



U S Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

APR 28 2008

1200 New Jersey Ave S E
Washington DC 20590

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Hank True
President
Belle Fourche Pipeline Company
455 N. Poplar St.
Casper, WY 82601-1783

Re: CPF No. 5-2007-5002

Dear Mr. True:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions to be taken to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Western Region, this enforcement action will be closed. Your receipt of this Final Order constitutes service 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: Colin G. Harris, Esq.
Holme Roberts & Owen LLP
1801 13th St., Ste 300
Boulder, CO 80302-5387

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

In the Matter of)	
)	
Belle Fourche Pipeline Company,)	CPF No. 5-2007-5002
)	
Respondent.)	
)	

FINAL ORDER

On June 6-10, July 18-21, and August 15-18, 2005, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration's Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Belle Fourche Pipeline Company's (Belle Fourche or Respondent) pipeline facilities and records in Montana and Wyoming. Respondent's pipeline system transports crude oil and refined petroleum products in North Dakota, Montana, and Wyoming. As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated February 21, 2006, a Notice of Probable Violation and Proposed Compliance Order. By letters dated May 26 and December 26, 2006, Respondent submitted written objection to the issuance of the Notice on the grounds that the proper entities had not been named.

In response to those objections, the Director withdrew the original charges on February 2, 2007, and, on the same date, issued a revised Notice of Probable Violation and Proposed Compliance Order to Respondent (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed violations of 49 C.F.R. Part 195 and proposed ordering Respondent to take certain measures to correct the alleged violations. In accordance with 49 C.F.R. § 190.205, the Notice also advised Respondent to take appropriate corrective action to address several warning items.

Respondent responded to the Notice by letter dated March 8, 2007 (Response). In its Response, Belle Fourche contested the allegations of violation and requested a hearing. In accordance with 49 C.F.R. § 190.211, a hearing was held on August 31, 2007 in Lakewood, Colorado, with an attorney from the Office of Chief Counsel, PHMSA, presiding. Both the Western Region, OPS, and Respondent were represented by counsel at the hearing. Respondent also submitted a post-hearing brief, dated October 11, 2007, and additional information by letter dated December 21, 2007.

The hearing held on August 31, 2007 concerned the present case and two related cases, all arising from the 2005 OPS inspection described above. The other two cases are: In the Matter of Bridger Pipeline Company (Bridger), Notice of Probable Violation and Proposed Compliance Order, CPF No. 5-2007-5003 (Feb. 2, 2007); and In the Matter of Butte Pipeline Company (Butte), Notice of Probable Violation and Proposed Compliance Order, CPF No. 5-2007-5008 (Feb. 8, 2007). By letter dated December 26, 2006, Respondent explained that the Belle Fourche, Bridger, and Butte companies are separate legal entities, although they do share the same manual of operating procedures and some of the same employees.

FINDINGS OF VIOLATION

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.110(a), which states:

§ 195.110 External loads.

(a) Anticipated external loads (e.g.), earthquakes, vibration, thermal expansion, and contraction must be provided for in designing a pipeline system. In providing for expansion and flexibility, section 419 of ASME/ANSI B31.4 [incorporated by reference] must be followed.

In its Response, at the hearing, and in its post-hearing brief, Respondent did not contest this allegation and stated that it had addressed the matter. At the time of the inspection, Respondent was still using temporary supports for pipeline facilities that had been constructed in 2000. The stacked wooden and concrete block supports were not securely fastened to the ground or other permanent feature. Excessive vibration could have caused the vertically stacked wooden and concrete blocks to topple. Accordingly, I find that Respondent violated 49 C.F.R. § 195.110(a) by failing to provide for anticipated external loads, vibration, thermal expansion, and contraction.

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 195.583, 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

(b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(c) If you find atmospheric corrosion during an inspection, you must provide protection against the corrosion as required by §195.581.

The Notice alleged that Respondent violated § 195 583 by failing to inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, and to give “particular attention” to pipe surfaces at pipe supports. More specifically, the Notice alleged that Respondent had not completed or documented any atmospheric corrosion inspections and did not have plans to give particular attention to pipe surfaces in contact with concrete supports.

As a preliminary matter, at the hearing, OPS acknowledged a typographical error in the Notice concerning Item 8. OPS acknowledged that the Proposed Compliance Order erroneously referred to Item 8 as “Item 9.” (The Notice did not contain an Item 9.) In connection with that error, the Notice erroneously referred to Item 8 as a warning item, when in fact a compliance order had been proposed for the item. Respondent was made aware of this error at the hearing, and as discussed below, availed itself of the opportunity to contest the allegation.

At the hearing and in its post-hearing brief, Respondent contested the allegation that it violated § 195.583. Respondent explained that it routinely performed general operations and maintenance (O&M) inspections and that if any significant external corrosion were found during such inspections, it would be addressed. Respondent also stated that it had written O&M procedures that referenced external corrosion on exposed surfaces.

The extent to which Respondent’s routine O&M inspections achieved compliance with the requirements of § 195.583 is not evident in the record because Respondent never submitted any documentation from those inspections showing that Belle Fourche inspected each exposed pipeline or portion of pipeline for evidence of atmospheric corrosion, with particular attention given to pipe surfaces at pipe supports. Similarly, while Respondent contended that it had O&M procedures that referenced external corrosion on exposed surfaces, Respondent never submitted any documentation to show that such procedures were followed to ensure that each pipeline exposed to the atmosphere was inspected, particularly at pipe supports, as required by § 195.583.

On the contrary, the record shows that at the time of the OPS inspection, Respondent did not have records indicating that any atmospheric corrosion inspections had been performed. Furthermore, the pipe appeared to the inspector that it had not been inspected. Photographs taken during the inspection show pipe coating in poor condition at the location of pipe supports, indicative of years without regular examination and remediation. Finally, Respondent’s lead engineer, interviewed during the inspection, stated that Respondent did not have plans to perform atmospheric corrosion inspections of above-ground pipe at the location of pipe supports.

After considering all of the evidence, I hereby find that Respondent violated § 195.583 by failing to inspect each pipeline or portion of pipeline exposed to the atmosphere for evidence of atmospheric corrosion, with particular attention given to pipe surfaces at pipe supports.

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

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 and Item 8 in the Notice for violations of 49 C.F.R. §§ 195.110(a) and 195.583, respectively.

At the hearing and in its written submissions, Respondent indicated that it had taken measures to remedy these items. With respect to Item 1, Respondent contended that the matter “has been corrected” but did not submit documentation showing that each temporary support had been removed and replaced, as proposed in the Notice. With respect to Item 8, Respondent stated that

it had added a new section to its O&M manual regarding atmospheric corrosion inspections, had created a form to document such inspections, and was now performing inspections as required by the regulation. Again, Respondent did not submit any documentation showing that these measures had been completed. Therefore, I cannot find, as Respondent has suggested, that the actions in the proposed compliance order are unnecessary. In addition, I cannot find, as Respondent has suggested, that the proposed compliance actions are excessive or that the time period for compliance is unrealistic. If Respondent is subsequently faced with unexpected circumstances that justify an extension of time to comply, Respondent may request an extension from the Director, as specified below.

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquid by pipeline or who owns or operates a hazardous liquid 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 hereby ordered to take the following actions with respect to its pipeline system to ensure compliance with the pipeline safety regulations applicable to its operations. Respondent must—

1. Remove each temporary support for above-ground pipeline appurtenances and replace them with adequate permanent supports that comply with 49 C.F.R. § 195.110(a). Submit documentation showing these actions have been completed.
2. Complete an atmospheric corrosion inspection of each pipeline and portion of pipeline exposed to the atmosphere, in accordance with § 195.583(a). Each inspection shall give particular attention to pipe at soil-to-air interfaces and at pipe supports, among other locations, in accordance with § 195.583(b). Provide protection against any atmospheric corrosion found during the inspection, in accordance with § 195.583(c). Submit documentation showing these actions have been completed.
3. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and report the cost as follows: (a) total cost associated with preparation, revision of plans and procedures, and performance of studies and analyses; and (b) total cost associated with physical changes to the pipeline infrastructure, including replacements and additions.
4. Complete each of the above items and submit documentation of compliance within 60 days of receipt of this Final Order. Documentation shall be submitted to the Director, Western Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 12300 W. Dakota Ave. # 110, Lakewood, CO 80228-2585.

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

Failure to comply with this Order may result in 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.

WARNING ITEMS

With respect to Items 2(a), 2(b), 2(c), 3, 3(a), 3(b), 4, 5, 6, and 7, the Notice alleged probable violations of 49 C.F.R. Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.402(a) (Notice Item 2a) – Respondent’s alleged failure to review its manual of operations and maintenance procedures at intervals not to exceed 15 months.

49 C.F.R. § 195.402(a) (Notice Item 2b) – Respondent’s alleged failure to follow its written procedures for periodically reviewing completed work to determine the adequacy of procedures used in normal operations and maintenance.

49 C.F.R. § 195.402(a) (Notice Item 2c) – Respondent’s alleged failure to follow its written procedures for periodically reviewing completed work to determine the adequacy of procedures used in controlling abnormal operations.

49 C.F.R. § 195.402(c)(12) (Notice Item 3) – Respondent’s alleged failure to establish and maintain liaison with local responders, particularly those at remote locations, to learn about their resources and responsibilities for responding to pipeline emergencies, and to acquaint them with Respondent’s abilities and means of communication.

49 C.F.R. § 195.403(b)(1) (Notice Item 3a) – Respondent’s alleged failure to review with personnel at intervals not to exceed 15 months, but at least once each calendar year, their performance in meeting the objectives of Respondent’s emergency response training program.

49 C.F.R. § 195.403(c) (Notice Item 3b) – Respondent’s alleged failure to verify whether its supervisors had maintained a thorough knowledge of the emergency response procedures for which they were responsible.

49 C.F.R. § 195.404(b)(2) (Notice Item 4) – Respondent’s alleged failure to maintain daily operating records that documented each abnormal operation and response taken in accordance with Respondent’s procedures.

49 C.F.R. § 195.410(a)(1) (Notice Item 5) – Respondent’s alleged failure to maintain line markers over the buried Bicentennial pipeline.

49 C.F.R. § 195.420(c) (Notice Item 6) – Respondent’s alleged failure to protect each vault and block valve on the Bicentennial pipeline from unauthorized operation.

49 C.F.R. § 195.440 (Notice Item 7) – Respondent’s alleged failure to have a continuing education program with adequate information to enable the public to recognize a pipeline emergency and report it.

Respondent did not address these warning items in its Response, at the hearing, or in its post-hearing brief, but indicated the items were investigated and have been addressed. Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. §§ 195.402(a) (Items 2a, 2b, and 2c), 195.402(c)(12) (Item 3), 195.403(b)(1) (Item 3a), 195.403(c) (Item 3b), 195.404(b)(2) (Item 4), 195.410(a)(1) (Item 5), 195.420(c) (Item 6), and 195.440 (Item 7) have occurred. Respondent is hereby advised to ensure compliance with respect to these items. Respondent is warned that if OPS finds a violation for any of these items 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. 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 terms of the Final Order, including any required corrective actions, shall remain in full effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order shall be effective upon receipt.

William H Galt

for

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

APR 28 2008

Date Issued