

MAR 17 2010

Mr. Wilson Groen
President and CEO
Navajo Nation Oil & Gas Company, Inc.
P.O. Box 4439
Window Rock, AZ 86515

Re: CPF No. 4-2006-5029

Dear Mr. Groen:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and assesses a reduced civil penalty of \$212,000. It further finds that you have completed the actions specified in the Notice required 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, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Patricia Godley, Esq., Counsel for Navajo Nation Oil & Gas Company
Van Ness Feldman, P.C.
1050 Thomas Jefferson Street, NW, Suite 700
Washington, DC 20007

Mr. Rod Seeley, Director, Southwest Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7009 1410 0000 2472 5156]

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

_____)	
In the Matter of)	
)	
Navajo Nation Oil & Gas Company, Inc.,)	CPF No. 4-2006-5029
A Federal corporation,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On September 12-15, 2005, 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 Navajo Nation Oil & Gas Company, Inc.'s (Navajo's or Respondent's) Running Horse pipeline system. The Running Horse system consists of approximately 88 miles of 16-inch diameter crude oil pipeline running from Utah to New Mexico.

As a result of the inspection, the Director, Southwest Region, PHMSA (Director), issued to Respondent, by letter dated June 1, 2006, 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 Respondent had committed various violations of 49 C.F.R. Part 195, assessing a civil penalty of \$230,000 for the alleged violations, and ordering Respondent to take certain measures to correct the alleged violations. The Notice also proposed finding that Navajo had committed another probable violation of 49 C.F.R. Part 195 and warning the company to take appropriate corrective action to address it or be subject to future enforcement action.

After requesting and receiving an extension of time, Respondent responded to the Notice by letter dated July 14, 2006 (Response). Respondent requested an informal telephonic hearing. On February 23, 2007, Respondent submitted further response materials. An informal hearing was held via telephone conference on March 6, 2007, with Larry White, Attorney, Office of Chief Counsel, PHMSA, presiding. Respondent was represented by counsel during the hearing. After the hearing, Respondent provided further materials for the record on April 5, 2007, and December 5, 2008.

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. § 195.589(c), which states:

§ 195.589 What corrosion control information do I have to maintain?

(a) . . .

(c) You must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. You must retain these records for at least 5 years, except that records related to §§ 195.569, 195.573(a) and (b), and 195.579(b)(3) and (c) must be retained for as long as the pipeline remains in service.

Item 1A of the Notice alleged that Respondent failed to maintain records of atmospheric corrosion monitoring for the three-year period prior to the September 2005 PHMSA inspection. Periodic monitoring for atmospheric corrosion is required by 49 C.F.R. § 195.583(a), which states:

§ 195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion as follows:

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months.
Offshore	At least once each calendar year, but with intervals not exceeding 15 months.

Navajo responded by contending that from May through July of 2003, those portions of the pipeline exposed to the atmosphere were inspected, cleaned and painted by a painting contractor. Respondent was able to provide invoices from the contractor but acknowledged that it did not have records demonstrating that it had performed a full atmospheric corrosion inspection meeting the requirements of § 195.583(a). Respondent explained that only about 500 feet of the pipeline was exposed to the atmosphere, the majority of which was associated with pig launchers and receivers. Respondent further stated that the pipeline was examined at the time of the cleaning and inspection and found to be in good condition, with no evidence of atmospheric corrosion. The company also stated that its personnel regularly inspected the areas of the pipeline that were exposed to the atmosphere to check for corrosion in the course of routine pipeline operations and maintenance.

While Respondent is correct about the limited amount of exposed pipe that it has in its system, such limited quantity has no bearing on the regulatory requirement to keep adequate records. Navajo was unable to produce any records during the September 2005 PHMSA inspection to confirm that the required inspections for atmospheric corrosion had been performed for the prior three-year period. The 2003 invoices of a painting contractor, subsequently produced by the operator in 2007, do not meet the regulatory requirement for complete records of the atmospheric corrosion inspection that had to be performed by the operator. We acknowledge that Respondent carried out an atmospheric corrosion inspection in 2007; the period relevant to the violation, however, is the three-year period prior to September of 2005.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain records of atmospheric corrosion monitoring required by 49 C.F.R. § 195.583(a).

Item 1B of the Notice alleged that Respondent failed to maintain records of examinations of exposed portions of the Running Horse pipeline, as required by 49 C.F.R. § 195.569, which states:

§ 195.569 Do I have to examine exposed portions of buried pipelines?

Whenever you have knowledge that any portion of a buried pipeline is exposed, you must examine the exposed portion for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated. If you find external corrosion requiring corrective action under §195.585, you must investigate circumferentially and longitudinally beyond the exposed portion (by visual examination, indirect method, or both) to determine whether additional corrosion requiring remedial action exists in the vicinity of the exposed portion.

Specifically, the Notice alleged that at the time of the 2005 PHMSA inspection, Navajo failed to produce records verifying that it had performed an external corrosion examination of an exposed portion of the Running Horse pipeline system that had been exposed to repair a leak occurring on October 7, 2004.

In its Response and during the hearing, Navajo stated that it had performed the required inspection at the time of the October 7, 2004 leak, but was unable to produce a contemporaneous record. Respondent did provide photographs of a four-foot section of pipe that was reported to have been removed from the pipeline in October of 2004. In addition, Respondent provided an inspection form for the 2004 leak incident that was dated February 20, 2007.

There were no records produced at the September 2005 PHMSA inspection to confirm that the required inspection for external corrosion on exposed buried pipe had been performed for the 2004 accident. Photographs of the removed pipe furnished to PHMSA in 2007 do not satisfy the regulatory requirement to maintain a complete record “with sufficient detail to demonstrate the adequacy of corrosion control or that corrosion requiring control measures does not exist,” nor does an inspection form that was filled out in 2007.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain adequate records of exposed pipeline examinations required by 49 C.F.R. § 195.569.

Item 1C of the Notice alleged that Respondent failed to maintain records of internal surface corrosion inspections on the pipeline, as required by 49 C.F.R. § 195.579(c), which states:

§ 195.579 What must I do to mitigate internal corrosion?

(a) . . .

(c) *Removing pipe.* Whenever you remove pipe from a pipeline, you must inspect the internal surface of the pipe for evidence of corrosion. If you find internal corrosion requiring corrective action under §195.585, you must investigate circumferentially and longitudinally beyond the removed pipe (by visual examination, indirect method, or both) to determine whether additional corrosion requiring remedial action exists in the vicinity of the removed pipe.

Specifically, the Notice alleged that at the time of the 2005 PHMSA inspection, Navajo failed to produce records verifying that it had performed an inspection of the internal surface of pipe that had been removed on the Running Horse pipeline system following a leak that occurred on October 7, 2004.

In its Response and during the hearing, Navajo stated that it had performed the required inspection at the time of the October 7, 2004 leak, and attached an inspection form dated February 20, 2007. Respondent also included photographs of a four-foot section of pipe that it claimed had been removed from the pipeline in October of 2004.

Such evidence, however, does not satisfy the record-keeping requirements of 49 C.F.R. § 195.589(c). There were no records produced at the September 2005 PHMSA inspection documenting completion of the required inspection for internal corrosion on exposed pipe in connection with the 2004 accident. Photographs of the removed pipe furnished to PHMSA in 2007 do not satisfy the regulatory requirement to maintain a complete record “with sufficient detail to demonstrate the adequacy of corrosion control or that corrosion requiring control measures does not exist,” nor does an inspection form that was filled out in 2007.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain adequate records of internal surface corrosion inspections required by 49 C.F.R. § 195.579(c).

Item 1D of the Notice alleged that Respondent failed to maintain records of the identification of the circumstances in which a close-interval survey or comparable testing was necessary to determine the adequacy of cathodic protection on the Running Horse pipeline. Such steps to monitor external corrosion are required by 49 C.F.R. § 195.573(a)(2), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with §195.571:

- (1) . . .
- (2) Identify not more than 2 years after cathodic protection is installed, the circumstances in which a close-interval survey or comparable technology is practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE Standard RP 0169 (incorporated by reference, see §195.3).

Specifically, the Notice alleged that at the time of the 2005 PHMSA inspection, Navajo failed to produce records demonstrating that it had identified the circumstances in which such testing was needed on the Running Horse pipeline system, which Respondent had operated since December 2002.

Respondent did not contest the allegation in Item 1D of the Notice. In its Response, Navajo explained that it was in the process of satisfying the requirements of Item 4 of the Proposed Compliance Order with respect to the close-interval survey (CIS). Respondent acknowledged the benefits of conducting a CIS and indicated that it had obtained three estimates for conducting one on the Running Horse Pipeline. In its letter of April 27, 2007, Respondent notified PHMSA that it would perform a CIS in the third quarter of 2007. Respondent provided information in its April 23, 2008 correspondence that it had awarded CORRPRO Companies a contract for conducting a CIS of its entire pipeline and later confirmed that it had been completed on November 3, 2007.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain records of the identification of the circumstances in which a close-interval survey or comparable technology was practicable and necessary to determine the adequacy of cathodic protection on the Running Horse pipeline required by 49 C.F.R. § 195.573(a)(2).

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(b)(1), which states:

§ 195.404 Maps and records.

- (a) . . .
- (b) Each operator shall maintain for at least 3 years daily operating records that indicate—
 - (1) The discharge pressure at each pump station;

Specifically, the Notice alleged that Respondent failed to maintain daily operating records indicating the discharge pressure of its two pump stations, except for the 30-day period prior to the inspection.

Respondent did not contest the allegation in Item 2 of the Notice. In its Response and during the hearing, Navajo explained that it had developed an internal guidance document governing the generation and storage of daily discharge pressure data. The procedure described the process by which the company ensured that daily discharge pressure data for each pump station were to be maintained and kept available for at least three years. Respondent stated that under its prior procedures, these records had been stored in a digitally computerized format that did not permit ready retrieval.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(b)(1) by failing to maintain daily operating records indicating the discharge pressure of its two pump stations, except for the 30-day period prior to the inspection.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), 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. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent failed to demonstrate that it had conducted annual reviews of its procedural manual for operations, maintenance, and emergencies (O&M Manual) at intervals not exceeding 15 months, but at least once each calendar year. Specifically, it alleged that even though Navajo had been operating the Running Horse pipeline system since December 2002, it did not have records reflecting annual O&M Manual reviews for calendar years prior to 2005.

In its Response and at the hearing, Respondent acknowledged that it could not produce the records and explained that from 2002 to 2005, it had relied on a consulting company to perform the required reviews of its O&M Manual but that Navajo was unable to locate documentation of the consultant's inspections. Navajo stated that it had now retained a new consultant to restructure the format of the procedural manual so that it met DOT requirements. Respondent indicated that it had developed an inspection form to be completed by Navajo personnel when reviewing the pipeline's O&M Manual, and a copy of the form was attached to the February 23, 2007 letter.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to demonstrate that it had conducted annual reviews of its O&M Manual at intervals not exceeding 15 months, but at least once each calendar year.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) . . .

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations: . . .

(13) Periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

Specifically, the Notice alleged that Respondent failed to demonstrate that it had periodically reviewed the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and had taken corrective action where deficiencies were found, as required by §195.402(c).

In its Response and during the hearing, Navajo acknowledged that it could not produce any records showing that it had conducted such periodic reviews and explained that it was a small company with only four employees. As such, its communications among employees and its review of operational processes reflected in the O&M Manual had been informal. Respondent stated that it had now developed an inspection form that would be completed by Respondent personnel in the future when reviewing work performed by operator personnel. Such form would be used to assess the effectiveness of the company's procedures for conducting normal operation and maintenance activities, and for taking corrective action when deficiencies were found. Respondent also indicated that it had developed a form to document monthly safety meeting discussions that involved the O&M Manual.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(13) by failing to demonstrate that it had periodically reviewed the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and for taking corrective action where deficiencies were found, as required by §195.402(c).

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(e)(9), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) . . .

(e) *Emergencies.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety when an emergency condition occurs: . . .

(9) Providing for a post accident review of employee activities to determine whether the procedures were effective in each emergency and taking corrective action where deficiencies are found.

Specifically, the Notice alleged that Respondent failed to demonstrate that it had provided for a post-accident review of employee activities to determine whether the company's procedures were effective in each emergency, and that it had taken corrective action where deficiencies were found. At least one accident occurred on this pipeline on October 7, 2004.

In its Response and during the hearing, Navajo acknowledged that it did not have a 2004 record documenting a post-accident review of the October 7, 2004 failure, but stated that meetings were held with its personnel and insurance personnel to review how the company had responded to the accident. Respondent provided a document dated March 30, 2007, documenting the post-accident review of employee activities for the 2004 accident. Respondent contended that this

2007 record constituted compliance with the requirement. I disagree. The requirement to create and maintain records means the record must be created contemporaneously with the required activity. Creating a record two and one-half years after an accident does not meet the regulatory requirement to maintain complete post-accident records.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(e)(9) by failing to demonstrate that it had provided for a post-accident review of employee activities to determine whether the company's procedures were effective in each emergency, and that it had taken corrective action where deficiencies were found.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.403(b), which states:

§ 195.403 Emergency response training.

(a) . . .

(b) At the intervals not exceeding 15 months, but at least once each calendar year, each operator shall:

(1) Review with personnel their performance in meeting the objectives of the emergency response training program set forth in paragraph (a) of this section; and

(2) Make appropriate changes to the emergency response training program as necessary to ensure that it is effective.

Specifically, the Notice alleged that Respondent failed to demonstrate that it had conducted a review with personnel of their performance in meeting the objectives of the company's emergency response training program, and had made appropriate changes to the program as necessary to ensure that it was effective.

In its Response and during the hearing, Navajo acknowledged that it could not produce records of the emergency response training program personnel reviews, but explained that it believed it had been diligent about ensuring that its employees received adequate and effective emergency response training and gave examples of the company's emergency response training and exercises. However, training alone does not meet the regulatory requirements of §195.403(b).

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.403(b) by failing to demonstrate that it had conducted a review with personnel of their performance in meeting the objectives of the emergency response training program, and had made appropriate changes to the emergency response training program as necessary to ensure that it was effective.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.403(c), which states:

§ 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.

Specifically, the Notice alleged that Respondent failed to demonstrate that it had required and verified that its supervisors maintained a thorough knowledge of that portion of the emergency procedures for which they were responsible.

In its Response and during the hearing, Navajo explained that it was committed to effective emergency response training for all of its employees, including supervisors, but acknowledged that it did not document compliance with this requirement during the relevant time period. Respondent provided copies of the forms it had begun using to document this requirement.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.403(c) by failing to demonstrate that it had required and verified that its supervisors maintained a thorough knowledge of that portion of the emergency procedures for which they were responsible.

Item 9: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with §195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. However, if tests at those intervals are impractical for separately protected short sections of bare or ineffectively coated pipelines, testing may be done at least once every 3 calendar years, but with intervals not exceeding 39 months.

Specifically, the Notice alleged that Respondent failed to provide adequate cathodic protection for the Running Horse pipeline, in accordance with §195.573(a)(1). The applicable criteria for cathodic protection are contained in paragraphs 6.2 and 6.3 of NACE Standard RP0169-96 (incorporated by reference). The criteria in paragraph 6.2 include "[a] negative polarized potential (see definitions in Section 2) of at least 850 millivolts (mv) relative to a saturated copper/copper sulfate reference electrode." Other alternative criteria are listed in RP0169-96, but Respondent confirmed that it was not utilizing the alternative criteria. Respondent's records showed that the 850 mv criteria were not being met consistently over the three calendar years preceding the inspection.

In its Response and during the hearing, Navajo provided its cathodic protection survey records for 2004, 2005, and 2006, and contended that they did not support the allegations in the Notice. Respondent contended that the 2004 survey showed only one low pipe-to-soil reading and that the 2005 survey showed low readings at block valves resulting from block valve repairs. Respondent further stated that it did not believe the low pipe-to-soil readings in the 2005 survey were representative of an overall level of cathodic protection on the line and stated that the 2006 survey showed no low pipe-to-soil readings after repair of an anode bed.

I find this argument unpersuasive. According to Respondent's own records, the 2003 annual survey included over 30 readings below the -850 mv criteria, out of approximately 85 total readings. The 2004 survey indicated two readings below the criteria, although there were several readings that were very close to -850-860 mv. For the 2005 annual survey, there were over 20 low readings out of a total of approximately 94. During the September 2005 PHMSA inspection,

there were approximately 11 readings made in the field. Six of the 11 were below the criteria, with low readings at block valves but also at locations where there were no valves. The 2006 annual survey data that Respondent produced subsequent to the 2005 PHMSA inspection were not during the relevant period 2003-2005 and have no bearing on this violation.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(a)(1) by failing to provide adequate cathodic protection for the Running Horse pipeline, in accordance with §195.573(a)(1).

Item 10: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(c), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) . . .

(c) *Rectifiers and other devices.* You must electrically check for proper performance each device in the first column at the frequency stated in the second column.

Device	Check frequency
Rectifier Reverse current switch. Diode. Interference bond whose failure would jeopardize structural protection.	At least six times each calendar year, but with intervals not exceeding 2½ months.
Other interference bond	At least once each calendar year, but with intervals not exceeding 15 months.

Specifically, the Notice alleged that Navajo: (1) failed to maintain records demonstrating that electrical checks of its rectifiers were conducted at least six times each calendar year, but with intervals not exceeding 2½ months, due to its failure to record the day of the month for part of 2004 and all of 2005; and (2) failed to demonstrate that more than four electrical checks were conducted on the rectifiers in 2003.

In its Response and during the hearing, Navajo acknowledged that only four electrical checks were conducted in 2003. However, Respondent contested the allegation that the day of the month that rectifiers were read was not reflected in the 2004 and 2005 records and provided rectifier inspection data showing inspection dates for 2003-2005. These records consisted of tables of individual rectifier readings with handwritten entries, all of which included the day, month and year of the check. Having reviewed these records, I find that Respondent did demonstrate that it conducted electrical checks of its rectifiers at least six times in calendar years 2004 and 2005, with intervals not exceeding 2½ months. I further find, however, that

Respondent failed to provide records demonstrating that more than four electrical checks were conducted on the rectifiers in 2003.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(c) by failing to demonstrate that more than four electrical checks were conducted on the rectifiers in 2003.

Item 11: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) . . .

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by §195.401(b). However, if the deficiency involves a pipeline in an integrity management program under §195.452, you must correct the deficiency as required by §195.452(h).

The Notice alleged that Respondent failed to correct, within a reasonable time, an identified deficiency in its corrosion control system that could adversely affect the safe operation of the pipeline, as required by 49 C.F.R. § 195.401(b), which states:

§ 195.401 General requirements.

(a) . . .

(b) Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it shall correct it within a reasonable time. . . .

Specifically, the Notice alleged that Navajo failed to correct a deficiency in its corrosion control system, in that Rectifier 58 was not operating from August, 2003 until May of 2005, a total of 20 months.

In its Response and during the hearing, Navajo acknowledged that Rectifier 58 was not operating for the cited period of time but contended that there was no deficiency in its corrosion control system. The company contended that because Rectifier 61 was operating approximately three miles away during this period and pipe-to-soil readings taken subsequently met applicable criteria, external corrosion was being controlled. Under §195.573(e), however, deficiencies in corrosion control must be promptly corrected when identified. Respondent's argument that pipe-to-soil readings were sufficient is not persuasive. The pipe-to-soil data for both the March 2004 and May 2005 annual surveys show values ranging from -530 mv to -850 mv in the vicinity of Mile Post (MP) 58, and -780 mv in the area of MP 61.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(e) by failing to correct, within a reasonable time, an identified deficiency in its corrosion control system, in that Rectifier 58 was not operating from August 2003 until May 2005.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

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; the Respondent's ability to pay the penalty and 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 \$230,000 for the violations cited above.

With respect to **Item 1**, the Notice proposed a civil penalty of \$21,000 for Respondent's four violations of 49 C.F.R. § 195.589(c), for failing to maintain records of atmospheric corrosion inspections, exposed pipe examinations, internal surface corrosion inspections, and close-interval survey determinations. In its Response and during the hearing, Navajo explained that it had performed a fully documented inspection of the exposed portions of the pipe for atmospheric corrosion in 2007, developed inspection forms for exposed pipe and internal surface corrosion inspections, and performed a close-interval survey in 2007. Respondent further stated that no significant corrosion or other safety threats had occurred as a result of the non-compliance. Finally, with respect to the assessment of penalties generally in this case, Respondent estimated that it would spend up to \$220,000 to take corrective actions and asserted that the imposition of civil penalties would be inconsistent with other Federal objectives in light of the economic status of the Navajo Nation.

Performing documented inspections is a key part of pipeline safety—particularly those inspections related to an operator's corrosion control program. Effective corrosion control depends on knowing how the adequacy of specific corrosion control measures, such as cathodic protection, is trending over time. Maintaining complete and accurate records is essential for Respondent's managers to be able to perform oversight of the work performed by personnel and contractors. While it is fortunate that no failures occurred, this does not negate the seriousness of the non-compliance.

With respect to financial hardship, Respondent provided no certified final statements or other information demonstrating that the proposed penalty would affect its ability to continue in business. Moreover, to ensure public safety, any company, municipality, or tribal entity that is in the business of transporting hazardous products by pipeline must have sufficient resources to operate in a manner consistent with applicable regulations. Respondent has provided no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this Item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$21,000 for violating 49 C.F.R. § 195.589(c).

With respect to **Item 2**, the Notice proposed a civil penalty of \$28,000 for Respondent's violation of 49 C.F.R. § 195.404(b)(1), for failing to maintain daily operating records indicating the discharge pressure of its two pump stations, except for the 30-day period prior to the 2005

PHMSA inspection. Maintaining daily operating records is a key part of pipeline safety—particularly those records related to operating pressures. Operating decisions that potentially impact safety often depend on the availability of accurate pressure records and discharge logs. We acknowledge that Respondent has taken appropriate corrective action following the 2005 PHMSA inspection and has purchased the software necessary to enable its employees to retrieve historical data and to generate reports showing daily discharge pressures. Respondent, however, has provided no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this Item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$28,000 for violating 49 C.F.R. § 195.404(b)(1).

With respect to **Item 5**, the Notice proposed a civil penalty of \$21,000 for Respondent's violation of 49 C.F.R. § 195.402(e)(9), for failing to demonstrate that it had provided for a post-accident review of employee activities to determine whether the company's procedures were effective in each emergency, and had taken corrective action where deficiencies were found. Applying lessons learned from accidents is an important part of preventing similar accidents from occurring in the future. The post-accident review process is important enough that it is specified directly in the code. The failure to document post-accident reviews reduces the chance that deficiencies will be identified and corrective action taken. Respondent has provided no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this Item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$21,000 for violating 49 C.F.R. § 195.402(e)(9).

With respect to **Item 6**, the Notice proposed a civil penalty of \$28,000 for Respondent's violation of 49 C.F.R. § 195.403(b), for failing to demonstrate that it had conducted a review with company personnel of their performance in meeting the objectives of the company's emergency response training program, and had made appropriate changes to its emergency response training program, as necessary, to ensure that it was effective. Pipeline operators are obligated to have effective emergency response training programs to ensure that their personnel respond appropriately in the event of a spill or other emergency. Reviewing the training objectives with company personnel ensures that all affected personnel are adequately trained and fully involved with their emergency response roles. Respondent has provided no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this Item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$28,000 for violating 49 C.F.R. § 195.403(b).

With respect to **Item 7**, the Notice proposed a civil penalty of \$21,000 for Respondent's violation of 49 C.F.R. § 195.403(c), for failing to demonstrate that it had required and verified that its supervisors maintained a thorough knowledge of that portion of the emergency procedures for which they were responsible. Supervisors have an extremely important role in emergency response and the failure to ensure that they are fully knowledgeable about emergency procedures can potentially put other personnel at risk during an emergency. Respondent has provided no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this Item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$21,000 for violating 49 C.F.R. § 195.403(c).

With respect to **Item 9**, the Notice proposed a civil penalty of \$36,000 for Respondent's

violation of 49 C.F.R. § 195.573(a)(1), for failing to provide adequate cathodic protection for the Running Horse pipeline. In its Response and during the hearing, Navajo explained that in 2007 it authorized Tierra Corrosion Control Cathodic Protection to perform an evaluation of Navajo's cathodic protection system and provide recommendations for improvements. As a result of Tierra's evaluation, ground beds were replaced at the Sisti and Aneth stations, and at Mile Post 58 in the summer of 2007. Additionally, seven new leads were installed and adjustments were performed on the rectifiers, with some being replaced. Interface coating was also replaced on certain portions of the pipeline. As a result of these improvements, the annual surveys for 2007 and 2008 met the applicable cathodic protection criteria.

The failure to provide adequate cathodic protection can directly result in corrosion and potentially compromise the integrity of the pipeline. While it is fortunate that no failures occurred, this does not negate the seriousness of the non-compliance. We acknowledge that Navajo took appropriate corrective action in 2007. Respondent, however, has provided no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this Item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$36,000 for violating 49 C.F.R. § 195.573(a).

With respect to **Item 10**, the Notice proposed a civil penalty of \$36,000 for Respondent's violation of 49 C.F.R. § 195.573(c), for failing to perform electrical checks of its rectifiers at least six times each calendar year, but with intervals not exceeding 2½ months. Specifically, the Notice alleged that Navajo failed to demonstrate that (1) it had performed such checks for part of 2004 and all of 2005, since it lacked records showing the actual inspection dates, and (2) it had performed more than four electrical checks on the rectifiers in 2003. In its Response and during the hearing, Navajo provided rectifier inspection data that showed the inspection dates for 2003-2005. These records consisted of tables of individual rectifier readings, with handwritten entries showing the day, month and year of each check. As indicated above, Respondent was persuasive with respect to the day of the month for the electrical checks conducted in 2004 and 2005. Therefore, I find that a 50 percent reduction in the civil penalty amount proposed in the Notice for this Item is warranted. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$18,000 for violating 49 C.F.R. § 195.573(a), by failing to demonstrate that more than four electrical checks were conducted on the rectifiers in 2003.

With respect to **Item 11**, the Notice proposed a civil penalty of \$39,000 for Respondent's violation of 49 C.F.R. § 195.573(e), for failing to correct a deficiency in corrosion control, as required by § 195.401(b). As noted above, I found that Navajo failed to correct a deficiency in Rectifier 58, which was not operating from August 2003 until May 2005. Key corrosion control components such as rectifiers are placed at locations where the system designers determine that impressed current should be applied to the pipe. Pipeline operators are obligated to promptly repair rectifiers whenever they become inoperative. In its Response and during the hearing, Navajo explained that corrective action had been taken and stated that no corrosion had occurred. While it is fortunate that corrosion did not occur, subsequent determinations that the pipe was not adversely affected does not negate the non-compliance. Respondent has provided no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this Item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$39,000 for violating 49 C.F.R. § 195.573(e).

For the reasons discussed above, I assess Respondent a total reduced civil penalty of **\$212,000**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$212,000 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 United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1-7 and 9-11 in the Notice. 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.

The Director has indicated that Respondent has taken the following actions addressing the proposed compliance items:

- Conducted a documented atmospheric corrosion inspection and developed inspection forms for exposed pipe and internal surface corrosion inspections;
- Reviewed and followed the written procedures for monitoring external corrosion control in accordance with § 195.573(a)(2), including identifying the circumstances in which a close-interval survey or comparable technology is necessary to determine the adequacy of cathodic protection;
- Developed a written process to ensure daily operating records of pump discharge pressures are maintained;
- Developed an inspection form to be used for annual reviews of the manual for operations, maintenance and emergencies;
- Initiated periodic reviews of work performed by operator personnel to determine the effectiveness of written procedures and correct deficiencies and has developed an inspection form to document the reviews;

- Reviewed the written procedures for post-accident evaluations of employee activities to determine the effectiveness of the procedures and developed an inspection form to document the evaluations;
- Reviewed the performance of personnel in meeting the objectives of the emergency response training program to identify the need for any changes and developed an inspection form to document the reviews;
- Ensured that supervisors are maintaining a thorough knowledge of the emergency response procedures for which each supervisor is responsible and developed an inspection form to document the requirement;
- Evaluated why the cathodic protection system did not provide adequate protection meeting the criteria referenced in § 195.571 and submitted a written plan to conduct the evaluation and remediate the deficiencies to the Director;
- Reviewed procedures for and conducted required rectifier inspections and developed an inspection form to document the inspections that includes instructions for recording inspection dates, including day of the month, and specifies the frequency of inspections required under § 195.573;
- Corrected identified inadequacies in the corrosion control system, including rectifiers that are not functioning properly, in accordance with the requirements of § 195.573(e); and
- Maintained documentation of the safety improvement costs associated with fulfilling this compliance order and submitted the total to the Director.

These actions indicate that Respondent has achieved compliance with the requirements in Items 1-7, and 9-11 cited in the Notice. Accordingly, it is unnecessary to include compliance terms in this Order.

WARNING ITEM

With respect to Item 8, the Notice alleged a probable violation of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 195.420(c) (Notice Item 8) — Respondent's alleged failure to provide the block valves on both sides of the river and the NAPI valve with protection from vandalism.

Respondent presented information in its Response showing that it had taken action to address the cited item. Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that a probable violation of 49 C.F.R. § 195.420(c) (Notice Item 8) has occurred and Respondent is hereby advised to correct such conditions. In the event that OPS finds a violation for this item in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, the petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590. A copy of the petition should also be sent to: Assistant Chief Counsel for Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590. PHMSA will accept petitions received no later than 20 days after receipt of service of the Final Order by the Respondent and must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued