

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

February 28, 2018

Mr. Otis Randle
Vice President of Environmental Safety and Regulatory Compliance
Bridger Environmental, LLC
6100 W. Plano Parkway, Suite 1600
Plano, Texas 75093-8230

CPF 5-2018-6004

Dear Mr. Randle:

On August 29 through September 2, 2016, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, inspected Bridger Logistics LLC's (Bridger) Swan Ranch Facility in Cheyenne, Wyoming.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. **§195.452 Pipeline integrity management in high consequence areas.**
 - (b) **What program and practices must operators use to manage pipeline integrity? Each operator of a pipeline covered by this section must:**
 - (2) **Include in the program an identification of each pipeline or pipeline segment in the first column of the following table not later than the date in the second column:**

Pipeline	Date
Category 1.....	December 31, 2001.
Category 2.....	November 18, 2002.
Category 3.....	Date the pipeline begins operation.

Bridger violated 49 C.F.R. §195.452(b)(2) by failing to complete identification of pipeline segments that could affect a High Consequence Area (HCA). Specifically, Bridger’s integrity management program did not identify the Swan Ranch Facility pipeline segment as a hazardous liquid pipeline that could affect a HCA.¹ During the inspection, a National Pipeline Mapping System map overlay with the Swan Ranch Facility pipeline showed the entire pipeline segment was within a drinking water resource, making it a pipeline that could affect an HCA.² Furthermore, this facility has been in service since November 2013 so it is a category 3 pipeline, requiring that HCAs be identified when the pipeline begins operation.³ By failing to identify the Swan Ranch Facility pipeline segment as a pipeline that could affect an HCA on the date the pipeline became operational, Bridger violated §195.452(b)(2).⁴

¹ According to 49 C.F.R. § 195.450, a “High Consequence Area” is (1) a commercially navigable waterway, (2) a high population area, (3) an “other populated area,” or (4) “an unusually sensitive area,” as more specifically defined in § 195.6.

² According to 49 C.F.R §195.6, an “Unusually Sensitive Area (USA)” ...means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release. 49 C.F.R §195.6(a) defines a drinking water resource as “(1) The water intake for a Community Water System (CWS) or a Non-Transient Non-Community Water System (NTNCWS) that obtains its water supply primarily from a surface water source and does not have an adequate alternative drinking water source; (2) The Source Water Protection Area (SWPA) for a CWS or a NTNCWS that obtains its water supply from a Class I or Class IIA aquifer and does not have an adequate alternative drinking water source. Where a state has not yet identified the SWPA, the Wellhead Protection Area (WHPA) will be used until the state has identified the SWPA; or (3) The sole source aquifer recharge area where the sole source aquifer is a karst aquifer in nature.” *See also* Exhibit 1 to Violation Report.

³ 49 C.F.R. §195.452(a)(3).

⁴ During the inspection, Bridger personnel admitted that they were not unaware this pipeline was in a HCA-could affect area. Violation Report at 6.

2. **§195.446 Control room management.**

(a) General. This section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this section. The procedures required by this section must be integrated, as appropriate, with the operator's written procedures required by § 195.402. An operator must develop the procedures no later than August 1, 2011, and must implement the procedures according to the following schedule. The procedures required by paragraphs (b), (c)(5), (d)(2) and (d)(3), (f) and (g) of this section must be implemented no later than October 1, 2011. The procedures required by paragraphs (c)(1) through (4), (d)(1), (d)(4), and (e) must be implemented no later than August 1, 2012. The training procedures required by paragraph (h) must be implemented no later than August 1, 2012, except that any training required by another paragraph of this section must be implemented no later than the deadline for that paragraph.

Bridger violated 49 C.F.R. § 195.446(a) by failing to have and follow written control room management procedures that implement the requirements of this section. Bridger is the operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of its pipeline facility through a SCADA system. At the time of the inspection, Bridger referenced a control room management program in its Operations and Maintenance (O&M) manual but when PHMSA requested to see this document, one could not be provided.⁵ Therefore, Bridger violated 49 C.F.R. § 195.446(a).

3. **§194.101 Operators required to submit plans**

(a) Except as provided in paragraph (b) of this section, unless OPS grants a request from an Federal On-Scene Coordinator (FOSC) to require an operator of a pipeline in paragraph (b) to submit a response plan, each operator of an onshore pipeline facility shall prepare and submit a response plan to PHMSA as provided in §194.119. A pipeline which does not meet the criteria for significant and substantial harm as defined in §194.103(c) and is not eligible for an exception under §194.101(b), can be expected to cause substantial harm. Operators of substantial harm pipeline facilities must prepare and submit plans to PHMSA for review.

Bridger, an operator of an onshore pipeline facility that does not fall under any exceptions, failed to prepare and submit a response plan to PHMSA as provided in § 194.119. Specifically, at the time of the inspection, Bridger had not submitted a plan to PHMSA for review, therefore, violating § 194.101(a).

⁵ See Bridger O&M Manual at 74.

4. §195.403 Emergency Response Training.

(b) At the intervals not exceeding 15 months, but at least once each calendar year, each operator shall:

(1) Review with personnel their performance in meeting the objectives of the emergency response training program set forth in paragraph (a) of this section; and

(2) Make appropriate changes to the emergency response training program as necessary to ensure that it is effective.

Bridger failed to demonstrate that it had conducted a review with personnel of their performance in meeting the objectives of the company's emergency response program, and had made appropriate changes to the program as necessary to ensure that it was effective. At the time of inspection, Bridger indicated that it conducted an annual review of its emergency response training in conjunction with its facility response plan; however, Bridger failed to demonstrate it had reviewed with personnel their performance in meeting the objectives of the emergency response training and making appropriate changes to the training program to ensure effectiveness, thereby violating §195.403(b).⁶

5. §195.420 Valve maintenance.

(b) Each operator shall, at intervals not exceeding 7 1/2 months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

Bridger failed to inspect all mainline valves at intervals not exceeding 7 1/2 months, but at least twice each calendar year, in accordance with § 195.420(b). During the inspection, Bridger personnel did not provide evidence that they had inspected any of their mainline valves for 2014 and 2016.⁷

6. §195.412 Inspection of rights-of-way and crossings under navigable waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

Bridger failed to inspect the surface conditions on and adjacent to its pipeline rights-of-way at intervals not exceeding 3 weeks, but at least 26 times each calendar year. Bridger provided 17 driving right-of-way patrolling records for 2015 and 13 driving right-of-way patrolling records for 2014.⁸ During the inspection, Bridger personnel admitted that the remaining

⁶ During the inspection, Bridger personnel could not produce records or other substantiating evidence to demonstrate that this was completed. Violation Report at 27.

⁷ *Id.* at 34.

⁸ Violation Report at 41.

records were not available and failed to provide other substantiating evidence that the inspections were performed. By failing to inspect the surface condition on its pipeline right-of-ways 26 times each of those calendar years, Bridger violated § 195.412(a).

7. §195.440 Public awareness

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see §195.3).

Bridger failed to develop and implement a written continuing public education program meeting the requirements of API 1162. Specifically, Bridger failed to provide baseline messages at the required frequency to its stakeholder audience, as required by API 1162, Section 2 Table 2-1 (Summary Public Awareness Communications for Hazardous Liquid and Natural Gas Transmission Pipeline Operators).⁹

8. §195.440 Public awareness

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (IBR, see §195.3).

Bridger failed to develop and implement a written continuing public education program meeting the requirements of API 1162. Specifically, Bridger failed to follow the requirement of API 1162, Section 3, by not identifying the affected public along its right of way.¹⁰

9. §195.440 Public awareness

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (IBR, see § 195.3).

Bridger failed to develop and implement a written continuing public education program meeting the requirements of API 1162 in violation of 49 C.F.R. §195.440(a). Specifically, Bridger failed to follow the requirement of API 1162, Section 2.3.1 (Public Education), by not establishing a continuing education program to enable the public, appropriate government organizations, and persons engaged in excavation-related activities to recognize a pipeline emergency and to report it to the operator and/or the fire, police, or other appropriate officials.¹¹

⁹ See Exhibit 2 to Violation Report at 10 (outlining message type, delivery frequency, and delivery method and/or media for public awareness communications to the stakeholder audience).

¹⁰ *Id.* at 17-18 (identifying the audience(s) that should receive the program's messages).

¹¹ *Id.* at 5 (noting that pipeline operators must “establish continuing education programs to enable the public, appropriate government organizations, and persons engaged in excavation-related activities to recognize a

10. §195.440 Public awareness

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (IBR, see §195.3).

Bridger failed to develop and implement a written continuing public education program meeting the requirements of API 1162. Specifically, Bridger failed to follow the requirement of API 1162, Section 8.3 (Measuring Program Implementation), by not completing annual audit or review of its public awareness program.¹² During the inspection, Bridger personnel were unable to provide records demonstrating that it had completed annual audits or reviews of its public awareness program, in violation of API 1162, Section 8.3, and 49 C.F.R. § 195.440(a).

11. §195.573 What must I do to monitor external corrosion control?

(c) Rectifiers and other devices. You must electrically check for proper performance each device in the first column at the frequency stated in the second column.

Device	Check frequency
Rectifier.....	At least six times each calendar year, but with intervals not exceeding 2 ½ months

Bridger failed to perform electrical checks on each rectifier at least six times each calendar year, but with intervals not exceeding every 2 ½ months for calendar years 2014 and 2015 in accordance with 195.404 (c)(3). During the inspection, Bridger personnel were unable to provide records demonstrating that it had performed electrical checks of its rectifiers at the required intervals.¹³

pipeline emergency and to report it to the operator and/or the fire, police, or other appropriate public officials. The programs are to be provided in both English and in other languages commonly used by a significant concentration of non-English speaking population along the pipeline”).

¹² *Id.* at 27 (including a sample set of questions that will aid an operator in auditing the program implementation process, and outlining three alternative methodologies when completing an annual audit of program implementation).

¹³ *See* 49 C.F.R. § 195.589(c)(requiring records of “each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart” be maintained for “. . . at least 5 years.”); *see also* Violation Report at 76.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$209,002 per violation per day the violation persists, up to a maximum of \$2,090,022 for a related series of violations. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$88,800 as follows:

<u>Item number</u>	<u>PENALTY</u>
Item 5	\$30,900
Item 6	\$10,100
Item 11	\$47,800

Warning Items

With respect to Items 4, 7, 8, 9, and 10, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Failure to do so may result in additional enforcement action.

Proposed Compliance Order

With respect to Items 1, 2, 3, 5, 6 and 11 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Bridger Logistics LLC. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and

authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 5-2018-6004** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Huy Nguyen
Acting Director, Western Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

cc: PHP-60 Compliance Registry
PHP-500 G. Ogirima (#154092)

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Bridger Logistics LLC (Bridger) a Compliance Order incorporating the following remedial requirements to ensure the compliance of Bridger Logistics LLC with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to its integrity management program, Bridger must identify the Swan Ranch Facility as a pipeline that could affect a High Consequence Area (HCA) in its written integrity management program within 30 days of receipt of the Final Order.
2. In regard to Item Number 2 of the Notice pertaining to its control room management program, Bridger must develop a control room management program within 90 days of receipt of the Final Order.
3. In regard to Item Number 3 of the Notice pertaining to the submission of a facility response plan, Bridger must submit its response plan for approval within 30 days of receipt of the Final Order.
4. In regard to Item Number 5 of the Notice pertaining to mainline valves, Bridger must inspect each mainline valve to determine it is functioning properly every 7 ½ months, but at least twice each calendar year and submit the inspections records for 2017 to PHMSA's Western Region office by March 31, 2018.
5. In regard to Item Number 6 of the Notice pertaining to the pipeline rights-of-way and crossings under navigable waters, Bridger must inspect the surface condition on or adjacent to each pipeline right of way at intervals not exceeding 3 weeks, but at least 26 times each calendar year and submit the inspections records to PHMSA's Western Region office by March 31, 2018
6. In regard to Item Number 11 of the Notice pertaining to the inspection of rectifiers on their system, Bridger must electrically check each rectifier on their system for proper performance at least 6 times each calendar year but with intervals not exceeding 2 ½ months and submit the inspections records to PHMSA's Western Region office by March 31, 2018
7. It is requested (not mandated) that Bridger maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Huy Nguyen, Acting Director, Western Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.