

October 10, 2019

Mr. Joshua Jamison
Managing Member
Bridger Swan Ranch, LLC
2291 Renauna Avenue
Casper, Wyoming 82601

Re: CPF No. 5-2018-6004

Dear Mr. Jamison:

Enclosed please find my Decision on the Petition for Reconsideration filed by Bridger Swan Ranch, LLC, in the above-referenced case. For the reasons explained therein, the Decision denies the Petition. This Decision constitutes the final administrative action in this proceeding. Service of this Decision is made pursuant to 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA
Mr. Paul Saffell, Chief Operating Officer, Bridger Swan Ranch, LLC
Mr. John Russell, General Manager, Bridger Swan Ranch, LLC

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 Swan Ranch, LLC,)

Petitioner.)
_____)

CPF No. 5-2018-6004

DECISION ON PETITION FOR RECONSIDERATION

From August 29 through September 2, 2016, 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 Swan Ranch, LLC's (Bridger or Petitioner), crude oil blending and tanking facility in Cheyenne, Wyoming. The Bridger Swan Ranch Facility consists of five tanks totaling 225,000 barrels of blending and storage capacity for crude oil, 10 truck load/unload lanes, and pipeline connections to the Cheyenne Rail Hub and Sinclair's pipeline to Guernsey, Wyoming.

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Petitioner, by letter dated February 28, 2018, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included warnings pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Bridger had committed five violations of 49 C.F.R. Part 195 and one violation of Part 194, and proposed assessing a civil penalty of \$88,800 for the alleged violations. The Notice also proposed ordering Petitioner to take certain measures to correct the alleged violations. The five warning items required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

Bridger responded to the Notice by letter dated March 30, 2018 (Response). The company contested the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced. Petitioner did not request a hearing and therefore waived its right to one. On October 23, 2018, Petitioner submitted additional information about its compliance actions and again requested that the proposed civil penalties be withdrawn or reduced.

On May 31, 2019, pursuant to 49 C.F.R. § 190.213, PHMSA issued a Final Order in this proceeding, found that Bridger had committed five violations of 49 C.F.R. Part 195 and one violation of Part 194, assessed a reduced civil penalty of \$81,600 for the violations, and ordered that Bridger take certain corrective actions, as set forth in the Compliance Order that was part of

the Final Order.¹

In accordance with § 190.243, Bridger filed a Petition for Reconsideration (Petition) on June 14, 2019, seeking reconsideration of the finding that it violated § 195.573(c) (Item 11) by failing to perform electrical checks on each rectifier at least six times each calendar year, but with intervals not exceeding 2½ months for calendar years 2014 and 2015, and requested that the \$40,600 penalty assessed for this Item be rescinded. In addition, Bridger requested that PHMSA reconsider and rescind all other penalties assessed in this matter.

Standard of Review

In enforcement proceedings brought under 49 C.F.R. Part 190, respondents are afforded the right to petition the Associate Administrator for reconsideration of a final order. That right, however, does not constitute an appeal or an opportunity to seek a *de novo* review of the record. On the contrary, it is an opportunity for respondents to present the Associate Administrator with information that was not previously available or to request that errors in the final order be corrected. The Associate Administrator does not consider repetitious information, arguments, or petitions. In addition, any request for consideration of additional 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.

Analysis

Before turning to the merits, I will address the procedural adequacy of this Petition. Under Part 190 of the Pipeline Safety Regulations, “[i]f [a] respondent requests the consideration of additional facts or arguments [in a petition for reconsideration], the respondent must submit the reasons they were not presented prior to the issuance of the final order.”² In this case, Petitioner wishes to “bring to [PHMSA’s] attention a matter concerning the alleged violation regarding... Item 11.” However, the issue raised in this Petition was never mentioned in either of Bridger’s written responses to the Notice, and Petitioner has not provided a statement of the reasons why those facts and arguments were not presented before the issuance of the Final Order. In fact, as explained in more detail below, Respondent’s assertions in its Petition conflict with assertions and evidence provided in its Response.

Accordingly, I find that Bridger has not complied with the procedural requirements for raising new facts and arguments on reconsideration. Moreover, as Bridger has not properly raised any other arguments in this Petition, I am denying reconsideration on that basis and affirming the Final Order without modification.

Notwithstanding the procedural defects in the Petition, I have reviewed the record regarding Item 11 in light of Petitioner’s arguments.

¹ Bridger Swan Ranch, LLC, Final Order, CPF No. 5-2018-6004, (May 31, 2019) (available at www.phmsa.dot.gov/pipeline/enforcement).

² 49 CFR § 190.243(b).

Item 11 of the Final Order determined that Bridger violated § 195.573(c) by failing to perform electrical checks on each rectifier at least six times each calendar year, but with intervals not exceeding 2½ months for calendar years 2014 and 2015. In its Petition, Bridger claims that the pipeline segments in question are protected by a passive anode system and no impressed current system (i.e., cathodic protection) is in use. Bridger asserted that because there were no rectifiers in place that would require electrical checks as provided in § 195.573(c), it is not possible for a violation of § 195.573(c) to have occurred. It also stated that regular checks of the adequacy of the passive anode system were made and documentation was provided to PHMSA. In addition, results of a close interval survey on the two pipeline segments were provided to PHMSA at the time of the inspection. It claimed that the electrical check records provided to PHMSA were associated with the cathodic protection rectifiers for the facility tanks, which are covered under § 195.573(d) rather than § 195.573(c). Therefore, Bridger argued that § 195.573(c) cited in the Final Order does not apply to the cathodic protection system on the facility tankage, and that because no cathodic protection system with rectifiers exists for the pipeline segments, a violation of § 195.573(c) could not have occurred.

Having reviewed the record, I find Petitioner's assertion is in conflict with its Response, in which Bridger enclosed logs of certain rectifier checks that were performed in 2014, 2015, 2016, and 2017, and did not contest the allegation that it failed to perform required checks at the intervals set forth in § 195.573(c) in 2014 and 2015.³ Petitioner also stated it has verified that rectifier checks are now being performed in compliance with applicable regulations, and it verified compliance using records of the same segments as far back as calendar year 2016.⁴ The documentation provided to PHMSA during the inspection is titled "Bridger Swan Ranch Impressed Current Rectifier Inspection" and explicitly states, "[r]ectifier provides CP for the tanks and facility piping only."⁵

Bridger's Petition does not explain the apparent conflict between its original position that these pipeline segments were subject to § 195.573(c) and its new position that the pipeline segments were never subject to § 195.573(c). It also does not explain the conflict between its new position and the evidence originally provided of rectifier records that Bridger claimed demonstrate the same segments were brought into compliance with § 195.573(c).

Finally, Petitioner did not submit evidence that these pipeline segments are indeed protected by a passive anode system, with no impressed current system (i.e., cathodic protection) in use. Accordingly, I remain persuaded by the evidence in the case file, including Bridger's original admission and accompanying evidence that the pipeline segments at issue were in violation of § 195.573(c), as set forth in the Final Order.

For the above reasons, I decline to rescind or modify Item 11, therefore its accompanying civil penalty remains in effect. I find that Bridger has not presented any new information or other basis in its Petition to support a penalty reduction. The assessed civil penalty of \$40,600 for this

³ Response, at 4, 9-11; Final Order at 7.

⁴ Response, at 4, 9-11; Final Order at 7.

⁵ Response, at 9-10.

Item stands and Bridger's petition on this Item is denied.

In addition, Bridger requested that PHMSA reconsider and rescind all other penalties assessed in this matter due to the measures undertaken by Bridger to bring the facility into compliance and the measures implemented to reduce the possibility of future violations. I do not find, however, that such actions justify a civil penalty reduction. Bridger was ordered to take such actions to remediate existing violations and the operator is expected to take any other measures necessary to ensure future compliance with applicable safety standards. I therefore deny the Petition.

Conclusion

Based on a review of the record and the information provided in the Petition, I hereby deny the Petition for the reasons set forth above.

All other terms of the Final Order remain in effect.

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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$81,600 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.

This Decision constitutes final agency action taken by PHMSA in the enforcement proceeding. The terms and conditions of this Decision are effective upon service in accordance with 49 C.F.R. § 190.5.

October 10, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued