



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

901 Locust Street, Suite 462
Kansas City, MO 64106-2641

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

January 2, 2018

David Scobel
Chief Executive Officer
Caliber North Dakota
1200 17th Street Suite 2100
Denver, CO 80202

CPF 3-2018-6001

Dear Mr. Scobel:

On July 25, 2017, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected Caliber North Dakota's, formerly Caliber Midstream, (Caliber) oil spill response plans in Washington, D. C.

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 (CFR). The items inspected and the probable violation are:

- 1. §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.

Caliber failed to prepare and submit a response plan to PHMSA as provided in §194.119. Caliber has been operating their oil pipeline known as the Rawson Gathering System for several years as shown in its Annual Reports (Form PHMSA F 7000-1.1) for 2014, 2015, and 2016.

On April 28, 2016, PHMSA received a letter and submission from Jonathan Greiner, President of Basin Safety Consulting, representing Caliber, stating, "Please accept this as Part 1 of 2 of our Emergency Response Plan. We are compiling Part 2 and training records and will have them soon to follow."

On June 28, 2016, PHMSA received Part 2, which was an excerpt from Caliber's emergency response plan, from Mr. Greiner. During a review of the submitted documents, it was clear that the submissions were not a response plan compliant with 49 CFR Part 194. On December 12, 2016, PHMSA staff contacted Mr. Greiner via email asking whether a complete plan was submitted to PHMSA and noted, "It appears to be an Operations and Maintenance Manual intended to satisfy 49 CFR 195.402 regulations, however does not contain the appropriate content of Part 194 – "Response Plans for Onshore Oil Pipelines."

Mr. Greiner responded on January 20, 2017, stating, "I believe I sent you a previous version of the document. I am currently out of town, but will get you the updated version as soon as I return." No updated version was submitted. PHMSA staff attempted to contact Mr. Greiner again on March 28, 2017, but received no response.

On July 25, 2017, the matter was referred to the Director, Oil Spill Preparedness and Emergency Support Division for review. The review found that the Rawson pipeline is within one mile of environmentally sensitive areas and drinking water sources. Therefore, Caliber is required to submit a response plan for this pipeline. No response plan has been submitted as of September 20, 2017.

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 violation and has recommended that you be preliminarily assessed a civil penalty of \$19,000.

Proposed Compliance Order

With respect to item 1 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Caliber Midstream, 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 3-2018-6001** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



Allan C. Beshore
Director, Central, OPS
Pipeline and Hazardous Materials Safety Administration

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

PROPOSED COMPLIANCE ORDER

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

1. In regard to Item Number 1 of the Notice pertaining to submittal of a response plan, Caliber North Dakota must submit a response plan as required by §194.101, pursuant to §194.119, and to Allan C. Beshore, Director Central Region.
2. Caliber North Dakota must submit the response plan referenced in Item 1 of this Compliance Order within 60 days after receipt of the Final Order.
3. It is requested (not mandated) that Caliber North Dakota maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Allan C. Beshore, Director, Central, 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.