

DECEMBER 31, 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 is my Decision on the Petition for Reconsideration filed by Bridger Pipeline, LLC, in the above-referenced case. The Decision grants, in part, and denies, in part, Bridger's Petition for Reconsideration. The remaining terms of the Final Order are in effect, including the assessment of a civil penalty in the amount of \$63,800. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Service of the Decision 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

VIA 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,)

Respondent.)

CPF No. 5-2009-5034

DECISION ON PETITION FOR RECONSIDERATION

On August 30, 2012, pursuant to 49 U.S.C. § 60122 and 49 C.F.R. § 190.213, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), issued a Final Order in this proceeding, finding that Bridger Pipeline, LLC (Bridger or Petitioner), had committed six violations of the Pipeline Safety Regulations, codified at 49 C.F.R. Part 195. The Final Order assessed a reduced civil penalty of \$63,800 for various violations of 49 C.F.R. Part 195.

On September 24, 2012, Bridger submitted a Petition for Reconsideration (Petition) of the Final Order, contesting the findings and requesting a review of Items 2-7 of the Final Order and the associated civil penalties. First, the company argued that PHMSA erred in finding that it violated 49 C.F.R. § 195.202 (Item 2); 49 C.F.R. § 195.302 (Item 3); 49 C.F.R. § 195.402(a) (Item 4); 49 C.F.R. § 195.402(c)(13) (Item 5); 49 C.F.R. § 195.402(d)(5) (Item 6); and 49 C.F.R. § 195.402(e)(9) (Item 7). Second, Bridger argued that PHMSA relied on hearsay statements in the Pipeline Safety Violation Report (Violation Report) to make findings of violation. Third, Bridger argued that the civil penalties assessed for Items 4 and 7 of the Final Order should be recalculated.

Standard of Review

A respondent may petition the Associate Administrator for reconsideration of a final order. Reconsideration is not a right to appeal or seek a de novo review of the record.¹ It is an opportunity to present the Associate Administrator with previously unavailable information or to request that any errors in the Final Order be corrected. Requests for consideration of new facts or arguments must be supported by a statement of reasons as to why those facts or arguments were not presented prior to the issuance of the Final Order. Repetitious information or arguments will not be considered.²

¹ 49 C.F.R. § 190.215(a)-(e).

² 49 C.F.R. § 190.215(c).

For the reasons set forth below, I am denying Bridger's request for reconsideration of the finding that it violated the requirements of 49 C.F.R. § 195.402(c)(13) (Item 5), 49 C.F.R. § 195.402(d)(5) (Item 6), and 49 C.F.R. § 195.402(e)(9) (Item 7). I affirm the findings of violation in the Final Order, compliance order and the assessed civil penalty of \$63,800. However, I am withdrawing the findings that Bridger violated the requirements of 49 C.F.R. §§ 195.202 (Item 2) and 195.302(a) (Item3). The associated compliance items for Item 2 are also withdrawn.

Analysis

Item 2: The Final Order determined that Bridger 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 Final Order determined that Bridger failed 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. I found 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.³

In its Petition, Bridger argued that Item 2 should be reversed because the regulation in effect at the time of the alleged violation excepted from Part 195 requirements certain low stress pipelines and pipeline segments. According to Bridger, the Poplar Station pipeline met the criteria of the exception: the segment did not transport hazardous volatile liquids (HVL), was neither located in a non rural area nor in a waterway segment, and operated at 20 percent of specified minimum yield strength (SMYS) or below. Further, Bridger contended that PHMSA did not meet its burden of proof that the segment operated in excess of 20 percent SMYS and erred by relying on a February 2, 2006 accident report.

To clarify, it is the version of the regulation that is in effect at the time of the inspection that is applicable. The inspection was conducted on June 15 to 20, 2008. The final rule that brought low stress pipeline under regulation was issued on June 3, 2008. However, the final rule did not go into effect until July 3, 2008, after the inspection. Before July 3, 2008, certain pipelines operating at low-stress were excepted from 49 C.F.R. Part 195. The limited exception applied to a low-stress onshore pipeline or pipeline segment that did not transport HVL; is located in a rural area; and is located outside a waterway currently used for commercial navigation.

Thus, the question is whether, at the time of the inspection, this limited exception applied to the above-ground piping installed for breakout tanks at Bridger's Poplar station. 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

³ Final Order at 3 and 5

tank. It is undisputed that the piping at the Poplar Pipeline station is an onshore pipeline segment that does not transport HVL; is located in a rural area; and is located outside a waterway currently used for commercial navigation. However, to fall under the exception, the piping has to be operated in its *entirety* at a stress level of 20 percent or less of the SMYS of the line pipe.⁴

The finding in the Final Order was based in part on the February 2, 2006 accident report as evidence that a component on a pipeline segment at the Poplar Station failed while operating in excess of 20 percent of SMYS.⁵ In its Petition, Bridger argued that the accident report does not involve an incident at the Poplar Station; it involved an incident at the Baker, Montana pipeline station, as indicated in the answers to questions 2-3 on page 1 of the accident report.⁶

However, the accident report states on page 2, *Part C-Origin of the Accident*, Line 1a the “Line segment name or ID Poplar Station”. Line 4 states that the “Failure occurred on Component”. On page 4, *Part I—Narrative Description of Factors Contributing to the Event*, “A steel bar in a barred tee of the Poplar pipeline prover broke off, allowing the prover ball to partially block the flow out of the prover. Wichita controllers picked up high pressure alarms on Poplar pipeline...” Bridger’s accident report indicated that the accident occurred when a component failed on a pipeline segment at the Poplar Station.

Given the conflicting information about the location of the accident, I have reconsidered the accident report that led to the finding that Petitioner’s Poplar line operated in excess of 20 percent of SMYS. Although the accident report recorded the estimated pressure at the time of the accident, the report omitted the specifications necessary to determine the internal design pressure of the pipeline. The internal design pressure helps determine the SMYS level of the pipe at the time of the accident. Under 49 C.F.R. § 195.106, the internal design pressure of a pipe is calculated by inputting certain specific criteria into a predetermined formula. Without the specific criteria to put into the formula, the stress level of the pipe cannot be determined. After considering all of the evidence, I find that there is insufficient evidence to determine whether the pipe referenced in the accident report operated in excess of 20 percent SMYS at the time of the accident; or that the piping at the Poplar Station was exempt from Part 195 at the time of the inspection as a low-stress pipeline. Therefore, I am withdrawing this allegation of violation. Nothing in this finding prevents PHMSA, in future enforcement actions, from alleging a violation of 49 C.F.R. § 195.202.

Item 3: The Final Order determined that Bridger 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

⁴ 49 C.F.R. §195.2 defines a low stress pipeline as a hazardous liquid pipeline that is operated in its entirety at a stress level of 20% or less of the specified minimum yield strength of the line pipe.

⁵ Final Order at 4.

⁶ Petition at 3.

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 Final Order determined that Bridger subsequently submitted a satisfactory pressure test dated June 15, 2010, to comply with 49 C.F.R. § 195.302(a) and there were no compliance terms for Item 3 included in the Final Order. Petitioner repeated its argument that the breakout tank piping is a low stress line and not subject to system pressure and, therefore, is exempt from 49 C.F.R. Part 195. Because I have withdrawn Item 2 above, Item 3 is also withdrawn.

Item 4: The Final Order determined that Bridger 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 Final Order determined that Bridger failed to review its Operations and Maintenance (O&M) manual at the required intervals, exceeding the maximum allowed interval by approximately 26 months. As stated in the Order, there was insufficient evidence that Bridger had reviewed the manual from February 2005 until June 2007. Bridger's manual was prepared in February 2005, which means that the first review would have been due no later than May 2006. Bridger had not demonstrated that it performed the May 2006 review.

In its Petition, Bridger argued that PHMSA erred in finding that it violated 49 C.F.R. § 195.402(a), when the agency relied on hearsay statements in the Violation Report and an interview of Mr. Darin Schiller by the PHMSA inspector, and ignored testimony by Mr. Gary Quinn, an affiant and witness at the hearing.

First, with regard to Bridger's hearsay contention, PHMSA's informal hearings may consider hearsay evidence that would be inadmissible in federal courts. The hearings are conducted informally without strict adherence to rules of evidence, 49 C.F.R. § 190.211(d). There is no denial of due process when hearings are not conducted under the rules of evidence. In this case, hearsay evidence did not deprive Bridger of its right to a fair hearing. Bridger had an opportunity to be heard, cross-examine witnesses, and to submit relevant information and material. The hearing officer may accept all, none, or part of any person's testimony, and credibility is always a consideration.

With regard to PHMSA's violation reports, these are kept in the regular course of business to record observations, activities, events, conditions, and interviews during an inspection, as shown by the testimony of the PHMSA inspector. During the inspection, Bridger was unable to provide documentation to demonstrate compliance. In making a finding, I weighed evidence and credibility, including the statements of Mr. Schiller in the Violation Report, and the testimony of Mr. Quinn and PHMSA's inspector. Mr. Schiller and Mr. Quinn had worked for Bridger for years and made statements of memory or belief to prove the fact remembered. The determining factor was the lack of documentation. Without documentation to demonstrate compliance, I found insufficient evidence that Bridger had performed a review of its O&M manual from February 2005 until June 2007. Petitioner has not presented any new evidence to contradict that finding. I find no basis to alter the finding of the Final Order.

Item 5: The Final Order determined that Bridger 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 determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

The Final Order determined that Bridger failed to demonstrate that it reviewed 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 3.8.⁷

In its Petition, Bridger argued that the finding made in Item 5 of the Final Order should be reversed. Petitioner contended that it was cited for failing to have an O&M manual containing procedures for reviewing deficiency reviews and abnormal events, but the Final Order found Bridger violated the regulation by failing to follow its procedures.

Contrary to the Petitioner's contention, the Notice alleged that Bridger 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 O&M procedures and had taken corrective action where deficiencies were found, as required by the company's Normal Operating Procedures, Section 3.8. Specifically, Bridger had not demonstrated that it had performed the required annual review of work done by its personnel in accordance with its

⁷ Violation Report, Exhibit B at 20.

procedures. In Item 5 of the Final Order, I found that to comply with the regulation Bridger must be able to demonstrate that reviews, as required by its procedures, had been performed.⁸ The Final Order determined that there was insufficient evidence to show Bridger had actually reviewed the work performed by its personnel to determine the effectiveness of its procedures used in normal O&M, within the intervals required by its Normal Operating Procedures 3.8.

Having reviewed the evidence provided in the Notice of Probable Violation, Violation Report, Response and Petition, I find that PHMSA met its burden of proof in sustaining the finding of violation. Bridger's petition for Item 5 is denied. Bridger must therefore complete the actions specified in the Compliance Order.

Item 6: The Final Order determined that Bridger 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 Final Order determined that Bridger failed to demonstrate it had 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.⁹

In its Petition, Petitioner repeated the argument made in Item 5 above that there was no violation of 49 C.F.R. §195.402 because Bridger's O&M Manual contained the required review procedures. The Final Order determined that there was insufficient evidence to show Bridger had actually reviewed the work performed by its personnel and contractors to evaluate responses to abnormal operations to determine the effectiveness of abnormal operating procedures.¹⁰ I find no basis to conclude that Bridger 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. Having reviewed the evidence provided in the Notice of Probable Violation, Violation Report, Response and Petition, I find that PHMSA met its burden of proof in sustaining the finding of violation. Bridger's petition for Item 6 is denied. Bridger must therefore complete the actions specified in the Compliance Order.

⁸ See *In the Matter of Bridger Pipeline, LLC*, Final Order, CPF No. 5-2009-5034, (Aug. 30, 2012) at 8. (available at www.phmsa.dot.gov/pipeline/enforcement).

⁹ Final Order at 10.

¹⁰ Final Order at 10.

Item 7: The Final Order determined that Bridger 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.

In Item 7 of the Final Order, I found that Bridger failed to demonstrate that it performed post-accident reviews no later than 45 days after the four accidental hazardous liquid releases on its Poplar pipeline were no longer considered emergencies, as required by the company's O&M Manual.

In its Petition, Bridger argued that Item 7 should be reversed for the same reason as Items 5-6 above because Bridger's O&M Manual contains the review procedures. Bridger contended that the evidence was ignored, or there was confusion because Bridger filled out one Incident Response Review form in preparation for the hearing.¹¹ Bridger also contended that it "openly and directly advised PHMSA and the hearing officer at the hearing that this was not a contemporaneous record", but was "based on was based on contemporaneous diary entries of the person responsible for responding to the event."¹²

As stated in the Order, 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 Bridger 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.¹³

During the hearing, Bridger presented a record for the purpose of demonstrating compliance years after the accident. Bridger was warned that the handwritten notes of a former employee could be submitted but not post-accident review records created for the purpose of the hearing. In fact, during a side bar, the hearing officer questioned and advised Bridger of the potential implications of knowingly creating a record from a diary, years after the accident, for the purpose of the hearing, and after receipt of the Notice to demonstrate compliance. The

¹¹ Petition at 5.

¹² *Id.*

¹³ Final Order at 11.

requirement to create and maintain post-accident review records means the record must be created contemporaneously with the required activity. Creating a record years after an accident does not meet the regulatory requirement to maintain complete post-accident records. In making a finding, I weighed evidence and credibility. After considering Bridger's Petition, I find no reason to alter the finding in the Final Order.

Civil Penalty

Petitioner argued that the civil penalties assessed for Items 4 and 7 of the Final Order should be recalculated.

Specifically, Petitioner argued that the \$35,000 civil penalty assess for Item 4 should be dismissed because Bridger did not violate 49 C.F.R. § 195.402(a); the civil penalty is based on an incorrect factual assumption about the status of Bridger employees and it is not supported by the evidence.

Bridger also made an alternative argument that, even if there was a violation, the reduced civil penalty is miscalculated, the basis for the penalty is not in the Final Order, and the statutorily required mitigation factors were addressed in a generic way. Bridger contended that it was found to have "exceeded the maximum allowed interval by approximately 26 months", based on a difference between February 2005 and June 2007. Bridger contended that it did not "exceed" the allowed interval by 26 months; the interval was exceeded at most by 11 months, and the penalty should at most be \$14,800.

First, Petitioner was found to have violated 49 C.F.R. § 195.402(a) in the Final Order. The finding of violation stands, as discussed above and in more detail in the Final Order. Furthermore, the civil penalty for this violation was reduced to \$28,800 in the Final Order.

Second, I found in the Final Order that the foundation of the penalty amount was based on the gravity of the violation and the circumstances surrounding the violation, including the number of reviews that Bridger failed to perform and exceeding the maximum interval for review. In particular, I found the nature and circumstances of Petitioner's failure to review its O&M manual beyond the regulatory deadline justified the assessment of the full proposed penalty amount. On the other hand, I found Bridger had performed reviews of its O&M Manual on June 12, 2007 and June 11, 2008, which factored into my decision to reduce the civil penalty. After considering Bridger's Petition, I find no reason to further reduce the civil penalty. Bridger must therefore pay the reduced civil penalty of \$28,800.

With regard to Item 7, Petitioner argued that the \$35,000 civil penalty assessed for this item should be reduced by three-quarters because it proved "that three of the four reviews occurred at or near the time of the incidents and that Mr. Quinn prepared near-contemporaneous Incident Review Forms."¹⁴

¹⁴ Petition at 7.

As discussed above and in the Final Order, Bridger did not provide any documentation to the OPS inspector to demonstrate compliance during the inspection. In making a finding, I weighed evidence and credibility. Bridger created at least one of its incident response review forms years after the accident, for the purpose of the hearing, and after receipt of the Notice to demonstrate compliance. Thus, I found no basis to reduce the civil penalty.

Petitioner expressed concern with the statement in the Final Order that “[i]n general, Bridger has a poor compliance history.”¹⁵ Bridger maintained that two of the Final Orders cited in the Final Order involve Bridger Lake, LLC, a company not affiliated with Bridger. Further, one Bridger case, CPF No. 5-2007-5003, was double counted by including both the Final Order and the Decision on Petition for Reconsideration.

There is a footnote containing a typographical error that includes a Bridger Lake Corrective Action Order and Consent Agreement. PHMSA will provide Bridger with a copy of the Final Order with the revised footnote. Notwithstanding the revision, Bridger’s history demonstrates that it cognizant of the regulations, culpable for the violations, and that the company’s history of prior offenses supported the penalty.¹⁶ Bridger operated the subject pipeline during the time in question, and therefore was responsible for compliance with the applicable pipeline safety regulations. This fact is well-supported in the record.

After considering Bridger’s Petition, I find no reason to reduce the assessed \$35,000 civil penalty for Item 7.

Conclusion

Based on a review of the record and the information provided in the Petition, pursuant to 49 C.F.R. § 109.215(c), I grant, in part, and deny, in part, Bridger’s Petition. Notwithstanding such finding, I have considered all the information and arguments submitted by Petitioner and find no basis to reconsider or alter the \$63,800 civil penalty and associated compliance items.

Payment of the \$63,800 civil penalty assessed in the Final Order is now due. The payment instructions were set forth in detail in the Final Order. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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:

¹⁵ Petition at 7.

¹⁶ Belle Fourche Pipeline Company, Bridger Pipeline Company, LLC (Bridger), and Butte Pipeline Company share the same manual of operating procedures and some of the same employees and officers. See *In the Matter of Butte Pipeline Company*, CPF No. 5-2007-5008, Final Order (Aug. 17, 2009). See also, *In the Matter of Belle Fourche Pipeline Company*, CPF No. 5-2007-5002, Decision on Petition for Reconsideration (A single hearing was held and the companies jointly submitted a single Post-Hearing Submittal.) PHMSA also correctly recorded Bridger’s enforcement history: See also, *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; and *In the Matter of Bridger Pipeline, LLC*, Decision on Petition for Reconsideration, dated June 16, 2009, CPF No. 5-2007-5003.

Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (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. 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.

This Decision on Reconsideration is the final administrative action in this proceeding.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued