

**AUG 17, 2009**

Mr. Hank True  
President  
Butte Pipeline Company  
455 N. Poplar Street  
P.O. Drawer 2360  
Casper, WY 82602

**Re: CPF No. 5-2007-5008**

Dear Mr. True:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions that need to be taken by Butte Pipeline Company 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 of that document 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: Chris Hoidal  
Director, Western Region, PHMSA

Colin G. Harris, Esq.  
Holme Roberts & Owen LLP  
1801 13th St., Ste 300  
Boulder, CO 80302-5387

**VIA CERTIFIED MAIL—RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5746]**

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

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<b>In the Matter of</b>	)	
	)	
<b>Butte Pipeline Company,</b>	)	<b>CPF No. 5-2007-5008</b>
	)	
<b>Respondent.</b>	)	
_____	)	

**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 (PHMSA) conducted a safety inspection of the hazardous liquid pipeline systems operated by Butte Pipeline Company (Butte or Respondent), and several related companies in Montana and Wyoming.<sup>1</sup> The Butte pipeline system transports crude oil from Baker, Montana, to Ft. Laramie and Guernsey, Wyoming. As a result of the inspection, the Director, Western Region (Director) issued a combined notice of probable violation and proposed compliance order (CPF No. 5-2006-5004) by letter dated February 21, 2006, to one of the companies (Belle Fourche), alleging violations of the hazardous liquid pipeline safety regulations with respect to the inspected facilities. By letters dated May 26 and December 26, 2006, Belle Fourche objected to the notice on the grounds that the individual companies were separate and distinct legal entities and should be named separately.

In response to those objections, the Director withdrew the original charges on February 2, 2007, and issued separate enforcement documents to each company, including a Notice of Probable Violation and Proposed Compliance Order (Notice) issued in this case to Butte on February 8, 2007.<sup>2</sup> In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Butte had committed certain violations of 49 C.F.R. Part 195 and proposed that Butte take measures to correct the alleged violations. In addition, pursuant to 49 C.F.R. § 190.205, the Notice advised Respondent to take appropriate corrective action to address several warning items or face future potential enforcement action.

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<sup>1</sup> The companies inspected were Belle Fourche Pipeline Company (Belle Fourche), Bridger Pipeline Company, LLC (Bridger), and Butte Pipeline Company. These companies share the same manual of operating procedures and some of the same employees and officers.

<sup>2</sup> The Director issued separate notices to Belle Fourche (CPF No. 5-2007-5002) and Bridger (CPF No. 5-2007-5003). This Final Order concerns only the Notice issued to Butte. Final agency action has already been taken in the cases involving Belle Fourche and Bridger.

Butte responded to the Notice by letter dated March 13, 2007 (Response). In its Response, the company contested the allegations of violation and requested a hearing. In accordance with 49 C.F.R. § 190.211, a combined hearing was held on August 31, 2007, in Lakewood, Colorado, with an attorney from the Office of Chief Counsel, PHMSA, presiding. Butte, Belle Fourche, and Bridger were jointly represented by counsel at the hearing. After the hearing, the companies submitted a single post-hearing brief (Brief) on October 11, 2007, and additional information by letter dated December 21, 2007. To the extent that the issues raised at the hearing and in the Brief relate to Butte, they are addressed below.

As a preliminary matter, the parties agree that in making findings of violation, PHMSA carries the burden of proving the allegations set forth in the Notice, meaning that a violation may be found only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.<sup>3</sup> Respondent argues in its Brief that PHMSA failed to meet its burden of proof on all contested Items in the Notice (i.e., Items 4, 5, and 7). As discussed below, I find that PHMSA met its burden of proof on Items 4 and 7, but not Item 5.

### **FINDINGS OF VIOLATION**

The Notice alleged that Respondent committed violations of 49 C.F.R. Part 195, as follows:

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 195.422(a), which states:

**§ 195.422 Pipeline repairs.**

(a) Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.

The Notice alleged that Respondent violated § 195.422(a) by failing to ensure that integrity repairs performed on the Butte pipeline in 2004 were made in a safe manner. Specifically, it alleged that Butte failed to use a nondestructive testing (NDT) method to examine all but two type-B repair sleeves and associated sleeve-to-pipe fillet welds. The Notice also alleged that industry practice has been to use NDT to ensure that type-B repair sleeves are installed in a safe manner. The Notice alleged further that Respondent's repair records did not indicate that visual examinations of such welds had even been performed.

During the PHMSA safety inspection, the inspector noted that although Butte had made more than 50 integrity repairs to the Butte pipeline in 2004 using type-B repair sleeves, the company's records indicated that only two sleeve repairs had been tested using NDT. The inspector noted further that there were no records of any of the repairs having been visually inspected. Statements by two of Respondent's employees during the safety inspection indicated the company had visually inspected the welds but did not perform NDT on all the welds because

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<sup>3</sup> PHMSA enforces the pipeline safety regulations and imposes sanctions for violations by conducting proceedings in accordance with 49 C.F.R. Part 190. Such proceedings are not "formal adjudications" under the Administrative Procedures Act (5 U.S.C. §§ 554 and 556). By way of comparison, however, it may be noted that the Supreme Court has found in formal adjudications that the burden of proof includes the burden of persuasion, and the standard of proof is the preponderance-of-the-evidence standard. *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 276 (1994); and *Steadman v. SEC*, 450 U.S. 91, 102 (1981).

NDT had been performed on two sleeve repairs and those tests had been successful. Violation Report at 2.

Butte raised several defenses to Item 4. First, it contended that the company ensured type-B repair sleeves had been installed in a safe manner by using fully qualified welders and procedures and by visually inspecting the welds.<sup>4</sup> Second, it argued that PHMSA failed to provide the company with fair notice of the agency's interpretation and application of this NDT standard.

As for Butte's first defense that the company had ensured the repairs were made in a safe manner, the company presented a witness who stated that he had been told by the welding foreman that all of the welds were visually inspected.<sup>5</sup> Brief Ex. 6 at ¶ 9. The witness also testified that, to his knowledge, the company had used qualified welders and procedures in the performance of this particular type of repair. *Id.* at ¶ 8. Respondent argued that these measures constituted compliance with § 195.422 and American Society of Mechanical Engineers (ASME) Standard B31.4, which Respondent referred to as "the relevant professional code governing pipeline transportation systems." Response at 2. In particular, Respondent contended that Section 451.6.3 of ASME B31.4 "allows for 'other methods' along with visual inspection" to ensure the safety of repair welds. *Id.*

With regard to the use of qualified workers and procedures, Respondent is correct to point out that these are critical for ensuring repairs are made in a safe manner. However, the use of qualified workers and procedures is not a substitute for post-repair examination. The use of qualified workers and procedures may serve prospectively to make it more likely that repairs *will be* made safely in the future, but the use of post-repair examinations is also needed to ensure that repairs *were in fact* made safely.

With regard to the visual examinations, I find little support in the record for Respondent's assertion that it conducted visual examinations of the repair welds, other than second-hand accounts and hearsay. Even if visual examinations were performed, they do not provide enough information on their own to determine whether repair welds were safely performed. Therefore, another type of post-repair examination method was required besides just visual examinations. While Butte attempted to convince PHMSA that "other methods," generally, are acceptable under the relevant industry standard, the company curiously neglected to disclose that the standard actually states, "Welds made during pipeline repairs . . . should also be examined by *at least one other nondestructive examination method.*" ASME B31.4 § 451.6.3(b) (2002) (emphasis added).

NDT may be the industry-recognized method to ensure type-B repair sleeves are installed in a safe manner, but the text of § 195.422(a) does not explicitly require the use of NDT to determine the safety of such repairs. As Respondent correctly notes, § 195.422(a) is a performance-based

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<sup>4</sup> In its Response, Butte indicated that it had also performed a post-repair hydrostatic test to ensure the safety of the repairs on the Butte pipeline; but at the hearing, the company clarified that it had not actually performed a hydrostatic test of the Butte line.

<sup>5</sup> It is not evident in the record when the witness actually spoke to the foreman. Respondent was not able to locate the foreman for this proceeding. Brief at 8.

regulation, which requires a specified minimum level of safety for pipeline repairs without prescribing a specific process or method for each type of repair. With regard to the repairs at issue in this case, the question is whether Respondent used a post-repair evaluation process capable of ensuring that type-B repair sleeves were installed in a safe manner. Respondent did not make the assertion that it ever used NDT testing, or testing of any kind other than visual examinations, to examine all of the repair welds. For the reasons expressed above, I find Respondent failed to determine the safety of the 2004 type-B sleeve repairs on the Butte pipeline using a method capable of complying with § 195.422(a).

As for Butte's second argument that PHMSA failed to provide fair notice of its interpretation of this regulation, Respondent argued that it "could not have reasonably ascertained that OPS now considers NDT to be a mandatory requirement under 49 C.F.R. § 195.422(a)," because the regulation, on its face, imposes no such requirement. Brief at 10. Accordingly, Respondent argued that "it would violate due process to hold any party liable under this interpretation." Response at 3.

Butte has misinterpreted the agency's application of § 195.422. PHMSA does not take the position that NDT is always a mandatory requirement of the regulation. Rather, the agency notes the industry practice has been to use NDT to meet the performance-based requirement for the type of pipeline repair at issue in this case. PHMSA applies the text of § 195.422(a) to require that operators ensure each pipeline repair has been made in a safe manner through the use of an evaluation method capable of demonstrating the safety of that particular repair.

Respondent is correct that governmental agencies may not violate a person's right of due process by depriving such person of property without providing a minimum level of "fair notice" as to what may constitute a violation of law. "Due process requires that parties receive fair notice before being deprived of property . . . . In the absence of notice—for example, where the regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing civil or criminal liability." *Gen. Elec. Co. v. U.S. EPA*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995) (citations omitted) (internal quotation marks omitted). *See also, United States v. Chrysler Corp.*, 158 F.3d 1350, 1354 (D.C. Cir. 1998); *Trinity Broad. of Fla., Inc. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000). When an agency interprets a regulation through enforcement rather than pre-enforcement efforts, the issue of notice rests on "whether the regulated party received, or should have received, notice of the agency's interpretation in the most obvious way of all: by reading the regulations. If, by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with 'ascertainable certainty,' the standards with which the agency expects parties to conform, then the agency has fairly notified a petitioner of the agency's interpretation." *Gen. Elec. Co.*, 53 F.3d at 1329.<sup>6</sup>

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<sup>6</sup> Such "ascertainable certainty" may not be possible where an agency has given conflicting public interpretations of a regulation. In addition, even in those situations where an "agency does not issue contradictory public statements, it may fail to give sufficient fair notice to justify a penalty if the regulation is so ambiguous that a regulated party cannot be expected to arrive at the correct interpretation using standard tools of legal interpretation, must therefore look to the agency for guidance, and the agency failed to articulate its interpretation before imposing a penalty." *United States v. Lachman*, 387 F.3d 42, 57-58 (1st Cir. 2004) (citation omitted).

It is evident from the text of § 195.422(a) that a pipeline operator is required to ensure that each pipeline repair is made in a safe manner. It follows necessarily that the operator must employ a method of evaluating the repair that is capable of demonstrating whether or not the repair was made safely. As a matter of law, therefore, I find that Butte had fair notice of the requirement implicit in § 195.422(a) that it must use an evaluation method capable of determining type-B sleeve repairs were made in a safe manner. Unfortunately, for the reasons expressed above, the methods used by Butte were insufficient to comply with this requirement.

Respondent's assertion that the company was not aware NDT was the "industry standard" is specious, as Butte itself cited the ASME B31.4 standard, which states that repair welds should be examined by NDT. Whether or not NDT is the industry standard, however, is not controlling because § 195.422(a) does not bind Respondent to the industry standard. Respondent may comply with the regulation by using one or more evaluation methods capable of determining that "the repairs are made in a safe manner"; however, the operator must be able to demonstrate that the chosen method is capable of making such a determination. In this case, Butte failed to use an evaluation method capable of demonstrating the repairs were safely made.

Accordingly, after considering all of the evidence and arguments presented, I find Respondent violated § 195.422(a) by failing to ensure that type-B repairs sleeves were completed in a safe manner.

**Item 5:** The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

**§ 195.428 Overpressure safety devices and overfill protection systems.**

(a) [E]ach operator shall, at intervals not exceeding 15 months, but at least once each calendar year . . . inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated § 195.428(a) by failing to inspect and test certain pressure control equipment on the Butte pipeline to determine if such equipment was functioning properly, was in good mechanical condition, and was adequate in terms of capacity and reliability of operation. Specifically, the Notice alleged that Butte failed to calibrate "pressure transducers that transmit data to the [Supervisory Control and Data Acquisition (SCADA)] center on the Poplar pipeline." Notice at 3. The Notice further stated that "[p]ressure transmitters that send pressure data to manned SCADA centers are part of the pressure control system." *Id.*

Butte raised several defenses to Item 5. The company argued, *inter alia*, that the requirements in § 195.428(a) do not apply to the pressure transducers/transmitters identified in the Notice because Butte's pipeline uses on-site overpressure protection devices that are "hard-wired to mechanically shut down the system locally and independently of the SCADA system" when pressure reaches a certain level. Brief at 12. Respondent distinguished those devices from pressure transducers/transmitters that send pressure data to a SCADA center, arguing that the regulation only applies to its mechanical devices.

The term “transducer” is a generic reference to an electro-mechanical device that reads a physical metric (in this case, pipeline pressure) and translates that data into an electronic signal that can then be transmitted, usually by wire. The term “transmitter” is an electronic assembly comprised of a transducer at the front end, which transmits the signal. Although the two terms can be distinguished in certain applications, the use of these terms interchangeably in the Notice refers to the common assembly that Butte uses to measure pipeline pressure, translate that data into an electronic signal, and transmit that data to the company’s SCADA center. For brevity, this Final Order uses the term “pressure transmitter” to refer to this entire mechanism.

Respondent is correct to point out that local mechanical pressure control equipment is covered by § 195.428(a), but the regulation is not so limited as to exclude other types of devices used to control operating pressure on a pipeline. By its terms, § 195.428(a) requires “each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment” to be tested and inspected at specified intervals. The regulation does not define “pressure control equipment,” but the commonly understood (dictionary) meaning of the words pressure, control, and equipment would include any device used to control or limit pressure in the pipeline.

An interpretation of § 195.428(a) that applies to all types of pressure transmitters, to the extent they control pipeline pressure, could be legally supported; but I have found as a matter of policy that § 195.428(a) should not be applied so broadly.<sup>7</sup> There are certain distinctions between pressure transmitters that serve as an integral part of a pipeline’s overpressure protection system compared with those that only function to send pressure information to a SCADA system for other reasons. For example, certain pressure transmitters on a pipeline may be utilized to send pressure data to remote terminal units or program logic computers that use the data to automatically control pressure to avoid an overpressure event. These types of pressure transmitters, and other devices integral to a pipeline’s overpressure protection system, should be and are covered by the regulatory requirements in § 195.428(a). By comparison, pressure transmitters that only send pressure information to a SCADA system for use by a human controller, or for other informational purposes, might not be part of a particular pipeline’s overpressure protection system, and as such are not intended to be covered by § 195.428(a).

I have reviewed the evidence in this case to determine whether the pressure transmitters identified in the Notice were integral to Butte’s pipeline overpressure protection system. PHMSA did not introduce evidence showing how the pressure transmitters on Butte’s pipeline system were actually utilized other than that the devices sent pressure information to the company’s SCADA center. This evidence is insufficient to demonstrate that the pressure transmitters were integral to the pipeline’s overpressure control system. Butte, on the other hand, introduced evidence that its overpressure control system utilized local mechanical devices that operated independently of its SCADA system. Without additional evidence in the record demonstrating that the pressure transmitters were an integral part of Butte’s overpressure protection system, I cannot find a violation of § 195.428(a).

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<sup>7</sup> See *In the Matter of Bridger Pipeline Company, LLC*, CPF No. 5-2007-5003, Decision on Reconsideration (Jun. 16, 2009) (finding § 195.428(a) applies to pressure transmitters to the extent they are integral to a pipeline’s overpressure protection system).

Accordingly, I am withdrawing the finding of violation with respect to § 195.428(a). Since the violation is withdrawn for the above reasons, it is not necessary to address the additional arguments for withdrawal presented by Butte for this Item.

**Item 7:** 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, as follows:

<b>If the pipeline is located:</b>	<b>Then the frequency of inspection is:</b>
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months . . . .

(b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbanded 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 perform documented atmospheric corrosion inspections. Specifically, the PHMSA inspector noted that Butte did not have records of any completed atmospheric corrosion inspections and that none of the pipe supports appeared to have been inspected. Violation Report at 4. When the PHMSA inspector asked company officials whether Butte planned to inspect pipe surfaces that were in contact with concrete supports, Respondent’s lead engineer indicated that the company did not have procedures to examine those pipe surfaces and had not documented any external corrosion inspections. Violation Report at 4.

Respondent contended, inconclusively, that “Butte [was] in material compliance, *or* [has] been addressing the alleged deficiencies.” Brief at 13-14 (emphasis added). At the hearing, Respondent’s lead engineer stated that while the company had not used specific forms to document its atmospheric corrosion inspections, the company did perform generic inspections and identified corrosive surfaces at times. In its Brief, Butte introduced an affidavit from the same person, stating that “specific external corrosion inspection procedures were not necessarily written down,” but that the company had “routine inspection procedures for pipelines,” and that “any significant external corrosion that was found would have been addressed appropriately.” Brief Ex. 6 at ¶ 28. The witness also stated that the company had a reference to external corrosion in its operations and maintenance (O&M) manual and has been taking actions to improve inspection procedures. *Id.* at ¶ 29.

While Butte’s lead engineer testified that the company performed “routine” O&M inspections, the company could not state explicitly how or when these inspections occurred, whether such inspections occurred at the requisite intervals under § 195.583, whether the company always checked for atmospheric corrosion during such inspections, or whether such inspections specifically checked pipe surfaces that were in contact with concrete supports—all requirements under the regulation. Butte was also unable to produce any records of having performed such inspections, which the company is required to keep under § 195.589(c).

Respondent's evidence concerning efforts to improve its forms and procedures after the PHMSA inspection are not relevant to the determination of whether or not Respondent was in compliance at the time of the inspection. Accordingly, after considering all of the evidence, I find Butte violated 49 C.F.R. § 195.583 by failing to perform documented atmospheric corrosion inspections, particularly at pipe surfaces in contact with concrete supports.

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

**Freedom of Information Act (FOIA) Issue:** Finally, Respondent objected generally to the setting of a hearing in this proceeding while the company still had a FOIA request for documents pending with the agency. Butte argued in its Brief that PHMSA's decision to go forward with the hearing, despite the company's FOIA request and over its objections, constituted "a violation of Respondent's due process rights." Brief at 14. Respondent did not present any evidence or cite any legal authority in support of this claim.

PHMSA has specific procedures in place to guarantee a respondent's procedural due process rights in informal adjudications. *See* 49 C.F.R. Part 190. In accordance with those procedures, PHMSA provided Butte with all of the materials from the agency's case file well in advance of the date set for the hearing. *See* § 190.211(e). Therefore, Butte cannot reasonably assert that its procedural due process rights were violated.

Furthermore, the law provides that an agency may proceed with an adjudication despite a respondent's filing of a FOIA request. The Supreme Court has stated, "Discovery for litigation purposes is not an expressly indicated purpose of the [Freedom of Information] Act." *Renegotiation Bd. v. Bannerkraft Clothing Co.*, 415 U.S. 1, 24 (1974). The Court has further cautioned against "[i]nterference with the agency proceeding [that] opens the way to the use of the FOIA as a tool of discovery . . . over and beyond that provided by the regulations issued by the [agency] for its proceedings." *Id.*; *see also, Columbia Packaging Co. v. U.S. Dep't of Agric.*, 563 F.2d 495, 499-500 (1st Cir. 1977) (stating that "FOIA was not enacted to provide litigants with an additional discovery tool" and that "discovery in the different types of agency litigation is primarily a matter either for agency regulation or separate Congressional determination").

Based upon the foregoing, I find that Respondent's due process rights were not violated by the setting of a hearing in this proceeding while Butte's FOIA request for documents was still pending. It should also be noted that PHMSA responded to Butte's FOIA request on March 7, 2007, approximately six months prior to the hearing, and to its FOIA appeal on October 2, 2008.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Items 4, 5, and 7 in the Notice for violations of §§ 195.422(a), 195.428(a), and 195.583, respectively. Since the allegation of violation contained in Item 5 of the Notice has been withdrawn, the terms of the proposed compliance order associated with that item have also been withdrawn.

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids 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.

With respect to several of the proposed compliance order items, Respondent argued that “a grant of jurisdiction to require remedial measures is not an absolute duty to do so under any circumstances,” and that a “cost-benefit assessment” of the proposed compliance terms shows they would be “unnecessary or excessive.” *E.g.*, Response at 2. At the hearing, Respondent argued that the proposed compliance terms would be very expensive and that the cost would far exceed any benefit gained from the remedial measures.

While PHMSA considers expected costs and benefits when promulgating new safety regulations, each operator must comply with them once they become final. 49 U.S.C. § 60118(a). PHMSA does not permit the noncompliant operation of a pipeline facility merely because it would be expensive for the operator to adhere to the established set of safety standards that applies to all hazardous liquid pipeline operators. Furthermore, it is entirely possible that Respondent realized an economic *benefit* by avoiding certain activities otherwise required by regulations. Accordingly, I reject Respondent’s argument that PHMSA should refrain from ordering the company to come into compliance with applicable safety regulations.

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 to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.422(a) (**Item 4**), Butte must excavate and examine 50% of all sleeve-to-pipe fillet welds associated with type-B repair sleeves installed on the Butte pipeline as part of the referenced integrity repairs of 2004. The method of examination shall be NDT unless Butte submits to the Director for prior approval a proposal to use another method of examination capable of complying with § 195.422(a). If any excavated welds show indications of cracking or other cause for repair, then the balance of all welds shall be excavated and examined. Each excavated weld that has an indication of cracking or other cause for repair must be repaired in accordance with procedures that comply with 49 C.F.R. Part 195 and that have been submitted to the Director for prior approval. Documentation of each excavation, examination, and repair must be maintained and submitted.
2. With respect to the violation of § 195.583 (**Item 7**), Butte must develop and follow procedures for performing atmospheric corrosion inspections of all piping exposed to the atmosphere, giving particular attention to pipe surfaces at soil-to-air interfaces and at pipe supports, among other locations, in accordance with § 195.583. Remediate any atmospheric corrosion found during the inspection in accordance with § 195.583. Documentation of these actions must be maintained and submitted.
4. 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.
5. Documentation of compliance with each item shall be submitted within 60 days of receipt of this Final Order 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 1a, 1b, 2, 3a, 3b, and 6, the Notice alleged probable violations of 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 1a**) – Respondent’s alleged failure to follow its own written procedures for conducting periodic reviews of work completed for the purpose of determining the adequacy of the company’s written procedures for *normal* operations and maintenance.

49 C.F.R. § 195.402(a) (**Notice Item 1b**) – Respondent’s alleged failure to follow its own written procedures for conducting periodic reviews of work completed for the purpose of determining the adequacy of the company’s written procedures for *abnormal* operations.

49 C.F.R. § 195.402(c)(12) (**Notice Item 2**) – Respondent’s alleged failure to establish and maintain liaison with local emergency responders, including those at remote locations, to learn their responsibilities and resources when responding to pipeline emergencies and to acquaint the officials with Respondent’s ability in responding to emergencies 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 exceeding 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 that its supervisors have a thorough knowledge of the emergency response procedures for which they are responsible to ensure compliance.

49 C.F.R. § 195.440 (**Notice Item 6**) – Respondent’s alleged failure to establish an adequate public education program that enables the general public to recognize a pipeline emergency and to report it to the operator or appropriate emergency responders.

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) (Notice Item 1a), § 195.402(a) (Notice Item 1b), § 195.402(c)(12) (Notice Item 2), § 195.403(b)(1) (Notice Item 3a), § 195.403(c) (Notice Item 3b), and § 195.440 (Notice Item 6) have occurred and Respondent is hereby advised to correct such conditions. In the event that PHMSA 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 order, including any required corrective action, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued