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BRIDGEMARK CORPORATION
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8 **BEFORE THE U.S. DEPARTMENT OF TRANSPORTATION**
9 **PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**
10 **OFFICE OF PIPELINE SAFETY**
11 **WASHINGTON, D.C. 20590**
12

13 **IN THE MATTER OF BRIDGEMARK**
14 **CORPORATION, Respondent,**

CPF No. 5-2005-0018

PETITION OF BRIDGEMARK
CORPORATION FOR
RECONSIDERATION OF FINAL ORDER
(49 C.F.R. § 190.215);
DECLARATION OF KEVIN MUGAVERO
IN SUPPORT THEREOF

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19 **INTRODUCTION**

20 Pursuant to 49 C.F.R. § 190.215, Respondent and Petitioner, Bridgemark
21 Corporation, a California corporation ("Bridgemark"), hereby petitions the Office of
22 Pipeline Safety ("OPS") for reconsideration of Final Order CPF No. 5-2005-0018 ("Final
23 Order"), dated March 31, 2008, and sent on April 2, 2008, and received by Bridgemark
24 on April 8, 2008. Accordingly, this Petition is timely in that it will be received by the Office
25 less than 20 days after service and Bridgemark's receipt of the Final Order. A true and
26 correct copy of the Final Order is attached hereto as Exhibit A.

27 The effectiveness of the Final Order should be stayed so that the facts and
28 argument set forth herein can be appropriately considered by the Associate

1 Administrator. The Final Order does not contain a compliance order and the penalty set
2 forth therein is stayed by the filing of this Petition pursuant to 49 C.F.R. § 190.215(d).

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4 A. **PETITIONER AND RESPONDENT**

5 1. Bridgemark is a California corporation located in Tustin, California.

6 The address for Petitioner is:

7 Bridgemark Corporation
8 17671 Irvine Blvd.
9 Suite 217
Tustin, CA 92780-3129
Attention: Kevin Mugavero, Vice President of Operations

10 2. Petitioner's counsel:

11 John J. Harris, Esq.
12 Sabrina Wolfson, Esq.
13 Meyers Nave
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14 Los Angeles, California 90071
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15 B. **ISSUES RAISED BY THIS PETITION**

16 1. Whether the pipeline which is the subject of the Final Order is a gathering
17 line that is not subject to the regulations set forth in 49 C.F.R. Part 192.

18 2. Whether the penalty set forth in the Final Order is barred by the statute of
19 limitations set forth in 28 U.S.C. § 2462.

20 3. Whether Bridgemark could be found to have violated 49 C.F.R. § 192.809
21 when at the time of the Notice of Probable Violation it was not operating the pipeline.

22 4. Whether Bridgemark's November 1, 2005 letter satisfied the requirements
23 of 49 C.F.R. § 190.209, thereby contesting the allegations of the Notice of Probable
24 Violation and preserving its right to a hearing on the Notice.

25 5. Whether the finding of violation set forth in the Final Order should be
26 considered a prior offense in any subsequent enforcement action and whether the \$5,000
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1 penalty should be reduced, or, alternatively, whether, the Associate Administrator should
2 withdraw the Final Order.

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4 C. FACTUAL BACKGROUND

5 1. Bridgemark is an independent oil producer based in Tustin, California.
6 Bridgemark produces oil from a number of oil and gas fields, primarily in Orange County,
7 California, including the Richfield Field in Placentia, California.

8 2. Bridgemark produces gas in association with oil from its wells in the
9 Richfield Field. That gas did not meet pipeline quality specifications. From 2001 until
10 approximately June 2005, that gas was sent through a gathering line of approximately
11 1,250 feet operated by Bridgemark from a location on Alta Vista Street to a location on
12 Rose Street in Placentia (the "Bridgemark Line"). That line then connected to another
13 gathering line which was operated by another operator and which then treated the gas at
14 a separate facility to bring the gas up to pipeline quality. Bridgemark was not paid for the
15 gas.

16 3. According to a May 27, 2003 letter from Chris Hoidal, Director, Western
17 Region, of the Office of Pipeline Safety ("OPS"), on or about February 26, 2002, a
18 representative of OPS conducted an inspection of a pipeline operated by Nuevo Energy
19 Company, and apparently became aware of the Bridgemark Line. The May 27, 2003
20 letter requested information as to whether the Bridgemark Line was subject to the
21 regulations set forth in 49 C.F.R. Part 192. Bridgemark subsequently provided the
22 requested information. However, OPS did not inform Bridgemark that it considered the
23 Bridgemark Line to be a jurisdictional line subject to the regulations set forth in 49 C.F.R.
24 Part 192

25 4. On or about May 11, 2004, a representative of the Pipeline and Hazardous
26 Materials Safety Administration's (PHMSA's), Office of Pipeline Safety conducted an
27 inspection of the Bridgemark Line and its facilities in the Richfield Field.

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1 5. In approximately June 2005, Bridgemark took the Bridgemark Line out of
2 service and began using the associated gas as fuel for a cogeneration facility.

3 6. At no time during Bridgemark's ownership or operation of the Bridgemark
4 Line was that line used as anything other than a gathering line, as that term is defined in
5 49 C.F.R. § 192.3.

6 D. PROCEDURAL BACKGROUND

7 1. Over one year after the May 11, 2004 inspection, PHMSA sent Bridgemark
8 on October 17, 2005, a "Notice of Probable Violation, Proposed Civil Penalty and
9 Proposed Compliance Order" ("Notice of Probable Violation "). The Notice alleged that
10 Bridgemark violated 49 C.F.R. § 192.809(a) by failing to have a written program for
11 qualifying its pipeline personnel as of the date of the inspection. The Notice also
12 proposed assessing a \$5,000 civil penalty for the alleged violation. Most importantly, the
13 Notice of Probable Violation does not assert that the Bridgemark Line was a jurisdictional
14 line, rather than a gathering line, nor did it provide any factual or evidentiary basis for any
15 determination or finding that the Bridgemark Line was subject to the regulations set forth
16 in 49 C.F.R. § 192.809(a). By definition, Bridgemark could not have been in violation of
17 the Qualification Program requirements of 49 C.F.R. § 192.809(a) since the Bridgemark
18 Line was a gathering line and not a transmission line.

19 2. Following its receipt of the Notice of Probable Violation, Bridgemark
20 Personnel contacted OPS to discuss Bridgemark's response. OPS Personnel
21 recommended to Bridgemark that it simply write a letter explaining that the line was out of
22 service.

23 3. In accordance with OPS' recommendation, on November 5, 2005,
24 Bridgemark sent a response to PHMSA in accordance with 49 C.F.R. § 190.209
25 ("November 2005 Letter"). In its letter, Bridgemark contested the Notice of Probable
26 Violation on the grounds that PHMSA did not have jurisdiction over its facility because
27 Bridgemark was no longer operating a gas pipeline regulated by the Department of
28 Transportation ("DOT") as of June 1, 2005. In addition, Bridgemark requested that OPS

1 waive the proposed \$5,000 civil penalty. Bridgemark's November 2005 Letter did object
2 to the proposed penalty and compliance order and did provide a written explanation and
3 information and other materials in answer to and contesting the allegations in the Notice
4 of Probable Violation. Accordingly, Bridgemark did not waive any rights to contest the
5 allegations. Bridgemark never received a response to its letter. For that reason,
6 Bridgemark reasonably assumed that the matter had been resolved and the OPS did not
7 intend to take any further action on the Notice of Probable Violation.

8 4. Over two years later, on or about March 31, 2008, PHMSA issued the Final
9 Order to Bridgemark. In the Final Order, PHMSA found that Bridgemark violated 49
10 C.F.R. § 192.809(a) by failing to have a written program for qualifying its pipeline
11 personnel as of the date of the PHMSA inspection on May 11, 2004 and assessed
12 Bridgemark a \$5,000 civil penalty.

13 5. The Final Order did not include any compliance terms because, according
14 to PHMSA, Bridgemark "is no longer operating a DOT-regulated facility as of April 11,
15 2006, and that the pipeline at issue has been disconnected and put in inactive mode."
16 (Final Order, p. 3).

17 6. Bridgemark did not present the arguments contained herein prior to
18 issuance of the Final Order because it reasonably believed that the Office was not going
19 to assert jurisdiction over Bridgemark's facility. The Office issued the Notice of Probable
20 Violation on October 17, 2005. Bridgemark responded to the Notice by a letter dated
21 November 5, 2005. However, Bridgemark did not receive any further communications
22 from the Office until the issuance of the Final Order on March 31, 2008. Had Bridgemark
23 been aware that the Office intended to assert jurisdiction over its facility and intended to
24 pursue the notice of probable violation, it would have submitted a more formal request for
25 a hearing to present the arguments contained herein.

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1 E. ARGUMENT

2 1. **The Bridgemark Line Is Not Subject To PHMSA Jurisdiction.**

3 PHMSA does not have jurisdiction over the Bridgemark Line that is the subject of
4 the Final Order. Pursuant to 49 C.F.R. § 192.1(b)(4), the safety standards set forth in
5 Part 192 do not apply to

6 Onshore gathering of gas –

7 (i) Through a pipeline that operates at less than 0 psig (0
8 kPa);

9 (ii) Through a pipeline that is not a regulated onshore
10 gathering line (as determined in § 192.8); and

11 (iii) Within inlets of the Gulf of Mexico, except for the
12 requirements in § 192.612.

13 A "gathering line" is a "pipeline that transports gas from a current production facility to a
14 transmission line or main." (49 C.F.R. § 192.3). A "transmission line" is a "pipeline, other
15 than a gathering line, that: (1) Transports gas from a gathering line or storage facility to a
16 distribution center, storage facility, or large volume customer that is not down-stream
17 from a distribution center; (2) operates at a hoop stress of 20 percent or more of SMYS;
18 or (3) transports gas within a storage field." (*Id.*).

19 The Final Order acknowledges, and OPS does not contest, that the Bridgemark
20 Line is not currently subject to 49 C.F.R. Part 192. Furthermore, at the time the Notice of
21 Probable Violation was issued in October 2005, the Bridgemark Line was not a
22 jurisdictional line subject to 49 C.F.R. Part 192- the line was taken out of operation
23 altogether in June 2005.

24 Furthermore, the Bridgemark Line does not meet any of the criteria for a
25 jurisdictional line *prior to June 2005*. As set forth in the attached declaration of Kevin
26 Mugavero, the line was a gathering line which simply transported gas to a treatment
27 facility. (See, *In the Matter of Total Pipeline Corporation*, 1998 WL 35166486 (D.O.T.))

28 Neither the Notice of Probable Violation nor the Final Order set forth any facts
which would support a finding that the Bridgemark Line was a jurisdictional line, rather
than a gathering line, nor did either provide any factual or evidentiary basis for any

1 determination or finding that the Bridgemark Line was subject to the regulations set forth
2 in 49 C.F.R. § 192.809(a).

3 49 C.F.R. § 190.213(c)(1) requires a Final Order to include "A statement of
4 findings and determinations on all material issues, including a determination as to
5 whether each alleged violation has been proved." By definition, Bridgemark could not
6 have been in violation of the Qualification Program requirements of 49 C.F.R. §
7 192.809(a) if the Bridgemark Line was a gathering line during the time of its operation.
8 The Final Order contains no determination that the Bridgemark Line was *not* a gathering
9 line, nor does it contain any finding or refer to any facts that support a determination that
10 the Bridgemark Line was a jurisdictional line.

11 **2. The Final Order Is Time-Barred.**

12 The basis for the Final Order is a finding (at page 2) that the Bridgemark "...
13 violated 49 C.F.R. § 192.809(a) by failing to have a written OQ program by **April 27,**
14 **2001**. On its face, therefore, the Final Order is barred by the statute of limitations set forth
15 in 28 U.S.C. § 2462, which provides in relevant part "an action, suit or proceeding for the
16 enforcement of any civil fine, *penalty*, or forfeiture, pecuniary or otherwise, shall not be
17 entertained unless commenced within five years from the date when the claim first
18 accrued." This five-year statute of limitations applies to administrative proceedings
19 commenced by PHSMA as well as civil actions. (*In the Matter of Distrigas of*
20 *Massachusetts LLC*, 2005 WL 5010143 (D.O.T.); *3M Company v. Browner*, 17 F.3d
21 1453, 1457 (D.C. Cir. 1994).

22 The violation that is the subject of the Final Order accrued more than five years
23 ago. A claim first accrues under 28 U.S.C. § 2462 on the date the violation giving rise to
24 the civil penalty occurred. (*3M Company*, 17 F.3d at 1462; *In the Matter of Aerocomp*
25 *Inc.*, 2005 WL 2490112 (D.O.T.))

26 The Final Order alleges that Bridgemark violated 49 C.F.R. § 192.809(a). This
27 section requires operators to have "a written qualification program by **April 27, 2001**."
28 Accordingly, Bridgemark's alleged violation of 49 C.F.R. § 192.809(a) for failure to have

1 a written qualification program accrued on April 28, 2001, or at the latest on February 26,
2 2002, the date OPS inspected the Nuevo Energy Company line and noticed that
3 Bridgemark's Line. Either way, the penalty set forth in the Final Order is barred because
4 Bridgemark's alleged violation accrued more than five years ago.

5 Furthermore, the penalty in the Final Order is time barred because the Office failed
6 to issue the order within a reasonable period of time following the issuance of the Notice.
7 Pursuant to 49 C.F.R. 190.213(e), OPS is required to issue a final order expeditiously
8 and to notify the alleged violator in the event substantial delay is expected when
9 practicable. OPS, however, issued the Final Order to Bridgemark on March 31, 2008,
10 two and a half years after the issuance of the Notice and never informed Bridgemark that
11 substantial delay was expected or provided any indication that a Final Order would be
12 forthcoming.

13 **3. Bridgemark Could Not Be Found To Have Violated 49 C.F.R. § 192.809**
14 **When At The Time Of The Notice Of Probable Violation It Was Not Operating The**
15 **Pipeline.**

16 As noted above, the basis for the Final Order is a finding (at page 2) that the
17 Bridgemark "... violated 49 C.F.R. § 192.809(a) by failing to have a written OQ program
18 by April 27, 2001. Initially, there is no finding that Bridgemark operated a jurisdictional line
19 on April 27, 2001 or thereafter. Accordingly, the Final Order does not meet the
20 requirements of 49 C.F.R. § 190.213(c)(1).

21 Whether or not the Bridgemark Line is considered a jurisdictional line, Bridgemark
22 was *not* operating the line at the time the Notice of Probable Violation was issued in
23 October 2005.

24 49 C.F.R. § 192.801, which defines the scope of the Operator Qualification regulations
25 provides:

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1 “(a) This subpart prescribes the minimum requirements for operator
2 qualification of individuals performing covered tasks on a pipeline facility.

3 (b) For the purpose of this subpart, a covered task is an activity, identified
4 by the operator, that:

- 5 (1) Is performed on a pipeline facility;
- 6 (2) Is an operations or maintenance task;
- 7 (3) Is performed as a requirement of this part; and
- 8 (4) Affects the operation or integrity of the pipeline.”

9 49 C.F.R. § 192.805 provides that “Each operator shall have and follow a written
10 qualification program.” 49 C.F.R. § 192.3 defines “operator” as a “person who engages in
11 the transportation of gas.”

12 At the time that Bridgemark received the Notice of Probable Violation in October
13 2005, it was not an “operator”, nor were there any “covered tasks” being conducted.

14 Furthermore, since, as set forth in the declaration of Kevin Mugavero, the
15 Bridgemark Line was taken out of service as of June 2005, there was no reason at that
16 point for an Operator Qualification Program, nor a factual basis for finding it in violation of
17 49 C.F.R. § 192.809(a).

18 **4. Bridgemark’s November 1, 2005 Letter Satisfied The Requirements Of**
19 **49 C.F.R. § 190.209.**

20 As discussed above, following its receipt of the Notice of Probable Violation,
21 Bridgemark Personnel contacted OPS to discuss Bridgemark’s response. OPS Personnel
22 recommended to Bridgemark that it simply write a letter explaining that the line was out of
23 service.

24 On November 5, 2005, Bridgemark sent a response to PHMSA in accordance with
25 49 C.F.R. § 190.209 (“November 2005 Letter”). In its letter, Bridgemark contested the
26 Notice on the grounds that PHMSA did not have jurisdiction over its facility because
27 Bridgemark was no longer operating a gas pipeline regulated by the Department of
28 Transportation (“DOT”) as of June 1, 2005. In addition, Bridgemark requested that

1 PHMSA waive the proposed \$5,000 civil penalty. Bridgemark's November 2005 Letter
2 objected to the proposed penalty and compliance order and provided a written
3 explanation and information and other materials in answer to and contesting the
4 allegations in the Notice of Probable Violation. Accordingly, Bridgemark did not waive
5 any right to contest the allegations and certainly did not intend to do so.

6 Bridgemark never received any response to its November 2005 Letter. For that
7 reason, Bridgemark reasonably assumed that the matter had been satisfactorily resolved
8 and the OPS did not intend to take any further action on the Notice of Probable Violation.
9 Had Bridgemark been informed that OPS was not fully satisfied, it would have taken
10 further action and provided at that time all of the documents and information necessary to
11 demonstrate that the Bridgemark Line was not a jurisdictional line. Accordingly,
12 Bridgemark's November 2005 Letter satisfied the requirements of 49 C.F.R. § 190.209.

13 Furthermore, these facts demonstrate the reasons why additional facts and
14 argument were not previously presented and Bridgemark thereby meets the requirements
15 of 49 C.F.R. § 190.215(b).

16 Bridgemark fully appreciates the Office's concern that it be assured that
17 jurisdictional lines are operated in accordance with its regulations. Bridgemark remains
18 prepared to provide the documentation necessary and any factual declarations to confirm
19 that its line was not a jurisdictional line and to otherwise support the arguments set forth
20 herein. If a hearing is necessary to do so, Bridgemark is prepared to fully participate.

21 **5. At A Minimum, The Violation Should Not Be Considered A Prior**
22 **Offense And The \$5,000 Penalty Should Be Reduced.**

23 Based on the foregoing, Bridgemark believes that its Petition should be granted.

24 Alternatively, considering the fact that there is no finding of any ongoing violation,
25 or of any intent to violate 49 C.F.R. Part 192, any technical violation should not be
26 considered a "prior offense", and Bridgemark requests that, at the very least, the Final
27 Order be modified to delete that sentence on Page 2.

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