



Holme Roberts & Owen LLP
Attorneys at Law

BOULDER

July 28, 2006

VIA FEDERAL EXPRESS

COLORADO SPRINGS

Stacey Gerard
Associate Administrator for Pipeline Safety
U.S. Department of Transportation
Pipeline and Hazardous Material Safety Administration
400 Seventh Street, S.W., Room 2103
Washington, D.C. 20590

DENVER

Re: CPF No. 5-2004-5030

LONDON

Dear Ms. Gerard:

Enclosed please find the original and two copies of Belle Fourche Pipeline Company's Petition for Reconsideration in regard to the above referenced matter.

LOS ANGELES

Very truly yours,

Colin G. Harris

MUNICH

CGH/cp

SALT LAKE CITY

Enclosures

SAN FRANCISCO

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

In the Matter of)
)
)

Belle Fourche Pipeline Company,)
)
)

Petitioner)
)
_____)

CPF No. 5-2004-5030

PETITION FOR RECONSIDERATION

Petitioner Belle Fourche Pipeline Company (BFP), respectfully submits this Petition for Reconsideration regarding the Final Order in the matter styled CPF No. 5-2005-5030. As grounds, BFP states as follows:

1. FACTUAL BACKGROUND

BFP owns and operates crude oil pipelines in Wyoming, North Dakota and Montana. In May 2004, representatives of the Office of Pipeline Safety (OPS) “conducted an Integrity Management (IM) Inspection of the Belle Fourche Pipeline Company” in Casper, Wyoming. *See* Notice of Probable Violation Proposed Civil Penalty Proposed Compliance Order and Notice of Amendment (the “NPV”), at 1. (Attached as Exhibit A).

Generally, under 49 CFR § 195.452, operators are required to identify pipeline segments that could affect a “high consequence area” and perform certain risk ranking assessments associated with those segments. At the time of the May 2004 inspection, BFP had already completed these identifications and risk assessments. *See* Affidavit of Robert Stamp, ¶ 3. (Attached as Exhibit B). However, BFP, at the time of the May 2004 inspection, also was integrating its IM plan with that of a related company that had recently been formed to acquire different pipeline assets in Wyoming, Montana and North Dakota, named Bridger Pipeline LLC

(Bridger Pipeline). *Id.* Bridger Pipeline operates another related, but separate company called Butte Pipeline Company (Butte Pipeline). BFP is a separate and distinct corporate entity from Bridger Pipeline and Butte Pipeline. *Id.* It does not own either company, nor does it operate their respective pipelines. *Id.* In fact, a review of OPS records will confirm that the three companies have separate OPS identification numbers.

Following the May 2004 inspection, OPS issued the NPV to BFP on September 30, 2004. OPS did not issue a NPV to Bridger Pipeline or Butte Pipeline in connection with the May 2004 inspection. The NPV has three relevant components. First, referring to certain segments of the BFP, Butte and Poplar (Bridger) pipelines, the NPV alleges that BFP did not perform a seam failure susceptibility analysis for low-frequency ERW (electric-resistance welded) pipe, citing to 195.452(c) (1) (i). NPV at 3. The NPV has a proposed compliance plan requiring that BFP perform such an analysis. *Id.* at 12. Second, the NPV proposes a penalty in the amount of \$50,000 for the alleged failure to complete unspecified “risk analysis processes.” *Id.* at 3, 10. Finally, the NPV contains a “notice of amendment” requiring that various alleged deficiencies in BFP’s IM plan be corrected. *Id.* at 1-12.

On November 4, 2004, BFP responded in writing to the NPV. *See* Affidavit of Manuel Lojo (Exhibit C); *see also* Letter from Manuel Lojo to Chris Hoidal, November 4, 2004 (the “Response Letter”) (Attached to Exhibit C). OPS did not respond to this matter until issuance of the Final Order, 23 months after issuance of the NPV.

2. AS TO ITEM 2(a), NO PENALTY SHOULD BE ASSESSED BECAUSE THE FINAL ORDER IS BASED ON THE INCORRECT ASSUMPTION THAT BFP DID NOT RESPOND TO THE NPV AND BECAUSE BFP HAD COMPLIED WITH THE REGULATION AT ISSUE AT THE TIME OF THE MAY 2004 INSPECTION

The Final Order states that BFP has waived its rights to contest the NPV because it did not respond to the NPV, and did not provide information warranting a reduction in the penalty.

These findings are incorrect. Manual Lojo is an attorney employed by BFP who is responsible for responding to matters involving OPS. Exhibit C, ¶ 1. Mr. Lojo has considerable experience in timely responding to pipeline matters and regulatory deadlines. Id. ¶ 2

Attached as Exhibit 1 to Mr. Lojo's affidavit is the Response Letter he prepared (with the assistance of Mr. Stamp, the BFP engineer) and sent in response to the September 2004 NPV at issue in this case. On its face, the letter responds to and specifically contests the entire proposed \$50,000 penalty, and provides the reason for contesting the penalty. In addition, Mr. Lojo recalls that he prepared the Response Letter with the assistance of Mr. Stamp, (the BFP engineer) who provided factual information about the technical aspects of the NPV. Exhibit C, ¶ 3. In addition, Mr. Lojo's file contains information including an email that and other documents related to his work in preparing a response to the NPV. Id.

Given the length of time it has taken for OPS to issue a Final Order in this matter, Mr. Lojo understandably does not have a specific recollection about how he directed that the Response Letter be sent to the OPS. However, it was his customary practice then and still is today to send any communications to regulatory agencies such as the OPS by expedited means, and Mr. Lojo believes that he in fact sent the letter by expedited means on November 4, 2004. Id. ¶4. The letter itself and Mr. Lojo's affidavit testimony demonstrate that, contrary to the findings in the Final Order, BFP did respond to the NPV and did contest the penalty. Since the Final Order (and the accompanying penalty assessment) is based on the mistaken assumption that BFP did not respond, no penalty should be assessed.

The Final Order states that BFP did not seek a reduction in the penalty. In fact, BFP requested that the penalty be eliminated because BFP was not in violation of the regulation at issue. The penalty is based on Item 2(a) of the NPV. This item alleges that BFP "had not yet

completed their risk analysis process. Therefore, the baseline assessment was not based on the specific risk factors identified for each segment.” NPV at 3. Although not specified, the NPV’s reference to “risk analysis process” apparently was intended to invoke those parts of 49 C.F.R. § 195.452 that require identification of “high consequence areas” and a schedule of assessment based on risk. The NPV apparently alleges that in failing to conduct the “risk analysis,” BFP failed to comply with 49 C.F.R. § 195.452 (c) (1) (iii), which requires that an operator evaluate “risk factors” in its baseline assessment plan. However, as stated in the Response Letter, and confirmed by Mr. Stamp, BFP in fact had completed the required “risk analysis process” as of the inspection date of May 2004. Response Letter at 1; Exhibit B, ¶ 3. Consequently, BFP did not violate the applicable sections of 49 C.F.R. § 195.452 upon which the penalty apparently is based. Because OPS has never considered this information which was submitted to it in the Response Letter, and because the information demonstrates that no violation occurred, the penalty should be eliminated.¹

To the extent BFP and OPS disagree about whether there was compliance with the susceptibility analysis regulations as of May 2004, a \$50,000 penalty is still excessive. BFP had made good faith efforts to comply by timely completing an IM plan. Further, as noted in the Response Letter, BFP clearly recognized its obligations to conduct “risk analysis” and the plan contained a schedule of assessment based on risk characteristics; BFP did not simply disregard its regulatory obligations. No environmental harm resulted from the alleged violation. BFP did

¹ The inspectors may have based the NPV, at least in part, on the alleged status of the Bridger Pipeline and Butte Pipeline IM plans at the time of the May 2004 inspection. Although a combined plan was in development at that time, BFP is a separate and distinct corporate entity from Bridger Pipeline and Butte Pipeline, neither owning nor operating their lines. Exhibit B, ¶ 3. To the extent that OPS believes that the May 2004 inspection revealed alleged violations of OPS regulations regarding those entities and their assets, BFP, as a separate corporate entity, cannot be held liable for any such alleged violations.

not realize any economic benefit because it committed the resources to prepare an IM plan and perform risk analyses. Finally, given the circumstances about the confusion over which plan OPS was reviewing, it would be unjust and inequitable to impose anything but a de minimis penalty, to the extent a violation occurred (which BFP disputes).

3. AS TO ITEM 2(b), BFP HAD COMPLIED WITH THE REGULATION AT ISSUE AT THE TIME OF THE MAY 2004 INSPECTION

With regard to Item 2(b), OPS, citing 49 C.F.R. § 195.452 (c) (1) (i), ordered BFP to address the requirements of that regulation relating to potential seam failures in certain kinds of pipe (low frequency electronic resistance welded pipe, or “ERW” pipe). Specifically, the NPV alleges that BFP’s IM program did not include a seam failure susceptibility analysis on ERW pipe, which OPS apparently contends was necessary “prior to selecting baseline integrity assessment methods for applicable segments.” NPV at 3.

As stated in the Response Letter, BFP informed OPS that it believed it had a complete IM plan at the time of the May 2004 inspection, and that it was unclear which plan (given the integration that was ongoing at the time) was the subject of the NPV.² Because OPS incorrectly assumed that BFP failed to respond to the NPV, OPS failed to consider this information. Specifically, with regard to seam failure susceptibility analysis, the applicable regulations do not require actual seam failure baseline assessments to be completed until (as applicable to BFP) 2005 (for at least 50 percent of the line) and 2009 for the remainder of the line. 49 C.F.R. § 195.452 (d). As Mr. Stamp explains, BFP addressed the requirements by electing to reduce maximum operating pressure on the relevant segments by 80 percent, and did so as of January

² In support of Item 2(b), the NPV references releases of oil from two line segments that are not owned or operated by Belle Fourche. Belle Fourche again emphasizes that it cannot be held liable for alleged deficiencies in the plans of other companies, even if they are related, nor can such incidents be attributed to it.

2005. Exhibit C ¶ 5. Thus, BFP contends that (as stated in the Response Letter) it was in compliance as of the date of the inspection (because it had completed its IM plan), and is fully compliant today, regarding the seam failure susceptibility requirements. (In fact, by reducing maximum operating pressure by 80 percent as of January 2005, BFP is ahead of schedule). For these reasons, the compliance order (and any finding of violation upon which it may be based) should be rescinded.

4. THE ORDER TO AMEND SHOULD BE WITHDRAWN TO THE EXTENT ANY OF THE REQUIREMENTS ARE BASED ON DEFICIENCIES ON PLANS OTHER THAN THE BFP PLAN

As noted in the Response Letter, there was confusion during the May 2004 inspection about which plan was being reviewed. This arose because BFP was integrating its completed plan (as to its assets) with that of a recently formed, related pipeline company, such that the combined plan was a work in progress. Thus, it was then and remains unclear which plan and which assets (given the integration that was ongoing at the time) are the subject of the NPV. Since the NPV was issued only to BFP, BFP requests that any items in the NPV that were not directed at BFP's plan or assets be withdrawn.

Dated this 20 day of July, 2006.

Respectfully submitted,

HOLME ROBERTS & OWEN LLP



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Belle Fourche Pipeline Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of July, 2006, a true and correct copy of the foregoing **Petition for Reconsideration** was served by U.S. mail, postage prepaid, as follows:



Myrna Rose



U.S. Department
of Transportation

Research and
Special Programs
Administration

Western Region
Pipeline Safety

12300 W. Dakota Avenue
Suite 110
Lakewood, CO 80228-2585

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
PROPOSED COMPLIANCE ORDER
AND
NOTICE OF AMENDMENT**

**CERTIFIED - RETURN RECEIPT REQUESTED #7002-
0860-0003-4827-2566**

September 30, 2004

Mr. Hank True
President
Belle Fourche Pipeline Company
895 W. River Cross Road
Casper, WY 82602

CPF No. 5-2004-5030

Dear Mr. True:

Between May 17 and 19, 2004, representatives of the Office of Pipeline Safety (OPS), Western Region, pursuant to Chapter 601 of 49 United States Code, conducted an Integrity Management (IM) Inspection of the Belle Fourche Pipeline Company (BFPL) at your offices in Casper, Wyoming.

As a result of the inspection, it appears that you have committed probable violations, as noted below, of pipeline safety regulations, Title 49, Code of Federal Regulations, Part 195. The probable violations are as follows:

1. §195.452 Pipeline integrity management in high consequence areas.

(f) What are the elements of an integrity management program? An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program:

(1) A process for identifying which pipeline segments could affect a high consequence area;

- 1(a). BFPL has not considered which facilities could affect a high consequence area (HCA) in their IM program. BFPL must amend their IM program to include an evaluation to determine if their individual pipeline facilities could affect an HCA. This analysis must include potential facility release volumes.
- 1(b). Belle Fourche Pipeline Company (BFPL) incorrectly defines a segment that could affect an HCA as that section of pipe between two pipeline appurtenances such as valves or pump stations that contains pipeline that could affect an HCA. As noted in FAQ 3.2 "As used in the rule, a segment that can affect an HCA refers to a continuous portion of a pipeline system in which the released commodity from a failure occurring anywhere between the two end points of the segment could migrate to and affect an HCA. The segment sizes should be defined by whether or not a spill could impact the HCA and not by pre-set definitions used by the operator." BFPL must amend their IM program to properly define the boundaries of those segments that could affect an HCA. A properly defined pipeline segment could affect an HCA at any location between its end points.
- 1(c). BFPL has arbitrarily determined the area of impact from a worst case discharge scenario to be one mile from the pipeline, for on-land spills. BFPL must amend their IM program to include technical justification showing that their use of the one mile area of impact for on-land spills is conservative.
- 1(d). BFPL has arbitrarily determined that any segment of pipeline that crosses a stream with an HCA on it, could affect that HCA. BFPL must amend their IM program to include technical justification for the assumption that any segment of pipeline that crosses a stream with an HCA is considered to affect that HCA.

2. §195.452 Pipeline integrity management in high consequence areas.

(c) What must be in the baseline assessment plan?

(1) An operator must include each of the following elements in its written baseline assessment plan:

- (i) The methods selected to assess the integrity of the line pipe. An operator must assess the integrity of the line pipe by any of the following methods. The methods an operator selects to assess low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure must be capable of assessing seam integrity and of detecting corrosion and deformation anomalies.**

(A) Internal inspection tool or tools capable of detecting corrosion and deformation anomalies including dents, gouges and grooves;

(B) Pressure test conducted in accordance with subpart E of this part; or

(C) Other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 90 days before conducting the assessment, by sending a notice to the address or facsimile number specified in paragraph (m) of this section.;

(ii) A schedule for completing the integrity assessment;

(iii) An explanation of the assessment methods selected and evaluation of risk factors considered in establishing the assessment schedule.

(2) An operator must document, prior to implementing any changes to the plan, any modification to the plan, and reasons for the modification.

- 2(a). At the time of this inspection BFPL had not yet completed their risk analysis process. Therefore, the baseline assessment schedule was not based on the specific risk factors identified for each segment.
- 2(b). Historical OPS Accident Report records show that the 10-inch portion of the Poplar Pipeline, the 16-inch Butte Pipeline, and the Belle Fourche 12-inch Donkey Creek to Guernsey Pipeline all appear to have had pipeline releases associated with a long seam failure. BFPL's IM program did not include a seam failure susceptibility analysis on all pipeline segments containing low frequency electric resistance welded pipe (LFERW) and lap welded pipe to determine which segments are susceptible to seam failure prior to selecting baseline integrity assessment methods for applicable segments.
- 2(c). BFPL must amend their IM program baseline assessment plan (BAP) so that it consolidates all portions of the BFPL system and includes 1) the required assessment schedule; 2) an explanation of assessment methods selected and; 3) the risk analysis results used to establish the schedule.
- 2(d). BFPL must amend their IM program BAP to include a process for revising the BAP and appropriately documenting those revisions.

3. §195.452 Pipeline integrity management in high consequence areas.

(d) When must operators complete baseline assessments? Operators must complete baseline assessments as follows:

(1) Time periods. Complete assessments before the following deadlines:

If the pipeline is	Then complete baseline assessments not later than the following date according to a schedule that prioritizes assessments	And assess at least 50 percent of the line pipe on an expedited basis, beginning with the highest risk pipe, not later than:
Category 1	March 31, 2008	September 30, 2004.
Category 2	February 17, 2009	August 16, 2005
Category 3	Date the pipeline begins operation.	Not applicable.

3(a). BFPL's IM program baseline assessment schedule would result in only approximately 37% of Category 2 pipe being assessed by August 8, 2005.

3(b). BFPL must amend their IM program baseline assessment schedule to ensure that 50% of Category 2 pipe will be assessed by August 8, 2005.

4. §195.452 Pipeline integrity management in high consequence areas.

(d) When must operators complete baseline assessments? Operators must complete baseline assessments as follows:

(3) Newly-identified areas.

(i) When information is available from the information analysis (see paragraph (g) of this section), or from Census Bureau maps, that the population density around a pipeline segment has changed so as to fall within the definition in §195.450 of a high population area or other populated area, the operator must incorporate the area into its baseline assessment plan as a high consequence area within one year from the date the area is identified. An operator must complete the baseline assessment of any line pipe that could affect the newly-

identified high consequence area within five years from the date the area is identified.

(ii) An operator must incorporate a new unusually sensitive area into its baseline assessment plan within one year from the date the area is identified. An operator must complete the baseline assessment of any line pipe that could affect the newly-identified high consequence area within five years from the date the area is identified.

BFPL must amend their IM program to include a process for the incorporation of changes that may cause new segments of their pipeline to affect an HCA.

5. §195.452 Pipeline integrity management in high consequence areas.

(f) What are the elements of an integrity management program? An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program:

(8) A process for review of integrity assessment results and information analysis by a person qualified to evaluate the results and information (see paragraph (h)(2) of this section).

5(a). BFPL must amend their IM program to include training and qualification requirements for personnel performing key integrity management functions (e.g., review of assessment results, risk analysis).

5(b). BFPL must amend their IM program to include criteria for 1) vendor in-line-inspection (ILI) tool tolerances; 2) vendor reporting requirements; 3) operator/vendor process for resolution of variances and problems; 4) vendor ILI assessment personnel qualifications. One possible solution is to develop vendor specifications.

6. §195.452 Pipeline integrity management in high consequence areas.

(g) What is an information analysis? In periodically evaluating the integrity of each pipeline segment (paragraph (j) of this section), an operator must analyze all available information about the integrity of the entire pipeline and the consequences of a failure. This information includes:

(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

BFPL must amend their IM program to include a process to correlate ILI indications with other data such as cathodic protection (CP) monitoring, one-call records, etc.

7. §195.452 Pipeline integrity management in high consequence areas.

(f) What are the elements of an integrity management program? An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program:

(4) Criteria for remedial actions to address integrity issues raised by the assessment methods and information analysis (see paragraph (h) of this section);

- 7(a). BFPL must amend their IM program to include processes for validating assessment results and for making tool tolerance adjustments resulting from validation activities.
- 7(b). BFPL must amend their IM program to include a method for determining the amount of immediate repair pressure reduction, or provide guidance to use an alternate 20% pressure reduction, when ASME/ANSI B31.4 451.7 does not apply.
- 7(c). BFPL must amend their IM program to include a process for the prioritization and scheduling of remediation activities resulting from assessment activities; [Ref. §192.452(h)(3)]
- 7(d). BFPL must amend their IM program to include procedures to notify OPS if the remediation schedule can not be met and safety can not be provided through a temporary reduction in pressure.

8. §195.452 Pipeline integrity management in high consequence areas.

(e) What are the risk factors for establishing an assessment schedule (for both the baseline and continual integrity assessments)?

(1) An operator must establish an integrity assessment schedule that prioritizes pipeline segments for assessment (see paragraphs (d)(1) and (j)(3) of this section). An operator must base the assessment schedule on all risk factors that reflect the risk conditions on the pipeline segment. The factors an operator must consider include, but are not limited to:

- (i) Results of the previous integrity assessment, defect type and size that the assessment method can detect, and defect growth rate;**

- (ii) Pipe size, material, manufacturing information, coating type and condition, and seam type;
- (iii) Leak history, repair history and cathodic protection history;
- (iv) Product transported;
- (v) Operating stress level;
- (vi) Existing or projected activities in the area;
- (vii) Local environmental factors that could affect the pipeline (e.g., corrosivity of soil, subsidence, climatic);
- (viii) geo-technical hazards; and (ix) Physical support of the segment such as by a cable suspension bridge.

(2) Appendix C of this part provides further guidance on risk factors.

- 8(a). BFPL must amend their IM program risk analysis process to ensure risk factors reflect the risk conditions on the pipeline segment. The factors an operator must consider include, but are not limited to all of the risk factors listed under §195.452(e)(1) .
- 8(b). BFPL must amend their IM program risk analysis process to ensure that the dominant causes of risk are readily identifiable.
- 8(c). BFPL must amend their IM program risk analysis process to ensure that probability of failure (POF) categories are not weighted equally, but instead properly reflect system-specific and industry threat history.
- 8(d). BFPL must amend their IM program risk analysis process to ensure that consequence of failure (COF) categories weight public safety and environmental considerations appropriately and that do not over emphasize non-safety considerations such as business impacts.
- 8(e). BFPL must amend their IM program risk analysis process to ensure that the application of the risk analysis process is to pipeline segments that could affect an HCA and not to pipeline sections that have in their length one or more pipeline segment(s) that could affect HCAs.
- 8(f). BFPL must amend their IM program risk analysis process to include the application of the risk analysis process to all pipeline facilities.

9. §195.452 Pipeline integrity management in high consequence areas.

(i) What preventive and mitigative measures must an operator take to protect the high consequence area?

- 9(a). BFPL must amend their IM program preventative and mitigative measures to include a determination of the likelihood of a pipeline release occurring and how such a release could affect a high consequence area. At a minimum the following risk factors shall be

considered; terrain surrounding the pipeline segment, including drainage systems such as small streams and other smaller waterways that could act as a conduit to the high consequence area, elevation profile, characteristics of the product transported, amount of product that could be released, possibility of a spillage in a farm field following the drain tile into a waterway, ditches along side a roadway the pipeline crosses, physical support of the pipeline segment such as by a cable suspension bridge, exposure of the pipeline to operating pressure exceeding established maximum operating pressure.

- 9(b). BFPL must amend their IM program to include an evaluation of potential preventative and mitigative measures to prevent or minimize the likelihood of a pipeline release. The preventative and mitigative measures may include, but are not limited to; implementing damage prevention best practices, better monitoring of cathodic protection where corrosion is a concern, establishing shorter inspection intervals, installing emergency flow restriction devices (EFRDs) on the pipeline segment, modifying the systems that monitor pressure and detect leaks, providing additional training to personnel on response procedures, conducting drills with local emergency responders and adopting other management controls.
- 9(c). BFPL must amend their IM program preventative and mitigative measures to include a process to evaluate the capability of leak detection on their system and a process to modify their leak detection capability, as necessary, to protect high consequence areas. The evaluation process must, at least, consider, the following factors—length and size of the pipeline, type of product carried, the pipeline's proximity to the high consequence area, the swiftness of leak detection, location of nearest response personnel, leak history, and risk assessment results.
- 9(d). BFPL must amend their IM program preventative and mitigative measures to include an analytical process for determining if an EFRD is needed on a pipeline segment to protect a high consequence area in the event of a hazardous liquid pipeline release. At a minimum this analysis shall consider the following factors—the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline segment and the high consequence area, and benefits expected by reducing the spill size.

10. §195.452 Pipeline integrity management in high consequence areas.

(j) What is a continual process of evaluation and assessment to maintain a pipeline's integrity?

(4) Variance from the 5-year intervals in limited situations-

(i) Engineering basis. An operator may be able to justify an engineering basis for a longer assessment interval on a segment of line pipe. The

justification must be supported by a reliable engineering evaluation combined with the use of other technology, such as external monitoring technology, that provides an understanding of the condition of the line pipe equivalent to that which can be obtained from the assessment methods allowed in paragraph (j)(5) of this section. An operator must notify OPS 270 days before the end of the five-year (or less) interval of the justification for a longer interval, and propose an alternative interval. An operator must send the notice to the address specified in paragraph (m) of this section.

(ii) **Unavailable technology.** An operator may require a longer assessment period for a segment of line pipe (for example, because sophisticated internal inspection technology is not available). An operator must justify the reasons why it cannot comply with the required assessment period and must also demonstrate the actions it is taking to evaluate the integrity of the pipeline segment in the interim. An operator must notify OPS 180 days before the end of the five-year (or less) interval that the operator may require a longer assessment interval, and provide an estimate of when the assessment can be completed. An operator must send a notice to the address specified in paragraph (m) of this section.

(5) **Assessment methods.** An operator must assess the integrity of the line pipe by any of the following methods. The methods an operator selects to assess low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure must be capable of assessing seam integrity and of detecting corrosion and deformation anomalies.

(iii) **Other technology** that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify OPS 90 days before conducting the assessment, by sending a notice to the address or facsimile number specified in paragraph (m) of this section.

10(a). BFPL must amend their IM program to include processes for the justification of the reassessment interval for each assessment section. Five years is not a default reassessment interval. The reassessment interval must be justified.

10(b). BFPL must amend their IM program to include provisions for notifications to OPS for 1) reassessment variances and 2) the use of other technology, as needed.

11. §195.452 Pipeline integrity management in high consequence areas.

(f) **What are the elements of an integrity management program?** An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of

consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program:

(7) Methods to measure the program's effectiveness (see paragraph (k) of this section);

BFPL must amend their IM program to include a monitoring and evaluation process for determining the program's effectiveness in assessing and evaluating the integrity of each pipeline segment and in protecting the high consequence areas.

Following is an additional matter reviewed during the inspection, which revealed an area of concern. We hope that you will consider and address this item of concern to further improve your present level of safety:

One ILI assessment on the Butte system had been conducted by Shell prior to BFPL acquiring the line, but the final vendor report was not received until after the acquisition was completed. On 52% wall thickness anomaly was identified in the final ILI report, with a 180-day remediation period that had not yet expired at the time of this inspection.

Under 49 United States Code, §60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations, and it is recommended that you be preliminarily assessed a civil penalty of \$50,000.00 for Item 2(a).

Regarding Item 3(a), we have reviewed the circumstances and supporting documents involved in this case, and have decided not to assess you a civil penalty. We advise you, however, that should you not correct the circumstances leading to this violation, we will take enforcement action when and if the continued violations come to our attention.

Regarding Items 2(b) however, pursuant to 49 United States Code §60118, the Office of Pipeline Safety proposes to issue Belle Fourche Pipeline Company a compliance order in the form of the Proposed Compliance Order that is attached to and made a part of this Notice of Probable Violation.

Also attached to and made a part of this Notice of Probable Violation is an enclosed description of the courses of action available to you in responding to this Notice. Please note that if you elect to make a response, you must do so within thirty (30) days of receipt of this Notice, or waive your rights under 49 CFR §190.209. No response or a response that does not contest the allegations in the Notice authorizes the Director, OPS to find the facts to be as alleged herein and to issue appropriate orders. The thirty (30) day response period may be extended for good cause shown if the request for extension is submitted within the original thirty (30) day period.

Regarding Items 1(a), 1(b), 1(c), 1(d), 2(c), 2(d), 3(b), 4, 5(a), 5(b), 6, 7(a), 7(b), 7(c), 7(d), 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 9(a), 9(b), 9(c), 9(d), 10(a), 10(b), and 11 as provided in 49 CFR §190.237, this notice serves as your notification that this office considers your procedures/plans inadequate. Under 49 CFR §190.237, you have a right to submit written comments or request an informal hearing. You must submit written comments or a request for a hearing within 30 days after receipt of this notice. After reviewing the record, the Associate Administrator for Pipeline Safety will determine whether your plans or procedures are adequate. The criteria used in making this determination are outlined in 49 CFR §190.237. If you do not wish to contest this notice, please provide your revised procedures within 30 days of receipt of this notice. When appropriate procedures have been prepared, submit them to:

Director, Western Region
Office of Pipeline Safety
Research and Special Programs Administration
12300 W. Dakota Avenue, Suite #110
Lakewood, CO 80228

If you have any questions regarding these matters, please contact me at (720) 963-3160. Please refer to CPF No. 5-2004-5030 in any correspondence or communication on this matter.

Sincerely,



Chris Hoidal, P.E.

Director, Western Region

Enclosures

cc: Compliance Registry (3)
DPS-28 (J. Davis)

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code, §60118, the Office of Pipeline Safety proposes to issue to Belle Fourche Pipeline Company (BFPL), a compliance order incorporating the following requirements to assure the compliance of BFPL with the pipeline safety regulations applicable to its operations.

BFPL must, in complying with each proposed compliance item, ensure that the required processes and procedures have the four characteristics identified as (a) through (d) below. The proposed items all relate to the need for BFPL to improve its Integrity Management Program (IM program) documentation. OPS recognizes that a number of program elements are still in the development stage, and that documentation will continue to evolve as methods are fully developed and defined. However, the procedures as well as the management and analytical process guidance used to implement the program must be of sufficient detail and specificity to:

- (a) Clearly articulate the necessary steps to perform each program element and ensure repeatability,
- (b) Describe the key input information sources,
- (c) Define the process output products, their documentation (including the justification for decisions), and document retention requirements, and
- (d) Specify organizational responsibilities for performing key process steps.

1. With respect to Item 2(b) of the Notice, BFPL must:

Perform a seam failure susceptibility analysis on all pipeline segments containing low frequency electric resistance welded pipe (LFERW) and lap welded pipe to determine which segments are susceptible to seam failure prior to selecting baseline integrity assessment methods for applicable segments. This analysis must conclude which assessment methods are capable of addressing their specific seam issues.

2. **Within 60 days of issuance of the Final Order, Belle Fourche Pipeline Company must complete the above items, and submit the required documentation and procedures to the Director, Western Region, Office of Pipeline Safety, Research and Special Programs Administration, 12300 West Dakota Ave, #110, Lakewood, Colorado 80228.**
3. **BFPL must maintain documentation of the costs associated with fulfilling this compliance order and submit the total to the Director, Western Region, Office of Pipeline Safety.**

Please refer to CPF No. 5-2004-5030 on all correspondence.

I. Procedures for Responding to a Notice of Probable Violation:

The requirements of 49 C.F.R. Part 190, Subpart B govern your response to this Notice of Probable Violation ("Notice").

Within 30 days of receipt of a Notice, the respondent shall respond to the Regional Director who issued the Notice in the following way:

(a) When the Notice contains a proposed civil penalty* --

- (1) Pay the proposed civil penalty, authorizing OPS to make findings and to close the case with prejudice to the respondent. Payment terms are outlined in Attachment A;
- (2) Submit written explanations, information, or other materials regarding the merits of the allegations and seek elimination or mitigation of the proposed civil penalty; or
- (3) Request a hearing as described below to contest the allegations and proposed assessment of a civil penalty.

* Failure of the respondent to respond within 30 days of receipt of a Notice containing a civil penalty constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

(b) When the Notice contains a proposed compliance order --

- (1) Notify the Regional Director that you intend to take the steps in the proposed compliance order;
- (2) Submit written explanations, information, or other materials in answer to the allegations in the Notice and object to or seek clarification of the proposed compliance order items in whole or in part;
- (3) Request a hearing as described below to contest the allegations in the Notice; or
- (4) Request consideration of a consent order as described below pursuant to 49 C.F.R. § 190.219.

(c) When the Notice contains an amendment of plans or procedures --

- (1) Notify the Regional Director that you intend to take the steps in the proposed amendment of plans or procedures;

(2) Submit written explanations, information, or other materials in answer to the allegations in the Notice and object to or seek clarification of the proposed amendment items in whole or in part; or

(3) Request a hearing as described below to contest the allegations in the Notice.

(d) When the Notice contains **warning items** -- These items may be addressed at the operator's discretion; however, no response is required.

II. Procedure for Requesting a Hearing

A request for a hearing must be in writing and accompanied by a statement of the issues which the respondent intends to raise at the hearing. The issues may relate to the alleged violations, new information, or to the proposed compliance order or proposed civil penalty amount. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to submit a request for a hearing in writing waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

III. Extensions of Time

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Region Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

IV. Freedom of Information Act

Any material prepared by RSPA/OPS, including the violation report, this Notice, and any order issued in this case, and/or any material provided to OPS, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If the information you provide is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if RSPA/OPS, after review of the materials and your provided justification, determines that withholding the materials does not meet any exemption provided under the FOIA. You may appeal the agency's decision to release materials under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

V. Small Business Regulatory Enforcement Fairness Act Information

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Research and Special Programs Administration, call 1-888-REG-FAIR (1-888-734-3247).

ATTACHMENT A -- PAYMENT INSTRUCTIONS

Civil Penalty Payments of Less Than \$10,000

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order should be made payable to the "Department of Transportation" and should be sent to:

General Ledger Branch (AMZ-300)
Federal Aviation Administration
U.S. Department of Transportation
Mike Monroney Aeronautical Center
P.O. Box 25082
Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the General Ledger Branch at (405) 954-4719, or at the above address.

Civil Penalty Payments of \$10,000 or more

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)) through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the General Ledger Branch at (405) 954-4719, or at the above address.

1. <u>RECEIVER'S ABA NO.</u> 021030004	2. <u>TYPE SUBTYPE</u> (provided by sending bank)
3. <u>SENDING BANK ARB NO.</u> (provided by sending bank)	4. <u>SENDING BANK REF NO.</u> (provided by sending bank)
5. <u>AMOUNT</u>	6. <u>SENDING BANK NAME</u> (provided by sending bank)
7. <u>RECEIVER NAME:</u> TREAS NYC	8. <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)

9. BENEFICIAL (BNF)- AGENCY LOCATION CODE-/ AC 69-00-1105	
10. REASONS FOR PAYMENT OBI = Payment for Civil Penalty/RSPA CPF #	

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for Block (1), (5), (7), (9), and (10). The information provided in blocks (1), (7), and (9) are constant and remain the same for all wire transfers to Research and Special Programs Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this nine digit identification number, it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE; \$10,000.00**

Block #7 - RECEIVER NAME- "TREAS NYC." Ensure the sending bank enters this abbreviation, it must be used for all wire transfer to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/AC-69001105" Ensures the sending bank enters this information. This is the Agency Location Code for Research and Special Programs Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - "OBI = Payment for Civil Penalty/RSPA CPF number and your company's name. Example: OBI = Payment for Civil Penalty/RSPA CPF #1-2002-5001/ ABC Pipeline Co.

Note: - A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You, as the sender, can assist this process by notifying, at the time you send the wire transfer to the General Accounting Division (405) 954-4719.

EXHIBIT B

AFFIDAVIT OF ROBERT STAMP

I, Robert Stamp, hereby depose and state as follows:

1. I am have been employed by Belle Fourche Pipeline Company ("BFP") since September 1990. Among other duties, I am responsible for certain aspects of Belle Fourche's compliance with Office of Pipeline Safety regulations.
2. I am familiar with the Notice of Probable Violation (NPV) referenced as CPF No. 5-2004-5030, and the Final Order regarding the same. The NPV and the Final Order were issued to BFP. I was also involved in the OPS May 2004 inspections of certain plans that led to the issuance of the NPV.
3. At the time of the inspections, BFP had completed the requirements in 29 CFR § 195.452(a) for its pipeline systems, as of December 1, 2003. Specifically, BFP had identified "high consequence areas" and performed risk assessments for those segments. At the time of the inspections, BFP was integrating its completed plan with the in-process plan of a related, but separate company named Bridger Pipeline LLC (Bridger Pipeline), which had recently been acquired. Bridger Pipeline operates another related, but separate company called Butte Pipeline Company (Butte Pipeline).
4. Bridger Pipeline and Butte Pipeline are separate corporate entities from BFP, and BFP does not operate either company.
5. BFP has pre-1970 low-frequency ERW (electric-resistance welded) pipe on a few segments of pipeline that could affect an HCA. Pursuant to 29 CFR § 195.452(c)(1)(i)(B), such lines must be "assessed" using one of three methods. One method allows application of the pressure test regulations at 29 CFR Subpart E. In turn, Subpart E allows an operator to reduce maximum operating pressure (MOP) by 80% in lieu of pressure testing. BFP has elected to "assess" and mitigate the risk of seam failure on the applicable pre-1970 ERW pipeline by reducing MOP by 80%. This was done in January 2005.
6. Bridger and Butte Pipeline have made timely progress in complying with 29 CFR § 195.452(c)(1)(i)(B).

Robert C Stamp

Robert Stamp.
Belle Fourche Pipeline Company
455 N. Poplar
P.O. Drawer 2360
Casper, WY 82602

State of Wyoming

County of Natrona

Subscribed and sworn to before me this 27th day of July, 2006.



Linda Koch
Notary Public

My Commission Expires: 05/24/07

EXHIBIT C

BELLE FOURCHE PIPELINE COMPANY
Casper, WY 82602

Law Department

John J. Blomstrom, General Counsel
Manuel A. Lojo, Attorney
W. Jackson Stewart, Attorney

Reply to writer:

P.O. Drawer 2360
Casper, WY 82602
Phone: 307/ 266-0319
Facsimile: 307/266-0357
eMail: mlojo@truecos.com

November 4, 2004

Chris Hoidal
Director, Western Region
Office of Pipeline Safety
RSPA
12300 W. Dakota Avenue, Suite 110
Lakewood, CO 80228

Re: CPF No. 5-2004-5030

Mr. Hoidal;

This responds to the OPS Notice of Violation issued after an audit of the Belle Fourche and Bridger Pipeline Integrity Management Plans in May 2004. Specifically, this will address the proposed civil penalty for Item 2(a): Not completing the risk analysis process.

We disagree that BFPL did not complete its risk analysis process at the time of the inspection. There was confusion at the time of the audit as to exactly what plan was being reviewed. BFPL's plan was, in fact, completed in January 2003 for an operator with less than 500 miles.

However, Bridger Pipeline was acquired in December 2003, and it was the combined Bridger Pipeline/Belle Fourche Pipeline plan, which included assets acquired in January 2004 along with the Belle Fourche Pipeline assets, which was a work in progress at the time of the audit in May 2004. Both plans were reviewed and the Inspectors present agreed that, given the short time after a major acquisition, the combined BPL/BFPL plan was in progress.

In addition, it is unclear to us exactly on to what plan the violation is being assessed. Item 2(a) states that BFPL "had not completed their risk analysis". But the BFPL plan was complete, for BFPL assets, as of January 2003 some 16 months prior to the inspection. The BFPL plan had very little

Chris Hoidal, Director
November 4, 2004
Page 2 of 2

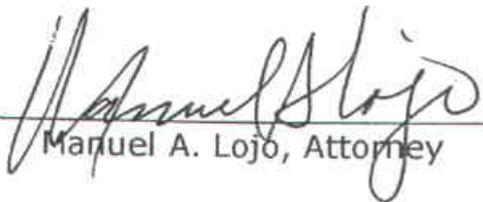
in the way of risk analysis as stated in Item 2(a), but that was because there were only 3 "could-affect" line segments for BFPL. The IM plan laid out a schedule of assessment for the 3 segments based on easily identifiable risk characteristics in the text of the plan. A more rigorous risk analysis process was not warranted for these 3 segments.

In light of all of the circumstances, we would request that the proposed penalty be rescinded.

We have examined all of the other Items in the NOV and are incorporating them into the BPL/BFPL plan.

Very truly,

Belle Fourche Pipeline Company

By 
Manuel A. Lojo, Attorney