeline safety risk.

Third, Respondent argued that the Violation Report erroneously stated there were potential impacts to high consequence areas (HCAs) as a result of the violation, when there are not any HCAs in the area of the valves that had missed inspections. The only evidence presented in the Violation Report of the location of HCAs are several maps, but they are of such a large scale, and are not supported by additional documentation, that it is inconclusive as to whether there are any HCAs in the area of the valves that had missed inspections.⁴³ Accordingly, after reviewing the record, I agree the evidence does not support finding potential impacts to HCAs. In this regard, the gravity of the violation warrants a reduction to the proposed civil penalty.

Fourth, BFPL argued that the Violation Report included no evidence of the degree of culpability, but rather stated simply that the company was "culpable" because it had knowledge of the regulation. In prior final orders, I have found that when evaluating an operator's culpability, I determine the extent to which the company deserves the blame for the violation that occurred.⁴⁴ In this case, as the operator of the pipeline facility, BFPL is responsible for compliance and therefore is culpable for these violations of the pipeline safety regulations. I find no reason to determine there is any lesser degree of culpability on the part of Respondent for these violations.

⁴³ Violation Report, Exhibit L.

⁴⁴ *In the Matter of Alyeska Pipeline Service Co.*, Decision on Petition for Reconsideration, CPF No. 5-2006-5018, 2010 WL 2228550, at 2-3 (Mar. 1, 2010) (citing the American Heritage Dictionary of the English Language 442 (4th ed. 2000)).

Fifth, Respondent argued that it had demonstrated good faith in attempting to achieve compliance, as the company had implemented a “vigorous valve inspection program, that [the missed inspections] were isolated occurrences, and most importantly that a majority of the valves at issue in fact were inspected.”⁴⁵ While Respondent may have performed other valve inspections in a timely manner, the numerous instances of missed valve inspections in this case preclude any penalty reduction for good faith in attempting to achieve compliance.

Sixth, Respondent contested the statement in the Violation Report that “BFPL has a poor record of compliance with Part 195 requirements,” since there was no finding that BFPL previously violated this regulation. In prior final orders, I have found that “[w]hile a repeat violation of the exact same regulatory section is certainly the most acute example of a prior offense, I am not precluded from considering [a respondent’s] overall compliance history, including all previous violations of the pipeline safety regulations regardless of regulatory section number.”⁴⁶ Accordingly, when evaluating BFPL’s history of prior offenses, “I may consider not only instances of past violations of the same regulation, but also the company’s history of other offenses, such as prior violations of other regulations, the extent to which such violations resulted in civil penalties, and whether corrective action was necessary.”⁴⁷

With regard to history of prior offenses, the Violation Report cited three prior enforcement actions issued against BFPL in the five-year period preceding the Notice in this case. In the prior enforcement actions, Respondent was found to have committed approximately 11 violations of the pipeline safety regulations, requiring the agency to order specific corrective measures to ensure compliance. In addition, those violations resulted in more than \$90,000 in civil penalties. Accordingly, I have weighed Respondent’s history of prior offenses and find that when viewed as a whole, it supports the proposed penalty and does not warrant any reduction.

Finally, BFPL argued the penalty should be reduced to reflect relatively lower penalty assessments in other PHMSA enforcement actions. Specifically, Respondent cited a previous final order in which PHMSA assessed a lower penalty against a different operator for failing to inspect and test nine mainline valves in violation of § 195.420(b).⁴⁸

PHMSA sets civil penalties by applying the statutory assessment criteria on a case-by-case basis. Given the unique facts of each offense, operating conditions of each pipeline, an operator’s individual compliance history, how the violation was discovered, its duration, whether the operator made a good faith effort to comply with the regulation prior to the inspection, and whether there was any immediate or potential safety or environmental impacts, it is not uncommon for there to be some variance in the penalties assessed for different operators’ violation of the same code section. This fact-sensitive approach is consistent with PHMSA’s largely performance-based regulatory scheme, which involves the consideration of risk factors

⁴⁵ Brief at 12.

⁴⁶ *Alyeska Pipeline Service Co.*, CPF No. 5-2006-5018, at 3. See also 49 U.S.C. § 60122(b)(2)(B) and 49 C.F.R. § 190.225(b)(2), which authorizes PHMSA to consider such other matters as justice may require in determining the amount of a civil penalty.

⁴⁷ *Alyeska Pipeline Service Co.*, CPF No. 5-2006-5018, at 3.

⁴⁸ See *In the Matter of Texas Eastern Petroleum Products Co.*, Final Order, CPF No. 3-2004-5027, 2006 WL 3825327 (Jan. 3, 2006).

and complexities unique to each pipeline system. Moreover, PHMSA has found it appropriate to increase many of its civil penalties over the years, including those for violations of § 195.420(b).⁴⁹ Therefore I do not find this is a reason to reduce the penalty in light of the other assessment criteria.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$15,800 for its violation of § 195.420(b).

Item 9: The Notice proposed a civil penalty of \$62,100 for Respondent's violation of 49 C.F.R. § 195.428(a). As discussed above, I found that BFPL failed to inspect and test station pressure limiting devices at the Hwy 450 Station, Seiler Station, Sussex Pump Station, and Guernsey Terminal. I have withdrawn the allegations with regard to the Donkey Creek station.

In its Response and Brief, Respondent argued that the penalty should be reduced for several reasons. First Respondent contended, and I agree, that the circumstances of the violation warrant a reduction to the civil penalty to reflect that I have withdrawn the allegations of violation with regard to the Donkey Creek station.

Second, Respondent argued "there was no risk of harm to the environment or to public safety" from the violation. I disagree with this assertion, however. Properly functioning pressure control equipment provides critical protection against pipeline system failures caused by overpressure. Regular inspections of overpressure protection devices allow operators to identify and repair problems before more serious incidents occur, such as pipeline system failures. In fact, pipeline failures are known to have occurred as a direct result of a pipeline operator failing to perform regular inspections under this regulation.⁵⁰ Accordingly, I find BFPL's failure to perform such inspections presented a pipeline safety risk.

Third, Respondent contested the statements in the Violation Report that suggested the violations "could potentially impact" populated and ecological HCAs, including the North Platte River. Specifically, BFPL argued with regard to Highway 450 and Sussex stations that there are no HCAs that could be affected. At Guernsey terminal, Respondent contended that it would not be possible to experience an overpressure situation. Respondent also introduced as Exhibit 22 spill modeling data related to the North Platte River, which the company argued proves that a spill could not impact the river. Respondent did not discuss Seiler Station specifically. After reviewing the record, I find there is an absence of conclusive evidence of potential impacts to HCAs by this noncompliance. In this regard, the gravity of the violation warrants a reduction to the proposed civil penalty.

Fourth, BFPL argued that the Violation Report included no evidence of any degree of culpability, but rather stated the company was "culpable" simply because it had knowledge of the regulation. For the same reasons expressed in Item 8, as operator of the pipeline, BFPL is responsible for compliance and therefore is culpable for these violations of the pipeline safety

⁴⁹ See, e.g., *In the Matter of Nustar Logistics, L.P., F/K/A Valero Logistics Operations, L.P.*, CPF No. 4-2005-5048, 2009 WL 1211363 (Mar. 11, 2009) (assessing a civil penalty of \$105,000 for violation of § 195.420(b)).

⁵⁰ See, e.g., *In the Matter of Jayhawk Pipeline, LLC*, Final Order, CPF No. 3-2008-5006, 2010 WL 5761106 (Dec. 16, 2010).

regulations. I find no reason to determine there is any lesser degree of culpability on the part of Respondent for these violations.

Fifth, Respondent contested the statement in the Violation Report that “BFPL has a poor record of compliance with Part 195 requirements,” since there was no finding that BFPL previously violated this regulation. For the same reasons expressed in Item 8, I find that when viewed as a whole, Respondent’s history of prior offenses support the proposed penalty and do not warrant any reduction. Furthermore, the Violation Reported confirmed that Respondent has previously been found in violation of this specific regulation.⁵¹

Sixth, Respondent argued the proposed penalty “does not reflect the good faith efforts of BFPL to comply, including corrective measures already implemented.”⁵² I do not find evidence in the record, however, that BFPL took corrective measures to achieve compliance. Regardless, corrective measures taken after the violation has already been identified by PHMSA do not warrant a penalty reduction.

Finally, BFPL argued the penalty should be reduced to reflect lower penalty assessments in prior cases. For the reasons stated above, it is appropriate for the civil penalties in this case to differ from prior cases given the unique facts of each case and that PHMSA has increased civil penalties over the years, including those for violations of § 195.428(a).⁵³

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$42,000 for its violation of § 195.428(a).

Item 10: The Notice proposed a civil penalty of \$30,800 for Respondent’s violation of 49 C.F.R. § 195.428(d). As discussed above, I found that BFPL failed to inspect and test the overfill protection systems at three breakout tanks.

In its Response, BFPL contested the penalty assessment “because it is inconsistent with enforcement in similar cases, is disproportionate to the nature and gravity of the alleged violation, and does not reflect the good faith efforts of BFPL to comply, including corrective measures already implemented, among other reasons.”⁵⁴ At the hearing and in its Brief, BFPL did not further clarify these general arguments, but requested that PHMSA consider its practice of hand gauging as good faith efforts “to comply with the ultimate objectives of section 195.428(d).”⁵⁵

Respondent’s violation of § 195.428(d) was not merely an inspection missed by several days, but rather an extended period of noncompliance. BFPL never inspected and tested the high level alarms at the three breakout tanks. Overfill protection systems provide crucial protection against spills and regular inspections and tests of such systems are key to ensuring that these systems

⁵¹ Violation Report at 23. See *In the Matter of Belle Fourche Pipeline Co.*, Final Order, CPF No. 5-2004-5010, at 5 (Dec. 11, 2006).

⁵² Response at 11.

⁵³ For example, in *Jayhawk Pipeline*, CPF No. 3-2008-5006, cited above, PHMSA assessed a civil penalty of \$96,000 for violation of § 195.428(a).

⁵⁴ Response at 12-13.

⁵⁵ Brief at 18.

operate properly. Accordingly, I find BFPL's failure to perform such inspections presented a pipeline safety risk, and that the civil penalty proposed is appropriate given the nature, circumstances and gravity of the violation. As the operator of the pipeline facility, BFPL is also culpable for this violation of the pipeline safety regulations.

With regard to BFPL's statement in its Response that the penalty is inconsistent with other enforcement cases, Respondent did not cite to any other enforcement cases. For the reasons stated above, I find it is appropriate for civil penalties to differ from one case to another given the unique facts of each case.

Finally, BFPL requested that PHMSA consider its practice of hand gauging as good faith efforts to comply with the "ultimate objectives" of the regulation. As noted above, hand gauging was performed to verify that tank level indicators on its SCADA system were accurate. The gauging did not actually test the overfill alarm devices to determine they were functioning properly. Moreover, there is no evidence in the record that Respondent undertook such hand gauging for the purpose of attempting to comply with § 195.428(d). Lastly, with regard to any "corrective measures already implemented," I do not find evidence in the record that BFPL took corrective measures to achieve compliance. Therefore I do not find such practice warrants a penalty reduction for good faith.

I have also weighed Respondent's history of prior offenses and find that when viewed as a whole, it supports the proposed penalty and does not warrant any reduction.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$30,800 for its violation of § 195.428(d).

Item 11: The Notice proposed a civil penalty of \$43,300 for Respondent's violation of 49 C.F.R. § 195.432(b). As discussed above, I found that BFPL failed to perform an external inspection of the Sussex Breakout Tank at the required interval established by API Standard 653.

In its Response, BFPL contested the penalty assessment "because it is inconsistent with enforcement in similar cases, is disproportionate to the nature and gravity of the alleged violation, and does not reflect the good faith efforts of BFPL to comply, including corrective measures already implemented, among other reasons."⁵⁶ At the hearing and in its Brief, however, BFPL did not further clarify these general arguments.

With regard to nature, circumstances, and gravity, I find Respondent's failure to inspect the physical integrity of its breakout tank at the proper interval to evaluate the suitability for continued service presented a risk to pipeline safety that supports the proposed civil penalty. As the operator of the pipeline facility, BFPL is culpable for this violation of the pipeline safety regulations.

For the reasons stated above, it is appropriate for civil penalties to differ from one case to another given the unique facts of each case. I have also weighed Respondent's history of prior offenses and find that when viewed as a whole, it supports the proposed penalty and does not warrant any

⁵⁶ Response at 13.

reduction. Furthermore, the Violation Reported confirmed that Respondent has previously been found in violation of this regulation.⁵⁷

Lastly, with regard to any “corrective measures already implemented,” although Respondent has taken corrective measures to achieve compliance, such measures taken after the violation has already been identified by PHMSA do not warrant a penalty reduction.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$43,300 for its violation of § 195.432(b).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$131,900**.

Respondent has not provided any evidence suggesting that Respondent is unable to pay the proposed civil penalty. Therefore, I find Respondent is able to pay the penalty without adversely affecting its ability to continue in business.

Payment of the civil penalty must be made within 20 days of receipt of this Final Order. 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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$131,900 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 in referral of the matter to the Attorney General for appropriate action in a United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 2, 3, 4, 6, 10, 11, 12, 13, and 14 in the Notice for the violations described above.

Since Items 3 and 6 have been withdrawn, the associated terms of the proposed compliance order are not included for those items.

With regard to the terms of the proposed compliance order associated with Items 2, 4 and 11, Respondent has taken the following actions to fulfill the terms of the proposed compliance order:

As proposed for **Item 2**, Respondent has developed a list of all relevant county sheriff departments, county fire departments, county emergency managers, and public officials

⁵⁷ Violation Report at 23. See *In the Matter of Belle Fourche Pipeline Co.*, Final Order, CPF No. 5-2004-5010, at 5 (Dec. 11, 2006).

requiring liaison. Respondent also became a member of the Wyoming Pipeline Association, which is a consortium of pipeline operators with a mission of improving public awareness including liaison with local responders.

As proposed for **Item 4**, Respondent has installed a pressure recording device at the Guernsey pump station.

As proposed for **Item 11**, Respondent has completed an API Standard 653 Internal Inspection of the Sussex diesel breakout tank.

Accordingly, since compliance has been achieved with respect to these violations, the compliance terms are not included in this Order.

With regard to the proposed compliance order associated with **Item 10**, BFPL contended in its Response that “certain alarms have been installed and are being tested,” but provided no further explanation or documentation at the hearing or in its Brief that the company has inspected and tested the high level alarms specified in the proposed compliance order.⁵⁸

With regard to the proposed compliance order associated with **Item 12**, BFPL did not provide any documentation of additional protection installed at the Donkey Creek Pump Station, Sussex Pump Station, and Sussex Breakout Tank.

With regard to the proposed compliance order associated with **Item 13**, BFPL contended in its Response and Brief that it had already performed a CIS in June-July 2009 and determined based on that study that no detrimental stray currents are impacting its facilities in the specified area.

After reviewing the referenced study, it appears that the purpose of the CIS was to evaluate cathodic protection levels and areas of coating damage. In Respondent’s Exhibit 7, its third-party contractor states that it “was contracted to perform a close interval On/Off cathodic protection survey on the 12[-inch] Belle Fourche Pipeline as part of Belle Fourche Pipeline’s ongoing integrity program.” It is not evident from the record that the CIS constituted an interference study.

With regard to the proposed compliance order associated with **Item 14**, BFPL contended in its Response that “BFPL has initiated an investigation to determine if there are any additional steps necessary to mitigate the effects of internal corrosion,” but provided no further explanation or documentation at the hearing or in its Brief regarding such an investigation.⁵⁹

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids by pipeline or who owns or operates a hazardous liquid pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

⁵⁸ Response at 12.

⁵⁹ Response at 16.

1. With respect to the violation of § 195.428(d) (**Item 10**), BFPL must inspect and test the high level alarms on the following tanks: Sussex Pump Station Breakout Tank (BOT); Davis Station (Tank 74) BOT; and Hawk Point Terminal BOT.
2. With respect to the violation of § 195.436 (**Item 12**), BFPL must install adequate protection from vandalism and unauthorized entry for the Donkey Creek Pump Station, Sussex Pump Station, and Sussex Breakout Tank. The protection must consist of the following, unless BFPL can demonstrate an alternative method of protection that achieves the same or greater level of safety and security: security fencing that is a minimum of six feet high and includes a minimum of three strands of barbed wire above the fencing with appropriate warning signs and operator contact information installed on the fencing, and with gates that can be locked.
3. With respect to the violation of § 195.577(a) (**Item 13**), BFPL must perform an interference study on the Donkey Creek Pipeline between Guernsey station and Ft. Laramie station and remediate any stray currents that are found.
4. With respect to the violation of § 195.579(a) (**Item 14**), BFPL must conduct an investigation to determine if crude oil transported through its pipeline system has the ability to cause internal corrosion. If the results of the investigation warrant, BFPL must develop and follow procedures for appropriate remedial actions to mitigate the occurrence of internal corrosion.
5. BFPL must complete the actions required by this Compliance Order and submit documentation demonstrating compliance within 60 days following receipt of the Final Order. Documentation of compliance must be submitted to the Director, Western Region, Pipeline and Hazardous Materials Safety Administration, 12300 W. Dakota Ave. #110, Lakewood, CO 80228. Documentation may be submitted in an electronic format when feasible.
6. It is requested that BFPL maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and report the total cost to the Director in two categories: (a) total cost associated with preparation and revision of plans and procedures, and performance of studies and analyses; and (b) total cost associated with physical changes, if any, to the pipeline infrastructure, including replacements and additions.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEM

In addition, with respect to Item 7, the Notice alleged a probable violation of Part 195 and specifically considered this to be a warning item. The warning was for:

49 C.F.R. § 195.412(a) (**Item 7**) – Respondent allegedly failed to inspect the right-of-way of its Bicentennial pipeline in Montana at the required intervals between March 24 and April 21, 2008, and between June 4 and July 5, 2008. Specifically, the Notice alleged Respondent had aerial inspection records for the Bicentennial pipeline during those periods, but the records indicated the Montana portion had not been flown.

If OPS finds this issue in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order to the Associate Administrator for Pipeline Safety, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590. A petition must be received within 20 days of Respondent's receipt of the Final Order. The petition must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. 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 force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued

MAR 30 2011

Mr. Tad True
President
Butte Pipeline Company
455 North Poplar Street
P. O. Drawer 2360
Casper, WY 82602

Re: CPF No. 5-2009-5002

Dear Mr. True:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$28,800, and specifies actions that need to be taken by Butte Pipeline Company to comply with the pipeline safety regulations. It also issues your company a warning for one probable violation. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Western Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, Director, Western Region, PHMSA
Mr. Manuel Lojo, Counsel, Butte Pipeline Company

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0043 9535]

FINDINGS OF VIOLATION

Butte has waived its right to contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall 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. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Butte violated 49 C.F.R. § 195.402(a) by failing to perform an annual review of its manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. In particular, the Notice alleged that Respondent did not review its manual from February 2005 until January 2008, the date of the OPS inspection. Butte waived its right to contest that allegation.³ Accordingly, based upon a review of all of the evidence, I find without further notice that Respondent violated 49 C.F.R. § 195.402(a) by failing to perform an annual review of its manual at an interval not exceeding 15 months, but at least once each calendar year.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(12), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) . . .

(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1) . . .

(12) Establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication.

³ In its untimely response, Butte admitted that its review of the manual was still “ongoing” and only “25% complete.”

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(12) by failing to establish and maintain liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid pipeline emergency and means of communication. Butte waived its right to contest that allegation.⁴ Accordingly, based upon a review of all of the evidence, I find without further notice that Respondent violated 49 C.F.R. § 195.402(c)(12) by failing to establish and maintain liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid pipeline emergency and means of communication.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) . . .

(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1) . . .

(13) Periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

The Notice alleged that Butte violated 49 C.F.R. § 195.402(c)(13) by failing to periodically review the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and take corrective action where deficiencies are found. In particular, the Notice alleged that Respondent's manual required that this review be conducted annually, and that Butte had no record of performing those reviews. The Notice also alleged that OPS had previously issued Respondent a warning letter, dated February 8, 2007, for the same probable violation. Butte waived its right to contest that allegation.⁵ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(13) by failing to periodically review the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and take corrective action where deficiencies are found.

⁴ In its untimely response, Butte noted that it was participating in several state pipeline associations, but stated that the documentation associated with that participation was not yet fully available. Butte also did not dispute the allegation that it had no procedure in its manual for establishing and maintaining liaison with local public officials at the time of the OPS inspection.

⁵ In its untimely response, Butte noted that this review was now underway.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(d)(5), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) . . .

(d) Abnormal operation. The manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

(1) . . .

(5) Periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.

The Notice alleged that Butte violated 49 C.F.R. § 195.402(d)(5) by failing to periodically review the response of operator personnel to determine the effectiveness of their procedures for controlling abnormal operations and to take corrective action where deficiencies are found. In particular, the Notice alleged that Respondent's manual required that these reviews be conducted periodically, and that Butte had no record of performing the same. The Notice also alleged that interviews with company personnel indicated that Butte only conducted these reviews on an informal basis, and that OPS had previously issued Respondent a warning letter, dated February 8, 2007, for the same probable violation. Butte waived its right to contest that allegation.⁶ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(d)(5) by failing to periodically review the response of operator personnel to determine the effectiveness of their procedures for controlling abnormal operations and to take corrective action where deficiencies are found.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13), which states:

§ 195.403 Emergency Response Training.

(a) . . .

(c) Each operator shall require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under 195.402 for which they are responsible to ensure compliance.

The Notice alleged that Butte violated 49 C.F.R. § 195.403(c) by failing to require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance. In particular, the Notice alleged that Respondent had no provision in its manual for implementing this requirement, and that the company had no records documenting its compliance with the

⁶ In its untimely response, Butte submitted its written procedure and standardized form for conducting these reviews, but did not dispute any of the remaining allegations in the Notice. That includes the fact that the company did not have the documentation required to substantiate the performance and adequacy of these reviews.

regulation. Butte waived its right to contest that allegation.⁷ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.403(c) by failing to require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.577(a), which states:

§ 195.577 What must I do to alleviate interference currents?

(a) For pipelines exposed to stray currents, you must have a program to identify, test for, and minimize the detrimental effects of such currents.

The Notice alleged that Butte violated 49 C.F.R. § 195.577(a) by failing to have a program to identify, test for, and minimize the detrimental effects of stray current on pipelines exposed to those currents. In particular, the Notice alleged that Respondent's cathodic protection records showed that certain pipeline segments between Guernsey and Ft. Laramie station were exposed to potentially damaging stray currents from foreign pipelines in 2006, and that interviews with the company's field personnel indicated that there was no program in place for identifying, testing for, and minimizing the detrimental effects of those currents. Butte waived its right to contest that allegation.⁸ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.577(a) by failing to have a program to identify, test for, and minimize the detrimental effects of stray current on pipeline exposed to such currents.

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 an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations.

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, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the

⁷ In its untimely response, Butte noted that it provides its supervisors with training and requires that they participate in emergency response drills, but did not dispute that allegation in the Notice that it had no written procedures in its Manual or records associated with the performance of these activities.

⁸ In its untimely response, Butte noted that a multi-operator investigation into the source of the stray current was scheduled for June 2009. In a subsequent letter, dated January 6, 2010, Butte provided the Director, Western Region, with the results of that investigation.

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 \$28,800 for Item 1.

Item 1: The Notice proposed a civil penalty of \$28,800 for Respondent's violation of 49 C.F.R. § 195.402(a) by failing to perform an annual review its manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies from February 2005 until January 2008. Butte waived its right to contest the proposed civil penalty amount.

The evidence shows that Respondent failed to perform the required annual review for 35 months, an extended period of noncompliance that increases the gravity of this particular violation.⁹ There is also no indication that Butte cannot pay the proposed penalty amount, that doing so would impair its ability to stay in business, or that it sought in good faith to comply with the regulation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$28,800 for its violation of 49 C.F.R. § 195.402(a).

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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125. The Financial Operations Division's telephone number is (405) 954-8893.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, 3, 4, 5, and 7 in the Notice for violations of 49 C.F.R. §§ 195.402(a), (c)(12)-(13), (d)(5), 195.403(c), and 195.577(a), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.402(a) (**Item 1**), Respondent must review all of its manuals, make changes to any portions of those manuals that are not effective, and keep a record of its review.

⁹ In its untimely Response, Butte argued that the civil penalty amount was excessive in comparison to *In the Matter of ExxonMobil Pipeline Company*, CPF 5-2005-2008, another enforcement action that proposed a \$5,000 civil penalty for a similar violation. However, the latter case was withdrawn in an August 6, 2009 Final Order and has no further precedential value.

2. With respect to the violation of § 195.402(c)(12) (**Item 2**), Respondent must develop a list of local fire, police, and other appropriate officials and develop and implement a plan for conducting liaison activities with the same, including instructions for documenting establishing the frequency of those contacts.
3. With respect to the violation of § 195.402(c)(13) (**Item 3**), Respondent must review the work done by its personnel to determine the effectiveness of the procedures used in normal operation and maintenance, take any necessary corrective actions where deficiencies are found, and keep a record of performing that review.
4. With respect to the violation of § 195.403(d)(5) (**Item 4**), Respondent must review the response of its personnel to determine the effectiveness of the procedures controlling abnormal operation, take any necessary corrective actions where deficiencies are found, and keep a record of performing that review as required by Part 195 of the Pipeline Safety Regulations.
5. With respect to the violation of § 195.402(c) (**Item 5**), Respondent must verify that all of its supervisors have a thorough knowledge of the appropriate portions of its emergency response procedures.
6. With respect to the violation of § 195.577(a) (**Item 7**), Respondent must develop a plan for identifying, testing for, and minimizing the detrimental effects of stray current on its pipeline segments between Guernsey and Ft. Laramie station.
7. Respondent must complete the actions listed in paragraphs 1 through 6 of this Compliance Order within 12 months of the date of this Final Order and submit documentation of the actions taken to Chris Hoidal, Director, Western Region, PHMSA. It is requested that Respondent maintain documentation of the safety improvement costs associated with fulfilling the terms of this Compliance Order and submit the total to Chris Hoidal, Director, Western Region, PHMSA. Such costs should be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies, and analyses, and (2) total cost associated with replacements, additions, and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEM

With respect to Item 6, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for that item. Therefore, it is considered to be a warning item. The warning was for:

49 C.F.R. § 195.412(a) (**Item 6**) — Respondent's alleged failure on two occasions to patrol at intervals not exceeding 3 weeks, but at least 26 times each calendar year, the right of way for its pipeline in the area between Hulet and Osage, Wyoming.

Butte waived its right to contest this allegation. Accordingly, having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that a probable violation of 49 C.F.R. § 195.412(a) (Item 6) occurred and Respondent is hereby advised to correct such condition. In the event that OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590. A copy of the petition should also be sent to: Assistant Chief Counsel for Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590. The petition must be received no later than 20 days after service of this Final Order upon the Respondent and must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of the petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon receipt of service.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

FEB 16 2006

Mr. H. A. True, III
President
Bridger Pipeline, LLC
455 North Poplar Street
Casper, WY 82601

Re: CPF No. 3-2005-5036

Dear Mr. Bridger:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and specifies actions to be taken to comply with the pipeline safety regulations. When the terms of the Compliance Order are completed, as determined by the Director, Central Region, OPS, this enforcement action will be closed. Your receipt of this Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Ivan Huntoon
Director, Central Region, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)	
)	
Bridger Pipeline, LLC,)	CPF No. 3-2005-5036
)	
Respondent.)	
)	

FINAL ORDER

On June 6-10, 2005, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Central Region, conducted an on-site pipeline safety inspection of Respondent's facilities and records in Newcastle, Wyoming and Baker, Montana. As a result of the inspection, the Director, Central Region, PHMSA, issued to Respondent, by letter dated September 27, 2005, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed violations of 49 C.F.R. Part 195, and proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated October 24, 2005 (Response). Respondent did not contest the allegations of violation but provided information concerning the corrective actions it has initiated. Respondent did not request a hearing, and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Respondent did not contest the alleged violations in the Notice. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. § 195.402(a) (Notice Item 1) – failing to prepare and follow procedures for operations, maintenance, and emergencies for the 10” Little Missouri System in accordance with all applicable requirements of Part 195; and

49 C.F.R. § 195.402(c) (Notice Item 2) – failing to prepare and follow welding procedures for pipeline repairs in accordance with the requirements of § 195.226(c).

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to Items 1 and 2 in the Notice. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. Submit a general plan and proposed schedule for developing and implementing procedures for operations, maintenance and emergencies that address the inadequacies described in the Notice and meet the applicable requirements of 49 C.F.R. Part 195 to the Director, Central Region, OPS;
2. Within 90 days following receipt of this Order, submit a copy of the written procedures for operations, maintenance and emergencies addressing the inadequacies described in the Notice and meeting the requirements of 49 C.F.R. Part 195 to the Director, Central Region, OPS; and
3. Within 180 days following receipt of this Order: (1) complete the training of Bridger personnel on the written procedures for operations, maintenance, and emergencies as revised and updated; and (2) maintain records of the training including the names of people trained and the dates the training occurred in accordance with applicable recordkeeping requirements.

The Regional Director has indicated that Respondent has submitted a general plan and proposed schedule for establishing the procedures and conducting the training. These actions comply with the requirements in Item 1 of this Compliance Order.

The Regional Director may extend the period for complying with any of the required items if the Respondent requests an extension in writing and adequately justifies the reasons for the extension.

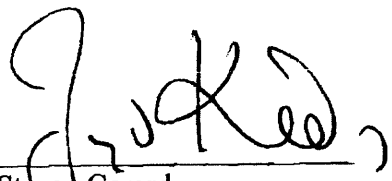
WARNING ITEMS

The Notice did not propose a civil penalty or compliance order for Items 3, 4, and 5 in the Notice. Therefore, these are considered warning items. The warnings were for Respondent's failure to adequately follow its procedures for maintaining liaison with fire, police and other public officials in accordance with § 195.402(c)(12); failure to demonstrate that an adequate public education program was established in accordance with § 195.440; and failure to maintain records of atmospheric corrosion surveys in accordance with § 195.589. Respondent presented information its response showing that it has initiated actions to address these items. Respondent

is warned that if these items are not fully addressed, enforcement action will be taken if a subsequent inspection reveals a violation.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, 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 terms of the Order, including any required corrective action, remain in full effect unless the Associate Administrator, upon request, grants a stay.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement. The terms and conditions of this Final Order are effective on receipt.



for
Stacey Gerard
Associate Administrator
for Pipeline Safety

FEB 16 2011

Date Issued

AUG 17, 2009

Mr. Hank True
President
Butte Pipeline Company
455 N. Poplar Street
P.O. Drawer 2360
Casper, WY 82602

Re: CPF No. 5-2007-5008

Dear Mr. True:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions that need to be taken by Butte Pipeline Company to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Western Region, this enforcement action will be closed. Your receipt of this Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Chris Hoidal
Director, Western Region, PHMSA

Colin G. Harris, Esq.
Holme Roberts & Owen LLP
1801 13th St., Ste 300
Boulder, CO 80302-5387

VIA CERTIFIED MAIL—RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5746]

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

)	
In the Matter of)	
)	
Butte Pipeline Company,)	CPF No. 5-2007-5008
)	
Respondent.)	
)	

FINAL ORDER

On June 6-10, July 18-21, and August 15-18, 2005, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration's Office of Pipeline Safety (PHMSA) conducted a safety inspection of the hazardous liquid pipeline systems operated by Butte Pipeline Company (Butte or Respondent), and several related companies in Montana and Wyoming.¹ The Butte pipeline system transports crude oil from Baker, Montana, to Ft. Laramie and Guernsey, Wyoming. As a result of the inspection, the Director, Western Region (Director) issued a combined notice of probable violation and proposed compliance order (CPF No. 5-2006-5004) by letter dated February 21, 2006, to one of the companies (Belle Fourche), alleging violations of the hazardous liquid pipeline safety regulations with respect to the inspected facilities. By letters dated May 26 and December 26, 2006, Belle Fourche objected to the notice on the grounds that the individual companies were separate and distinct legal entities and should be named separately.

In response to those objections, the Director withdrew the original charges on February 2, 2007, and issued separate enforcement documents to each company, including a Notice of Probable Violation and Proposed Compliance Order (Notice) issued in this case to Butte on February 8, 2007.² In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Butte had committed certain violations of 49 C.F.R. Part 195 and proposed that Butte take measures to correct the alleged violations. In addition, pursuant to 49 C.F.R. § 190.205, the Notice advised Respondent to take appropriate corrective action to address several warning items or face future potential enforcement action.

¹ The companies inspected were Belle Fourche Pipeline Company (Belle Fourche), Bridger Pipeline Company, LLC (Bridger), and Butte Pipeline Company. These companies share the same manual of operating procedures and some of the same employees and officers.

² The Director issued separate notices to Belle Fourche (CPF No. 5-2007-5002) and Bridger (CPF No. 5-2007-5003). This Final Order concerns only the Notice issued to Butte. Final agency action has already been taken in the cases involving Belle Fourche and Bridger.

Butte responded to the Notice by letter dated March 13, 2007 (Response). In its Response, the company contested the allegations of violation and requested a hearing. In accordance with 49 C.F.R. § 190.211, a combined hearing was held on August 31, 2007, in Lakewood, Colorado, with an attorney from the Office of Chief Counsel, PHMSA, presiding. Butte, Belle Fourche, and Bridger were jointly represented by counsel at the hearing. After the hearing, the companies submitted a single post-hearing brief (Brief) on October 11, 2007, and additional information by letter dated December 21, 2007. To the extent that the issues raised at the hearing and in the Brief relate to Butte, they are addressed below.

As a preliminary matter, the parties agree that in making findings of violation, PHMSA carries the burden of proving the allegations set forth in the Notice, meaning that a violation may be found only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.³ Respondent argues in its Brief that PHMSA failed to meet its burden of proof on all contested Items in the Notice (i.e., Items 4, 5, and 7). As discussed below, I find that PHMSA met its burden of proof on Items 4 and 7, but not Item 5.

FINDINGS OF VIOLATION

The Notice alleged that Respondent committed violations of 49 C.F.R. Part 195, as follows:

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.422(a), which states:

§ 195.422 Pipeline repairs.

(a) Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.

The Notice alleged that Respondent violated § 195.422(a) by failing to ensure that integrity repairs performed on the Butte pipeline in 2004 were made in a safe manner. Specifically, it alleged that Butte failed to use a nondestructive testing (NDT) method to examine all but two type-B repair sleeves and associated sleeve-to-pipe fillet welds. The Notice also alleged that industry practice has been to use NDT to ensure that type-B repair sleeves are installed in a safe manner. The Notice alleged further that Respondent's repair records did not indicate that visual examinations of such welds had even been performed.

During the PHMSA safety inspection, the inspector noted that although Butte had made more than 50 integrity repairs to the Butte pipeline in 2004 using type-B repair sleeves, the company's records indicated that only two sleeve repairs had been tested using NDT. The inspector noted further that there were no records of any of the repairs having been visually inspected. Statements by two of Respondent's employees during the safety inspection indicated the company had visually inspected the welds but did not perform NDT on all the welds because

³ PHMSA enforces the pipeline safety regulations and imposes sanctions for violations by conducting proceedings in accordance with 49 C.F.R. Part 190. Such proceedings are not "formal adjudications" under the Administrative Procedures Act (5 U.S.C. §§ 554 and 556). By way of comparison, however, it may be noted that the Supreme Court has found in formal adjudications that the burden of proof includes the burden of persuasion, and the standard of proof is the preponderance-of-the-evidence standard. *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 276 (1994); and *Steadman v. SEC*, 450 U.S. 91, 102 (1981).

NDT had been performed on two sleeve repairs and those tests had been successful. Violation Report at 2.

Butte raised several defenses to Item 4. First, it contended that the company ensured type-B repair sleeves had been installed in a safe manner by using fully qualified welders and procedures and by visually inspecting the welds.⁴ Second, it argued that PHMSA failed to provide the company with fair notice of the agency's interpretation and application of this NDT standard.

As for Butte's first defense that the company had ensured the repairs were made in a safe manner, the company presented a witness who stated that he had been told by the welding foreman that all of the welds were visually inspected.⁵ Brief Ex. 6 at ¶ 9. The witness also testified that, to his knowledge, the company had used qualified welders and procedures in the performance of this particular type of repair. *Id.* at ¶ 8. Respondent argued that these measures constituted compliance with § 195.422 and American Society of Mechanical Engineers (ASME) Standard B31.4, which Respondent referred to as "the relevant professional code governing pipeline transportation systems." Response at 2. In particular, Respondent contended that Section 451.6.3 of ASME B31.4 "allows for 'other methods' along with visual inspection" to ensure the safety of repair welds. *Id.*

With regard to the use of qualified workers and procedures, Respondent is correct to point out that these are critical for ensuring repairs are made in a safe manner. However, the use of qualified workers and procedures is not a substitute for post-repair examination. The use of qualified workers and procedures may serve prospectively to make it more likely that repairs *will be* made safely in the future, but the use of post-repair examinations is also needed to ensure that repairs *were in fact* made safely.

With regard to the visual examinations, I find little support in the record for Respondent's assertion that it conducted visual examinations of the repair welds, other than second-hand accounts and hearsay. Even if visual examinations were performed, they do not provide enough information on their own to determine whether repair welds were safely performed. Therefore, another type of post-repair examination method was required besides just visual examinations. While Butte attempted to convince PHMSA that "other methods," generally, are acceptable under the relevant industry standard, the company curiously neglected to disclose that the standard actually states, "Welds made during pipeline repairs . . . should also be examined by *at least one other nondestructive examination method.*" ASME B31.4 § 451.6.3(b) (2002) (emphasis added).

NDT may be the industry-recognized method to ensure type-B repair sleeves are installed in a safe manner, but the text of § 195.422(a) does not explicitly require the use of NDT to determine the safety of such repairs. As Respondent correctly notes, § 195.422(a) is a performance-based

⁴ In its Response, Butte indicated that it had also performed a post-repair hydrostatic test to ensure the safety of the repairs on the Butte pipeline; but at the hearing, the company clarified that it had not actually performed a hydrostatic test of the Butte line.

⁵ It is not evident in the record when the witness actually spoke to the foreman. Respondent was not able to locate the foreman for this proceeding. Brief at 8.

regulation, which requires a specified minimum level of safety for pipeline repairs without prescribing a specific process or method for each type of repair. With regard to the repairs at issue in this case, the question is whether Respondent used a post-repair evaluation process capable of ensuring that type-B repair sleeves were installed in a safe manner. Respondent did not make the assertion that it ever used NDT testing, or testing of any kind other than visual examinations, to examine all of the repair welds. For the reasons expressed above, I find Respondent failed to determine the safety of the 2004 type-B sleeve repairs on the Butte pipeline using a method capable of complying with § 195.422(a).

As for Butte's second argument that PHMSA failed to provide fair notice of its interpretation of this regulation, Respondent argued that it "could not have reasonably ascertained that OPS now considers NDT to be a mandatory requirement under 49 C.F.R. § 195.422(a)," because the regulation, on its face, imposes no such requirement. Brief at 10. Accordingly, Respondent argued that "it would violate due process to hold any party liable under this interpretation." Response at 3.

Butte has misinterpreted the agency's application of § 195.422. PHMSA does not take the position that NDT is always a mandatory requirement of the regulation. Rather, the agency notes the industry practice has been to use NDT to meet the performance-based requirement for the type of pipeline repair at issue in this case. PHMSA applies the text of § 195.422(a) to require that operators ensure each pipeline repair has been made in a safe manner through the use of an evaluation method capable of demonstrating the safety of that particular repair.

Respondent is correct that governmental agencies may not violate a person's right of due process by depriving such person of property without providing a minimum level of "fair notice" as to what may constitute a violation of law. "Due process requires that parties receive fair notice before being deprived of property In the absence of notice—for example, where the regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing civil or criminal liability." *Gen. Elec. Co. v. U.S. EPA*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995) (citations omitted) (internal quotation marks omitted). See also, *United States v. Chrysler Corp.*, 158 F.3d 1350, 1354 (D.C. Cir. 1998); *Trinity Broad. of Fla., Inc. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000). When an agency interprets a regulation through enforcement rather than pre-enforcement efforts, the issue of notice rests on "whether the regulated party received, or should have received, notice of the agency's interpretation in the most obvious way of all: by reading the regulations. If, by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with 'ascertainable certainty,' the standards with which the agency expects parties to conform, then the agency has fairly notified a petitioner of the agency's interpretation." *Gen. Elec. Co.*, 53 F.3d at 1329.⁶

⁶ Such "ascertainable certainty" may not be possible where an agency has given conflicting public interpretations of a regulation. In addition, even in those situations where an "agency does not issue contradictory public statements, it may fail to give sufficient fair notice to justify a penalty if the regulation is so ambiguous that a regulated party cannot be expected to arrive at the correct interpretation using standard tools of legal interpretation, must therefore look to the agency for guidance, and the agency failed to articulate its interpretation before imposing a penalty." *United States v. Lachman*, 387 F.3d 42, 57-58 (1st Cir. 2004) (citation omitted).

It is evident from the text of § 195.422(a) that a pipeline operator is required to ensure that each pipeline repair is made in a safe manner. It follows necessarily that the operator must employ a method of evaluating the repair that is capable of demonstrating whether or not the repair was made safely. As a matter of law, therefore, I find that Butte had fair notice of the requirement implicit in § 195.422(a) that it must use an evaluation method capable of determining type-B sleeve repairs were made in a safe manner. Unfortunately, for the reasons expressed above, the methods used by Butte were insufficient to comply with this requirement.

Respondent's assertion that the company was not aware NDT was the "industry standard" is specious, as Butte itself cited the ASME B31.4 standard, which states that repair welds should be examined by NDT. Whether or not NDT is the industry standard, however, is not controlling because § 195.422(a) does not bind Respondent to the industry standard. Respondent may comply with the regulation by using one or more evaluation methods capable of determining that "the repairs are made in a safe manner"; however, the operator must be able to demonstrate that the chosen method is capable of making such a determination. In this case, Butte failed to use an evaluation method capable of demonstrating the repairs were safely made.

Accordingly, after considering all of the evidence and arguments presented, I find Respondent violated § 195.422(a) by failing to ensure that type-B repairs sleeves were completed in a safe manner.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overfill protection systems.

(a) [E]ach operator shall, at intervals not exceeding 15 months, but at least once each calendar year . . . inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated § 195.428(a) by failing to inspect and test certain pressure control equipment on the Butte pipeline to determine if such equipment was functioning properly, was in good mechanical condition, and was adequate in terms of capacity and reliability of operation. Specifically, the Notice alleged that Butte failed to calibrate "pressure transducers that transmit data to the [Supervisory Control and Data Acquisition (SCADA)] center on the Poplar pipeline." Notice at 3. The Notice further stated that "[p]ressure transmitters that send pressure data to manned SCADA centers are part of the pressure control system." *Id.*

Butte raised several defenses to Item 5. The company argued, *inter alia*, that the requirements in § 195.428(a) do not apply to the pressure transducers/transmitters identified in the Notice because Butte's pipeline uses on-site overpressure protection devices that are "hard-wired to mechanically shut down the system locally and independently of the SCADA system" when pressure reaches a certain level. Brief at 12. Respondent distinguished those devices from pressure transducers/transmitters that send pressure data to a SCADA center, arguing that the regulation only applies to its mechanical devices.

The term “transducer” is a generic reference to an electro-mechanical device that reads a physical metric (in this case, pipeline pressure) and translates that data into an electronic signal that can then be transmitted, usually by wire. The term “transmitter” is an electronic assembly comprised of a transducer at the front end, which transmits the signal. Although the two terms can be distinguished in certain applications, the use of these terms interchangeably in the Notice refers to the common assembly that Butte uses to measure pipeline pressure, translate that data into an electronic signal, and transmit that data to the company’s SCADA center. For brevity, this Final Order uses the term “pressure transmitter” to refer to this entire mechanism.

Respondent is correct to point out that local mechanical pressure control equipment is covered by § 195.428(a), but the regulation is not so limited as to exclude other types of devices used to control operating pressure on a pipeline. By its terms, § 195.428(a) requires “each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment” to be tested and inspected at specified intervals. The regulation does not define “pressure control equipment,” but the commonly understood (dictionary) meaning of the words pressure, control, and equipment would include any device used to control or limit pressure in the pipeline.

An interpretation of § 195.428(a) that applies to all types of pressure transmitters, to the extent they control pipeline pressure, could be legally supported; but I have found as a matter of policy that § 195.428(a) should not be applied so broadly.⁷ There are certain distinctions between pressure transmitters that serve as an integral part of a pipeline’s overpressure protection system compared with those that only function to send pressure information to a SCADA system for other reasons. For example, certain pressure transmitters on a pipeline may be utilized to send pressure data to remote terminal units or program logic computers that use the data to automatically control pressure to avoid an overpressure event. These types of pressure transmitters, and other devices integral to a pipeline’s overpressure protection system, should be and are covered by the regulatory requirements in § 195.428(a). By comparison, pressure transmitters that only send pressure information to a SCADA system for use by a human controller, or for other informational purposes, might not be part of a particular pipeline’s overpressure protection system, and as such are not intended to be covered by § 195.428(a).

I have reviewed the evidence in this case to determine whether the pressure transmitters identified in the Notice were integral to Butte’s pipeline overpressure protection system. PHMSA did not introduce evidence showing how the pressure transmitters on Butte’s pipeline system were actually utilized other than that the devices sent pressure information to the company’s SCADA center. This evidence is insufficient to demonstrate that the pressure transmitters were integral to the pipeline’s overpressure control system. Butte, on the other hand, introduced evidence that its overpressure control system utilized local mechanical devices that operated independently of its SCADA system. Without additional evidence in the record demonstrating that the pressure transmitters were an integral part of Butte’s overpressure protection system, I cannot find a violation of § 195.428(a).

⁷ See *In the Matter of Bridger Pipeline Company, LLC*, CPF No. 5-2007-5003, Decision on Reconsideration (Jun. 16, 2009) (finding § 195.428(a) applies to pressure transmitters to the extent they are integral to a pipeline’s overpressure protection system).

Accordingly, I am withdrawing the finding of violation with respect to § 195.428(a). Since the violation is withdrawn for the above reasons, it is not necessary to address the additional arguments for withdrawal presented by Butte for this Item.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.583, which states:

§ 195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months

(b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbanded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(c) If you find atmospheric corrosion during an inspection, you must provide protection against the corrosion as required by § 195.581.

The Notice alleged that Respondent violated § 195.583 by failing to perform documented atmospheric corrosion inspections. Specifically, the PHMSA inspector noted that Butte did not have records of any completed atmospheric corrosion inspections and that none of the pipe supports appeared to have been inspected. Violation Report at 4. When the PHMSA inspector asked company officials whether Butte planned to inspect pipe surfaces that were in contact with concrete supports, Respondent's lead engineer indicated that the company did not have procedures to examine those pipe surfaces and had not documented any external corrosion inspections. Violation Report at 4.

Respondent contended, inconclusively, that "Butte [was] in material compliance, *or* [has] been addressing the alleged deficiencies." Brief at 13-14 (emphasis added). At the hearing, Respondent's lead engineer stated that while the company had not used specific forms to document its atmospheric corrosion inspections, the company did perform generic inspections and identified corrosive surfaces at times. In its Brief, Butte introduced an affidavit from the same person, stating that "specific external corrosion inspection procedures were not necessarily written down," but that the company had "routine inspection procedures for pipelines," and that "any significant external corrosion that was found would have been addressed appropriately." Brief Ex. 6 at ¶ 28. The witness also stated that the company had a reference to external corrosion in its operations and maintenance (O&M) manual and has been taking actions to improve inspection procedures. *Id.* at ¶ 29.

While Butte's lead engineer testified that the company performed "routine" O&M inspections, the company could not state explicitly how or when these inspections occurred, whether such inspections occurred at the requisite intervals under § 195.583, whether the company always checked for atmospheric corrosion during such inspections, or whether such inspections specifically checked pipe surfaces that were in contact with concrete supports—all requirements under the regulation. Butte was also unable to produce any records of having performed such inspections, which the company is required to keep under § 195.589(c).

Respondent's evidence concerning efforts to improve its forms and procedures after the PHMSA inspection are not relevant to the determination of whether or not Respondent was in compliance at the time of the inspection. Accordingly, after considering all of the evidence, I find Butte violated 49 C.F.R. § 195.583 by failing to perform documented atmospheric corrosion inspections, particularly at pipe surfaces in contact with concrete supports.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

Freedom of Information Act (FOIA) Issue: Finally, Respondent objected generally to the setting of a hearing in this proceeding while the company still had a FOIA request for documents pending with the agency. Butte argued in its Brief that PHMSA's decision to go forward with the hearing, despite the company's FOIA request and over its objections, constituted "a violation of Respondent's due process rights." Brief at 14. Respondent did not present any evidence or cite any legal authority in support of this claim.

PHMSA has specific procedures in place to guarantee a respondent's procedural due process rights in informal adjudications. *See* 49 C.F.R. Part 190. In accordance with those procedures, PHMSA provided Butte with all of the materials from the agency's case file well in advance of the date set for the hearing. *See* § 190.211(e). Therefore, Butte cannot reasonably assert that its procedural due process rights were violated.

Furthermore, the law provides that an agency may proceed with an adjudication despite a respondent's filing of a FOIA request. The Supreme Court has stated, "Discovery for litigation purposes is not an expressly indicated purpose of the [Freedom of Information] Act." *Renegotiation Bd. v. Bannerkraft Clothing Co.*, 415 U.S. 1, 24 (1974). The Court has further cautioned against "[i]nterference with the agency proceeding [that] opens the way to the use of the FOIA as a tool of discovery . . . over and beyond that provided by the regulations issued by the [agency] for its proceedings." *Id.*; *see also, Columbia Packaging Co. v. U.S. Dep't of Agric.*, 563 F.2d 495, 499-500 (1st Cir. 1977) (stating that "FOIA was not enacted to provide litigants with an additional discovery tool" and that "discovery in the different types of agency litigation is primarily a matter either for agency regulation or separate Congressional determination").

Based upon the foregoing, I find that Respondent's due process rights were not violated by the setting of a hearing in this proceeding while Butte's FOIA request for documents was still pending. It should also be noted that PHMSA responded to Butte's FOIA request on March 7, 2007, approximately six months prior to the hearing, and to its FOIA appeal on October 2, 2008.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 4, 5, and 7 in the Notice for violations of §§ 195.422(a), 195.428(a), and 195.583, respectively. Since the allegation of violation contained in Item 5 of the Notice has been withdrawn, the terms of the proposed compliance order associated with that item have also been withdrawn.

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids by pipeline or who owns or operates a hazardous liquid pipeline facility is required to comply with the applicable safety standards established under chapter 601.

With respect to several of the proposed compliance order items, Respondent argued that “a grant of jurisdiction to require remedial measures is not an absolute duty to do so under any circumstances,” and that a “cost-benefit assessment” of the proposed compliance terms shows they would be “unnecessary or excessive.” *E.g.*, Response at 2. At the hearing, Respondent argued that the proposed compliance terms would be very expensive and that the cost would far exceed any benefit gained from the remedial measures.

While PHMSA considers expected costs and benefits when promulgating new safety regulations, each operator must comply with them once they become final. 49 U.S.C. § 60118(a). PHMSA does not permit the noncompliant operation of a pipeline facility merely because it would be expensive for the operator to adhere to the established set of safety standards that applies to all hazardous liquid pipeline operators. Furthermore, it is entirely possible that Respondent realized an economic *benefit* by avoiding certain activities otherwise required by regulations. Accordingly, I reject Respondent’s argument that PHMSA should refrain from ordering the company to come into compliance with applicable safety regulations.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is hereby ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.422(a) (**Item 4**), Butte must excavate and examine 50% of all sleeve-to-pipe fillet welds associated with type-B repair sleeves installed on the Butte pipeline as part of the referenced integrity repairs of 2004. The method of examination shall be NDT unless Butte submits to the Director for prior approval a proposal to use another method of examination capable of complying with § 195.422(a). If any excavated welds show indications of cracking or other cause for repair, then the balance of all welds shall be excavated and examined. Each excavated weld that has an indication of cracking or other cause for repair must be repaired in accordance with procedures that comply with 49 C.F.R. Part 195 and that have been submitted to the Director for prior approval. Documentation of each excavation, examination, and repair must be maintained and submitted.
2. With respect to the violation of § 195.583 (**Item 7**), Butte must develop and follow procedures for performing atmospheric corrosion inspections of all piping exposed to the atmosphere, giving particular attention to pipe surfaces at soil-to-air interfaces and at pipe supports, among other locations, in accordance with § 195.583. Remediate any atmospheric corrosion found during the inspection in accordance with § 195.583. Documentation of these actions must be maintained and submitted.
4. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and report the cost as follows: (a) total cost associated with preparation, revision of plans and procedures, and performance of studies and

analyses; and (b) total cost associated with physical changes to the pipeline infrastructure, including replacements and additions.

5. Documentation of compliance with each item shall be submitted within 60 days of receipt of this Final Order to the Director, Western Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 12300 W. Dakota Ave. # 110, Lakewood, CO 80228-2585.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 1a, 1b, 2, 3a, 3b, and 6, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.402(a) (**Notice Item 1a**) – Respondent’s alleged failure to follow its own written procedures for conducting periodic reviews of work completed for the purpose of determining the adequacy of the company’s written procedures for *normal* operations and maintenance.

49 C.F.R. § 195.402(a) (**Notice Item 1b**) – Respondent’s alleged failure to follow its own written procedures for conducting periodic reviews of work completed for the purpose of determining the adequacy of the company’s written procedures for *abnormal* operations.

49 C.F.R. § 195.402(c)(12) (**Notice Item 2**) – Respondent’s alleged failure to establish and maintain liaison with local emergency responders, including those at remote locations, to learn their responsibilities and resources when responding to pipeline emergencies and to acquaint the officials with Respondent’s ability in responding to emergencies and means of communication.

49 C.F.R. § 195.403(b)(1) (**Notice Item 3a**) – Respondent’s alleged failure to review with personnel at intervals not exceeding 15 months, but at least once each calendar year, their performance in meeting the objectives of Respondent’s emergency response training program.

49 C.F.R. § 195.403(c) (**Notice Item 3b**) – Respondent’s alleged failure to verify that its supervisors have a thorough knowledge of the emergency response procedures for which they are responsible to ensure compliance.

49 C.F.R. § 195.440 (**Notice Item 6**) – Respondent’s alleged failure to establish an adequate public education program that enables the general public to recognize a pipeline emergency and to report it to the operator or appropriate emergency responders.

Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that “probable” violations of 49 C.F.R. § 195.402(a) (Notice Item 1a), § 195.402(a) (Notice Item 1b), § 195.402(c)(12) (Notice Item 2), § 195.403(b)(1) (Notice Item 3a), § 195.403(c) (Notice Item 3b), and § 195.440 (Notice Item 6) have occurred and Respondent is hereby advised to correct such conditions. In the event that PHMSA finds a violation for any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. 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 terms of the order, including any required corrective action, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued