

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

VIA ELECTRONIC MAIL TO: dwerth@calibermidstream.com,
kjohnson@calibermidstream.com and aporter@calibermidstream.com

December 22, 2021

Mr. Daniel Werth
Chief Executive Officer
Caliber North Dakota, LLC
950 17th Street, Suite 1000,
Denver, CO 80202

CPF 3-2021-080-NOPV

Dear Mr. Werth:

On February 10, March 8-9, March 19, April 12-13 and August 31, 2021, 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 records, procedures and Caliber Hay Butte unit facilities virtually and in Alexander, North Dakota.

As a result of the inspection, it is alleged that Caliber North Dakota, LLC (Caliber) has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. § 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 failed to maintain pressure within the maximum operating pressure (MOP) plus 10 % from March 8, 2019 to May 15, 2019 on a pump skid that was locked and tagged out with product in the line. The thermal overprotection device had been removed allowing pressure to reach 126 % of MOP. This violation is a repeat of violations found in CPF 3-2019-6001, Item No. 2.

Event Date	Location	Pressure Transmitter	Recorded Pressure	Calc Pressure @ Low Point	%	Comments	MOP
3/8/19 - 5/15/19	Hay Butte Crude Oil LACT	PIT-4017A	631.34	NA	126%	High pressure noted during this event was contained to ANSI 300 skid piping, pipeline was isolated with LOTO during event	500

2. § 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.

Caliber failed to provide program documentation and evaluation results for periodic review. Specifically, Caliber did not provide annual implementation review records for 2017, 2018 and 2019. 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.

3. § 195.452 Pipeline integrity management in high consequence areas

(a)

(l) *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.

Caliber failed to maintain the following records for review during the inspection, as required. First, Caliber failed to provide adequate documentation regarding information analysis and risk model run updates in 2017, 2018, 2019 and 2020. Section 195.452(f)(3) requires operators to include in its written integrity management program (IMP) “an analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure.” Section 195.452(g) provides the requirements for how operators are to perform the requisite information analysis. Caliber was unable to provide any records for review showing that it performed an information analysis required by the following subparagraphs of § 195.452(g)¹:

- Section 195.452(g)(1): Information critical to determining the potential for and preventing, damage due to excavation, including current and planned damage prevention activities, and development or planned development along the pipeline segment;
- Section 195.452(g)(2): Data gathered through the integrity assessment required under this section;
- Section 195.452(g)(3): Data gathered in conjunction with other inspections, tests, surveillance and patrols required by this Part, including, corrosion control monitoring and cathodic protection surveys; and
- Section 195.452(g)(4): Information about how a failure would affect the high consequence area, such as location of the water intake.

Second, Caliber failed to provide records demonstrating that it had complied with the requirements of § 195.452(f)(5), which requires operators to include in its IMP a “continual process of assessment and evaluation to maintain a pipeline’s integrity” Section 195.452(j) provides the requirements for how to perform the requisite continual process of evaluation and assessment to maintain a pipeline’s integrity. Section 195.452(j)(2) requires operators to perform an evaluation using a risk model based on the factors set forth in § 195.452(e). Caliber IMP procedure 8.8 requires an annual review of the program, and documentation of any needed updates. As Caliber acknowledged during the inspection interview, the risk model has not been analyzed for updates since April 18, 2016, despite information being available that was required to be analyzed to determine if the risk model needed to be updated. Specifically, Caliber failed to document its analysis and consideration of the results from 2019 ILI runs, which showed high internal and external corrosion rates. During a June 4, 2021 virtual meeting with PHMSA inspectors, Caliber noted that they were waiting until 2021 ILI runs on other parts of their system before re-running the risk model.

Third, Caliber failed to submit documentation in 2017, 2018, 2019 and 2020 to show that the annual reviews for preventative and mitigative (P&M) measures from Section 9.1 of the IMP plan were done. Section 195.452(f)(6) requires that an IMP program include the “identification of preventative and mitigative measures to protect the high consequence area” Section

¹ This allegation of violation is cited under the prior version of § 195.452(g) (65 FR 75406, Dec. 1, 2000). The updated requirements under § 195.452(g) requires that operators “must continue to comply with the data integration elements specified in § 195.452(g) that were in effect on October 1, 2018, until October 1, 2022.”

195.452(i) describes the preventative and mitigative (P&M) measures that operators must take. Upon review, it was also discovered that Caliber did not have documentation of any review, consideration or reasons for implementing, or not, the P&M recommendations in sections 5.4, 6.4 and 7.4 of the IMP plan, including a failure to integrate the Alex upstream pressure transmitter for the LDS system, which was a specific recommendation. Caliber has submitted a data responses saying P&M measure reviews will be done in 2021.

Fourth, Caliber failed to produce the annual IMP evaluation document required by their IMP plan section 11.1 for the years 2017, 2018, 2019 and 2020. Section 195.452(f)(7) requires operators to include in its IMP “methods to measure the program’s effectiveness” Section 195.452(k) describes the methods for measuring a program’s effectiveness. The annual program evaluation would include a measure on program effectiveness, and such documentation of this work is required to be maintained under § 195.452(l)(ii).

4. § 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.

Caliber failed to provide operator qualification records for the technician who performed the July 19, 2019 tank inspection, which is a qualified task as identified by Caliber.

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. 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.

We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of \$163,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$74,300
2	\$28,300
3	\$32,800
4	\$27,600

Proposed Compliance Order

With respect to item 3 pursuant to 49 U.S.C. § 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 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 3-2021-080-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: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

CC: Ms. Allison Porter, Director of Operations and Engineering, 950 17th Street, Suite 1000, Denver, CO 80202, (aporter@calibermidstream.com)

Ms. Katie Johnson, Operations Engineer, 950 17th Street, Suite 1000, Denver, CO 80202, (kjohnson@calibermidstream.com)

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 Caliber with the pipeline safety regulations:

- A. In regard to Item 3, Caliber must update its integrity management plan (IMP) 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.

- B. It is requested that Caliber North Dakota, LLC maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Gregory A. Ochs, 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.