

**APR 03 2012**

Mr. Halbert S. Washburn  
Director and Chief Executive Officer  
BreitBurn Energy Partners, LP  
515 South Flower Street, Suite 4800  
Los Angeles, CA 90071

**Re: CPF No. 5-2009-0008**

Dear Mr. Washburn:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes other findings of violation, assesses a civil penalty of \$70,000, and specifies actions that need to be taken by BreitBurn Energy Partners, LP, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Western Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, Director, Western Region, OPS  
Mr. Mark L. Pease, Executive Vice President and CEO, BreitBurn Energy Partners, LP  
Ms. Martha Brock, EH&S Manager, BreitBurn Energy Partners, LP

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164203423532]**

**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>	)	
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<b>BreitBurn Energy Partners, LP,</b>	)	<b>CPF No. 5-2009-0008</b>
	)	
<b>Respondent.</b>	)	
	)	

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**FINAL ORDER**

On June 18 and 19, 2008, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of BreitBurn Energy Partners, LP (BreitBurn or Respondent), for its Pico natural gas gathering line in Los Angeles, California. BreitBurn is an independent oil and gas limited partnership engaged in the development of oil and gas assets in several states, including California, Wyoming, Florida, Michigan, Indiana and Kentucky.<sup>1</sup> The Pico pipeline is approximately six miles long and lies entirely within a populated High Consequence Area.<sup>2</sup>

As a result of the inspection, the Director, Western Region, OPS (Director), issued to BreitBurn Energy Corporation, an affiliate of Respondent, by letter dated January 8, 2009, 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 BreitBurn had violated 49 C.F.R. §§ 192.625, 192.706 and 192.745 and proposed assessing a civil penalty of \$98,800 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

BreitBurn responded to the Notice by letter dated July 30, 2009 (Response) and submitted additional information by email on August 27, 2009, and in April - May 2011.<sup>3</sup> The company contested the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

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<sup>1</sup> <http://www.breitburn.com/> (last accessed 3/9/12).

<sup>2</sup> See 49 C.F.R. § 192.903.

<sup>3</sup> On file with PHMSA.

## FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 192.625(f), which states:

**§ 192.625 Odorization of gas.**

(a) A combustible gas in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.

(b) After December 31, 1976, a combustible gas in a transmission line in a Class 3 or Class 4 location must comply with the requirements of paragraph (a) of this section unless:....

(c) ....

(f) To assure the proper concentration of odorant in accordance with this section, each operator must conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable....

The Notice alleged that BreitBurn violated 49 C.F.R. § 192.625(f) by failing to confirm that the odorant in its distribution line had the proper concentration by conducting periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable.

In its Response, BreitBurn argued that the pipeline was exempt from § 192.625 because it was a Type B gathering line.<sup>4</sup> Regulated gathering lines are classified as either Type A or Type B by 49 CFR § 192.8(b). Type A gathering lines must comply with most requirements of Part 192 that apply to transmission lines, including § 192.625(f),<sup>5</sup> while Type B lines are subject only to the six requirements of § 192.9(d). BreitBurn stated that the line qualified as a Type B gathering line under § 192.8(b) because it was operated at less than 20% of the line's specified minimum yield strength (SMYS). BreitBurn argued that the pipeline was therefore only subject to the limited requirements of § 192.9(d), and did not need to comply with § 192.625.<sup>6</sup>

Type A lines include those that are “metallic and the [maximum allowable operating pressure] (MAOP) produces a hoop stress of 20 percent or more of SMYS” and that are located in a Class 2, 3, or 4 location. Type B lines include those which are “metallic and the MAOP produces a hoop stress of less than 20 percent of SMYS,”<sup>7</sup> and are commonly referred to as “low-stress” lines. The classification of an onshore gathering line is therefore determined by its maximum *allowable* operating pressure, not its actual operating pressure. BreitBurn stated that the Pico line operated at less than 20% SMYS, but did not offer any proof that the line qualified as a low-stress line.

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<sup>4</sup> Response at 1.

<sup>5</sup> 49 CFR § 192.9(c).

<sup>6</sup> Response at 2.

<sup>7</sup> 49 CFR § 192.8(b).

In fact, it appears that prior to this proceeding, BreitBurn had never accurately determined the SMYS of the Pico line. The SMYS of a steel pipe is defined as the manufacturer's specification, or if the manufacturer's specification is not known, it is determined in accordance with § 192.107(b).<sup>8</sup> If the tensile properties of pipe are unknown, § 192.107(b)(1) requires that the pipe be tensile tested in accordance with Part 192, Appendix B, Section II-D, to calculate SMYS. The Pico gas gathering line consists of segments of pipe with three different diameters (4, 6, and 12 inches).<sup>9</sup> BreitBurn did not have a record of the manufacturer's specifications of the yield strength and wall thickness of the 12-inch diameter pipe used in one segment of the pipeline.

To determine the yield strength of the pipe, BreitBurn extracted one sample of pipe for metallurgical testing,<sup>10</sup> but Appendix B required the company to take multiple samples. PHMSA estimates that there are approximately 150 lengths of 12-inch diameter pipe, so Appendix B would require sampling of *at least* 20 lengths to determine the yield strength. Because such testing had not been conducted, the default SMYS for this pipeline, in accordance with § 192.107(b)(2), was 24,000 psi.

In addition to knowing the SMYS, an operator must know the hoop stress produced by the MAOP to determine whether a gathering line is Type A or Type B. To calculate the hoop stress produced by the MAOP, the wall thickness of the pipe is needed, but BreitBurn did not have a record of the wall thickness of its 12-inch diameter pipe. If the wall thickness of a pipe is unknown, § 192.109 requires that the wall thickness of *at least* 10 lengths of pipe be measured at quarter points on one end.

BreitBurn extracted one sample to measure the wall thickness,<sup>11</sup> but this did not satisfy the regulatory requirement. Because the pipe's wall thickness was unknown, the hoop stress could not be calculated. It was therefore impossible to know whether the MAOP produced a hoop stress of less than 20% of SMYS. This pipeline is made of steel and is entirely within a class 4 location.<sup>12</sup> Therefore, the Pico pipeline would be considered a Type A gathering line, and would have to comply with all of Part 192 (other than § 192.150 and Subpart O), including the odorization requirements in § 192.625.

However, this particular Type A gathering line transported gas to a gas dehydration plant which received gas without an odorant before May 5, 1975.<sup>13</sup> Therefore, the pipeline fell under the exemption in § 192.625(b)(2)(iii), and was not required to odorize its gas or assure the proper concentration of odorant. Accordingly, after considering all of the evidence, I find that

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<sup>8</sup> 49 CFR § 192.3.

<sup>9</sup> Email from Alison Wong, BreitBurn, to Hossein Monfared, PHMSA (April 29, 2011) (on file with PHMSA).

<sup>10</sup> *Metallurgical Analysis of Gas Line Pipe Section (Butterfield Vault)*, Ref: BreitBurn Energy PO: 1001905, Kars' Advanced Materials, Inc., August 4, 2009, at 1(on file with PHMSA).

<sup>11</sup> Email from Alison Wong, BreitBurn, to Hossein Monfared, PHMSA (May 5, 2011) (on file with PHMSA).

<sup>12</sup> A pipeline's class location is determined by the criteria in 49 CFR § 192.5. A class 4 location is defined as an area where buildings with four or more stories above ground are prevalent.

<sup>13</sup> Email from Alison Wong, BreitBurn, to Hossein Monfared, PHMSA (April 7, 2011) (on file with PHMSA).

BreitBurn did not violate § 192.625(f) because the pipeline was exempt from this requirement under § 192.625(b)(2)(iii). Based upon the foregoing, I hereby order that this Item be withdrawn.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 192.706, which states in relevant part:

**§ 192.706 Transmission lines: Leakage surveys.**

Leakage surveys of a transmission line must be conducted at intervals not exceeding 15 months, but at least once each calendar year. However, in the case of a transmission line which transports gas in conformity with § 192.625 without an odor or odorant, leakage surveys using leak detector equipment must be conducted—

(a) ....

(b) In Class 4 locations, at intervals not exceeding 4½ months, but at least four times each calendar year.

The Notice alleged that BreitBurn violated 49 C.F.R. § 192.706 by failing to conduct leakage surveys on the Pico gathering line at the required intervals. Specifically, the Notice alleged that BreitBurn failed to conduct any leakage surveys on the pipeline during the three years prior to the PHMSA inspection.

In its Response, BreitBurn reiterated its claim that because the pipeline operated at less than 20% SMYS, it was a Type B gathering line exempt from this regulation.<sup>14</sup> As discussed in Item 1 above, however, the Pico gas gathering line is a Type A gathering line as defined in § 192.8(b), and therefore must comply with most of the regulations in Part 192, including § 192.706. In addition, BreitBurn claimed that even if the pipeline did need to comply with § 192.706, it only needed to conduct annual, rather than quarterly, leakage surveys since the company odorized its gas.<sup>15</sup>

Respondent is correct that under the language of § 192.706, it is only required to conduct annual leakage surveys, but it failed to perform even those. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.706 by failing to conduct any leakage surveys on the Pico gas gathering line during the three years prior to the PHMSA inspection.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 192.745(a), which states:

**§ 192.745 Valve maintenance: Transmission lines.**

(a) Each transmission line valve that might be required during any emergency must be inspected and partially operated at intervals not exceeding 15 months, but at least once each calendar year.

The Notice alleged that BreitBurn violated 49 C.F.R. § 192.745(a) by failing to inspect and partially operate each transmission line valve that might be required during any emergency at intervals not exceeding 15 months but at least once each calendar year. Specifically, it alleged that BreitBurn failed to inspect the mainline block valves on its pipeline for the three years prior

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<sup>14</sup> Response at 2.

<sup>15</sup> *Id.*

to the PHMSA inspection. In its Response, BreitBurn again contended that because the line operated at less than 20% SMYS, the pipeline only needed to comply with the six requirements of § 192.9(d), and not with this regulation.<sup>16</sup> BreitBurn did not offer any evidence to show that it had inspected and partially operated each valve.

As discussed above, however, the Pico gas gathering line is a Type A gathering line as defined in § 192.8(b), and therefore must comply with § 192.745. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.745(a) by failing to inspect and partially operate each transmission line valve that might be required during any emergency at intervals not exceeding 15 months, but at least once each calendar year.

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 an administrative 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. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$98,800 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$28,800 for Respondent's violation of 49 C.F.R. § 192.625(f), for failing to conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. For the reasons discussed above, I found that the Pico gas gathering line is exempt from the requirements of § 192.625. Based upon the foregoing, I withdraw the proposed penalty for violation of 49 C.F.R. § 192.625(f).

**Item 2:** The Notice proposed a civil penalty of \$35,000 for Respondent's violation of 49 C.F.R. § 192.706, for failing to conduct any leakage surveys on the Pico gas gathering line during the three years prior to the OPS inspection. Respondent is not exempt from this requirement, as discussed above. The prompt detection of leaks is critical for public safety in a high population area such as this. For this reason, leakage surveys must be done at least once a year, even when gas is odorized. Respondent did not present any evidence or argument for a reduction of the penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$35,000 for violation of 49 C.F.R. § 192.706.

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<sup>16</sup> Response at 3.

**Item 3:** The Notice proposed a civil penalty of \$35,000 for Respondent's violation of 49 C.F.R. § 192.745(a), for failing to inspect and partially operate each transmission line valve that might be required during any emergency at intervals not exceeding 15 months, but at least once each calendar year. Respondent is not exempt from this requirement, as discussed above. Inspecting valves that might be needed in an emergency in a high population area is critical for public safety. Respondent did not present any evidence or argument for a reduction in the penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$35,000 for violation of 49 C.F.R. § 192.745(a).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$70,000**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$70,000 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 district court of the United States.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Items 1, 2, and 3 in the Notice for violations of 49 C.F.R. §§ 192.625(f), 192.706, and 192.745(a), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. As for Item 1, I have withdrawn the allegation of violation so there is no need to include the proposed compliance terms for this Item in the Compliance Order. As for Items 2 and 3, 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:

1. With respect to the violation of § 192.706 (**Item 2**), within 60 days of issuance of this Final Order, Respondent must conduct a leakage survey of the Pico gas gathering line and provide documentation to the Director. Additionally, BreitBurn must institute a tracking system to ensure that leakage surveys are conducted at least once each calendar year, but at intervals not exceeding 15 months, per the requirements of § 192.706.

2. With respect to the violation of § 192.745(a) (**Item 3**), within 60 days of issuance of this Final Order, Respondent must inspect and partially operate all valves that might be required during an emergency and provide documentation to the Director.

Additionally, BreitBurn must institute a tracking system to ensure that any valves that may be required during an emergency are inspected at least once each calendar year, but at intervals not exceeding 15 months, per the requirements of § 192.745(a).

3. It is requested that BreitBurn maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. The company should report costs in two categories: 1) total costs associated with preparation/revision of plans, procedures, studies, and analyses; and 2) total costs associated with replacements, additions, and other changes to pipeline infrastructure.

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 and 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 sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued