



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

MAR 29 2012

Mr. Tad True
Vice President
Belle Fourche Pipeline Company
P.O. Box 2360
Casper, WY 82602

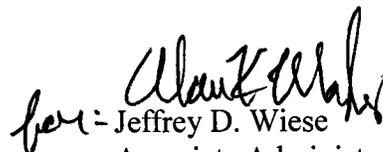
Re: CPF No. 5-2009-5042

Dear Mr. True:

Enclosed please find the decision on the petition for reconsideration filed by Belle Fourche Pipeline Company in the above-referenced case. For the reasons set forth in the decision, your petition to withdraw the findings of violation in Items 13 and 14 of the Final Order is denied. In addition, your petition to withdraw the terms of the compliance order associated with Item 14 is denied. Your petition to find that Belle Fourche has satisfied the terms of the compliance order associated with Item 13 is granted. Service of this document by certified mail is complete upon mailing as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,


for - Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Chris Hoidal, Director, Western Region, OPS
Mr. Colin Harris, Holme Roberts & Owen LLP
1801 13th Street, Suite 300, Boulder, CO 80302-5259

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [71791000164203446319]

Item 13: The Final Order determined that BFPL violated 49 C.F.R. § 195.577(a), which states:

§ 195.577 What must I do to alleviate interference currents?

(a) For pipelines exposed to stray currents, you must have a program to identify, test for, and minimize the detrimental effects of such currents.

The Final Order determined that BFPL failed to have and implement a program to identify, test for, and minimize the detrimental effects of stray currents on the company's pipeline. As stated in the Order, the operator's cathodic protection survey records from January 2006 to December 2008 showed there were areas on its pipeline with high "off" levels, indicative of interference currents that could have an adverse effect on the pipeline. BFPL could not produce a documented interference study or any other evidence to demonstrate the company took action in accordance with § 195.577(a) to test the interference currents that were detected during the surveys to determine whether any effects were adverse to the pipeline and to mitigate detrimental effects.

In its Petition, BFPL acknowledged that § 195.577(a) requires companies to identify, test for, and minimize the detrimental effects of electrical current flowing from an external source to the affected pipeline.³ Petitioner disagreed, however, that BFPL violated this requirement. The company argued that there was insufficient evidence of a violation presented by OPS, and that the evidence of compliance presented by BFPL was not properly considered.

First, BFPL argued that the finding of violation was in error because the evidence presented by OPS did not support the finding. Specifically, Petitioner stated that the cathodic protection survey records from 2006 to 2008 were not sufficient evidence to prove a violation.⁴

As noted in the Final Order, BFPL's survey records from 2006-2008 indicated that its pipeline was exposed to interference currents. Under § 195.577(a), the company was required to identify, test for, and minimize the detrimental effects of those stray currents. Despite the indications of interference currents, BFPL did not produce any evidence to demonstrate that it had taken action during the time period in question to conduct tests to determine whether the interference currents were adversely affecting the pipeline.⁵ These facts constituted sufficient evidence for PHMSA to find that BFPL violated § 195.577(a).

Second, Petitioner argued that the company's survey records from 2006-2008 demonstrated that the company did, in fact, have a program to identify and test for interference currents. Petitioner stated "[t]he whole purpose of the surveys" was to identify and test for interference currents, citing testimony it offered at the hearing.⁶ Petitioner claimed that this evidence was not addressed in the Order.

³ Petition at 2.

⁴ Petition at 2.

⁵ BFPL conducted a close interval survey in July 2009, but as stated in the Final Order, the survey was performed after the OPS inspection, and therefore did not demonstrate compliance for the time period in question.

⁶ Petition at 3.

The Final Order specifically addressed this position taken by the operator and the evidence it offered in support. For example, the Final Order noted that “BFPL claimed the reports used by PHMSA in support of the allegation demonstrated this program was in place and implemented.”⁷ While the survey report records showed Petitioner could apparently detect interference currents on its pipeline, the Order concluded that the records themselves did not demonstrate compliance with § 195.577(a) because, among other things, BFPL never actually tested the interference currents during the time period in question to determine if they were detrimental.⁸

BFPL argued in its Petition that it was not necessary for the company to test the interference currents because testimony in the record “unarguably shows” that the interference currents were not detrimental to the pipeline.⁹ Petitioner cited a statement by its witness that the pipelines in the area are all tied together with either piping, electrical grounding, or bonds. Petitioner argued there was no need to conduct additional tests or mitigation “because any issues had already been mitigated.”¹⁰ Petitioner claimed this evidence was not acknowledged or refuted in the Order.

The Final Order specifically discussed BFPL’s claim that it knew the source of the current and that it was not detrimental.¹¹ The Order quoted the company’s own Brief, which recited the testimony of its witness that the pipelines in the area “are tied together with either piping, electrical grounding between the different pipeline companies in the area, or by bonds.”¹² The Final Order determined, however, that the company’s assumption that interference currents were not detrimental was not an excuse for failing to conduct the testing required under the regulation. BFPL provided no evidence that it performed an analysis during the time period in question to confirm that interference currents were not detrimental to the pipeline.

Lastly, Petitioner argued that it was improper for the Final Order to include a statement that BFPL failed to follow written procedures for determining if the stray currents had detrimental effects. Petitioner claimed the issue of “written procedures” was never raised at the hearing.¹³

The Notice of Probable Violation provided sufficient notice to BFPL that the company had allegedly violated the requirement in § 195.577(a) to identify, test for, and minimize the detrimental effects of interference currents.¹⁴ Whether or not BFPL had adequate written procedures in place for these activities, the company violated § 195.577(a) by failing to test the interference currents to determine if they were detrimental to the pipeline facility.

⁷ Final Order at 16.

⁸ Although Petitioner is correct that the testimony it offered on this point was not quoted in the Order, the testimony only repeated the claim advanced by the company, namely that “[t]he survey reports used by [PHMSA] inspectors . . . is conclusive evidence that Belle Fourche implements this program.” BFPL’s Hearing Exhibit 10 at ¶3.

⁹ Petition at 3.

¹⁰ Petition at 3.

¹¹ Final Order at 15.

¹² Final Order at 15, (quoting BFPL’s Post-hearing Brief at 22 (Oct. 11, 2010), which cited Hearing Ex. 10 at ¶4).

¹³ Petition at 4. See also Final Order at 16. Petitioner submitted copies of its written procedures.

¹⁴ Petitioner’s program under § 195.577 must be in writing in accordance with § 195.402(c)(3).

For the above reasons, I confirm that BFPL committed a violation of § 195.577(a). BFPL's petition to withdraw the finding of violation for Item 13 is *denied*.

In its Petition, BFPL argued that the close interval survey (CIS) it performed in July 2009 should be found to have satisfied the terms of the Compliance Order associated with Item 13.¹⁵ In its post-hearing submission, OPS "agree[d] that the performance of that CIS renders the proposed compliance order unnecessary."¹⁶ For these reasons, I find there is no need for BFPL to take further action to remediate this compliance item. BFPL's request that PHMSA find it has satisfied the compliance terms associated with Item 13 is *granted*.

Item 14: The Final Order determined that BFPL violated 49 C.F.R. § 195.579(a), which states:

§ 195.579 What must I do to mitigate internal corrosion?

(a) *General.* If you transport any hazardous liquid or carbon dioxide that would corrode the pipeline, you must investigate the corrosive effect of the hazardous liquid or carbon dioxide on the pipeline and take adequate steps to mitigate internal corrosion.

The Final Order found that BFPL had failed to investigate the corrosive effect of the hazardous liquid it transported and to take adequate steps to mitigate internal corrosion. As stated in the Order, BFPL's pipeline system experienced at least three pipeline leaks between 2006 and 2008 that were caused by internal corrosion, but the company never investigated the corrosive effect of the product or mitigated the internal corrosion.

In its Petition, BFPL did not disagree that the company never investigated the corrosive effect of the product or mitigated internal corrosion. Petitioner argued, however, the regulation did not require the company to conduct an investigation in the first place. Petitioner stated that the regulation "does not impose an absolute obligation" on all operators to conduct an internal corrosion study, but only in cases where "such liquid 'would' corrode the pipeline" is an investigation required.¹⁷ Petitioner claimed the Final Order was erroneous in applying the regulation in a way that requires the company to conduct an internal corrosion study irrespective of the nature of the liquids transported. Petitioner also argued the Final Order impermissibly used guidance to broaden the regulatory requirement beyond the text of the regulation.

After reviewing the Final Order, I find PHMSA applied § 195.579(a) in a manner that is consistent with the text of the regulation. Section 195.579(a) establishes a duty for operators to investigate and mitigate internal corrosion whenever the product would corrode the pipeline. Petitioner's pipeline system experienced a series of accidents caused by internal corrosion—evidence the product transported "would corrode the pipeline."¹⁸ Despite the information that product *was actually causing internal corrosion*, BFPL failed to investigate and mitigate the

¹⁵ Petition at 6-7.

¹⁶ OPS Post-Hearing Submittal at 10 (Nov. 12, 2010).

¹⁷ Petition at 5.

¹⁸ § 195.579(a).

internal corrosion. BFPL's failure to investigate and take steps to mitigate the internal corrosion support the agency's conclusion that the company violated the requirements in § 195.579(a).

