



U S Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

400 Seventh Street, S W
Washington, D C 20590

JAN - 9 2007

Mr. Hank A. True III
President
Bridger Pipeline LLC
455 N. Poplar
Casper, WY 82602

Re: CPF No. 5-2005-5017

Dear Mr. True:

Enclosed is the Final Order issued by the Acting Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$100,000, and specifies actions to be taken to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the Compliance Order, as determined by the Director, Western Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
PHMSA-Office of Pipeline Safety

Enclosure

cc: Mr. Manuel A. Lojo, Esq., Bridger Pipeline LLC
Mr. Chris Hoidal, P.E., Director, Western Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

| | | |
|------------------------------|---|----------------------------|
| In the Matter of |) | |
| |) | |
| Bridger Pipeline LLC, |) | CPF No. 5-2005-5017 |
| |) | |
| Respondent |) | |
| |) | |

FINAL ORDER

On December 7, 2004, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration's (PHMSA's)¹ Office of Pipeline Safety conducted an on-site pipeline safety inspection of Respondent's Operator Qualification (OQ) Program, including records and procedures, in Casper, Wyoming. As a result of the inspection, the Director, Western Region, PHMSA, issued to Respondent, by letter dated March 15, 2005, 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 committed violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$100,000 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated April 21, 2005 (Response). Respondent contested the allegations, offered information in explanation of the allegations, and requested that the proposed civil penalty be rescinded. Respondent did not request a hearing, and therefore has waived its right to one.

¹ Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) succeeded Research and Special Programs Administration as the agency responsible for regulating safety in pipeline transportation and hazardous materials transportation. See, section 108 of the Norman Y Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)) See also, 70 Fed Reg. 8299 (February 18, 2005) re delegating the pipeline safety authorities and functions to the PHMSA Administrator.

FINDINGS OF VIOLATION

(Contested)

Item 1 in the Notice alleged Respondent violated 49 C.F.R. § 195.505 (a-g) by failing to have a written qualification program in affect to meet the above regulations at the time of the inspection. Respondent purchased the pipeline facilities from Shell Pipeline Company LP (Shell). Although Bridger retained former Shell employees to operate and maintain the pipeline system, Respondent did not incorporate the qualification records of these individual workers into an OQ Program that is implemented by Respondent. Therefore, at the time of inspection, Respondent did not have and were not following its own OQ Plan.

In its Response, Respondent disagreed with the allegations in the Notice. Respondent purchased the pipeline system on or about December 1, 2003 and retained many employees from the previous owner/operator.² These employees may have been qualified under the previous employers OQ Plan but this does not relieve Respondent from having and implementing its own OQ Plan. Furthermore, Respondent contends that its OQ Plan was complete except for the individual covered task list; this is moot because Respondent had not yet adopted nor implemented the contractor written OQ Plan.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.505 (a-g) by failing to have and follow its own written qualification program.

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

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require. The Notice proposed a total civil penalty of \$100,000 for violation of 49 C.F.R. § 195.505 (a-g).

Item 1 of the Notice proposed a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.505 (a-g), as more fully described in the Notice and as discussed above, in that Respondent failed to have an OQ Plan at the time of the inspection. Company and contract employees were

² At PHMSA Western Region's request, Respondent submitted supplemental information after the inspection, which included a January 4, 2005 cover letter and December 17, 2004 draft plan that had yet to be reviewed completely within Respondent's organization as stated in the cover letter

performing covered tasks without the existence or guidance of Respondent's own implemented current compliant OQ Plan. At the time of inspection, Respondent had been out of compliance with the regulations for about one year.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$100,000. Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business.

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-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$100,000 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 Item 1 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. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations. Respondent must complete the following elements of the OQ Program—

1. Within 30 days following receipt of the Final Order, complete a covered task list. In accordance with the requirements of 49 C.F.R. § 195.505, identify covered tasks and develop a covered task list. Refer to 49 C.F.R. § 195.501(b) for a description of covered tasks;
2. Within 90 days following receipt of the Final Order, complete the 49 C.F.R. § 195.503 defined evaluation and qualification of individuals performing covered tasks and submit the process for the evaluation of individuals performing covered tasks to the Western Region Office;
3. Within 30 days following receipt of the Final Order, develop a process to allow individuals that are not qualified pursuant to 49 C.F.R. Part 195 Subpart G—Qualification of Pipeline Personnel—to perform a covered task if directed and

observed by a qualified individual and submit that process to the Western Region Office;

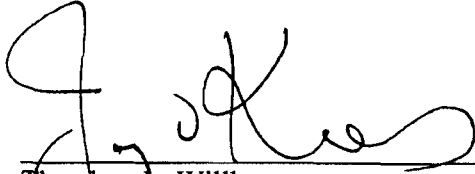
4. Within 30 days following receipt of the Final Order, develop a process to evaluate an individual if Respondent has reason to believe that the individual's performance of a covered task contributed to an accident as defined in 49 C.F.R. Part 195 and submit that process to the Western Region Office;
5. Within 30 days following receipt of the Final Order, develop a process to evaluate an individual if the operator has reason to believe that the individual is no longer qualified to perform a covered task and submit that process to the Western Region Office;
6. Within 30 days following receipt of the Final Order, develop a process to communicate changes that affect covered tasks to individuals performing those covered tasks and submit the process to the Western Region Office;
7. Within 30 days following receipt of the Final order, develop a process to identify those covered tasks and the intervals at which evaluation of the individual's qualifications are needed and submit that process to the Western Region Office;
8. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Director, Western Region, PHMSA. Costs shall be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure; and
9. When appropriate actions have been completed and supporting records provided in regard to the respective item as indicated above in this Compliance Order, submit documentation of procedures, costs and evidence of actions taken to the Director, Western Region, Pipeline and Hazardous Materials Safety Administration, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228. Please refer to CPF No. 5-2005-5017 on any correspondence or communication in these matters.


The Director, Western Region, may grant an extension of time to comply with any of the required items upon a written request timely submitted by Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this

Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. All other terms of the Order, including any required corrective action, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective on receipt.




Theodore L. Willke
Acting Associate Administrator
for Pipeline Safety

JAN - 9 2007

Date Issued