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BRIDGEMARK CORPORATION
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7

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
333 South Grand Avenue, Suite 1670
14 Los Angeles, California 90071
Telephone: (213) 626-2906
Facsimile: (213) 626-0215

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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1 Similarly, the foregoing serves as a sufficient factual and legal basis for reducing
2 the penalty substantially.

3 6. **The Final Order Should Be Stayed.**

4 The Final Order does not contain a compliance order. Accordingly, the \$5,000
5 penalty set forth in the Final Order is stayed by the filing of this Petition pursuant to 49
6 C.F.R. § 190.215(d).

7 Furthermore, the effectiveness of the Final Order should be stayed so that the
8 facts and arguments set forth herein can be appropriately considered by the Associate
9 Administrator.

10 **F. CONCLUSION**

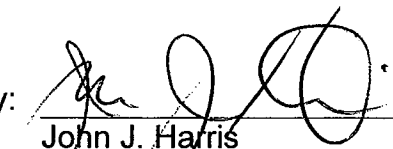
11 Based on the foregoing, Bridgemark respectfully requests that the Office vacate
12 the Final Order.

13 Alternatively, Bridgemark respectfully requests that the Final Order be modified to
14 delete the following sentence on Page 2: "This finding of violation will be considered a
15 prior offense in any subsequent enforcement action taken against Respondent."
16

17 DATED: April 18, 2008

Respectfully submitted,

18 MEYERS, NAVE, RIBACK, SILVER & WILSON

19
20
21 By: 
22 John J. Harris
23 Attorneys for Respondent and Petitioner,
24 BRIDGEMARK CORPORATION

25 1084771.3

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1 **DECLARATION OF KEVIN MUGAVERO IN SUPPORT OF**
2 **PETITION OF BRIDGEMARK CORPORATION FOR RECONSIDERATION OF FINAL**
3 **ORDER**

4 I, KEVIN MUGAVERO, hereby declare, as follows:

5 1. I am making this declaration in support of the Petition of Respondent and
6 Petitioner, Bridgemark Corporation, a California corporation ("Bridgemark"), for
7 reconsideration of Final Order CPF No. 5-2005-0018 ("Final Order") dated March 31,
8 2008.

9 2. I am the Vice President of Operations of Bridgemark and have been
10 employed by the company since September 1998.

11 3. According to the postmark on the envelope which contained the Final
12 Order, the order was sent by the Office of Pipeline Safety ("Office") on April 2, 2008. The
13 Final Order received by Bridgemark on April 8, 2008. Accordingly, Bridgemark's Petition
14 is timely in that it will be received by the Office less than 20 days after service and
15 Bridgemark's receipt of the Final Order. A true and correct copy of the Final Order is
16 attached hereto as Exhibit A.

17 4. Bridgemark is an independent oil producer based in Tustin, California.
18 Bridgemark produces oil from a number of oil and gas fields, primarily in Orange County,
19 California, including the Richfield Field in Placentia, California.

20 5. Bridgemark produces gas in association with oil from its wells in the
21 Richfield Field. That gas did not meet pipeline quality specifications. Accordingly,
22 Bridgemark does not sell the gas.

23 6. From 2001 until approximately June 2005, Bridgemark's gas from the
24 Richfield Field was sent through a gathering line of approximately 1,250 feet which was
25 operated by Bridgemark from a location on Alta Vista Street to a location on Rose Street
26 in Placentia (the "Bridgemark Line"). The line then connected to another gathering line
27 operated by another operator. The gas was treated at a separate facility to bring the gas
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1 up to pipeline quality. Bridgemark was not paid for the gas. The Brigemark Line was a
2 gathering line that simply transported gas to a treatment facility.

3 7. I received a May 27, 2003 letter from Chris Hoidal, Director, Western
4 Region, of the Office of Pipeline Safety ("OPS"). The letter discuss a February 26, 2002
5 inspection by a representative of the Office of Pipeline, Western Region of a pipeline
6 operated by Nuevo Energy Company. Apparently, OPS became aware of the
7 Bridgemark Line at that time.

8 8. Mr. Hoidal's May 27, 2003 letter requested information as to whether the
9 Bridgemark Line was subject to the regulations set forth in 49 C.F.R. Part 192. I
10 subsequently provided the requested information. However, OPS did not inform me that it
11 considered the Bridgemark Line to be a jurisdictional line subject to the regulations set
12 forth in 49 C.F.R. Part 192

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

16 10. In approximately June 2005, Bridgemark took the Bridgemark Line out of
17 service and began using the associated gas as fuel for a cogeneration facility. The
18 Bridgemark Line has not been used since then.

19 11. At no time during Bridgemark's ownership or operation of the Bridgemark
20 Line was that line used as anything other than a gathering line, as that term is defined in
21 49 C.F.R. § 192.3.

22 12. Over one year after the May 11, 2004 inspection, PHMSA sent Bridgemark
23 on October 17, 2005, a "Notice of Probable Violation, Proposed Civil Penalty and
24 Proposed Compliance Order" ("Notice of Probable Violation "). The Notice alleged that
25 Bridgemark violated 49 C.F.R. § 192.809(a) by failing to have a written program for
26 qualifying its pipeline personnel as of the date of the inspection. The Notice also
27 proposed assessing a \$5,000 civil penalty for the alleged violation.

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1 13. Following our receipt of the Notice of Probable Violation, I spoke to the OPS
2 inspector to discuss Bridgemark's response. He recommended that I simply write a letter
3 explaining that the line was out of service.

4 14. In accordance with OPS' recommendation, on November 5, 2005, I sent a
5 response to PHMSA in accordance with 49 C.F.R. § 190.209 ("November 2005 Letter").
6 In my letter, I contested the Notice on behalf of Bridgemark on the grounds that
7 Bridgemark was no longer operating a gas pipeline of June 1, 2005. In addition, I also
8 requested that PHMSA waive the proposed \$5,000 civil penalty. My November 2005
9 Letter did object to the proposed penalty and compliance order and did provide a written
10 explanation and information and other materials in answer to and contesting the
11 allegations in the Notice of Probable Violation. Accordingly, Bridgemark did not intend to
12 waive any rights to contest the allegations.

13 15. I never received a response to my November 2005 Letter. For that reason,
14 we reasonably assumed that the matter had been resolved and the OPS did not intend to
15 take any further action on the Notice of Probable Violation.

16 16. Over two years later, PHMSA issued the Final Order to Bridgemark.
17 Bridgemark did not receive any further communications from the OPS until the issuance
18 of the Final Order on March 31, 2008.

19 17. Bridgemark did not present the arguments contained in its Petition prior to
20 issuance of the Final Order because we reasonably believed that PHMSA was not
21 asserting jurisdiction over the Bridgemark Line or any of its facilities.

22 18. Had I been informed that OPS was not fully satisfied, it would have taken
23 further action and provided at that time all of the documents and information necessary to
24 demonstrate that the Bridgemark Line was not a jurisdictional line. Had I been aware that
25 the Office intended to assert jurisdiction over its line and intended to pursue the Notice Of
26 Probable Violation, we would have submitted a more formal request for a hearing to
27 present the arguments contained herein. I am not an attorney and had assumed that my
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1 November 2005 Letter was a sufficient response to resolve the matter, based on my
2 conversations with OPS personnel.

3 19. The Final Order alleges that Bridgemark violated 49 C.F.R. § 192.809(a),
4 which, as I understand, requires operators to have "a written qualification program by
5 April 27, 2001." The Office issued the Final Order on March 31, 2008, two and a half
6 years after the issuance of the Notice of Probable Violation. We were never informed
7 that substantial delay was expected or provided any indication that a Final Order would
8 be forthcoming.

9 20. Whether or not the Bridgemark Line is considered a jurisdictional line, there
10 is no dispute that, at the time the Notice of Probable Violation was issued in October
11 2005, Bridgemark was not operating the line. Since the Bridgemark Line was taken out of
12 service as of June 2005, there was no reason at that point for an Operator Qualification
13 Program.

14 21. We fully understand the Office's concern that it be assured that
15 jurisdictional lines are operated in accordance with its regulations. We remain prepared to
16 provide the documentation necessary to confirm that the Bridgemark Line was not a
17 jurisdictional line. If a hearing is necessary to do so, Bridgemark is prepared to fully
18 participate.

19 22. For that reason, Bridgemark believes, that, at a minimum, the violation
20 described in the Final Order should not be considered a prior offense and the \$5,000
21 penalty should be reduced.

22 23. Alternatively, considering the fact that there is no finding of any ongoing
23 violation, or of any intent to violate 49 C.F.R. Part 192, any technical violation should not
24 be considered a "prior offense", and Bridgemark requests that, at the very least, the Final
25 Order be modified to delete the following sentence on Page 2: "This finding of violation
26 will be considered a prior offense in any subsequent enforcement action taken against
27 Respondent."
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24. Based on the foregoing, Bridgemark respectfully requests that the Office vacate the Final Order.

If called as a witness, I could and would testify to the foregoing from my own personal knowledge.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 18 day of April, 2008.

K. MUGAVERO
KEVIN MUGAVERO



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

REC'D APR 7 2008

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

MAR 31 2008

Mr. Kevin Mugavero
Vice President of Operations
Bridgemark Corporation
17671 Irvine Blvd
Suite 217
Tustin, CA 92780-3129

APPROVED
KM

458508 KM

CODE	WELL	AFF	PAID
8055	S. RICH		\$5,000.00

Re: CPF No. 5-2005-0018

Dear Mr. Mugavero:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$5,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

William H. Giese

For

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Chris Hoidal, P.E., Director Western Region, PHMSA

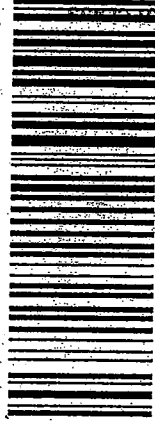
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

EXHIBIT A

U.S. Department of
of Transportation
**Pipeline and Hazardous Materials
Safety Administration**
1200 New Jersey Ave., S.E.
Washington, D.C. 20590

Official Business
Penalty for Private Use \$300

CERTIFIED MAIL™



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04/02/2008

Mailed From 20590

US POSTAGE

Mr. Kevin Mugavero
Vic President of Operations
Bridgemark Corporation
17671 Irvine Blvd
Suite 217
Tustin, CA 92780-3129

CP

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

In the Matter of)
)

Bridgemark Corporation,)
)

Respondent)
)

CPF No. 5-2005-0018

FINAL ORDER

On May 11, 2004, 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 inspection of Respondent's Operator Qualification of Pipeline Personnel (OQ) Program in Placentia, CA. As a result of the inspection, the Director, Western Region, PHMSA, issued to Respondent, by letter dated October 17, 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 had violated 49 C.F.R. § 192.809(a) and proposed assessing a civil penalty of \$5,000 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

Respondent responded to the Notice by letter dated November 1, 2005 (Response). Respondent did not contest the allegations of violation but stated that it was no longer operating a Department of Transportation-regulated gas pipeline. It stated that it began using 100% of the natural gas generated from its own field on June 1, 2005 and, as a result, requested that the proposed civil penalty be eliminated. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

In its Response, Respondent did not contest the allegation in the Notice that it violated 49 C.F.R. Part 192, as follows:

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) redelegating the pipeline safety authorities and functions to the PHMSA Administrator.

Item 1. Subpart N – Qualification of Pipeline Personnel
49 C.F.R. § 192.809 General.

(a) Operators must have a written qualification program by April 27, 2001. The program must be available for review by the Administrator or by a state agency participating under 49 U.S.C. Chapter 601 if the program is under the authority of that state agency.

The Notice alleged that Respondent did not have a written program for qualifying its pipeline personnel as of the date of the PHMSA inspection on May 11, 2004. Accordingly, I find that Respondent violated 49 C.F.R. § 192.809(a) by failing to have a written OQ program by April 27, 2001.

This finding of violation will be considered a prior offense 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.

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 \$5,000 for violation of 49 C.F.R. § 192.809(a).

The Notice proposed that Respondent be assessed a civil penalty of \$5,000 for violating 49 C.F.R. § 192.809(a) by failing to have a written OQ program available for inspection on May 11, 2004. In its Response, Respondent stated that it was no longer operating the pipeline at issue, that it was a small business, and requested that the penalty be waived. Respondent, however, presented no other information that would justify why it should not be held liable for the alleged violation, that it was unable to pay the proposed penalty, or that would otherwise warrant a reduction in the penalty amount. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney

Aeronautical Center, Financial Operations Division (AMZ-341), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this payment to 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 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$5,000 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 for the violation of 49 C.F.R. § 192.809(a). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director, Western Region, PHMSA has indicated that Respondent is no longer operating a DOT-regulated facility as of April 11, 2006, and that the pipeline at issue has been disconnected and put in inactive mode.

Accordingly, since compliance is no longer required with respect to this item, the compliance terms are not included in this Order.

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 issues. The filing of the petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order shall be effective upon receipt.

William H. Goble
for

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

MAR 31 2008

Date Issued

