

JUN 16 2009

VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED [7005 1160 0001 0046 9600]

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 decision on the petition for reconsideration filed by Bridger Pipeline Company, LLC in the above-referenced case. For the reasons specified therein, the decision withdraws the finding of violation with regard to Item 11, and reaffirms the previously-granted extension of time to complete the terms of the Compliance Order associated with Items 4 and 10.

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)	
)	
Bridger Pipeline Company, LLC,)	CPF No. 5-2007-5003
)	
Petitioner.)	
)	

DECISION ON RECONSIDERATION

On April 2, 2009, 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 finding Bridger Pipeline Company, LLC (Bridger or Petitioner) had violated certain federal pipeline safety standards within 49 C.F.R. Part 195. Specifically, the Final Order found Bridger had violated §§ 195.214 (Item 3 in the Final Order), 195.230 (Item 4), 195.402(c)(1) (Item 5), 195.422(a) (Item 10), 195.428(a) (Item 11), and 195.583 (Item 14). PHMSA did not assess any civil penalties against Bridger for the violations, but ordered the company to take specific corrective actions to achieve compliance. The Final Order also found Bridger had committed 10 other probable violations and warned the company to correct them or face possible future enforcement action.

On April 21, 2009, Petitioner filed a petition for reconsideration of the final order as permitted pursuant to § 190.215 (Petition). In the Petition, Bridger sought reconsideration of the finding in the Final Order regarding the violation of § 195.428(a) (Item 11), and the terms of the Compliance Order associated with that violation. Petitioner also requested a stay of those compliance terms. Finally, Bridger sought reconsideration of the time allowed to comply with the terms of the Compliance Order associated with §§ 195.230 and 195.422(a) (Items 4 and 10, respectively). By letter dated April 24, 2009, Petitioner submitted an affidavit in support of its request for reconsideration of those requirements in the Compliance Order.

By letter dated May 8, 2009, I granted a stay of the terms of the Compliance Order associated with Item 11, as well as an extension of time to comply with the terms associated with Items 4 and 10. The merits of Bridger’s petition for reconsideration are discussed below.

Item 4: The Final Order found Bridger had violated 49 C.F.R. § 195.230 by failing to repair a pipeline weld that the company had earlier determined was unacceptable. The terms of the Compliance Order associated with that violation require the company to submit documentation

that the weld has been excavated, examined, and removed or repaired, as appropriate. The completion of this corrective action was ordered within 60 days of receipt of the Final Order.

In its Petition, Bridger contended there are “compelling grounds to reverse the ruling,” but elected not to seek reconsideration of the finding of violation “in the spirit of cooperation.”¹ Petition at 5. Petitioner did, however, seek reconsideration of the 60-day period for fulfilling the associated terms of the Compliance Order. Bridger contended that it needed more time to locate, hire and mobilize a crew to complete the repairs and that wet and muddy spring weather conditions would delay commencement. Bridger requested that the company be given 180 days from issuance of a modified Compliance Order, effectively resulting in a deadline in late-November to early-December 2009.

In order to expeditiously address Petitioner’s request for an extension, I issued a letter on May 8, 2009, which provided an extension of time until October 31, 2009, to complete the Compliance Order terms associated with Item 4. After considering the Petition in full, I reaffirm the extended deadline of October 31, 2009, finding that it provides sufficient time for Bridger to complete the required activities given weather conditions and the logistics of implementation. Accordingly, the compliance deadline for the Compliance Order terms associated with Item 4 remains October 31, 2009.

Item 10: The Final Order found Bridger had violated 49 C.F.R. § 195.422(a) by failing to ensure that certain pipeline repairs were completed in a safe manner. The terms of the Compliance Order associated with that violation require the company to, among other things, submit documentation that the repair welds have been excavated, examined, and, if necessary, repaired. As with Item 4, the completion of these corrective actions was ordered within 60 days of receipt of the Final Order.

In its Petition, Bridger stated that it had completed examination of approximately 60% of the welds subject to this requirement, but that the scope of this project and scheduling issues for both the contractor and Bridger in relation to other pipeline maintenance projects warranted reconsideration of the 60-day period for compliance. Bridger requested that the deadline be extended to 180 days from issuance of a modified Compliance Order, which, as referenced above, would result in a deadline of late-November to early-December 2009.

By the same letter dated May 8, 2009, I provided Bridger an extension of time until October 31, 2009, to comply with the terms of the Compliance Order associated with Item 10. After

¹ Although Bridger did not seek reconsideration of the finding of violation, the company argued in its Petition that no evidence in the record supported the finding that the welding inspector had determined the pinhole defect was “detrimental” to the weld. I have considered Petitioner’s argument, but reaffirm the finding in the Final Order based upon Bridger’s own records, which show that the company (through its welding inspector) had rejected the weld because it found the weld to be unacceptable and had documented its determination on an inspection form. The company was therefore required to remove or repair the weld pursuant to § 195.230. Final Order at 4-5. Bridger also argued in its Petition that one of the company’s witnesses definitively stated the weld had been repaired. To the contrary, Bridger had multiple witnesses testify that the operator’s normal practice was to repair welds but that with respect to the particular weld at issue in this case, the same witnesses testified that they “believe[d]” the repair had been made or that the repair had “likely” been made—hardly definitive statements. Final Order at 5. I note further that Bridger had no record of the repair ever being made.

considering Bridger's Petition, I reaffirm the new deadline of October 31, 2009, finding that it provides sufficient time for Bridger to complete the required activities. Accordingly, the deadline for compliance with the terms of the Compliance Order associated with Item 10 remains October 31, 2009.

Item 11: The Final Order found that Bridger violated 49 C.F.R. § 195.428(a) by failing to calibrate transmitters that sent pressure data to the company's Supervisory Control and Data Acquisition (SCADA) center. The relevant language of § 195.428(a) states:

§ 195.428 Overpressure safety devices and overflow 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 finding of violation in the Final Order was based, in part, on an interpretation and application of the term "pressure control equipment" to apply to those devices referred to in the Notice that send pressure data from Bridger's pipeline to the company's SCADA center. In its Petition, Bridger argued, *inter alia*, that such devices were neither properly alleged in the Notice, nor properly determined in the Final Order, to be items of "pressure control equipment" under § 195.428(a).

Pressure transducers and transmitters

The Notice alleged that Bridger failed to calibrate "pressure transducers that transmit data to the SCADA center on the Poplar pipeline." Notice at 5. The Notice further stated that "[p]ressure transmitters that send pressure data to manned SCADA centers are part of the pressure control system." *Id.* Bridger argued in its Petition that the Notice "did not consistently or clearly define or identify the type of equipment that Bridger allegedly failed to test." Petition at 2. The company further argued that because of the confusion caused by this imprecise allegation, Bridger introduced evidence that the company tested local mechanical transducers, rather than pressure transmitters. Bridger now contends that the company has been prejudiced by the assertion in the Final Order "for the first time in this proceeding," that the allegation in the Notice applies to pressure transmitters that deliver signals to the SCADA system. *Id.*

Bridger's argument that the devices at issue in this case were not properly identified in the Notice is unpersuasive in light of the actual language of the Notice, which adequately described the equipment at issue as the pressure transducers that transmit data to the SCADA center. The Notice further identified the devices as the pressure transmitters that send pressure data to manned SCADA centers. As explained in the Final Order, use of both terms "transducer" and "transmitter" in the Notice referred to the same transducer-transmitter assembly that senses pressure on Bridger's pipeline and transmits that pressure data to the company's SCADA center.

As further explained in the Final Order, a “transducer” is a generic term referring 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. A “transmitter” is the electronic assembly that is comprised of a transducer at the front end and that transmits the signal. Although the two terms can be distinguished in certain applications, the use of these terms together in the Notice referred to the common assembly that Bridger uses to measure pipeline pressure, to translate that data into an electronic signal, and then to transmit that data to the company’s SCADA center. For brevity, the Final Order used the term “pressure transmitter” to refer to this entire mechanism. Accordingly, the term “pressure transmitter,” as used in the Final Order, means the assemblies comprised of a combined transducer-transmitter that Bridger uses to sense pressure on the Poplar pipeline and send that pressure data to its SCADA center.

At the hearing, Petitioner introduced evidence that the company calibrates other types of transducers, referred to as on-site mechanical devices that sense pressure, which are hard-wired to mechanically shut down the pipeline during an overpressure. Bridger’s expert readily admitted, however, that such mechanical transducers operate “locally and independent of the SCADA system.” Final Order at 10. Since those devices for which Petitioner introduced evidence do not transmit data to the SCADA center, they clearly were not the devices at issue in the Notice.

Nor do I find anything in the record to support Petitioner’s assertion that PHMSA clarified at the hearing the intent of the Notice was to allege that Bridger failed to test *mechanical transducers*. That would certainly not be consistent with the allegation in the Notice, because Petitioner’s mechanical transducers do not transmit pressure data to the SCADA center. If, on the other hand, statements made at the hearing by PHMSA were meant to focus the discussion or allegation on the *transducer components* of the combined transducer-transmitter units identified in the Notice, that would not be inconsistent with the allegation or finding in the Final Order that Bridger failed to calibrate its pressure transmitters that send pressure data to the SCADA center, because as explained above, such devices consist of a transducer.

Ordinary meaning of “pressure control equipment” in § 195.428(a)

The Final Order found that § 195.428(a) does not explicitly define “pressure control equipment,” but that the ordinary meaning of those terms would include devices used to control pipeline operating pressure, such as pressure transmitters that send pressure data to a SCADA center where operating pressure is controlled. In its Petition, Bridger objected to any use of the “ordinary meaning” of this term, because PHMSA had not presented evidence about the ordinary meaning at the hearing. Petition at 2.

PHMSA’s use of the ordinary meaning was nothing more than a reference to generally-understood meanings of the words “pressure,” “control,” and “equipment.” For example, “pressure” is defined as the application of force to something by something else in contact with it. The American Heritage Dictionary of the English Language 1389 (4th ed. 2000). As used in § 195.428(a), therefore, “pressure” refers to the application of force to the pipe by the hazardous liquid inside. The dictionary defines “control” as the exercise of influence over something. *Id.* at 400. In this case, we are referring to exercising influence over pipeline pressure. Finally, the

dictionary defines “equipment” as the tool utilized for a particular purpose. *Id.* at 603. Putting these terms together, it is not difficult to recognize the ordinary meaning of “pressure control equipment” includes the tools and devices used by a pipeline operator to restrain and control pressure within a pipeline.

I do not find anything improper about taking note of the ordinary meaning of the phrase “pressure control equipment,” and deducing therefrom that the broad meaning of the term includes pressure transmitters to the extent they are used to control pipeline pressure.

Whether the application of § 195.428(a) in the Final Order was too broad

As mentioned above, the Final Order interpreted “pressure control equipment” in § 195.428(a) to include pressure transmitters that send pressure signals to on-site devices and to off-site locations that control pipeline pressure. Bridger objected to this interpretation in its Petition, arguing that such a broad interpretation would include all pressure transmitters “even if the transmitter simply sends a [pressure] signal to a SCADA system.” Petition at 2.

After a careful and thorough reconsideration of the agency’s application of the regulation in this proceeding, I have concluded that the application of § 195.428(a) in the Final Order to cover *all* pressure transmitters, regardless of their actual role in the operator’s overpressure protection system, was in error. While a broad interpretation that would encompass all such devices could be legally supported, I find as a matter of policy that § 195.428(a) should not be applied so broadly as to cover all pressure transmitters indiscriminately.

The broad treatment of all pressure transmitters in the Final Order did not properly consider certain distinctions between pressure transmitters that serve as an integral part of a pipeline’s overpressure protection system, and those that only function to send pressure information to the 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 that 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, clearly should be (and are) covered by the regulatory requirement in § 195.428(a). By comparison, pressure transmitters that only send pressure information to the SCADA system for use by a human controller, or for other informational purposes, may not be part of a particular pipeline’s overpressure protection system, and as such are not intended to be covered by § 195.428(a). Even though the ordinary meaning of “pressure control equipment” could potentially include the latter, PHMSA does not intend to apply the requirement in § 195.428(a) so broadly.

Whether the evidence supports a finding of violation under § 195.428(a)

Based upon my conclusion that § 195.428(a) should not apply indiscriminately to all pressure transmitters but only to those that are integral to a pipeline’s overpressure protection system, I must reconsider whether the evidence in this case supports a finding of violation. In its Petition, Bridger argued that “PHMSA presented no [evidence] about Bridger’s transmitters and its

SCADA system in relation to the regulatory meaning of ‘pressure control equipment.’” Petition at 2.

I agree that PHMSA did not introduce any evidence showing how the pressure transmitters on Bridger’s system were actually utilized other than that they sent pressure information to the company’s SCADA center. I find the evidence introduced by PHMSA is insufficient to conclude whether the pressure transmitters referred to in the Notice were integral to the pipeline’s overpressure control system. Bridger, on the other hand, introduced evidence that its overpressure control system utilized local mechanical devices that operated independent of its SCADA system. Without additional evidence in the record demonstrating that the pressure transmitters referred to in the Notice were an integral part of Bridger’s overpressure protection system, I cannot find a violation of § 195.428(a).

Accordingly, I am withdrawing the finding of violation with respect to § 195.428(a). The terms of the Compliance Order associated with this violation are also withdrawn. Since the violation is withdrawn for the above reasons, it is not necessary to address the additional arguments for withdrawal presented by Bridger in its Petition.

Conclusion: The terms of the Compliance Order associated with Items 4 and 10 are modified such that the deadline for completion of both Items is October 31, 2009. The finding of violation in Item 11 of the Final Order is withdrawn, as are the terms of the Compliance Order associated with that Item. All other terms of the Final Order remain in effect as set forth therein. This Decision on Reconsideration is the final administrative action in this proceeding.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued