

December 2, 2019

Mr. Daniel Werth  
Chief Executive Officer  
Caliber Midstream Holdings, LP  
950 17<sup>th</sup> Street, Suite 1000  
Denver, Colorado 80202

**Re: CPF No. 3-2019-6001**

Dear Mr. Werth:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violations, assesses a civil penalty of \$67,600, and specifies actions that need to be taken by your subsidiary Caliber North Dakota, LLC, to comply with the pipeline safety regulations. 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, Central Region, this enforcement action will be closed. Service of the Final Order by certified mail is effective upon the date of mailing, as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Allan Beshore, Director, Central Region, Office of Pipeline Safety, PHMSA  
Ms. Carol Butero, Director of Regulatory, Safety, and Compliance, Caliber Midstream  
Holdings, LP, 950 17<sup>th</sup> Street, Suite 1000, Denver, Colorado 80202

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

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**In the Matter of** )

**Caliber North Dakota, LLC,** )  
**a subsidiary of Caliber Midstream Holdings, LP,** )

**Respondent.** )

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**CPF No. 3-2019-6001**

**FINAL ORDER**

On March 8, 2017, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected the Safety-Related Condition Report (PHMSA Reference 20170019) (SRCR)<sup>1</sup> of Caliber North Dakota, LLC (Caliber or Respondent), a subsidiary of Caliber Midstream Holdings, LP, pertaining to facilities near Alexander, North Dakota. Caliber Midstream Holdings' services include crude oil and natural gas gathering, transportation, treating and processing; produced water transportation and disposal in Caliber operated injection wells; and freshwater sourcing and transportation by pipeline linked to various points of supply.<sup>2</sup>

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated April 29, 2019, 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 Caliber had committed three violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$67,600 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

After requesting and receiving an extension of time to respond, Caliber responded to the Notice by letter dated July 22, 2019 (Response). Caliber stated that it was "electing to contest the allegations" in the Notice, but failed to challenge the allegations relating to Items 1 and 3, as well as Item 3's associated penalty.<sup>3</sup> Caliber contested the allegation of violation for Item 2, and the proposed penalties associated with Items 1 and 2. On August 28, 2019, the company provided an email with additional information, admitting the violations for Items 1 and 2 (Supplemental Response). Respondent did not request a hearing and therefore has waived its right to one.

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<sup>1</sup> Pipeline Safety Violation Report (Violation Report), (Apr. 29, 2019) (on file with PHMSA), at Exhibit A.

<sup>2</sup> Caliber Midstream Holdings, LP, is a joint venture supported by capital contributions from BlackRock's Global Energy & Power Infrastructure Fund and Triangle Petroleum Corporation. <http://www.calibermidstream.com/about> (last accessed Sept. 18, 2019).

<sup>3</sup> Response, at 1.

## FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(d)(3), 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 ...

(b) ...

(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) ...

(3) Correcting variations from normal operation of pressure and flow equipment and controls.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(d)(3) by failing to follow its manual of written procedures for handling abnormal operations when it failed to correct variations from normal operations of pressure equipment and controls on its Alex Crude Oil Facility. Specifically, the Notice alleged that in the mandated SRCR filed by Caliber on March 3, 2017 that a subsequent PHMSA investigation revealed violations by Caliber employees that led to the Safety related condition, as defined in §195.55. The company indicated that on February 27, while performing a lower-explosive-limit and hydrogen sulfide detector calibration, a company instrumentation and electrical (I&E) technician acknowledged alarms, but failed to inspect and confirm the opening of the facility's emergency shutdown valve. The valve remained closed, thereby creating an abnormal operation. Instead of correcting the variation from normal operations, the I&E technician continued his calibrations tests, which resulted in the pipeline pressure rising to 522 pounds per square inch (psig) on its 150 psig normal operating system.

According to the Notice, Caliber's abnormal operations procedures (Rev. 5/12/2014), Section 13.1, provides that "[a]ctivation of any safety device" constitutes an example of an abnormal operating condition. Under "Follow-up," the procedure states: "After an abnormal operating condition has been corrected, check variations from normal operation (at critical locations in the system) to determine continued integrity and safe operation." The I&E technician nor any Caliber employee on scene did not follow the Caliber's abnormal operating procedures after the Alex Crude Oil Facility experienced an activation of the emergency shut down safety device thereby allowing an overpressurization event to occur.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(d)(3) by failing to follow its manual of written procedures for handling abnormal operations when it failed to correct variations from normal operations of pressure equipment and controls on its Alex Crude Oil Facility.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b), which states:

**§ 195.406 Maximum operating pressure.**

(a) ....

(b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b) by failing to provide adequate controls and protective equipment to limit the pressure of its pipeline to 110 percent of maximum operating pressure (MOP). Specifically, the Notice alleged that, on February 27, 2017, Caliber's pipeline rose to a recorded pressure of 522.75 psig and an estimated pressure of 630 psig at its lowest elevation. The normal operating pressure was 150 psig and its maximum allowable pressure on this line was established as 500 psig. Therefore, the pipeline reached a pressure of 126 percent MOP.

In its Response, Caliber contested this violation, stating that its operating pressure did not exceed MOP and that it therefore had adequate controls and protective equipment in place to control the pressure.<sup>4</sup> However, in its Supplemental Response, its Director of Regulatory, Safety and Compliance admitted that the Response was not correct and that "the original information submitted based on elevation calculation shows MOP was exceeded at the lowest elevation of the system."<sup>5</sup>

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.406(b) by failing to provide adequate controls and protective equipment to limit the pressure of its pipeline to 110 percent of MOP.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

**§ 195.505 Qualification program.**

Each operator shall have and follow a written qualification program.

The program shall include provisions to:

(a) ....

(b) Ensure through evaluation that individuals performing covered tasks are qualified...

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to follow its written operator qualification program to ensure, through evaluation, that individuals performing covered tasks are qualified. Specifically, the Notice alleged that on February 13 or 16 and 21, 2017, an unqualified technician performed the covered task (Task ID 661) of "Launching and Receiving Internal Devices (pigs)" on the Skevolds to Alexander 16-inch Oil Line without being directed and observed by a qualified individual.

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<sup>4</sup> Response, at 2.

<sup>5</sup> Supplemental Response, at 1.

Caliber's Operator Qualification Plan in Section 1.0 Scope states: "Caliber OQ Program is designed to ensure that all individuals working on Caliber DOT-regulated pipeline facilities are OQ-qualified to perform specific covered tasks, to document that qualification and to reduce the probability and consequences of incidents and accidents. All Caliber employees as well as Contractors performing these covered tasks will be OQ-qualified under this Program before they perform any covered tasks."

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to follow its written operator qualification program to ensure, through evaluation, that individuals performing covered tasks are qualified.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.<sup>6</sup> 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; 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 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 \$67,600 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$22,400 for Respondent's violation of 49 C.F.R. § 195.402(d)(3), for failing to follow its manual of written procedures for handling abnormal operations when it failed to correct variations from normal operations of pressure equipment and controls on its Alex Crude Oil Facility.

In its Response, Caliber contested the proposed penalty and requested that it be reduced. The company contended that the Violation Report incorrectly stated, under Part E5 "Circumstances," that "PHMSA or a State Partner discovered the violation." Caliber claimed, on the contrary, that PHMSA became aware of the violation through Caliber's own self-reported Safety-Related Condition Report.<sup>7</sup> Therefore, Caliber asserted that since it had disclosed the over-pressure event through the SRCR, it was entitled to a reduced penalty under Part E5 of the Violation Report and penalty worksheet.

I disagree. The language in the Violation Report is clear. Part E5 states, in boldface type, that the lower penalty for self-reporting "**Does not apply to operator post-accident/incident self-**

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<sup>6</sup> These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

<sup>7</sup> Response, at 1.

**reporting.”** Operators are required to promptly file post-accident reports and SRCRs, as was done in this case, and the violation was discovered by PHMSA through a routine review of such reports. Therefore, the selection of “PHMSA or a State Partner discovered the violation” in Part E5 is correct and the company does not qualify for a reduced penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$22,400 for violation of 49 C.F.R. § 195.402(d)(3).

**Item 2:** The Notice proposed a civil penalty of \$22,400 for Respondent’s violation of 49 C.F.R. § 195.406(b), for failing to provide adequate controls and protective equipment to limit the pressure on its pipeline to 110 percent of MOP.

Caliber contested the proposed penalty and requested that it be eliminated or reduced. The company repeated its argument regarding whether a SRCR is considered a “self-report” when calculating a penalty under Part E5 “Circumstances” of the Violation Report. I have rejected this argument above.

It also argued that the Violation Report failed to recognize under Part E5 “Circumstances” that the violation had ended and was not “ongoing.” Caliber stated that it “promptly began an internal investigation of the event and voluntarily began putting corrective procedures in place.” Caliber, however, did not take into account the rest of Part E5, which states: “If the violation was not remedied before the end of inspection activities, enter the last known date of the violation... and indicate Ongoing.” The violation was not remedied by March 8, 2017, the end date of the inspection activities, so therefore the Violation Report is accurate.

Caliber also claimed that the Violation Report was incorrect in stating under “Circumstances” that the duration of the violation was over 10 days. Caliber argued that “[t]he entire event was resolved in 6.5 hours. The controls were in place prior to the surge event to prevent a surge event that would have constituted a violation.” Caliber misunderstands the extent of the violation. Section 195.406(b) requires that the operator not allow its pipeline pressure to exceed 100 percent of the operating pressure limit, and also that each operator provide adequate controls and protective equipment to control the pressure within this limit. While the pressure surge in this case may have only lasted 6.5 hours, Caliber did not complete its check or correct the problem through the addition of certain alarms until March 10, 2017, which was more than 10 days after the February 27 event. I am therefore unpersuaded by this argument.

Finally, Caliber argued that it did not receive proper credit under Part E5 “Culpability” of the Violation Report for actions it took following the incident. It reiterated that the Violation Report is incorrect because Caliber does not agree that PHMSA discovered the violation. Rather, it believes that since the violation is based on Caliber’s SRCR, Caliber should receive credit for self-reporting. It also stated that “[p]rior to its submittal of its SRCR Caliber identified, planned, scheduled and timely completed seven different follow-up / corrective actions. These follow-up / corrective actions were listed [in the] SRCR.”<sup>8</sup>

I have already rejected Caliber’s argument that the SRCR was a “self-report.” Likewise, Caliber is required to follow Federal pipeline safety regulations. While the actions taken by Caliber

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<sup>8</sup> Response, at 2.

following the incident are commendable, they are actions that any prudent operator would be expected to take in the aftermath of a safety-related condition. It cannot expect to receive credit for steps taken to come into compliance with requirements it must follow by law. I therefore reject this argument.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$22,400 for violation of 49 C.F.R. § 195.406(b).

**Item 3:** The Notice proposed a civil penalty of \$22,800 for Respondent's violation of 49 C.F.R. § 195.505(b), for failing to follow its written qualification program provisions to ensure, through evaluation, that individuals performing covered tasks are qualified. Caliber did not contest the proposed penalty associated with this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$22,800 for violation of 49 C.F.R. § 195.505(b).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$67,600**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such 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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$67,600 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 district court of the United States.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Item 2 in the Notice for the violation of 49 C.F.R. § 195.406(b). 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 § 195.406(b) (**Item 2**), Respondent must test its failsafe system to ensure that it functions properly. Documentation of this testing procedure(s) must be provided to PHMSA for review and approval. Results of this testing must also be provided to PHMSA.

2. Caliber shall submit its procedures for testing its system within 60 days after receipt of the Final Order, with completion of testing and documentation submitted within 120 days after receipt of the Final Order.

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.

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), 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.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service, in accordance with 49 C.F.R. § 190.5.

December 2, 2019

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued