NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 29, 2019

Daniel Werth,
Chief Executive Officer
Caliber Midstream
950 17th Street, Suite 1000,
Denver, CO 80202

CPF 3-2019-6001

Dear Mr. Werth:

On March 8, 2017, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code inspected your Safety Related Condition Report (PHMSA Reference 20170019) pertaining to facilities near Alexander, ND.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violation(s) are:

1. **§ 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.

Caliber failed 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, as reported in their Safety Related Condition Report, "At approximately 11:20 AM CST on 02/27/2017 the Alex Oil Facility experienced an emergency shut down (ESD) where the inlet control valve closed as a result of lower explosive limit (LEL) and hydrogen sulfur (H2S) calibration. The I&E technician performing the calibrations onsite acknowledged the LEL and H2S alarms from the local HMI (as a result of his operations). The I & E technician failed to inspect and confirm the opening of the ESD valve upon acknowledgement and the ESD valve remained latched as a result of relays not being reset, a failsafe at the facility." The I&E technician continued to perform calibrations tests onsite without addressing the abnormal condition. As a result, the pipeline pressure rose to 522 psig on its 150 psig normal operating system. The increased pressure was not corrected to normal operations until 5:50 p.m. Multiple technicians from other operating groups and shutting down of facilities supplying the line with product were required to rectify the abnormal operation.

Caliber's operations and maintenance procedures (Rev. 5/12.2014) regarding abnormal operations in Section 13.1 includes "13. 7 Activation of any safety device" as an abnormal operating condition example and under "Follow-up" 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 technician failed to follow this procedure after creating the abnormal operation by activating the LEL and H2S safety devices.

2. **§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.

Caliber North Dakota LLC (Caliber) did not provide adequate controls and protective equipment to limit the pressure to 110 percent of maximum operating pressure (MOP). 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% MOP which is a violation of the 110% limit of §195.406(b).

Additionally, pressure sources to the Alexander facility failed to have adequate controls or protective equipment to control the pressure within the 110% limit. Specifically, PIT-100 pressure transmitter was visible via SCADA and the local HMI, but did not have the correct alarm tags tied within the programming. As a result, SCADA and the program were looking at alarm tags that weren't tied to the value of PIT-100. Also, alarm set points on LACT units were confirmed in April 2016, but altered so that pressure on the pipeline rose higher than intended.

3. **Section 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;

Caliber North Dakota LLC did not follow its written qualification program provisions to ensure through evaluation that individuals performing covered tasks are qualified. 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."

Specifically, on February 13th or 16th (discrepancy in actual date in operator records) and 21st, 2017, an unqualified technician for Caliber performed the covered task (Task

ID 661) of "Launching and Receiving Internal Devices (pigs)" on the Skevolds to Alexander 16" Oil Line without being directed and observed by a qualified individual.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed $213,268 per violation per day the violation persists, up to a maximum of $2,132,679 for a related series of violations. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed $209,002 per violation per day, with a maximum penalty not to exceed $2,090,022. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed $200,000 per violation per day, with a maximum penalty not to exceed $2,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of $67,600 as follows:

Item number	PENALTY
1	$22,400
2	$22,400
3	$22,800

Proposed Compliance Order

With respect to item 2 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Caliber North Dakota LLC. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 3-2019-6001** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Allan C. Beshore
Director, Central Region, OPS
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Response Options for Pipeline Operators in Compliance Proceedings*

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Caliber North Dakota LLC (Caliber) a Compliance Order incorporating the following remedial requirements to ensure the compliance of with the pipeline safety regulations:

1. In regard to Item Number 2 of the Notice pertaining to providing adequate controls and protective equipment to limit the pressure to 110 percent of maximum operating pressure (MOP) for the entire system, Caliber must test their 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.

3. It is requested (not mandated) that Caliber maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Allan C. Beshore, Director, Central Region, OPS, Pipeline and Hazardous Materials Safety Administration. 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.