September 3, 2020

**VIA ELECTRONIC MAIL TO: saul_flota@wplc.com**

Mr. Saul Flota
President
Wolverine Pipe Line Company
8075 Creekside Drive, Suite 210
Portage, Michigan 49024

**Re: CPF No. 3-2019-5016**

Dear Mr. Flota:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one allegation of violation, makes two findings of violation, and assesses a reduced civil penalty of $65,800. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid, as determined by the Director, Central Region, this enforcement action will be closed. Service of the Final Order by electronic mail is effective upon the date of transmission, as provided under 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. Allan Beshore, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Thomas Morneau, Esq., General Counsel, Wolverine Pipe Line Company, tom_morneau@wplc.com
Mr. Vince Murchison, Esq., Counsel for Respondent, Murchison Law Firm, PLLC, vince.murchison@pipelinelegal.com

CONFIRMATION OF RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION**
**PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**
**OFFICE OF PIPELINE SAFETY**
**WASHINGTON, D.C. 20590**

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| **In the Matter of** | ) | |
| **Wolverine Pipe Line Company,** | ) | **CPF No. 3-2019-5016** |
| **Respondent.** | ) | |

# FINAL ORDER

From May through July 2017, 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, procedures and records of Wolverine Pipe Line Company (Wolverine or Respondent), in Illinois, Indiana, and Michigan. Wolverine has headquarters in Portage, Michigan. The pipeline system consists of 700 miles that transport refined products, including gasoline and diesel fuel, from Illinois to Michigan. [1]

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated April 11, 2019, a Notice of Probable Violation and Proposed Civil Penalty (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 Wolverine committed various violations of Part 195 and proposed assessing a civil penalty of $121,800 for three of the alleged violations. The warning items required no further action but warned the operator to correct the probable violations or face possible future enforcement action.

The Murchison Law Firm, on behalf of Wolverine, responded to the Notice by letter dated July 22, 2019 (Response). The company contested all the warning items and the allegations of violation, offered additional information in response to the Notice, requested that the proposed civil penalty be withdrawn or reduced, and requested an in-person hearing. A hearing was subsequently held on November 5, 2019, before a PHMSA Presiding Official. At the hearing, Respondent was represented by counsel. Respondent provided additional materials prior to the hearing on October 25, 2019 (Pre-hearing submission), and following the hearing on January 30, 2020 (Post-hearing submission). The Director submitted a post-hearing recommendation on March 27, 2020 (Recommendation), to which the Respondent submitted a response on April 15, 2020 (Response to the Region Recommendation).

[1] Wolverine Pipe Line Company website, *available at* https://wolverinepipeline.com/shippers/systems-overview/ (last accessed August 24, 2020).

## FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 195.446(c), which states:

> **§ 195.446 Control room management.**
> (a) ….
> (c) *Provide adequate information*. Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following:
> (1) Implement API RP 1165 (incorporated by reference, see 195.3) whenever a SCADA system is added, expanded or replaced, unless the operator demonstrates that certain provisions of API RP 1165 are not practical for the SCADA system used;
> (2) Conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays; …

The Notice alleged that Respondent violated 49 C.F.R. § 195.446(c) by failing to conduct point-to-point verifications between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays. Specifically, the Notice alleged that Wolverine failed to conduct point-to-point verifications between added field equipment and SCADA displays of the valve and the pressure transmitters at the South Metro Parkway valve site prior to starting the pipeline segment.[2]

In its Response and at the hearing, Wolverine explained that as an initial matter, it believed that OPS acted inappropriately in issuing the Notice. Respondent explained that OPS waited nearly two years before issuing the NOPV, thereby prejudicing the Respondent's ability to defend itself. Wolverine argued that the Notice and the proposed civil penalties should be withdrawn. [3]

I have considered these arguments and noticed no substantial prejudice to the Respondent in defending itself against this Notice. There are no missing documents or unavailable witnesses. Furthermore, the length of time between inspection and the issuance of the Notice is not so long as to deprive the Respondent of any due process rights.

Wolverine acknowledged that, during the inspection, its personnel led OPS inspectors to believe that the valve and pressure transmitters were data points being displayed on the SCADA system. However, neither communications nor power had been set up at the South Metro Parkway site

[2] Notice, at 1-2.

[3] Amended and Restated Statement of Issues of Wolverine Pipe Line Company to Notice of Probable Violation and Proposed Civil Penalties, at 2.

prior to the pipeline starting operation, and therefore, the valves were being operated manually. Since OPS was under the misimpression that the valves were being operated remotely, it correctly considered whether or not those data points had been added to the SCADA system. During the hearing, Wolverine demonstrated that the valves were operated manually, and therefore, no point-to-point verification was required.

OPS considered the evidence, and in its Recommendation, decided to recommend withdrawal of this allegation.

Accordingly, I withdraw this allegation.

**Item 5:** The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h)(4)(i), which states:

> **§ 195.452 Pipeline integrity management in high consequence areas.**
> (a) ….
> (h) *What actions must an operator take to address integrity issues?*
> (1) ….
> (4) *Special requirements for scheduling remediation-*
> (i) *Immediate repair conditions*. An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce the operating pressure or shut down the pipeline until the operator completes the repair of these conditions. An operator must calculate the temporary reduction in operating pressure using the formulas referenced in paragraph (h)(4)(i)(B) of this section. If no suitable remaining strength calculation method can be identified, an operator must implement a minimum 20 percent or greater operating pressure reduction, based on actual operating pressure for two months prior to the date of inspection, until the anomaly is repaired. An operator must treat the following conditions as immediate repair conditions:
> (A) ….
> (C) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) that has any indication of metal loss, cracking or a stress riser.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h)(4)(i) by failing to evaluate and remediate an immediate repair condition by temporarily reducing the operating pressure or shutting down the pipeline until the operator completes the repair of these conditions. Specifically, the Notice alleged that Wolverine failed to temporarily reduce the operating pressure on the Niles to Ferrysburg pipeline segment after a final in-line inspection (ILI) reported a dent with an indication of metal loss located on the topside of the pipeline. In the Notice, OPS stated that Wolverine claimed that it discovered the dent on June 26, 2015, and then completed repairs on June 30, 2015. The Violation Report further stated that Wolverine received a final ILI report on June 10, 2015, and OPS maintains that Wolverine's failure to reduce the pressure between June 10, 2015, and June 30, 2015, constitutes a violation of § 195.452(h)(4)(i).

The determination of whether or not Wolverine violated § 195.452(h)(4)(i) hinges on whether, following discovery that the dent met the criteria, it implemented a pressure reduction or shut

down the pipeline. It is undisputed that Wolverine never implemented a pressure reduction or shut down the pipeline. Furthermore, Wolverine does not argue that the dent did not meet criteria. Therefore, the only remaining issue is whether or not the Respondent failed to act on the immediate repair condition, as required by the regulation.

In its Response and at the hearing, Wolverine explained that as an initial matter, it believed that OPS has issued vague guidance that deprives the regulatory community of the certainty that it needs to determine exactly when and how an immediate repair condition must be addressed. Wolverine argues that it acted in conformity with its applicable *Integrity Management Program in High Consequence Areas* procedure (IMP procedure) (Section 2.3.6.4) and PHMSA's Integrity Management Frequently Asked Questions (FAQs) to determine how to address this immediate repair condition, per § 195.452(h)(4)(i).

Wolverine's IMP procedure outlines, among other things, the Respondent's process for the completion of integrity assessments and the timeline requirements for discovery of immediate repair conditions. In Section 2.3.6.4.4, *Safety Related Condition Requirements,* states:

> Data indicating a possible immediate repair condition must be analyzed quickly not to exceed 5 working days before an operator must determine whether the indication is an immediate repair condition or not. After the 5 day determination period, an operator has up to 5 additional working days (not to exceed 10 working days total from first knowledge of a condition) to either complete a repair of the condition, implement a pressure reduction as necessary, [and] possibly implement other mitigation… [4]

Since OPS lodged no objection to the IMP procedure during its inspection, Wolverine claims that OPS cannot now claim that its procedure is inadequate to fulfill its regulatory obligations under § 195.452(h)(4)(i). Therefore, in Wolverine's view, if it complied with its own procedures, OPS should be satisfied that it complied with the regulatory procedure. Wolverine further argues that it formally discovered the condition on June 26, the date its team met to discuss the final ILI report, and was only then required to commence acting to evaluate and remediate the dent. Working with a discovery date of June 26, 2015, Wolverine argues that, since it could complete repairs on June 30, 2015, a pressure reduction was both unnecessary and not required by its own procedures.

As OPS correctly points out, however, this argument ignores the fact that, once an operator determines that it has an immediate repair condition, the regulation requires it to temporarily reduce operating pressure or shut down the pipeline while it proceeds to repair the condition. OPS stated:

> Regardless of when Mr. Cooper chose to open the ILI report to review it, Wolverine was in possession of the final ILI report on June 9, 2015, and did not act upon the findings of the report until June 23, 2015, at

[4] Hearing Exhibit 28, at 71.

> the earliest. Between June 9[5], 2015 and June 23, 2015, the report sat in Mr. Cooper's email inbox with no action being taken. When Mr. Cooper finally did open the report, the report identified a dent with metal loss. Had the report been opened and reviewed when it was received, Wolverine would have been aware of a potential immediate repair condition on June 9 2015 and been able to take steps toward implementing a temporary pressure reduction until a repair could be completed.[6]

Wolverine's Post-hearing submission argues that the Integrity Management FAQs[7] support its position as to when it must have addressed the dent cited in the final ILI report. The FAQs state that "Repairs must be made as soon as practicable. An operator must reduce pressure … as soon as safety allows and operate at or below that pressure until a repair can be made." Wolverine received the ILI report noting the dent on June 10. Whatever Mr. Cooper, Wolverine's integrity analyst, was doing at the time he received the final ILI report is immaterial to the question of whether the information was treated as an immediate repair condition that had to be acted upon "as soon as practicabl[y]." At the hearing and in its Post-hearing submission, Wolverine demonstrated that, even when a condition is identified as an immediate repair, a pressure reduction cannot be implemented immediately. There are certain intervening steps that an operator must take to capably and safely implement a pressure reduction. Nevertheless, the time that elapsed between receipt of the ILI report on June 10, and the evaluation and repair that occurred from June 26 to June 30, was too long and did not meet the regulatory standard. The analysis of what time period is sufficient to comply with this regulatory requirement requires a fact dependent analysis of the repair that will vary from cases to case. In certain circumstances, an operator can immediately implement a pressure reduction, while in other cases, safety will dictate a longer time period for evaluation and repair. However, the fact that Wolverine did not take any action between June 10 and June 26 was a critical factor in my determination that the operator did not meet the regulatory requirement in this case. Wolverine's own procedure requires that data be "analyzed quickly." While the NOA did not allege that Wolverine violated its own procedure, this immediate repair condition was not quickly analyzed.

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[5] The record includes contradictory dates as to the date that the ILI report was received. For the purposes of this Final Order, June 10 is used, the date used in the Notice.

[6] Mr. Cooper serves as Wolverine's contract risk and integrity specialist and testified during the hearing. Among other things, he is responsible for implementing the company's IMP. Mr. Cooper recounts:
Ms. Williams: So can I ask who receives the final report? Who got that on June 10th?
Presiding Official: You mean the ILI report?
Ms. Williams: Yeah, who got the June 10th report? Where did it go?
Mr. Cooper: That was e-mailed to me by the vendor.
Ms. Williams: And you were on vacation?
Ms. Cooper: And I did not have access to e-mail at that point.
Ms. Williams: So it sat in your e-mail box from June 10th until?
Mr. Cooper: Until I was able to open it. I think I may have seen the e-mail, but I did not open the report until I got back from travels, which went on for a couple weeks. As soon as I got back, I reviewed it, posed the questions to the vendors and some others about some details about it, and confirmed it and called a conference call on the 26th. So what is that, 16 days later.

[7] Liquid Integrity Management Rule, FAQs, dated August 31, 2016.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.452(h)(4)(i)(C) by failing to evaluate and remediate an immediate repair condition by temporarily reducing the operating pressure or shutting down the pipeline until the operator completes the repair of these conditions.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

**Item 6:** The Notice alleged that Respondent violated 49 C.F.R. § 195.452, which states:

> **§ 195.452 Pipeline integrity management in high consequence areas.**
> (a) ….
> (h) *What actions must an operator take to address integrity issues?*
> (4) *Special requirements for scheduling remediation-*
> (iii) 180-day conditions. Except for conditions listed in paragraph (h)(4)(i) or (ii) of this section, an operator must schedule evaluation and remediation of the following within 180 days of discovery of the condition:
> (D) A calculation of the remaining strength of the pipe shows an operating pressure that is less than the current established maximum operating pressure at the location of the anomaly. Suitable remaining strength calculation methods include, but are not limited to, ASME/ANSI B31G and PRCI PR-3-805 (R-STRENG).

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h) by failing to address four integrity issues within 180 days of discovery of the conditions. Specifically, the Notice alleged that Wolverine failed to, within 180 days, schedule the evaluation and remediation of four integrity issues on the 18-inch Joliet to Kennedy Avenue pipeline segment, including: (1) Dig 7 (repaired on May 26, 2016, 400 days after the completed integrity assessment and 349 days after Wolverine received the final ILI report); (2) Dig 31 (evaluated on October 18, 2016, 545 days after the completed integrity assessment and 494 days after Wolverine received the final ILI report); (3) Dig 31.5 (evaluated on February 18, 2016, 302 days after the completed integrity assessment and 251 days after Wolverine received the final ILI report); and (4) Dig 34.5 (evaluated on June 3, 2016, 408 days after the completed integrity assessment and 357 days after Wolverine received the final ILI report).[8] The Region argued that Wolverine was required by regulation to complete remediation of the 180-day conditions within 180 days of receiving the final ILI report.[9] Wolverine argues that, by using a more accurate calculation method, the conditions are not properly classified as 180-day conditions. In the alternative, Wolverine argues that it did not exceed the 180-day timeline for two of the four dig sites.

In order to decide whether or not the Respondent violated this regulation, I must determine: (1) were these four anomalies 180-day conditions; and if so, (2) did the operator exceed the 180 days allotted to it in order to evaluate and remediate the conditions.

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[8] PHMSA Pipeline Safety Violation Report, pages 41-42, (on file with PHMSA).

[9] Condensed Transcript, at 241.

B31G and R-STRENG are two calculation methods that are used to determine if the remaining strength of a pipeline at an anomaly site should be considered a condition that must be evaluated and remediated within 180 days. Wolverine strenuously argues that, unless the condition meets the criteria for a 180-day condition under both the B31G and RSTRENG methods, an anomaly does not meet the criteria. However, while the regulation offers the upfront choice between calculation methods, an operator is held to its choice of calculation methodology. At the hearing, Mr. Cooper, Wolverine's integrity analyst, testified that Wolverine elected to use B31G, the method used in the final ILI report. Additionally, from the Violation Report, there is no indication that Wolverine intended to rely on any other calculation method until this matter was contested by hearing. In the Violation Report, "Describe the evidence", OPS stated that Wolverine provided a written response admitting that the deadlines had not been met and that new procedures were in place to ensure that future deadlines would be met.[10] Therefore, I find that, Wolverine should be held to its decision to use B31G methodology, and therefore, the subject conditions were 180-day conditions.

As for the required determination on whether or not the operator exceeded the 180-day timeline, it is necessary to determine the date on which discovery occurred. 49 C.F.R. § 195.452(h)(2) states:

> Discovery of a condition occurs when an operator has adequate information to determine that a condition presenting a potential threat to the integrity of the pipeline exists. An operator must promptly, but no later than 180 days after an assessment, obtain sufficient information about a condition to make that determination, unless the operator can demonstrate the 180-day interval is impracticable.

OPS argues that Wolverine had sufficient information on April 22, 2015, the date that Wolverine received the final ILI report. It emphasizes an OPS inspector's testimony at the hearing that the final ILI report included adequate information to make a threat determination. In its Response and at the hearing, Wolverine argued that operators, even after receiving final ILI reports, must execute various tasks prior to declaring a date of discovery, thereby triggering the 180-day clock between discovery of the condition and evaluation and remediation of the condition. While OPS argues that the date of discovery was the date Wolverine received the final ILI report, Wolverine maintains that the discovery date was October 19, 2015, the date that the company received the report from the risk integrity specialist who conducted various evaluations of the ILI report.[11]

The Integrity Management FAQs state that "Depending on circumstances, an operator may have adequate information when the operator receives the preliminary internal inspection report, gathers and integrates information from other inspections, or when an operator receives the final

[10] "Wolverine provided a written response that stated 'Wolverine will evaluate and implement improvements to repair plan monitoring to help ensure all future deadlines are met. Note: this dig site was on a multi year remediation plan, stewards failed to move this dig site up the priority list when the subsequent tool reclassified this from an 'other condition' to a potential 180 day repair. New Repair Tracking sheet being used, Open Items are reviewed at monthly Integrity Meetings to ensure deadlines are being met." Violation Report, at 42.

[11] Wolverine, Exhibit No. 36.

internal inspection report." After receiving the final ILI report, an operator may use a certain amount of time for data integration and repair plan development. Based on the testimony presented during the hearing by Mr. Cooper, Wolverine's integrity analyst, I find that there is ample evidence that the company spent considerable time analyzing the ILI report and taking the steps precedent to completing evaluation and remediation of these dig sites. Mr. Cooper testified that he routinely validates the calculations in the ILI reports, and the regulation allots an operator no more than 180 days to perform such validation, among other things. OPS has found, in previous cases, that the discovery date is not necessarily the date that the operator receives the final ILI report if the operator can demonstrate that it needed more information in order to formally discover a condition. *In the Matter of Natural Gas Pipeline Co. of America, a subsidiary of Kinder Morgan, Inc.,* Final Order, CPF 3-2015-1002, dated March 30, 2017, OPS found that the operator's claim of May 13, 2010, as the date of discovery was more appropriate than May 6, 2010, the day it received the final ILI report. This Final Order noted that, although an operator will normally be able to enable discovery of a condition upon receipt of an ILI report, sometimes an operator can demonstrate that further data integration is necessary. Based on the extensive testimony regarding the actions taken following receipt of Wolverine's final ILI report to gather and integrate information from other sources, I accept the operator's discovery date of October 19, 2015.

Nevertheless, even if I accept Wolverine's argument that the NOPV failed to accurately state the date of discovery (and therefore the number of days that the 180-day deadline was exceeded), the fact remains that, even using their October 19, 2015 discovery date, Wolverine exceeded the 180-day time limit for two of the four dig sites cited in the Notice, Dig 7 and Dig 31.[12]

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.452(h) by failing to schedule evaluation and remediation of 180-day conditions within 180 days of discovery of the condition.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

## ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed $200,000 per violation for each day of the violation, up to a maximum of $2,000,000 for any related series of violations.[13] In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent

[12] Dig 34.5 was completed 37 days prior to the deadline, after allowing for an extension permitted by Wolverine's procedures. NOPV Hearing Transcript, at 263.

[13] These amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223.

in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of $ 121,800 for the violation cited above.

**Item 4:** The Notice proposed a civil penalty of $46,600 for Respondent's violation of 49 C.F.R. § 195.446 for failing to conduct point-to-point verifications between added field equipment and SCADA displays of the valve and the pressure transmitters in the South Metro Parkway valve site prior to starting the pipeline segment. As stated above, I accept the Region's recommendation that the Item and the associated civil penalty be withdrawn.

**Item 5:** The Notice proposed a civil penalty of $36,000 for Respondent's violation of 49 C.F.R. § 195.452(h) for failing to treat a dent located on the topside of the pipeline with an indication of metal loss as an immediate repair condition. In its Response, Wolverine presented several arguments for a reduction in the civil penalty. I will address each one separately below.

First, Wolverine argues that the Culpability assessment consideration should be changed to "took significant steps to comply with a requirement" rather than "failed to take appropriate action to comply with a requirement that was clearly applicable." Wolverine states that it believes its actions to address the immediate repair condition, including following its IMP procedures, necessitate a change in the point designation.[14] The Region Recommendation supports a change in the Culpability designation and I agree it is appropriate.[15] Therefore, the Culpability assessment consideration will be weighted as "took significant steps to comply with a requirement but did not achieve compliance."

Second, Wolverine argues that the Good Faith assessment consideration should be changed from "did not make a reasonable interpretation of the requirement or did not have a credible justification for its actions or lack of actions" to "[t]he operator's interpretation of the requirement was reasonable, and it had a credible justification for the actions it took." Respondent argues that its interpretation of the integrity management regulation was a reasonable one. However, as explained above, the agency has been very clear that action must be taken as soon as practicably. While the agency allows for operators to take time to accomplish pressure reductions or shut down the pipeline in a safe manner, both the regulation and the accompanying FAQs emphasize that time is of the essence. I do not think this circumstance warrants a credit for Good Faith, and therefore, I decline to adjust this assessment consideration.

Based upon the foregoing, I assess Respondent a reduced civil penalty of $28,800 for violation of 49 C.F.R. § 195.406(a).

**Item 6:** The Notice proposed a civil penalty of $39,200 for Respondent's violation of 49 C.F.R. § 195.452(h) for failing to schedule the evaluation and remediation of multiple 180-day

[14] Response, at 39.

[15] Region Recommendation, at 5.

conditions on its pipeline system. In its Response, Wolverine presented several arguments for a reduction in the civil penalty. I will address each one separately below.

First, Wolverine contends that, since OPS cannot prove that the subject conditions were 180-day conditions using both B31G and RSTRENG calculations, that OPS cannot prove that there was a violation of § 195.452(h)(4)(iii), and accordingly, no penalty should be assessed for the violation of this regulation. As explained above, the regulation offers each operator an election among various calculation methods, including B31G and RSTRENG. Once it has determined which method to use, the operator is bound by those calculations. Wolverine elected the most conservative strategy and it cannot now use the other method to defend itself against the allegation.

Second, Wolverine contends that the proposed civil penalty should be significantly reduced given that the Respondent is guilty of only two of the four instances of violating the evaluation and remediation timelines.[16] The Region does not address this argument. As addressed above, an operator is entitled to a certain amount of time for data integration and repair plan development. Nevertheless, by Respondent's own discovery date, it exceeded the 180-day timelines twice. Therefore, I will lower the number of instances from four to two, and adjust the penalty accordingly.

Third, Wolverine argues that the civil penalty should be significantly reduced because the NOPV overstates the amount of time that it was allegedly late with evaluation and remediation of the alleged 180-day conditions.[17] I disagree. Contrary to Wolverine's assertion, the original penalty calculation factored in a duration of 10 days.[18] Since the duration of the violation exceeded 10 days for each of the two instances where I have found that Respondent violated this regulation, I will not adjust the duration of the violation.

Fourth, Wolverine requests a reduction on the basis of 49 C.F.R. § 190.225(b)(2) for "[s]uch other matters as justice may require." Respondent argues that OPS, given the Department of Transportation's stated commitment to fair enforcement practices, should further reduce the civil penalty. However, I have adjusted the penalty assessment to address each of the penalty assessment considerations where I have made a factual finding contrary to the Notice, and therefore, the Respondent is not prejudiced in any way that deprives it of any due process rights or offends standards of fair play and justice.

Finally, the company contends that it should be afforded good-faith credit because it is being judged per a novel interpretation of this regulation. However, as explained above, OPS' position is consistent with prior precedent and its FAQs.

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[16] Post-hearing submission, at 40.

[17] Post-hearing submission, at 41.

[18] "Enter duration of violation in days - enter 10, if evidence indicates 10 or more, but exact total cannot be determin[ed]." Civil Penalty Worksheet.

Based upon the foregoing, I assess Respondent a reduced civil penalty of $37,000 for violation of 49 C.F.R. §195.452(h)(4)(iii).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total reduced civil penalty of **$65,800**.

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. Detailed instructions are contained in the enclosure. 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 $65,800 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. 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.

## WARNING ITEMS

With respect to Items 1-3 and 7-9, the Notice alleged probable violations of Part 195, but identified them as warning items pursuant to § 190.205. The warnings were for:

> 49 C.F.R. § 195.420 **(Item 1) ─** Respondent's alleged failure to maintain each valve that is necessary for the safe operation of its pipeline system in good working order at all times;
>
> 49 C.F.R. § 195.424(a) **(Item 2) ─** Respondent's alleged failure to take a pressure reduction to not more than 50 percent of the maximum operating pressure when moving line pipe;
>
> 49 C.F.R. § 195.446(c) **(Item 3) ─** Respondent's alleged failure to provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities that the operator has defined
>
> 49 C.F.R. § 195.452(l) **(Item 7) ─** Respondent's alleged failure to maintain documents to support decisions and analyses, including any modifications, justifications, deviations and determinations made, variances, and actions taken to implement and evaluate each element of its integrity management program;
>
> 49 C.F.R. § 195.579(a) **(Item 8) ─** Respondent's alleged failure to investigate the corrosive effect of the hazardous liquid or carbon dioxide on its pipeline and to

take adequate steps to mitigate internal corrosion; and

49 C.F.R. § 195.581 **(Item 9) ─** Respondent's alleged failure to protect against atmospheric corrosion by cleaning and coating each pipeline or portion of pipeline that is exposed to the atmosphere.

At the hearing, Wolverine presented evidence and testimony to refute the allegations in the warning items. Under § 190.205, PHMSA does not adjudicate warning items. Accordingly, this order contains no findings on any of the warning items. If OPS finds a violation of any of these items in a subsequent inspection, the Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

September 3, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued