



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

901 Locust Street, Suite 480
Kansas City, MO 64106

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY**

VIA ELECTRONIC MAIL TO: dwerth@calibermidstream.com and
cbutero@calibermidstream.com

August 4, 2021

Daniel Werth
Chief Executive Officer
Caliber Bear Den Interconnect LLC
950 17th Street, Suite 1000
Denver, CO 80202

CPF 3-2021-037-NOPV

Dear Mr. Werth:

From March 18, 2019, through August 1, 2019, 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 (U.S.C.) inspected your Caliber Bear Den Interconnect LLC (CBDI) pipeline facilities located in North Dakota, near Watford City. This inspection also reviewed associated plans, procedures, and records, some of which were located in the Caliber Midstream headquarters and office located in Denver, Colorado.

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 (CFR). The items inspected and the probable violations are:

1. § 194.107 General response plan requirements.

(a) ...

(c) Each response plan must include:

(1) A core plan consisting of –

(ix) Drill program—an operator will satisfy the requirement for a drill program by following the National Preparedness for Response Exercise Program (PREP) guidelines. An operator choosing not to follow PREP guidelines must have a drill program that is equivalent to PREP.

CBDI failed to make changes to its response plan after discovering deficiencies during its September 20, 2017 drill as required by PREP guidelines under § 192.107(c)(ix). Section 1.0 of the PREP guidelines states “Plan holders are responsible for addressing any issues that arise from evaluation of exercises and making changes to their respective response plans to ensure the highest level of preparedness.” The CBDI September 20, 2017 drill documentation identified communication issues occurred during the exercise. However, CBDI failed to provide any documentation identifying corresponding changes the operator made to response plan as required by PREP guidelines. Therefore, CBDI failed to comply with the requirements of § 192.107(c)(ix).

2. § 194.121 Response plan review and update procedures.

(a) ...

(b) If a new or different operating condition or information would substantially affect the implementation of a response plan, the operator must immediately modify its response plan to address such a change and, within 30 days of making such a change, submit the change to PHMSA. Examples of changes in operating conditions that would cause a significant change to an operator's response plan are:

(8) Any other information relating to circumstances that may affect full implementation of the plan.

CBDI failed to submit its Spill Response Plan (SRP) (revised July 27, 2018) to PHMSA within 30 days of a significant information update as required by § 194.121(b). During the inspection, PHMSA identified that a Qualified Individual noted in Section 2.1 of the SRP was incorrect as of August 2018. CBDI had not updated the address as documented in Section 2.1. CBDI also failed to correctly identify titles in Section 5.7.1 for Emergency Notification. In addition, both Sections 2.1 and 5.7.1 included the name of an individual the operator no longer employed. Therefore, CBDI failed to comply with the requirements of § 194.121(b)(8).

3. § 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.

CBDI failed to provide documentation that supervisors maintained a thorough knowledge of the emergency response procedures established under § 195.402 for which they are responsible as required by § 195.403(c). During the investigation, CBDI did provide some documentation for emergency procedure training for 2017 and 2018, but failed to provide any record verifying that

supervisors maintained a thorough knowledge of the emergency response procedures. Therefore, CBDI failed to comply with the requirements of § 195.403(c).

4. § 195.420 Valve maintenance.

(a) ...

(b) Each operator shall, at intervals not exceeding 7½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

CBDI failed, at intervals not exceeding 7-1/2 months, but at least twice each calendar year, to inspect each mainline valve to determine that it is functioning properly as required by § 195.420(b).

During the inspection, CBDI only provided mainline valve inspection records dated January 11, 2019. The CBDI pipeline was commissioned on March 3, 2017. Therefore, CBDI was missing mainline valve maintenance inspection records for 2017 and 2018 for three inspection cycles (one 2017 inspection and two 2018 inspections). According to CBDI records, there were a total of nine (9) mainline valves in the Bear Den system. Therefore, CBDI failed to inspect its mainline valves at intervals not exceeding 7½ months, but at least twice each calendar year, as required under § 195.420(b).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. 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.

We have reviewed the circumstances and supporting documentation involved for the above probable violation(s) and recommend that you be preliminarily assessed a civil penalty of \$57,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$19,000
2	\$19,000
3	\$19,000

Warning Item

With respect to item 4 we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these item(s). Failure to do so may result in additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement 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).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. 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. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 3-2021-037-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Gregory A. Ochs,
Director, Central Region, OPS
Pipeline and Hazardous Materials Safety Administration

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

cc: Ms. Carol Butero, Director of Regulatory, Safety and Compliance, Caliber Midstream,
cbutero@calibermidstream.com