

September 2, 2022

VIA ELECTRONIC MAIL TO: bkent@calibermidstream.com

Mr. Bill Kent
Chief Executive Officer
Caliber North Dakota, LLC
1805 Shea Center Drive, Suite 120
Highlands Ranch, Colorado 80129

Re: CPF No. 3-2021-080-NOPV

Dear Mr. Kent:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$163,000, and specifies actions that need to be taken 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 e-mail is effective upon the date of transmission and acknowledgement of receipt 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 (Final Order)

cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Charles Maybee, Director of Operations, Caliber Midstream Partners, LP,
cmaybee@calibermidstream.com

CONFIRMATION OF RECEIPT REQUESTED

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

In the Matter of)

Caliber North Dakota, LLC,)
a subsidiary of Caliber Midstream Partners, LP,)

Respondent.)

CPF No. 3-2021-080-NOPV

FINAL ORDER

On February 10, March 8-9, March 19, April 12-13 and August 31, 2021, 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 Caliber North Dakota, LLC (Caliber or Respondent) in Alexander, North Dakota. Caliber is a subsidiary of Caliber Midstream Partners, LP that operates a 23-mile crude oil pipeline system consisting of 12-inch and 16-inch diameter pipe originating at the Hay Butte gas plant southeast of Alexander, North Dakota and terminating at the Alexander facility southwest of Williston, North Dakota.¹

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated December 22, 2021, 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 violated the pipeline safety regulations in 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$163,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Respondent failed to respond within 30 days after it received the Notice. Caliber's failure to respond within 30 days constitutes a waiver of its right to contest the allegations in the Notice and authorizes the entry of this Final Order.² In an email to the Director on February 25, 2022, Caliber acknowledged it had received the Notice on December 22, 2021, and indicated a response was forthcoming. On March 15, 2022, Caliber requested an extension of time to respond to the Notice, which the Director denied on March 17, 2022. That same day, Caliber submitted a response to the Notice³ (Response), 85 days after the Notice was issued. In its

¹ Pipeline Safety Violation Report (Violation Report), (December 29, 2021) (on file with PHMSA), at 1.

² 49 C.F.R. § 192.208(d).

³ Although the Response is dated March 10, 2022, PHMSA received it on March 17, 2022, after the Director denied Caliber's request for an extension.

Response, Caliber contested one of the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced or eliminated for two of the allegations. Caliber also requested modification of the proposed compliance order. Respondent did not request a hearing.

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. § 195.406(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 maintain pressure within 110 percent of the operating pressure limit from March 8, 2019, to May 5, 2019, on a pump skid. Specifically, the Notice alleged that the thermal overprotection device had been removed allowing pressure to reach 126 percent of the maximum operating pressure (MOP). The Notice also alleged that this violation is a repeat of a violation found in CPF 3-2019-6001, Item No. 2.

Caliber's response was received well after the deadline for responding to the Notice. Under § 190.208(d), failure to respond within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice. Accordingly, I find the facts as alleged in the Notice.

Moreover, I have reviewed Caliber's late-filed Response. In its Response, Caliber admitted that from March 8, 2019, to May 5, 2019, a pump skid operated at 126 percent of MOP. However, Caliber stated it was providing two documents (*2019-2020 Rawson Pump Discharge Records* and *D-12034-PID-4010 REV 5*) to explain the circumstances and to support a withdrawal of the allegation, or in the alternative a reduction in the civil penalty, the latter of which is discussed in more detail below. A review of the documentation provided reveals that Caliber did not submit any new information; PHMSA OPS previously reviewed the discharge records during the inspection.⁴ Additionally, the records demonstrate that Caliber removed a thermal overprotection device which allowed the operating pressure to exceed 110 percent of the MOP. Accordingly, based on a review of the evidence and because Caliber's failure to respond within 30 days of receipt of the Notice constitutes a waiver of the right to contest the allegations in the Notice, I find that Respondent violated 49 C.F.R. § 195.406(b) by failing to maintain pressure

⁴ Violation Report, Exhibit A.

within 110 percent of the operating pressure limit from March 8, 2019 to May 5, 2019, on a pump skid.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c) and (i), which states:

§ 195.440 Public awareness.

(a)

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

(i) The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c) and (i) by failing to provide to PHMSA program documentation and evaluation results for Caliber's periodic review. Specifically, the Notice alleged that Caliber did not provide program documentation and evaluation results for the periodic reviews performed in 2017, 2018, and 2019. The Notice explained that API RP 1162 Section 8.3 requires an annual implementation review, and Section 7.3 of API RP 1162 requires that all program evaluations be kept a minimum of five years.

As explained above, Caliber waived the right to contest the allegation. In addition, in its late-filed Response, Respondent did not contest this allegation of violation. Accordingly, based on a review of the evidence and because Caliber's failure to respond within 30 days of receipt of the Notice constitutes a waiver of the right to contest the allegations in the Notice, I find that Respondent violated 49 C.F.R. § 195.440(c) and (i) by failing to provide program documentation and evaluation results for periodic review.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(l)(1)(ii), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a)

(1) *What records must an operator keep to demonstrate compliance?*

(1) An operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of this subpart. At a minimum, an operator must maintain the following records for review during an inspection:

(i)

(ii) Documents to support the decisions and analyses, including any modifications, justifications, deviations and determinations made, variances, and actions taken, to implement and evaluate each element of the integrity management program listed in paragraph (f) of this section.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(l)(1)(ii) by failing maintain

records that support the decisions and analyses to implement and evaluate each element of the integrity management program (IMP). Specifically, the Notice alleged that Caliber failed to provide:

1. adequate documentation regarding information analysis and risk model run updates performed in 2017, 2018, 2019, and 2020 in accordance with § 195.452(f)(3);
2. records demonstrating compliance with the requirements of § 195.452(f)(5);
3. documentation from 2017, 2018, 2019, and 2020 showing that the annual reviews for preventative and mitigative measures from Section 9.1 of its IMP plan were completed; and
4. the annual IMP evaluation document from 2017, 2018, 2019, and 2020 required by Section 11.1 of its IMP plan.

As explained above, Caliber waived the right to contest the allegation. In addition, its late-filed Response, Respondent did not contest this allegation of violation but requested modification of the proposed compliance order, as discussed below. Accordingly, based on a review of the evidence and because Caliber's failure to respond within 30 days of receipt of the Notice constitutes a waiver of the right to contest the allegations in the Notice, I find that Respondent violated 49 C.F.R. § 195.452(l)(1)(ii) by failing to maintain the required records for review during the inspection.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.507(b), which states:

§ 195.507 Recordkeeping.

(a)

(b) Records supporting an individual's current qualification shall be maintained while the individual is performing the covered task. Records of prior qualification and records of individuals no longer performing covered tasks shall be retained for a period of five years.

The Notice alleged that Respondent violated 49 C.F.R. § 195.507(b) by failing to provide operator qualification (OQ) records for a technician who performed a covered task in 2019. Specifically, the Notice alleged that Caliber could not provide OQ records for the technician who performed the July 19, 2019 tank inspection, which is a covered task.

As explained above, Caliber waived the right to contest the allegation. In addition, in its late-filed Response, Caliber stated it could not provide the relevant OQ records, but nonetheless requested a reduction in the civil penalty, as discussed below. Accordingly, based on a review of the evidence and because Caliber's failure to respond within 30 days of receipt of the Notice constitutes a waiver of the right to contest the allegations in the Notice, I find that Respondent violated 49 C.F.R. § 195.507(b) by failing to provide OQ records for a technician who performed a covered task in 2019.

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.⁵

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; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 \$163,000 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$74,300 for Respondent's violation of 49 C.F.R. § 195.406(b), for failing to maintain pressure within 110 percent of the operating pressure limit from March 8, 2019 to May 5, 2019 on a pump skid.

Respondent's failure to respond within 30 days of receipt of the Notice constitutes a waiver of the right to contest the allegations in this proceeding. PHMSA also notes that in its late-filed Response, Caliber provided additional documentation to support its assertion that the civil penalty should be reduced. Controlling the operating pressure within 110 percent is a fundamental part of safe operation and maintenance of a pipeline. In this instance, the civil penalty assessment already considered that pipeline safety was minimally affected as the overpressure event occurred on a locked out, tagged out section of aboveground piping and did not exceed the rated pressure of the piping. PHMSA discovered this violation during its inspection and found that Caliber had no reasonable justification for noncompliance with an applicable regulation. Furthermore, as stated above, this is a repeat violation, and Caliber provided no new information for review to support a reduction in or elimination of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria and because Caliber's failure to respond within 30 days of receipt of the Notice constitutes a waiver of the right to contest the allegations in the Notice, I assess Respondent a civil penalty of \$74,300 for violation of 49 C.F.R. § 195.406(b).

Item 2: The Notice proposed a civil penalty of \$28,300 for Respondent's violation of 49 C.F.R. § 195.440(i), for failing to provide program documentation and evaluation results for periodic reviews for 2017, 2018, and 2019. In its late-filed Response, Caliber neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria and because Caliber's failure to respond within 30 days of receipt of the Notice constitutes a waiver of the right to contest the allegations in the Notice, I assess Respondent a

⁵ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

civil penalty of \$28,300 for violation of 49 C.F.R. § 195.440(i).

Item 3: The Notice proposed a civil penalty of \$32,800 for Respondent's violation of 49 C.F.R. § 195.452(l)(1)(ii), for failing to maintain records that support the decisions and analyses to implement and evaluate each element of the IMP. In its late-filed Response, Caliber neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria and because Caliber's failure to respond within 30 days of receipt of the Notice constitutes a waiver of the right to contest the allegations in the Notice, I assess Respondent a civil penalty of \$32,800 for violation of 49 C.F.R. § 195.452(l)(1)(ii).

Item 4: The Notice proposed a civil penalty of \$27,600 for Respondent's violation of 49 C.F.R. § 195.507(b), for failing to provide operator qualification records for a technician who performed a covered task in 2019. In its late-filed Response, Respondent argued that the civil penalty should be reduced.

Respondent's failure to respond within 30 days of receipt of the Notice constitutes a waiver of the right to contest the civil penalty in this proceeding. PHMSA also notes that in its late-filed Response, Respondent asserted it had a good faith reason for its noncompliance. Caliber argued that since the technician who performed the covered task in 2019 has passed away, it cannot locate the records. Accordingly, "[u]nder the circumstance and inability to obtain records for a deceased individual," Caliber requests a reduction of the civil penalty. This is not a reasonable justification for noncompliance. According to § 195.507(b), OQ records must be maintained for five years after an individual no longer performs covered tasks. Operators must have systems in place to maintain such records. Accordingly, having reviewed the record and considered the assessment criteria and because Caliber's failure to respond within 30 days of receipt of the Notice constitutes a waiver of the right to contest the allegations in the Notice, I assess Respondent a civil penalty of \$27,600 for violation of 49 C.F.R. § 195.507(b).

In summary, having reviewed the record and considered the assessment criteria and because Caliber's failure to respond within 30 days of receipt of the Notice constitutes a waiver of the right to contest the allegations in the Notice, I assess Respondent a total civil penalty of **\$163,000**.

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. 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 \$163,000 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 3 in the Notice for a violation of 49 C.F.R. § 195.452(l)(1)(ii). 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.

Respondent's failure to respond within 30 days of receipt of the Notice constitutes a waiver of the right to contest the compliance order in this proceeding. PHMSA also notes that in its late-filed Response, Caliber requested that compliance item A.i be removed or, in the alternative, modified "to clarify the specific updates which are needed to comply with the requirements of § 195.452(f)(6)."⁶ Specifically, Caliber asserted that "[i]t is unclear based on the NOPV findings" what updates it needs to make to its IMP. Caliber, however, did not submit any additional reasoning or information supporting uncertainty or ambiguity in the compliance term or documentation demonstrating compliance with § 195.452(f)(6). For the above reasons, I find no reason to remove or modify the Compliance Order.

Therefore, 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:

- A. With respect to the violation of § 195.452(l)(1)(ii) (**Item 3**), Respondent must update its IMP plan and submit for Director approval within 90 days of receipt of the Final Order, as follows:
 - i. Pertaining to preventative and mitigative measures, Caliber must update its IMP to comply with the requirements of § 195.452(f)(6), and maintain the required documentation of such updates; and
 - ii. Pertaining to IMP effectiveness measurement, Caliber must conduct performance effectiveness measurements as required by § 195.452(f)(7), and maintain documentation of such review as required.

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.

PHMSA requests 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.

⁶ Response, at 2-3.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (*see* 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, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. The written petition must be received no later than 20 days after receipt of the 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.

September 2, 2022

Alan K. Mayberry Date Issued
Associate Administrator
for Pipeline Safety