

AUGUST 30, 2012

Mr. H.A. 'Hank' True
President True Companies
Bridger Pipeline, LLC
455 N. Poplar
P. O. Drawer 2360
Casper, WY 82602

Re: CPF No. 5-2009-5034

Dear Mr. True:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, withdraws allegations of violation and assesses a reduced civil penalty of \$63,800, and specifies actions that need to be taken by Bridger Pipeline, LLC 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. Tad True, Vice President - True Companies, Bridger Pipeline, LLC - 455 N. Poplar
P. O. Drawer 2360, Casper, WY 82602
Mr. Colin G. Harris, Holme Bryan Cave, formerly Roberts & Owens, LLP, Counsel for
Bridger Pipeline, LLC, 1801 13th Street, Suite 300, Boulder, Colorado 80302
Mr. Chris Hoidal, Director, OPS Western Region
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**U.S. 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.)	
_____)	

FINAL ORDER

From June 15 to June 20, 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 Bridger Pipeline, LLC's (Bridger or Respondent) Poplar pipeline in eastern Montana. Bridger, part of the True Companies, operates crude oil transmission pipelines in Montana and North Dakota.¹

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated September 1, 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 Bridger had committed various violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$70,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning items required no further action, but warned the operator to correct the probable violations or face possible enforcement action.

Respondent responded to the Notice by letter dated October 29, 2009 (Response). Bridger contested all of the allegations, the proposed civil penalty, and the proposed compliance order and requested a hearing. Respondent provided additional written material by letter dated May 6, 2010 (Supplemental Response). A hearing was subsequently held on May 18, 2010 in Denver, Colorado, with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel.

At the opening of the hearing, OPS moved to withdraw Items 1 and 8 of the Notice, warning items. Both parties then presented evidence and arguments on the remaining allegations of violation. At the conclusion of the hearing, Bridger was given a reasonable time to submit a post-hearing brief. Bridger later requested and was granted an extension of time. Bridger submitted its post-hearing materials by letter with attachments dated July 7, 2010(Closing).

¹ <http://www.truecos.com/bridger/> (last accessed March 13, 2012).

Respondent provided additional written material and a post-hearing statement for the record, by letter dated August 10, 2010. (Supplemental Closing)

FINDINGS OF VIOLATION

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

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.202, which states:

§ 195.202 Compliance with specifications or standards.

Each pipeline system must be constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.202 by failing to document that piping at its Poplar station had been constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of 49 C.F.R. Part 195. Specifically, the Notice alleged that Bridger failed to provide inspection, welding, or material certifications to demonstrate that its above-ground piping installed for breakout tanks at its Poplar station, in either 2007 or early 2008, was constructed in accordance with the requirements of 49 C.F.R. Part 195.

In its Responses and at the hearing, Bridger did not dispute that it failed to provide inspection, welding, or material certifications to demonstrate that the subject piping was constructed in accordance with 49 C.F.R. § 195.202 but contended that the subject piping is exempt from 49 C.F.R. Part 195. Respondent raised three defenses to the allegation that it had violated 49 C.F.R. § 195.202. First, it argued that the requirements of Part 195 did not apply because the breakout tank piping is not subject to system pressure. Second, Bridger argued that the breakout tank piping is exempt from Part 195 because it is a low stress line that operates at less than 20 percent of specified minimum yield strength (SMYS). Third, Bridger argued that the piping was constructed in a manner consistent with Part 195 and that requiring the company to re-construct the subject piping to demonstrate compliance, as suggested in the Notice, is a drastic and unnecessary remedy.²

First, Respondent argued that the breakout tank piping is not subject to system pressure and, therefore, is exempt from 49 C.F.R. Part 195, Subpart C, citing to 49 C.F.R. § 195.128 that “[a]ny pipe to be installed in a station that is subject to system pressure must meet the applicable requirements of this subpart.” Bridger explained that the piping is not subject to system pressure because the back pressure valve holds constant pressure coming into the station, there is a difference in line sizes, the valves are pad locked open going in and the out pumps cannot generate more pressure than 84 psig. In support of its position, Bridger presented diagrams of

² The company contended that it constructed the subject piping, which operates at a pressure of 70 psi, in accordance with comprehensive written specifications or standards that are consistent with the requirements of 49 C.F.R. Part 195.

the Poplar Station piping, pump curves, and SMYS Calculations.³

In response, PHMSA testified that its inspection revealed new piping at the Poplar Station consisting of a manifold and piping going from the pumps to the breakout tanks.⁴ PHMSA asserted that 49 C.F.R. Part 195 applies because the piping leads to tanks that receive and deliver crude oil from a regulated pipeline and that can receive surges from a regulated pipeline. PHMSA explained that the breakout tank piping is subject to system pressure; that the station piping was constructed while the pipeline was in operation; that back pressure valves keep the pipe packed and that any line that could see mainline pressure must meet standards that are consistent with the requirements of 49 C.F.R. Part 195.

PHMSA testified that any relief device downstream providing relief to a greater than 20 percent SMYS line is a part of the construction because the operator can expose relief pressure to the same pressure on the main line. PHMSA explained that the breakout tank piping at the Poplar Station is part of the Poplar Pipeline System, as hazardous liquid moves through the line pipe, valves, and other appurtenances connected to the line pipe and breakout tank. PHMSA reasoned that because the piping is located between a regulated transmission pipe and regulated breakout tanks, this piping is regulated under Part 195. PHMSA testified that the breakout tank piping at issue could be subject to system pressure during an overpressure event and pointed to Bridger's schematics and drawings in support of its assessment.⁵ PHMSA asserted that, even if it is not subject to system pressure, requirements in Subparts D and E of Part 195 nonetheless applied to the breakout tank piping, in accordance with 49 C.F.R. § 195.202, because the breakout tank piping at the Poplar Station is part of a "pipeline system."

After considering the evidence, I find that the breakout tank piping at the Poplar Station is an appurtenance to the Poplar pipeline system.⁶ "Any pipe to be installed in a station that is subject to system pressure must meet the applicable requirements of this subpart", 49 C.F.R. § 195.128. From a review of the Poplar Station piping diagram, it is evident that the relief piping to the breakout tanks is needed to relieve system pressure should an overpressure event occur. In accordance with § 195.128, I find that Bridger's station piping is not ancillary to the system and that the piping is capable of experiencing or being affected by the internal operating pressure of the pipeline system. Therefore, I find that Bridger's station piping must meet the applicable requirements of Part 195.

Second, Bridger argued that the breakout tank piping is exempt from Part 195 because it is a low stress line that operates at less than 20 percent SMYS. Bridger argued that since the enactment of the Part 195 regulations in the late 1960's, the "scope" provision in section 195.1 has

³ Response at Exhibit 2.

⁴ Pipeline Safety Violation Report, (September 17, 2009) (Violation Report) Attachment A at 19.

⁵ Response at Exhibit 2.

⁶ A pipeline or pipeline system is all parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to the line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks, as defined in 49 C.F.R. § 195.2.

exempted “[t]ransportation through pipelines that operate at a stress level of 20 % or less of the specified minimum yield strength of the line pipe in the system.” 34 Fed. Reg. 15,473, 15,476 (Oct. 4, 1969). During the hearing, Bridger presented testimony that the pipe entering and at the Poplar Station segment had a maximum operating pressure (MOP) less than 20 percent SMYS.⁷

In response, PHMSA explained that if part of the line operated above 20 percent SMYS, then it is all above 20 percent SMYS and the line does not meet the definition of low-stress pipeline. PHMSA described and explained in detail how the February 2, 2006-accident report (accident report) Bridger submitted is evidence that a component on a pipeline segment at the Poplar Station failed while operating in excess of 20 percent of SMYS.⁸

A review of Bridger’s accident report showed that a failure occurred on a component of the line while operating above 20 percent SMYS. I find that the breakout tank piping at the Poplar Station is part of the Poplar Pipeline System, as hazardous liquid moves through the line pipe, valves, and other appurtenances connected to the line pipe and breakout tank. I find that at least some parts of Bridger’s Poplar Pipeline System operated at a stress level in excess of 20 percent of SMYS. If part of the line is operated above 20 percent SMYS, then the line does not satisfy the low stress exception that it be operated in its entirety at a stress level of 20 percent or less of the SMYS, in accordance with 49 C.F.R. § 195.2. Therefore, I further find that the piping at the Poplar station is subject to Part 195.

Then, the company argued that the subject piping was constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of 49 C.F.R. Part 195. As support, Bridger referred to the company’s welding records and use of a reputable welding contractor to perform the construction.⁹ During the hearing and in a post-hearing affidavit, Bridger’s employee attested that “we used pipe already owned by Bridger because we had a lot of 16-inch diameter, 0.250-inch wall thickness, Grade X-52 pipe that had been used as a temporary by-pass line on a stoppling job south of New Castle. The pipe had been hydrotested before being put into service as the by-pass...[f]or the tank discharge lines, all of the pipe was new pipe left over from earlier projects and from memory I was certain the 10-inch and 12-inch (diameter pipe) were X-42 because that is what Texaco engineers (the prior owner of the Station) always used in this system and ranged from .219 to .250 wall.”¹⁰

Bridger proposed to resolve the matter by performing an x-ray examination of the welds and a pressure test at over four times the pressure required by 49 C.F.R. § 195.302, to validate the integrity of the assembly, for the service to which it is intended.

In response, PHMSA argued that the documents Bridger submitted were mischaracterized as welding records and the documents do not support the Bridger employee’s affidavit and

⁷ Testimony and Closing, Affidavit of Kenneth Dockweiler, Attachment B; and Exhibits 2-4.

⁸ Violation Report, Exhibit E, at 23.

⁹ Closing, Attachment 5 and Exhibit 5.

¹⁰ Closing, Gary Quinn Affidavit, Attachment C.

testimony that based on the seam type and date of manufacture the pipe used in the construction was of the quality required by Part 195.¹¹ PHMSA described in detail components of the documents in Respondent's Exhibit 5 and argued that the documents are contractor itemized costs for labor and equipment, with no evidence of weld procedures used, qualifications of weld procedures or welders, and no evidence of any inspection of the welding.

After considering the evidence and testimony, I find that the evidence submitted by Respondent as "welding records" lacked sufficient information to show that the work that had been performed satisfied the requirements of 49 C.F.R. Part 195. I also find that Respondent submitted insufficient evidence to demonstrate that the above-ground piping installed for breakout tanks at its Poplar station, in either 2007 or early 2008, had been constructed in accordance with the requirements of Part 195.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Bridger's station piping is not exempt from Part 195. I also find that at the time of the inspection, Bridger violated 49 C.F.R. § 195.202 by failing to demonstrate that the above-ground piping installed for breakout tanks at its Poplar station, in either 2007 or early 2008, had been constructed in accordance with the comprehensive written specifications or standards required by 49 C.F.R. Part 195.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.302(a), which states:

§ 195.302 General requirements.

(a) Except as otherwise provided in this section and in § 195.305(b), no operator may operate a pipeline unless it has been pressure tested under this subpart without leakage. In addition, no operator may return to service a segment of pipeline that has been replaced, relocated, or otherwise changed until it has been pressure tested under this subpart without leakage.

The Notice alleged that Respondent violated 49 C.F.R. § 195.302(a) by operating a pipeline that had not been pressure tested without leakage, in accordance with Subpart E of Part 195. Specifically, the Notice alleged that Bridger failed to perform a pressure test on its Poplar Station breakout tank piping that had been installed in 2007 or early 2008.¹²

In its Response and at the hearing, Bridger argued that although the piping was exempt from Part 195 and no pressure test was required, it would complete a pressure test of the Poplar Station breakout tank piping in accordance with 49 C.F.R. § 195.302(a).

During the hearing, PHMSA asserted that the company was required to pressure test the breakout tank piping at the time of installation and that none of the exceptions from the requirements of Subpart E applied. PHMSA cited to 49 C.F.R. § 195.302(a) which requires that "no operator

¹¹ Closing, Gary Quinn Affidavit, Attachment C.

¹² The agency asserted that Respondent had no records or knowledge of a pressure test ever being performed on its Poplar Station breakout tank piping in 2007 or early 2008.

may operate a pipeline unless it has been pressure tested under this subpart without leakage”.

After the hearing, Bridger submitted a hydrostatic pressure test report¹³ dated June 15, 2010, to demonstrate compliance.¹⁴ PHMSA agreed that the company’s June 15, 2010 hydrostatic pressure test records showed that the above-ground piping was tested in accordance with the requirements.

Accordingly, after considering all of the evidence, I find that Bridger’s station piping was not exempt from Part 195. Although Bridger subsequently submitted a satisfactory pressure test dated June 15, 2010, I find that Respondent violated 49 C.F.R. § 195.302(a) by failing to perform a pressure test without leakage on the breakout tank piping that had been replaced or otherwise changed at the Poplar Station in 2007 or early 2008.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to review its manual of written procedures for conducting operations, maintenance, and emergencies (O&M Manual) from February 2005 until June 2008, exceeding the maximum allowed interval by approximately 25 months.

In its pre-hearing Response, Bridger contended that it had prepared and followed its manual of written procedures.¹⁵ Respondent stated that it would present the O&M Manual Review Logs and Revision Request Forms as evidence that its manuals had been reviewed on June 12, 2007, and June 11, 2008.¹⁶

Bridger presented the testimony and post-hearing affidavit of Mr. Gary Quinn, Bridger’s former Poplar Station Manager, who attested that reviews had been performed timely for years and in

¹³ Supplemental Closing.

¹⁴ *Id.*

¹⁵ In its response to Items 4, 5, and 6, Bridger argues that it had procedures. There is no question that the company had procedures. However, the allegations involve Bridger’s failure to follow its procedures.

¹⁶ Response.

accordance with §195.402.¹⁷ Respondent also contended that its Review Logs demonstrated that there were no violations during the years in question.¹⁸

During the hearing, PHMSA pointed out that Bridger acknowledged that it had reviewed its O&M Manual in June 2007 and June 2008, supporting the allegation that Bridger failed to review its O&M Manual for at least a 26-month period, i.e., from February 2005 until June 2007. PHMSA further asserted that it is questionable whether any of the reviews actually occurred because Bridger's records were incomplete and the revision dates shown at the bottom pages of its O&M manual indicate the procedures had not been reviewed since 2005. PHMSA testified that at the time of the inspection, Mr. Darin Schiller, Bridger's Pipeline Safety Compliance Coordinator, stated that "[t]o his knowledge [the company] ha[d] never reviewed their manuals since the manuals were released in February 2005."¹⁹ PHMSA referred to the Violation Report where it documented the statement during the inspection interview.

Accordingly, after considering all of the evidence, I find that Bridger's testimony and the revision dates in Bridger's O&M indicate that Bridger had performed reviews of its O&M Manual on June 12, 2007 and June 11, 2008. However, I find there is insufficient evidence that Bridger had reviewed the manual from February 2005 until June 2007. Respondent's manual was prepared in February 2005, which means that the first review would have been due no later than May 2006. Respondent has not demonstrated that it performed the May 2006 review. I also find that it is not clear that Bridger's Revision Request Forms are directly related to the individuals or the facility referenced in Bridger's Review Log. I further find conflicting testimony between Mr. Quinn, a former Bridger employee and Mr. Schiller, a Bridger employee at the time of the inspection. I find there is insufficient evidence that Bridger had performed a review of its O&M manual from February 2005 until June 2007. Based on the foregoing, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to review its O&M manual at the required intervals, exceeding the maximum allowed interval by approximately 26 months.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a)

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1)

(13) Periodically reviewing the work done by operator personnel to

¹⁷ "With the purchase by Bridger of the pipeline in December of 2003, record keeping practices changes and I may have been sending records to Casper, including the review records. In any event, I have no recollection that I stopped doing these reviews in 2005 or at any other time. To the contrary, my recollection is that I have always done them ..."Closing, Gary Quinn Affidavit, Attachment C.

¹⁸ Supplemental Response, Operations and Maintenance Manual Review Logs, revision date 07/08 and Revision Request Forms, Exhibit 6 and 7.

¹⁹ Violation Report, at 6.

determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13) by failing to demonstrate that it had periodically reviewed personnel performances to determine the effectiveness of normal operation and maintenance procedures and had taken corrective action where deficiencies were found, as required by the company's Normal Operating Procedures, Section 3.8.²⁰

In its Response and at the hearing, Bridger argued that it had procedures requiring annual reviews and that it followed Normal Operating Procedures, Section 3.8, requiring the annual review of its personnel performance.²¹ Bridger referenced the affidavit of Mr. Quinn attesting that the reviews included the normal operation and maintenance work performed by field personnel, as well as the work performed in abnormal situations such as emergencies. Bridger testified that it had conducted the reviews in June 2007 and June 2008. Respondent then argued that the regulation does not require Bridger to provide records to demonstrate that the reviews were completed.

During the hearing, PHMSA asserted that Bridger's Normal Operating Procedures, Section 3.8, required annual reviews of personnel performances to determine the effectiveness of normal operation and maintenance procedures each calendar year, at intervals not to exceed 15 months. PHMSA testified that Bridger failed to provide records to demonstrate that it had performed the required reviews. PHMSA also testified that during an inspection interview it documented a statement by Mr. Schiller, Bridger's Pipeline Safety DOT Compliance Coordinator, that "[h]e did not believe these reviews ha[d] ever been done".²²

Upon consideration of all of the evidence and testimony, I find that the regulation alleged to have been violated required the company to follow a manual that specifically must include procedures for periodically reviewing the work performed by its personnel to determine the effectiveness of the procedures used in normal operation and maintenance. I find that the company's manual included procedures implementing 49 C.F.R. § 195.402(c)(13) requiring the annual review of work done by its personnel to determine the effectiveness of the procedures used in normal operation and maintenance each calendar year, at intervals not to exceed 15 months.

I further find that although 49 C.F.R. § 195.402(c)(13) does not state that Respondent is required to produce records to show that it performed the periodic review, the regulation is a performance standard and Respondent must be able to demonstrate that reviews, as required by its procedures, had been performed. I find that there is insufficient evidence to show Respondent had actually performed the annual work performance reviews. One Bridger employee contradicted testimony by another employee, that the company had performed reviews. Based on the foregoing, I find that Respondent violated 49 C.F.R. § 195.402(c)(13) by failing to demonstrate that it reviewed

²⁰ Violation Report, Exhibit B at 20.

²¹ Supplemental Closing, Exhibit 9.

²² Violation Report, at 6.

the work performed by its personnel to determine the effectiveness of its procedures used in normal operation and maintenance, within the intervals required by its Normal Operating Procedures 3.8.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(d)(5), which states:

§ 195.402 Procedural manual for operations, maintenance.

(a)

(d) *Abnormal operation.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

(1)

(5) Periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(d)(5) by failing to periodically review work done by operator personnel and contractors to determine the effectiveness of the company's abnormal operation procedures. Specifically, the Notice alleged that Bridger failed to demonstrate that it had performed reviews of work performed by personnel and contractors to evaluate responses to abnormal operations to determine the effectiveness of abnormal operating procedures each calendar year, at intervals not to exceed 15 months, as required by the company's Abnormal Operating Procedures, Section 6.3.

In its Response and at the hearing, Bridger argued that the allegation of violation should be dismissed. Bridger argued that its O&M Manual had the procedures required by the regulation and that any obligation to follow the Abnormal Operating Procedures, Section 6.3, is triggered by 49 C.F.R. § 195.402(a). Respondent contended that its Abnormal Operating Procedures required and it had timely reviewed personnel responses to abnormal operations to determine the effectiveness of abnormal operating procedures. Respondent stated that it performed reviews in June 2007 and June 2008, relying upon the testimony of employee, Mr. Gary Quinn, that the reviews included the normal operation and maintenance work performed by field personnel, as well as the work performed for abnormal situations.

In response, PHMSA explained that the company's failure to perform the required reviews is the issue and following the procedures is necessary to perform the required reviews.

PHMSA asserted that Respondent's testimony that it performed reviews in June 2007 and June 2008 is an admission that it did not perform reviews each calendar year, at intervals not to exceed 15 months. PHMSA also argued that the company's admission contradicts any argument that it performed reviews at any time between February 2005 and June 2007. PHMSA testified that during the inspection interview it documented the statement of Mr. Schiller that "[b]oth myself and Mike Johnson informally review responses to abnormal operations, but these reviews have not been documented."²³

²³ Violation Report, at 10.

Accordingly, after considering all of the evidence, I find that Bridger had procedures to perform the annual review of work done by its personnel to determine the effectiveness of the procedures used in abnormal operation. However, I find that there is no verifiable evidence that Respondent actually conducted reviews of the work done by its personnel to determine the effectiveness of its Abnormal Operating Procedures, Section 6.3, between February 2005 and June 2007. It is not clear that Bridger's Revision Request Forms are directly related to the individuals or the facility referenced in Bridger's Review Log. As for the testimony relied upon by Bridger, I find that there were inconsistencies that raised questions about the reliability of the statements.

Respondent must be able to demonstrate that periodic reviews had been performed. I find that there is insufficient evidence to show Respondent had actually performed timely periodic work performance reviews. Accordingly, I find that Respondent violated 49 C.F.R. § 195.402(d)(5) by failing to demonstrate it has performed reviews of the work performed by its personnel and contractors to evaluate responses to abnormal operations to determine the effectiveness of abnormal operating procedures.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(e)(9), which states in relevant part:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a)

(e) *Emergencies.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety when an emergency condition occurs; . . .

(9) Providing for a post accident review of employee activities to determine whether the procedures were effective in each emergency and taking corrective action where deficiencies are found.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(e)(9) by failing to demonstrate that it had provided for a post-accident review of employee activities after four hazardous liquid releases on its Poplar pipeline, between February 2, 2006 and November 17, 2006. Specifically, the Notice alleged that Bridger failed to provide for a post-accident review no later than 45 days after an accident is no longer considered an emergency, as required by the company's O&M Manual.

In its Response and at the hearing, Bridger argued that its O&M Manual includes written procedures for performing post-accident reviews; therefore, a finding of violation is not warranted. Bridger also argued that it performed timely post-accident reviews in all four hazardous liquid releases. At the hearing, Bridger submitted handwritten memoranda prepared on Incident Response Review forms at the time of each incident documenting the procedures undertaken in response to each incident, including notification, containment, investigation of the cause, and corrective action.²⁴ The company relied upon the affidavit and testimony of Mr. Quinn about the completeness of these reviews. Bridger argued that these satisfy any requirement for post-accident review.

²⁴ Bridger Hearing Exhibits 10-14.

At the hearing, PHMSA testified that Bridger did not provide any documentation to the OPS inspector to demonstrate compliance during the inspection. PHMSA also testified that Respondent created at least one of its incident response review forms years after the fact using handwritten notes from a former employee, and the handwritten notes used as the basis for that re-creation did not include all of the information required for an adequate post-accident review. The agency also asserted that the evidence showed that at least one of the required post accident reviews of employee activities did not occur. PHMSA also clarified that the violation at issue is Respondent's failure to perform the reviews, not its failure to have a written procedure.

Respondent has not demonstrated that the reviews occurred. During the hearing, Bridger acknowledged that it entered information on a post-accident review form in preparation for the hearing, years after the accident, based on handwritten notes from a former employee. Creating a record years after an accident has occurred does not meet the regulatory requirement to maintain complete post-accident records. I do not find the testimony of Mr. Quinn substantiated that the post-accident reviews occurred. The testimony of Mr. Quinn, particularly relates to events that may (or may not) have occurred several years prior to the inspection. After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(e)(9) by failing to demonstrate that it performed post-accident reviews no later than 45 days after the four accidental hazardous liquid releases on its Poplar pipeline accident were no longer considered emergencies, as required by the company's O&M Manual.

Item 9: The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), which states:

§ 195.432 Inspection of in-service breakout tanks.

(a)

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Standard 653 (incorporated by reference, *see* § 195.3). However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3).

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to conduct an "out of service" inspection of the physical integrity of atmospheric and low-pressure steel aboveground breakout Tank 403 according to section 4 of API Standard 653 or according to its operations and maintenance manual, as required by § 195.402(c)(3). Specifically, the Notice alleged that Bridger failed to complete an "out of service" inspection of Tank 403 at its Poplar station after learning there may be significant corrosion inside Tank 403.

In its Response and at the hearing, Bridger disputed the allegation, argued that Tank 403 had been inspected at appropriate intervals in accordance with API Standard 653, "Tank Inspection, Repair, Alteration and Reconstruction." Bridger also contended that it performed an out-of-service inspection on Tank 403 in August 2009, which confirmed that the tank was in good condition. Bridger explained that an early tank inspection was not necessary because Tank 403 had an internal coating making it more resistant to any exposure to corrosive environment. In support of its position, Bridger submitted documentation regarding the internal coating.

PHMSA acknowledged that it issued the Notice without knowing that Tank 403 had a corrosion-resistant internal coating. PHMSA conceded that the August 2009 inspection demonstrates compliance.

Based upon the foregoing, I hereby order that Item 9 of the Notice be withdrawn.

Item 10: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(i), which states in relevant part:

§ 195.440 Public awareness.

(a)

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety

(i) The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(i) by failing to follow the program recommendations of API RP 1162. Specifically, Bridger failed to implement its public awareness program and failed to develop a list of emergency and public organization contact personnel within the vicinity or along its pipeline route. The Notice also alleged that at the time of the inspection Respondent had not developed lists of contact personnel with emergency and business phone numbers and addresses for its Poplar pipeline.

In its Response and at the hearing, Bridger argued that the company's participation in state pipeline associations satisfies the requirements of the regulation and API Recommended Practice 1162. Respondent contended the company has compiled an updated list of local public officials.

PHMSA asserted that an operator's participation in a state pipeline association does not constitute a sufficient public awareness program, and even if it did, Bridger has not introduced any evidence showing that it properly documented or evaluated its participation in such a program.

During the hearing, Respondent submitted lists of contact personnel with emergency and business phone numbers and addresses for its Poplar pipeline. A review of Bridger's submission shows that it is now consistent with the current regulation. Accordingly, after considering all of the evidence, I find that the documentation submitted by Bridger at the hearing and resubmitted in its post-hearing submission demonstrates compliance with 49 C.F.R. § 195.440(i). Based upon the foregoing, I hereby order that Item 10 of the Notice be withdrawn.

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 \$70,000 for the violations cited above.

Item 4: The Notice proposed a civil penalty of \$35,000 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to review its O&M manual each calendar year, at intervals not to exceed 15 months, exceeding the required intervals. Bridger argued that the terms of the proposed civil penalty and compliance order were "unreasonable, unnecessary and unduly burdensome and punitive, or they do not allow sufficient time to implement".²⁵ Bridger further argued that the civil penalty should be eliminated based on the evidence of compliance that it planned to submit post-hearing. In support of its position, Respondent compared the present case to *In the Matter of ExxonMobil Pipeline Company*, C.P.F. No. 5-2005-2008,²⁶ where ExxonMobil was cited for the same violation, found to be out of compliance for more than 3 years and fined \$5,000. Bridger proffered that although it had no previous citation of violation of 49 C.F.R. § 195.402(a) and it was no more than 13 months out of compliance, the proposed civil penalty is punitive.

I have considered the above-referenced assertions by Bridger and disagree with elimination of the proposed civil penalty, finding that the assessment of civil penalties takes into account all of the factors identified in 49 C.F.R. § 190.225 and the application of those factors are fact specific to the individual case in question. When Respondent attempts to compare previously issued final orders, it is not privy to all of the various circumstances that may exist in a particular case and history of that operator, so any attempt to make a comparison based upon violation of a particular regulation and the amount of the penalty will produce an inaccurate and flawed result. I am unable to compare the *ExxonMobil* case cited by Bridger to demonstrate the excessiveness of the proposed civil penalty amount, as the case was later withdrawn by the Associate Administrator.

Upon review of the record, I find that the foundation of the penalty amount is based on the gravity of the violation, the circumstances surrounding the violation, including the number of reviews that Respondent failed to perform, exceeding the maximum interval for review, and the prior history of the operator. Respondent's alleged failure to review its O&M manual from February 2005 until June 2008 was factored into the civil penalty amount. As stated above, I have found that Bridger had performed reviews of its O&M Manual on June 12, 2007 and

²⁵ Response at 1.

²⁶ See http://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_520055008.html?nocache=6563.

June 11, 2008. Therefore, the civil penalty amount is reduced to reflect that Bridger failed to review its O&M Manual from February 2005 until June 2007. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$28,800 for violation of 49 C.F.R. § 195.402(a).

Item 7: The Notice proposed a civil penalty of \$35,000 for Respondent's violation of 49 C.F.R. § 195.402(e)(9), for failing to demonstrate that it had provided for a post-accident review of employee activities to determine whether the company's procedures were effective in each emergency, and had taken corrective action where deficiencies were found. Bridger argued that the civil penalty should be eliminated based on the evidence of compliance and because it has no previous citation for violation of this regulation.

I have considered the arguments and assertions by Bridger. With respect to culpability, pipeline operators are well aware of their obligation to provide for post-accident review of employee activities. Bridger did not comply with its own O&M procedures to conduct post-accident reviews within 45 days after the accident is no longer an emergency. With respect to the gravity of the violation, it is essential that operators provide for post-accident reviews because a number of threats to a pipeline's integrity can go undetected if post-accident reviews are not conducted in a timely fashion, such as the presence of improperly trained personnel, the existence of defective equipment, and the use of inadequate procedures. In general, Bridger has a poor compliance history.²⁷ Applying lessons learned from accidents is an important part of preventing similar accidents from occurring in the future. The failure to document post-accident reviews reduces the chance that deficiencies will be identified and corrective action taken. Respondent has provided no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this Item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$35,000 for violating 49 C.F.R. § 195.402(e)(9).

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 \$63,800 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.

²⁷ *In the Matter of Bridger Pipeline, LLC*, Final Order, dated January 9, 2007, CPF No. 5-2005-5017; *In the Matter of Bridger Pipeline, LLC*, Final Order, dated February 16, 2006, CPF No. 3-2005-5036; *In the Matter of Bridger Pipeline, LLC*, Final Order, dated April 2, 2009, CPF No. 5-2007-5003; *In the Matter of Bridger Pipeline, LLC*, Decision on Petition for Reconsideration, dated June 16, 2009, CPF No. 5-2007-5003.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 2, 3, 4, 5, 6, 9 and 10 in the Notice for violations of 49 C.F.R. §§ 195.54, 195.302(a), 195.402(a), and 195.402(e)(9), respectively. 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. Because I ordered that the allegation in Item 9 be withdrawn, and Respondent submitted a Hydrostatic Test Report for Items 2 and 3, and lists of contact personnel with emergency and business phone numbers and addresses was submitted for Item 10, the compliance terms proposed for Items 2, 3, 9 and 10 are not included in this order. 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 § 195.402(a) (**Item 4**), Respondent must review its manuals of written procedures for normal operation and maintenance, for handling abnormal operations, and for responding to emergencies and make changes to those procedures that are not effective. Bridger must also maintain records of these reviews, as required by Part 195.
2. With respect to the violation of § 195.402(c)(13) (**Item 5**), Respondent must submit completed reviews of the work done by Bridger personnel and contractors to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.
3. With respect to the violation of § 195.402(d)(5) (**Item 6**), Respondent must review the response to emergencies by their personnel and contractors to determine the effectiveness of their emergency response procedures and take corrective action if deficiencies are found. Bridger must document all such reviews and corrective action taken.

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.

WARNING ITEMS

With respect to Item 1, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. During that hearing, OPS moved to withdraw Warning Items 1 and 8 of the Notice. Based upon the foregoing, I hereby order that Items 1 and 8 of the Notice be withdrawn.

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, 2nd 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued