U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

December 5, 2022

VIA ELECTRONIC MAIL TO: heath@dakota-midstream.com and tim@dakota-midstream.com

Mr. Heath Norman & Mr. Tim Reynolds
Co-Chief Executive Officers
Dakota Midstream LLC
708 Main St., 10th Floor,
Houston, Texas 77002

Re: CPF No. 3-2021-059-NOPV

Dear Mr. Norman and Mr. Reynolds:

Enclosed please find the Decision on Petition for Reconsideration Decision) issued in the above-referenced case. For the reasons explained therein, the Decision denies the Petition. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Central Region, this enforcement action will be closed. Service of this Decision by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

ALAN KRAMER
MAYBERRY

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Date: 2022.11.30 13:01:49 -05'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Kristopher Coe, P.E., Project Manager, Dakota Midstream, LLC,
kristopher@dakota-midstream.com

CONFIRMATION OF 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	)	
Dakota Midstream, LLC,	)	**CPF No. 3-2021-059-NOPV**
Respondent.	)	

DECISION ON PETITION FOR RECONSIDERATION

On March 18, April 8, May 18-20, and May 27, 2021, pursuant to 49 U.S.C. § 60117, representatives 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 Dakota Midstream, LLC (Dakota Midstream or Respondent) in Alexander, North Dakota. Dakota Midstream owns and operates approximately 65 miles of pipeline in the Bakken region.[1]

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated December 30, 2021, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Dakota Midstream had committed sixteen (16) violations of 49 C.F.R. Parts 194 and 195 and proposed assessing a civil penalty of $204,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Dakota Midstream responded to the Notice by letter dated January 30, 2022 (Response) and submitted additional correspondence on March 4 and March 18, 2022. The company contested several of the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore waived its right to one.

On August 30, 2022, pursuant to 49 U.S.C. §§ 60117 and 60122 and 49 C.F.R. § 190.213, PHMSA issued a Final Order finding that Respondent committed fifteen violations of 49 C.F.R. Part 195 (Final Order).[2] The Final Order withdrew Item 4 of the Notice, an alleged violation of

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[1] Dakota Midstream website, *available at* http://dakota-midstream.com/about/ (last accessed Nov. 23, 2022).

[2] *In re Dakota Midstream, LLC*, Final Order, CPF No. 3-2021-059-NOPV (Final Order) (August 30, 2022) (on file with PHMSA).

49 C.F.R. § 195.208, and the corresponding compliance terms for that item.[3] The Final Order assessed a civil penalty of $204,000, and specified certain actions that needed to be taken by Dakota Midstream to comply with the pipeline safety regulations.[4]

On September 19, 2022, Dakota Midstream filed a Petition for Reconsideration pursuant to 49 C.F.R. § 190.243 (Petition). In its Petition, Respondent requested reconsideration of the assessed civil penalty amount.[5] Specifically, Dakota Midstream stated that after it received the Notice and prior to issuance of the Final Order, it took action to comply with the corrective actions associated with Item 4 in the Proposed Compliance Order.[6] Therefore, Dakota Midstream argued that it should receive a reduction in the total assessed civil penalty amount to reflect its good-faithed effort to achieve compliance with the Proposed Compliance Order.[7]

STANDARD OF REVIEW

Under 49 C.F.R. § 190.243, a respondent may petition the Associate Administrator for reconsideration of a final order that has been issued pursuant to § 190.213. Reconsideration is not an appeal or a completely new review of the record.[8] A respondent may ask for correction of an error or, in limited circumstances, may present previously unavailable information. If a respondent requests consideration of additional facts or arguments, the respondent must submit the reasons they were not presented prior to the issuance of the final order. § 190.213(b). The Associate Administrator may grant or deny, in whole or in part, a petition for reconsideration without further proceedings. § 190.213(d).

DISCUSSION

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.208, which states:

> **§ 195.208 Welding of supports and braces.**
> Supports or braces may not be welded directly to pipe that will be operated at a pressure of more than 100 p.s.i. (689 kPa) gage.

Specifically, the Notice alleged that during the inspection, PHMSA observed supports welded directly to the pipeline, located down the middle of the 10 Spackler tanks and feeding all the

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[3] *Id.* Item 4 did not have a proposed civil penalty.

[4] *Id.*

[5] Petition, at 5-7.

[6] *Id,* at 6. Respondent estimates that it spent approximately $113,495 to comply with the proposed compliance order terms associated with Item 4.

[7] *Id*.

[8] 49 C.F.R. § 190.243(a)-(d).

tanks. The Notice included a Proposed Compliance Order that proposed to require Dakota Midstream to "remove all welded supports from the line located within the Spackler Tank Facility. . . [and] submit a progress update to the Central Region Director with 90 days of the Final Order and documentation of completed work within 180 days of the Final Order."

In its Response, Dakota Midstream contested the allegation of violation and explained that its pipeline at the above-referenced location has a pressure control valve set to 75 PSIG and will never operate above 100 PSIG. The Response did not include information on the action(s) the company had taken to implement the proposed corrective actions associated with Item 4 in the Proposed Compliance Order.

The Final Order found that because Dakota Midstream restricts the pressure on this line to a maximum pressure of 75 PSIG, and there was nothing in the record to indicate that the pressure control valve was malfunctioning, improperly calibrated, or otherwise not accurately restricting the pressure on this pipeline, the pipeline was not being operated above 100 PSIG and therefore the requirements set forth in § 195.208 were not applicable to this particular pipeline. Item 4, and the proposed compliance terms for Item 4 in the Proposed Compliance Order, were subsequently withdrawn in the Final Order.

In its Petition, Dakota Midstream requests reconsideration of the Final Order because it was in the process of implementing the terms of the Proposed Compliance Order for Item 4, which was ultimately withdrawn. Dakota Midstream cites to § 190.225(4), which states that the "Associate Administrator will consider any good faith effort by the respondent in attempting to achieve compliance" when determining the amount of a civil penalty.[9]

Although Item 4 did not have an associated civil penalty and was subsequently withdrawn in the Final Order, in general PHMSA considers an operator's good-faithed attempt to comply with a regulation in assessing a civil penalty amount in several ways. First, in Section E7-Culpability of the Pipeline Safety Violation Report (Violation Report), an operator may receive a civil penalty credit if, after finding the non-compliance, the operator took documented action to address the cause of the non-compliance, and was in the process of correcting the non-compliance, or corrected it, before PHMSA learned of the violation.[10] In this case, Dakota Midstream did not take documented action to correct the noncompliance until after the Notice was issued.

Second, in Section E8-Good Faith of the Violation Report, PHMSA considers whether the operator had a reasonable justification for its noncompliance, and provides a civil penalty credit for an operator that can demonstrate it took action in good faith to try to comply with the pipeline safety regulations.[11] Good Faith does not consider, however, "corrective actions taken by the

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[9] Petition, at 6.

[10] Violation Report, at E7-Culpability.

[11] For example, operators may be found to have a reasonable justification for a noncompliance if their interpretation of a regulatory requirement was reasonable, or if the operator failed to achieve compliance for reasons such as unforeseeable events or conditions that were partly or wholly outside its control. *Id.,* at E8-Good Faith.

Operator after PHMSA discovered the violation."[12] In this case, Dakota Midstream took action to implement the proposed compliance order after PHMSA discovered the alleged violation and issued the Notice.

Although Item 4 did not have an associated civil penalty and was subsequently withdrawn in the Final Order, Dakota Midstream was assessed a civil penalty for Items 1, 2, 3, 7, 8, 14, 15, and 16 in the Final Order. All of these items with the exception of Item 14 were uncontested.[13] Although Respondent contested Item 14, the Final Order found Dakota Midstream in violation and assessed the full proposed civil penalty. The Petition does not contain any request to reduce or eliminate the assessed civil penalty for this item, or for any other item, and therefore I find no reason to reduce it here.

In sum, I find no reason to reduce the total assessed civil penalty of $204,000 to account for Dakota Midstream's actions to implement the Proposed Compliance Order terms for Item 4. Since Dakota Midstream contested Item 4 in response to the Notice, Dakota Midstream understood there was a possibility that PHMSA would agree with its position and withdraw Item 4 and the associated Proposed Compliance Order. Moreover, the Proposed Compliance Order in this case specifically noted in the title and body of the document that it is a proposal. The company was not under a directive to implement these measures. This is further evidenced by the fact that the proposed compliance dates were after the Final Order was to be issued. Although PHMSA commends Dakota Midstream for affirmatively taking steps outlined in the Proposed Compliance Order prior to issuance of the Final Order, its actions, taken after the PHMSA inspection and in response to the Notice, do not afford it a reduction in the civil penalty amount.

Accordingly, after considering all of the evidence, I hereby deny the Petition. As set forth in the Final Order, Respondent is assessed a total civil penalty of **$204,000**.

Payment of the civil penalty must be made within 20 days after receipt of this Decision. 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 $204,000 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.

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[12] *Id.*

[13] *See, generally,* Response.

CONCLUSION

For the reasons stated above, the Petition is denied. This Decision affirms the findings in the Final Order, upholds the assessed civil penalty amount of $204,000 and fully incorporates the terms of the Compliance Order.

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

ALAN KRAMER MAYBERRY
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Date: 2022.11.30 12:59:39 -05'00'

December 5, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued