

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

_____)	
In the Matter of)	
)	
Bridger Pipeline, LLC,)	CPF No. 5-2009-5034
)	
Respondent.)	
_____)	

CONSENT AGREEMENT AND ORDER

The U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), and Bridger Pipeline, LLC (Bridger or Respondent), have engaged in settlement discussions regarding the resolution of the enforcement action listed above. Having concluded those discussions, PHMSA and Bridger (collectively, Parties) agree that a settlement of this matter is in the best interests of the Parties and the public and will avoid further administrative proceedings or litigation. The Parties further agree that the entry of this Consent Agreement and Order (Agreement) is the most appropriate means of accomplishing that objective.

I. Procedural History.

On September 1, 2009, PHMSA issued to Bridger a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). The Notice alleged that Bridger had committed eight violations of 49 C.F.R. Part 195 and proposed assessing an administrative civil penalty of \$70,000 for two of the alleged violations. The Notice also proposed ordering Bridger to complete certain corrective actions to address seven of the violations.

On October 29, 2009, and May 6, 2010, Bridger submitted a written response to the Notice and requested an informal hearing. A hearing was subsequently held on May 18, 2010, with an attorney from the Office of Chief Counsel, PHMSA, presiding.

On August 30, 2012, the Associate Administrator for Pipeline Safety, PHMSA, issued a Final Order in the case. The Final Order found that Bridger had violated 49 C.F.R. §§ 195.202 (Item 2), 195.302(a) (Item 3), 195.402(a) (Item 4), 195.402(c)(13) (Item 5), 195.402(d)(5) (Item 6), and 195.402(e)(9) (Item 7), assessed a reduced civil penalty of \$63,800, and ordered Bridger to complete certain corrective measures.

On September 24, 2012, Bridger submitted a Petition for Reconsideration (Petition) of the Final Order, seeking reconsideration of the findings of violation for Items 2-7 and the civil penalties assessed for Items 4 and 7. On December 31, 2012, the Associate Administrator issued a Decision on the Petition for Reconsideration (Decision), withdrawing Items 2 and 3 but denying any further relief.

On February 15, 2013, Bridger filed a petition for review in the United States Court of Appeals for the Tenth Circuit challenging the Associate Administrator's findings of violation for Items 4, 5, 6, and 7 in the Decision, in a case styled Bridger Pipeline, LLC v. Pipeline and Hazardous Materials Safety Administration, Case No. 13-9517 (Petition). Under the terms and conditions set forth in this Agreement, the Parties have now resolved the issues underlying the Notice and Petition, and Bridger will dismiss its Petition as provided in Paragraph 16 of this Agreement.

II. General Provisions.

1. Bridger acknowledges that the company and its pipeline system, known generally as the Poplar Pipeline and located in eastern Montana, is subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. 60101, et seq., and the regulations and administrative orders issued thereunder. For purposes of this Agreement, Bridger acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U. S.C. § 60101, et seq., and the regulations and orders issued thereunder.

2. Bridger agrees to the issuance of this Agreement and hereby waives any further procedural requirements with respect to its issuance. Bridger waives all rights to contest the adequacy of the Notice, Final Order, and Decision issued in this proceeding and the validity of this Agreement, including all rights to administrative or judicial hearings or appeals.

3. This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to this proceeding and the issues embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the amount or collection of any civil penalties other than those expressly contained in this Agreement.

4. Nothing in this Agreement affects or relieves Bridger of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, et seq., and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering, or its authority to bring any enforcement action against Bridger pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

5. This Agreement does not waive or modify any Federal, state, or local laws or regulations that are applicable to Bridger's pipeline system. This Agreement is not a permit or a modification of a permit under any Federal, State, or local laws or regulations. Bridger remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

6. This Agreement does not create rights in, or grant any cause of action to, any person not a party to this Agreement. PHMSA is not liable for any injuries or damages to persons or property

arising from acts or omissions of Bridger or its officers, employees, or agents carrying out the work required by this Agreement. PHMSA, its officers, employees, agents, and representatives are not liable for any cause of action arising from any acts or omissions of Bridger or its contractors in carrying out any work required by this Agreement.

7. This Agreement shall apply to and be binding on PHMSA and Bridger, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.

III. Findings of Fact and Violations.

8. By entry of this Agreement, PHMSA vacates and withdraws the Final Order and Decision previously issued in this proceeding.

9. Respondent acknowledges that even though the Final Order and Decision are hereby withdrawn, Items 4, 5, 6, and portions of Item 7 from the Notice may be considered by PHMSA to be prior offenses in any future PHMSA enforcement action brought by the agency against Bridger. Except as provided under Paragraph 10 below, this Agreement does not constitute a finding of violation of any Federal law or regulation and, therefore, may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement or in future PHMSA enforcement actions against Bridger

10. Respondent acknowledges, and PHMSA hereby finds, that Bridger violated 49 C.F.R. § 195.402(e)(9) (Item 7), as alleged in the Notice, by failing to demonstrate that it had provided for a post-accident review of its employee activities no later than 45 days after the accidental hazardous liquid release that occurred on its Poplar pipeline on January 5, 2006, and was no longer an emergency, as required by its manual of written procedures for conducting operations, maintenance and emergencies.

IV. Civil Penalty.

11. The Parties mutually agree, and PHMSA hereby orders, that the total civil penalty assessed in connection with the Notice is Forty-Five Thousand Dollars (\$45,000.00).

12. Bridger will pay the civil penalty amount in Paragraph 11 within 30 calendar days of signing this Agreement. Payment shall be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury.

13. The Parties agree that the civil penalty assessed and collected in this proceeding will not be deductible for purposes of Federal taxes.

14. The Parties agree that the civil penalty assessed and collected under this Section IV will not be used in determining the amount of any civil penalty for any future enforcement action against Bridger.

V. Compliance Order.

15. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent agrees to take (or has taken) the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

- A. With respect to the violation of § 195.402(a) alleged in Item 4 of the Notice, Bridger must:
 - 1. Review its manual of written procedures for normal operation and maintenance, for handling abnormal operations, and for responding to emergencies and must make changes to those procedures that are not effective.
 - 2. Maintain documentation in accordance with Part 195 for all procedure modifications and retraining of personnel.
- B. With respect to the violation of § 195.402(c)(13) alleged in Item 5 of the Notice, Respondent must:
 - 1. Revise its Normal Operating Procedures, Section 3.8, to require the periodic review of work done by Bridger personnel and unsupervised contractors to determine the effectiveness of the procedures used in normal operation and maintenance and to require corrective action where deficiencies are found. Such procedures must provide for periodic written reviews that are separate and apart from Bridger's annual employee performance reviews;
 - 2. Such procedures must be submitted to the Director, Western Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration (Director) for review; and
 - 3. Upon review of the revised procedures under subparagraph 1 above, Respondent must submit completed written reviews of the work performed by Bridger personnel and unsupervised contractors to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found. Such reviews must comply with the procedures revised in accordance with this Paragraph 15(B).
- C. With respect to the violation of § 195.402(d)(5) alleged in Item 6 of the Notice, Respondent must submit completed written reviews it has performed for Bridger personnel and contractors to determine the effectiveness of the procedures used in abnormal operations and for taking corrective action where deficiencies are found.
- D. Respondent must submit documentation that it has reviewed or revised its procedures pursuant to Paragraphs 15.A.1 and 15.B.1 above, within 90 calendar days from the Effective Date of this Agreement.

- E. Respondent must submit documentation that it has reviewed personnel performance pursuant to Paragraphs 15.B.3 and 15.C. above within 180 calendar days from the date its revised procedures have been reviewed and deemed to satisfy the terms of this order by the Director.

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. Upon receipt of the revised procedures required under Paragraphs 15.A and 15.B above, the Director will promptly respond in writing and indicate the expected completion date for his review. With respect to the procedures required to be submitted for review under Paragraphs 15.A.1 and 15.B.1 above, the Director may: (a) approve, in whole or in part, the procedures; (b) approve the procedures on specified conditions; or (c) disapprove the procedures, specifying the basis for disapproval. Bridger may seek review by the Associate Administrator if Bridger disagrees with the Director regarding any Director decision on a submission, and the decision by the Associate Administrator shall constitute final agency action.

VI. Dismissal of Petition for Review.

16. Within three (3) business days after the Effective Date of this Agreement, the Parties shall file a Stipulation to Dismiss the petition pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure, specifying that the Parties will bear their costs on appeal.

VII. Enforcement.

17. This Agreement is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190, including the assessment of civil penalties as determined in accordance with the requirements of 49 U.S.C. § 60122 and 49 C.F.R. §§ 190.223 to 190.225, if PHMSA determines that Bridger is not complying with the terms of this Agreement or any determination made by the Director under Paragraph 15 above. Failure to comply with the terms of this Agreement may also result in referral to the Attorney General for appropriate relief in a United States District Court pursuant to 49 U.S.C. § 60120.

VIII. Effective Date.

18. The “Effective Date” is the date on which this Agreement has been signed by both Bridger and PHMSA.

IX. Modification.

19. The terms of this Agreement may only be modified by mutual agreement of the Parties. Such modifications shall be in writing and signed by both parties.

X. Termination.

20. With the exception of Sections 9 and 10 of this Agreement, which shall survive termination, the remaining terms and conditions of this Agreement shall terminate upon: (a) Bridger’s payment of the civil penalty set forth in Paragraph 11; and, (b) Bridger’s satisfactory completion of the compliance terms set forth in Paragraph 15, pursuant to the submittal and

review procedures set forth therein. Nothing in this Agreement precludes Bridger or PHMSA from completing any of the obligations earlier than the deadlines provided for in this Agreement.

XI. Ratification.

21. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

For PHMSA:

For Bridger:

Jeffrey D. Wiese
Associate Administrator
For Pipeline Safety

_____, Managing Member
Bridger Pipeline, LLC

Date:

Date: