

MAR 30 2011

Mr. Tad True
President
Butte Pipeline Company
455 North Poplar Street
P. O. Drawer 2360
Casper, WY 82602

Re: CPF No. 5-2009-5002

Dear Mr. True:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$28,800, and specifies actions that need to be taken by Butte Pipeline Company to comply with the pipeline safety regulations. It also issues your company a warning for one probable violation. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Western Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, Director, Western Region, PHMSA
Mr. Manuel Lojo, Counsel, Butte Pipeline Company

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0043 9535]

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

)	
In the Matter of)	
)	
Butte Pipeline Company,)	CPF No. 5-2009-5002
)	
Respondent.)	
)	

FINAL ORDER

On June 19 and June 23 to 26, 2008, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Butte Pipeline Company (Butte or Respondent). The target of the inspection was Butte’s 313-mile crude oil pipeline system in southeastern Montana and eastern Wyoming.

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated January 28, 2009, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Butte had committed several violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$28,800 for the alleged violations, and proposed ordering Respondent to take certain measures to correct those violations. The Notice also proposed finding that Respondent had committed a probable violation of 49 C.F.R. Part 195 and warning Butte to take appropriate corrective action to address it or be subject to future enforcement action.

Butte has waived its right to contest the allegations of probable violation in the Notice. A Respondent must submit a written response “within 30 days of receipt of a notice of probable violation,” and a “[f]ailure to respond . . . constitutes a waiver of the right to contest the allegations in the notice of probable violation and authorizes the Associate Administrator, OPS, without further notice to the respondent, to find facts to be as alleged in the notice and to issue a final order.”¹ An electronic record from the U.S. Postal Service confirms that Butte received the Notice on February 2, 2009. The Western Region, PHMSA, did not receive a written response from Respondent until three months later, on May 8, 2009.² Consequently, Butte has waived its right to contest the allegations in the Notice and authorized the entry of this Final Order. In any event, each of Respondent’s arguments was considered as detailed below.

¹ 49 C.F.R. § 190.209.

² On January 11, 2010, the Western Region received another letter from Butte discussing its investigation of one of the allegations in the Notice.

FINDINGS OF VIOLATION

Butte has waived its right to contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

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

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

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

The Notice alleged that Butte violated 49 C.F.R. § 195.402(a) by failing to perform an annual review of its manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. In particular, the Notice alleged that Respondent did not review its manual from February 2005 until January 2008, the date of the OPS inspection. Butte waived its right to contest that allegation.³ Accordingly, based upon a review of all of the evidence, I find without further notice that Respondent violated 49 C.F.R. § 195.402(a) by failing to perform an annual review of its manual at an interval not exceeding 15 months, but at least once each calendar year.

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

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

(a) . . .

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

(1) . . .

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

³ In its untimely response, Butte admitted that its review of the manual was still “ongoing” and only “25% complete.”

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(12) by failing to establish and maintain liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid pipeline emergency and means of communication. Butte waived its right to contest that allegation.⁴ Accordingly, based upon a review of all of the evidence, I find without further notice that Respondent violated 49 C.F.R. § 195.402(c)(12) by failing to establish and maintain liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid pipeline emergency and means of communication.

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

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

(a) . . .

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

(1) . . .

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

The Notice alleged that Butte violated 49 C.F.R. § 195.402(c)(13) by failing to periodically review the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and take corrective action where deficiencies are found. In particular, the Notice alleged that Respondent's manual required that this review be conducted annually, and that Butte had no record of performing those reviews. The Notice also alleged that OPS had previously issued Respondent a warning letter, dated February 8, 2007, for the same probable violation. Butte waived its right to contest that allegation.⁵ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(13) by failing to periodically review the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and take corrective action where deficiencies are found.

⁴ In its untimely response, Butte noted that it was participating in several state pipeline associations, but stated that the documentation associated with that participation was not yet fully available. Butte also did not dispute the allegation that it had no procedure in its manual for establishing and maintaining liaison with local public officials at the time of the OPS inspection.

⁵ In its untimely response, Butte noted that this review was now underway.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(d)(5), which states:

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

(a) . . .

(d) Abnormal operation. The manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

(1) . . .

(5) Periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.

The Notice alleged that Butte violated 49 C.F.R. § 195.402(d)(5) by failing to periodically review the response of operator personnel to determine the effectiveness of their procedures for controlling abnormal operations and to take corrective action where deficiencies are found. In particular, the Notice alleged that Respondent's manual required that these reviews be conducted periodically, and that Butte had no record of performing the same. The Notice also alleged that interviews with company personnel indicated that Butte only conducted these reviews on an informal basis, and that OPS had previously issued Respondent a warning letter, dated February 8, 2007, for the same probable violation. Butte waived its right to contest that allegation.⁶ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(d)(5) by failing to periodically review the response of operator personnel to determine the effectiveness of their procedures for controlling abnormal operations and to take corrective action where deficiencies are found.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13), which states:

§ 195.403 Emergency Response Training.

(a) . . .

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

The Notice alleged that Butte violated 49 C.F.R. § 195.403(c) by failing to require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance. In particular, the Notice alleged that Respondent had no provision in its manual for implementing this requirement, and that the company had no records documenting its compliance with the

⁶ In its untimely response, Butte submitted its written procedure and standardized form for conducting these reviews, but did not dispute any of the remaining allegations in the Notice. That includes the fact that the company did not have the documentation required to substantiate the performance and adequacy of these reviews.

regulation. Butte waived its right to contest that allegation.⁷ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.403(c) by failing to require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.577(a), which states:

§ 195.577 What must I do to alleviate interference currents?

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

The Notice alleged that Butte violated 49 C.F.R. § 195.577(a) by failing to have a program to identify, test for, and minimize the detrimental effects of stray current on pipelines exposed to those currents. In particular, the Notice alleged that Respondent's cathodic protection records showed that certain pipeline segments between Guernsey and Ft. Laramie station were exposed to potentially damaging stray currents from foreign pipelines in 2006, and that interviews with the company's field personnel indicated that there was no program in place for identifying, testing for, and minimizing the detrimental effects of those currents. Butte waived its right to contest that allegation.⁸ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.577(a) by failing to have a program to identify, test for, and minimize the detrimental effects of stray current on pipeline exposed to such currents.

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

ASSESSMENT OF PENALTY

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

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the

⁷ In its untimely response, Butte noted that it provides its supervisors with training and requires that they participate in emergency response drills, but did not dispute that allegation in the Notice that it had no written procedures in its Manual or records associated with the performance of these activities.

⁸ In its untimely response, Butte noted that a multi-operator investigation into the source of the stray current was scheduled for June 2009. In a subsequent letter, dated January 6, 2010, Butte provided the Director, Western Region, with the results of that investigation.

economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$28,800 for Item 1.

Item 1: The Notice proposed a civil penalty of \$28,800 for Respondent's violation of 49 C.F.R. § 195.402(a) by failing to perform an annual review its manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies from February 2005 until January 2008. Butte waived its right to contest the proposed civil penalty amount.

The evidence shows that Respondent failed to perform the required annual review for 35 months, an extended period of noncompliance that increases the gravity of this particular violation.⁹ There is also no indication that Butte cannot pay the proposed penalty amount, that doing so would impair its ability to stay in business, or that it sought in good faith to comply with the regulation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$28,800 for its violation of 49 C.F.R. § 195.402(a).

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125. The Financial Operations Division's telephone number is (405) 954-8893.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, 3, 4, 5, and 7 in the Notice for violations of 49 C.F.R. §§ 195.402(a), (c)(12)-(13), (d)(5), 195.403(c), and 195.577(a), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.402(a) (**Item 1**), Respondent must review all of its manuals, make changes to any portions of those manuals that are not effective, and keep a record of its review.

⁹ In its untimely Response, Butte argued that the civil penalty amount was excessive in comparison to *In the Matter of ExxonMobil Pipeline Company*, CPF 5-2005-2008, another enforcement action that proposed a \$5,000 civil penalty for a similar violation. However, the latter case was withdrawn in an August 6, 2009 Final Order and has no further precedential value.

2. With respect to the violation of § 195.402(c)(12) (**Item 2**), Respondent must develop a list of local fire, police, and other appropriate officials and develop and implement a plan for conducting liaison activities with the same, including instructions for documenting establishing the frequency of those contacts.
3. With respect to the violation of § 195.402(c)(13) (**Item 3**), Respondent must review the work done by its personnel to determine the effectiveness of the procedures used in normal operation and maintenance, take any necessary corrective actions where deficiencies are found, and keep a record of performing that review.
4. With respect to the violation of § 195.403(d)(5) (**Item 4**), Respondent must review the response of its personnel to determine the effectiveness of the procedures controlling abnormal operation, take any necessary corrective actions where deficiencies are found, and keep a record of performing that review as required by Part 195 of the Pipeline Safety Regulations.
5. With respect to the violation of § 195.402(c) (**Item 5**), Respondent must verify that all of its supervisors have a thorough knowledge of the appropriate portions of its emergency response procedures.
6. With respect to the violation of § 195.577(a) (**Item 7**), Respondent must develop a plan for identifying, testing for, and minimizing the detrimental effects of stray current on its pipeline segments between Guernsey and Ft. Laramie station.
7. Respondent must complete the actions listed in paragraphs 1 through 6 of this Compliance Order within 12 months of the date of this Final Order and submit documentation of the actions taken to Chris Hoidal, Director, Western Region, PHMSA. It is requested that Respondent maintain documentation of the safety improvement costs associated with fulfilling the terms of this Compliance Order and submit the total to Chris Hoidal, Director, Western Region, PHMSA. Such costs should be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies, and analyses, and (2) total cost associated with replacements, additions, and other changes to pipeline infrastructure.

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

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

WARNING ITEM

With respect to Item 6, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for that item. Therefore, it is considered to be a warning item. The warning was for:

49 C.F.R. § 195.412(a) (**Item 6**) — Respondent’s alleged failure on two occasions to patrol at intervals not exceeding 3 weeks, but at least 26 times each calendar year, the right of way for its pipeline in the area between Hulet and Osage, Wyoming.

Butte waived its right to contest this allegation. Accordingly, having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that a probable violation of 49 C.F.R. § 195.412(a) (Item 6) occurred and Respondent is hereby advised to correct such condition. In the event that OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590. A copy of the petition should also be sent to: Assistant Chief Counsel for Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590. The petition must be received no later than 20 days after service of this Final Order upon the Respondent and must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of the petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon receipt of service.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued