

BRIDGER PIPELINE LLC

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Casper, WY 82602

October 29, 2009

Chris Hoidal, P.E., Director
Office of Pipeline Safety
12300 W. Dakota Avenue, Suite 110
Lakewood, CO 80228

VIA FEDERAL EXPRESS

Re: Bridger Pipeline, LLC
Notice of Probable Violation - CPF 5-2009-5034

Dear Mr. Hoidal:

Bridger Pipeline Company ("Bridger" or "BPL") responds to the above-referenced Notice of Probable Violation and Proposed Compliance Order (collectively, the "NPV"). The purpose of this letter is to request an in-person hearing, as set forth in 49 C.F.R. § 190.211, on the NPV, and to provide a statement of the issues we intend to raise at the hearing. As set forth below, Bridger will raise numerous issues regarding both the NPV, the proposed penalty, and the compliance order requirements set forth therein. Bridger reserves the right to supplement or amend this statement of issues. As to all matters involved in this proceeding, Bridger is represented by Colin Harris, Esq., of Holme Roberts and Owens, 1801 13th St., Suite 300, Boulder, Colorado 80302, as well as by the undersigned. Pursuant to 49 C.F.R. § 190.211(e), Bridger requests the case file pertinent to the matter.

As set forth below, Bridger disputes the referenced items in the NPV, and avers that the proposed compliance measures (if not already corrected) are unreasonable, unnecessary and unduly burdensome and punitive, or they do not allow sufficient time to implement. The following list is keyed to the allegations in the September 28, 2009, NPV, CPF No. 5-2009-5034, that provide the material basis for the Proposed Compliance Order. Language from the NPV is in bold; our response in regular font:

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 70001, 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.

Bridger disputes Item 1 of the NPV. Its records show that a complete accident report was delivered to the correct address on May 13, 2008 at 1:43 pm. Bridger intends to provide that documentation at the hearing.

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.

Bridger contends that it did construct the piping, which operates at a pressure of 70 psi, in accordance with comprehensive written specifications or standards that are consistent with 49 C.F.R. Part 195. .

Re-constructing the piping, as suggested in Item 1 of the Proposed Compliance Order (corresponding to Item 2 of the NPV), is a drastic and unnecessary remedy. In any event, Bridger proposes that a pressure test at over four times the pressure required by §195.302, would be sufficient to validate the integrity of the assembly, for the service to which it is intended. The charge pumps for this line are capable of no more than 75 psi which as per §195.302 would require a pressure test of 94 psi. Bridger proposes to apply the pressure test required in Item 2 of the compliance order to a pressure of at least 500 psi.

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.

Bridger will perform and document a pressure test of the Poplar station BOT piping as noted in item 3 above

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.

Bridger disputes Item 4. Bridger has prepared and follows manuals of written procedures. Bridger will present evidence to show that its manuals were reviewed on June 12, 2007 and June 11, 2008. The Review Logs demonstrate there were no violations in those years.

Moreover, Bridger contests the proposed civil penalty of \$35,000 for this allegation. This penalty should be reduced or eliminated based on the evidence of compliance that Bridger will produce. Furthermore, in comparison to other enforcement actions promulgated by PHMSA the penalty appears to be excessively punitive. In enforcement action 5-2005-5008 PHMSA notes that Exxon Mobil had been previously cited for this same violation, that they were found to be more than 3 years out of compliance and they were fined \$5,000. In contrast Bridger has no previous citation for this violation, and the evidence shows that Bridger was no more than 13 months out of compliance. To the extent a violation is determined, Bridger will present other evidence in mitigation of the proposed penalty, including lack of harm to health or the

environment, good faith efforts to comply, and other factors, including incongruity of the proposed penalty compared to what was imposed on other pipeline operators.

In addition, as noted the required reviews have already been completed and this item should be eliminated from the Proposed Compliance Order

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 personnel 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.

There is no violation of 49 C.F.R. § 195.402(c) because Bridger's manual contains the review procedures required by the rule. Further, any obligation to follow the Normal Operating Procedures is triggered by 49 C.F.R. § 195.402(a).

As noted in the allegation, Bridger's Normal Operating Procedures require annual reviews of personnel performance. Section 3.8 therefore fulfills 49 C.F.R. § 195.402(c)(13). Bridger did in fact timely perform the reviews required by Section 3.8. The reviews noted in 4 above included the normal operation and maintenance work performed by field personnel as well as the work performed in abnormal situations.

Item 4 of the Proposed Compliance Order (corresponding to NPV Item 5) calls for Bridger to "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." As noted the required reviews have already been completed and this item should be eliminated from the Proposed Compliance Order

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.

There is no violation of 49 C.F.R. § 195.402(d) because Bridger's manual contains the review procedures required by the rule. Furthermore, any obligation to follow the Abnormal Operating Procedures is triggered by 49 C.F.R. § 195.402(a).

As noted in the allegation, Bridger's Abnormal Operating Procedures require annual reviews of personnel performance. Section 6.3 therefore fulfills the requirement of 49 C.F.R. § 195.402(d)(5). Bridger did in fact timely perform the reviews required by Section 6.3. The reviews noted in 4 above included the normal operation and maintenance work performed by field personnel as well as the work performed in abnormal situations.

Item 5 of the Proposed Compliance Order (corresponding to NPV Item 6) calls for Bridger to "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." As noted the required reviews have already been completed and this item should be eliminated from the Proposed Compliance Order.

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.

There is no violation of 49 C.F.R. § 195.402(e) because Bridger's manual contains the review procedures required by the rule. Furthermore, any obligation to follow the manual is triggered by 49 C.F.R. § 195.402(a).

As noted in the allegation, Bridger's manual requires that post accident reviews be conducted. The manual therefore fulfills 49 C.F.R. § 195.402(e)(9). Bridger did in fact timely perform the reviews required by the manual and will show evidence of those reviews at the hearing.

PHMSA does not propose to issue a Compliance Order regarding Item 7 of the NPV, but the agency does propose a Civil Penalty. Bridger contests the proposed civil penalty of \$35,000 for this allegation. This penalty should be reduced or eliminated based on the evidence of compliance that Bridger will produce. Furthermore, even if there were no evidence of compliance, Bridger has no previous citation for this violation and as such the penalty is excessively punitive.

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.

Bridger disputes Item 8. Bridger intends to introduce evidence that the valve inspections were completed. Although documentation of these inspections was lost during computer upgrades, Bridger can prove they were completed through the testimony of the field technician who performed the inspection and other documentation.

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.

There was no violation of 49 C.F.R. § 195.432 because Tank 403 was inspected at appropriate time intervals in accordance with API Standard 653, “Tank Inspection, Repair, Alteration and Reconstruction.” Bridger disputes that it “learned there may be significant corrosion inside this tank.”

As the allegation suggests, Standard 653 allows the interval between inspections to be extended based on the facts of each situation. PHMSA alleges that the tank was exposed to a “highly corrosive environment” but fails to mention the other 12 considerations in API Standard 653 Section 6.2.1. Section 6.2.1(f) specifically looks at the methods and materials of construction. In this case, Tank 403 had an internal coating making it more resistant to any corrosive environment it may have been exposed to. This was shown to be sound engineering judgment when a subsequent inspection found no corrosion. Bridger performed an out-of-service inspection on tank 403 in August of 2009, the results of which confirmed our belief that the tank was in good condition.

Item 6 of the Proposed Compliance Order (corresponding to NPV Item 9) calls for Bridger to “complete an ‘out of service’ inspection in accordance with API Standard 653.” As noted above this inspection has already been performed and this item should be eliminated from the compliance order

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.

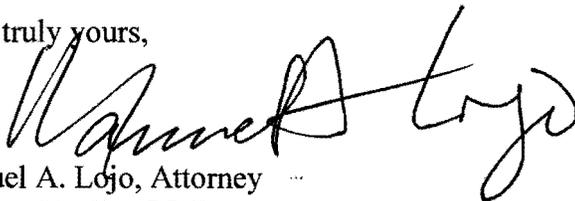
BPL did not implement their public awareness program. BPL did not develop lists of emergency and public organization contact personnel within the vicinity or along their pipeline's route. BPL's Public Awareness Program Supplement A requires that a list of emergency and public organizations be developed 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.

Bridger disputes the factual allegation that it did not implement a public awareness program. Bridger complies with this requirement through its membership in the pipeline associations of each state in which we conduct business. Those associations maintain a list of emergency and public organization contact personnel. The association's program complies with API Recommended Practice 1162, "Public Awareness Programs for Pipeline Operators." Bridger has updated its Public Awareness Program to show its reliance on the pipeline association's list of contact personnel.

Item 7 of the Proposed Compliance Order (corresponding to NPV Item 10) calls for Bridger to "develop a list of all local fire, police and other public officials for the purpose of liaison along their Poplar pipeline." Bridger disputes Item 7 of the Proposed Compliance Order. As described above, Bridger relies on the pipeline association, which already has such a list and this item should be eliminated from the proposed compliance order.

Please do not hesitate to contact either Mr. Harris or myself at our respective addresses.

Very truly yours,



Manuel A. Lojo, Attorney
Bridger Pipeline LLC