The agency's conclusion was based on application of the regulation to the facts of the case.¹⁹ Reference to an Advisory Bulletin in the Final Order was merely ancillary. For example, the Order cited to an Advisory Bulletin issued by the agency in 2008 to explain why BFPL's purported interpretation of the regulation was erroneous. BFPL had claimed the regulation requires prior "knowledge or reasonable belief" that product would corrode the pipeline before triggering the investigation requirements in § 195.579(a). Based on that interpretation, the company had argued it was never obligated to conduct an investigation.²⁰

To explain why that interpretation is incorrect, the Final Order cited to the advisory, which was issued to remind operators of their responsibilities to identify circumstances under which the potential for internal corrosion must be investigated. In particular, the advisory noted that § 195.579(a) requires operators "to determine if the hazardous liquids they are transporting could corrode the pipeline and, if so, take adequate steps to mitigate that corrosion potential."²¹ The document cautioned operators that even though "the base commodity may not be corrosive, all hazardous liquids regulated under part 195 could be corrosive during some phase of the production and/or manufacturing process when contaminants could be introduced." The advisory was consistent with statements made by the agency in the preamble to the original rulemaking.²² Contrary to the interpretation advanced by BFPL, neither the regulation, its preamble, nor the advisory conveyed that operators must first have knowledge or reasonable belief that a product would corrode the pipeline before triggering § 195.579(a).

Petitioner cited two court decisions that it claimed supported the position that an agency may not rely on interpretive guidance to expand a regulation without going through notice and comment.²³ Since the finding of violation was not based on the advisory or interpretive guidance, the two decisions cited by Petitioner are inapplicable.²⁴

¹⁹ See Final Order at 18 (finding that "[g]iven the pipeline failures caused by internal corrosion, BFPL was required under § 195.579(a) to investigate the corrosive effects of the hazardous liquid transported in its pipeline system.").

²⁰ Brief at 24 (stating "there must be some type of prior knowledge or reasonable belief, based on the circumstances, that the hazardous liquid would corrode the pipeline."); see also Final Order at 17.

²¹ Proper Identification of Internal Corrosion Risk, 73 Fed. Reg. 71,089 (Nov. 24, 2008).

²² Controlling Corrosion on Hazardous Liquid and Carbon Dioxide Pipelines, 66 Fed. Reg. 66,994, 67,000 (Dec. 27, 2001) (stating the rule "requires operators to investigate the effects of transporting hazardous liquid or carbon dioxide which could corrode the pipeline, and take adequate steps to mitigate corrosion.").

²³ Petition at 5, citing *Natural Resources Defense Council v. EPA*, 643 F.3d 311, 321 (D.C. Cir. 2011); and *National Mining Ass'n v. Jackson*, 768 F.Supp.2d 34, 49 (D.D.C. 2011).

²⁴ Agencies may issue regulatory interpretations in accordance with 5 U.S.C. § 553(b)(A). An "administrative interpretation . . . becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation." *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945).

In addition to the above legal arguments, Petitioner maintained that as a factual matter the internal corrosion leaks experienced on the BFPL pipeline system were not sufficient evidence to establish that the product transported would corrode the pipeline. Petitioner made this same argument prior to issuance of the Final Order, claiming the leaks were disconnected in time, location, operations, and type of crude.²⁵

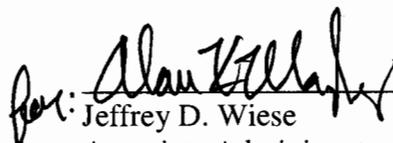
The Final Order has already determined that BFPL “may not ignore information about [the] internal corrosion leaks on its pipeline merely because it does not consider the leaks to be related in time or location. Likewise, the fact that leaks occurred on idle lines or dead legs is no excuse not to investigate the corrosive effects.”²⁶ I find no reason to alter that determination. It is hard to imagine stronger evidence that an operator must take action under § 195.579(a) than the occurrence of multiple leaks on its pipeline system that were caused by internal corrosion.

Finally, Petitioner maintained there was no evidence in the record that the leaks resulted from corrosion caused by “the specific type of liquid transported” by BFPL.²⁷ I find no support in the record for Petitioner’s assertion. The company’s own records indicate that the leaks were caused by internal corrosion. As noted in the Final Order, even if an operator believes the commodity it transports is not normally corrosive, contaminants may be introduced during upset conditions when untreated corrosive materials may bypass the treatment process and enter the pipeline.²⁸

For the above reasons, I confirm that BFPL committed a violation of § 195.579(a). BFPL’s petitions to withdraw the finding of violation and associated compliance terms for Item 14 are *denied*.

The stay granted on January 13, 2012, is hereby lifted. Petitioner must complete the actions required by the Compliance Order associated with Item 14 (paragraph 4 on page 26 of the Final Order) and submit documentation demonstrating compliance, as set forth therein, within 60 days of the date of this Decision. Except as specified above for Item 13, all other terms of the Final Order remain in effect and are not modified by this Decision.

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

for: 
 Jeffrey D. Wiese
 Associate Administrator
 for Pipeline Safety

MAR 29 2012

Date Issued

²⁵ Brief at 24-25.

²⁶ Final Order at 18.

²⁷ Petition at 6.

²⁸ Final Order at 18.