Hogan Lovells US LLP
700 Louisiana Street
Suite 4300
Houston, TX 77002
T +1 713 632 1400
F +1 713 632 1401
www.hoganlovells.com

June 10, 2011

Privileged And Confidential
By Certified Mail

Mr. Jeffrey D. Wiese, Associate Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
East Building, 2nd floor
Washington, D.C. 20590

Re: CPF No. 4-2007-5010: Petition for Reconsideration

Dear Mr. Wiese:

CITGO Pipeline Company ("CITGO") files this petition for reconsideration of limited portions of the Final Order that the Pipeline and Hazardous Materials Safety Administration ("PHMSA") issued on April 14, 2011, in CPF 4-2007-5010.

CITGO seeks reconsideration of two findings of violations as well as the penalty and compliance orders associated with those two findings. Within 180 days, CITGO will timely comply with the terms arising from the three other findings contained in the Final Order. On June 9, 2011, CITGO made payment of the $32,000 penalty associated with those findings.

Recognizing that it has been over four years since the issuance of the Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order ("NOPV"), CITGO respectfully submits that the Final Order contains inaccuracies regarding CITGO's positions and the evidence proffered to the Office of Pipeline Safety ("OPS") during its inspections and to the hearing officer at the informal hearing held in June 2007. CITGO also describes developments during the past four years that are relevant to the two findings for which CITGO is seeking reconsideration. In particular, CITGO seeks review of the following:

1. **The finding of a violation for Item 4 and compliance order number 2 relating to inspections of rights-of-way governed by 49 C.F.R. § 195.412(a).** The finding and order under § 195.412(a) exceed PHMSA's authority, fail to acknowledge CITGO's opposition, fail to require OPS to prove a violation, and are in part moot to the extent they purport to cover the Eagle Pipeline, which CITGO sold to Explorer Pipeline Company ("Explorer") in 2007.

2. **The finding of a violation for Item 7, civil penalty of $50,000, and compliance order number 4 relating to external corrosion control pursuant to 49 C.F.R. § 195.573(d) and (e).** In making the finding and order under § 195.573(d) and (e), PHMSA failed to require OPS to prove a violation and instead improperly shifted the burden to CITGO. CITGO also submits a statement from an independent outside expert confirming the accuracy of the information provided by CITGO to the OPS in 2006.

After providing a procedural background, CITGO will address both of these items, analyzing the evidence and showing compliance with the applicable regulations. For the reasons set out more fully below, CITGO respectfully requests that the Final Order be reconsidered and modified as requested.

Brief Background

The OPS inspected CITGO's operations in Texas, Oklahoma, and Louisiana from February to June 2006. The OPS inspection included portions of the Sour Lake District system, the Eagle Pipeline, associated facilities, and CITGO's control center in Tulsa, Oklahoma. The Southwest Region Director of OPS issued the NOPV on April 2, 2007. CITGO responded by letters dated May 4 and June 5, 2007, and a hearing was held on July 24, 2007. CITGO submitted a post-hearing supplement on August 23, 2007, closing the hearing process. Effective October 31, 2007, CITGO sold the Eagle Pipeline, which runs from Houston, Texas, to Drumright, Oklahoma, and related properties to Explorer.

Five years after the inspections and four years after the NOPV, PHMSA issued the Final Order to CITGO on April 14, 2011. In the order, PHMSA found violations of five items. CITGO files this petition only as regards Items 4 and 7 and their corresponding penalty and compliance orders. Based on its understanding of the Final Order, CITGO does not seek reconsideration of the findings, penalty, and compliance orders for Items 2, 6, and 8, or the warning regarding Item 5.

For items 2, 6, and 8, CITGO will demonstrate compliance within the timeframe established in the Final Order. More specifically, within 30 days of today's date, CITGO will submit the required surveys, assessments, and plans with timetables for compliance on the pipelines and facilities it currently operates, including the Sour Lake District system, the Lakemont system, the CASA system, and related facilities. Within 180 days of today's date, CITGO will complete the compliance actions and submit documentation of that completion. CITGO will also document the costs associated with preparation and compliance. CITGO has already paid the one penalty associated with Item 6.

Item 4 / Compliance Order No. 2
Inspection of Rights-of-Way under § 195.412(a)

CITGO seeks reconsideration of the finding of a violation of § 195.412(a) in Item 4 and the corresponding compliance order number 2. Reconsideration is warranted in light of (1) the excessive scope of the compliance order; (2) PHMSA's failure to carry its burden of showing a specific violation of § 195.412(a); and (3) the circumstance of CITGO's sale of the Eagle Pipeline.

Section 195.412(a) obligates an operator to inspect its pipeline rights-of-way by means of a method of its own choosing. Despite the flexibility established in the regulation, PHMSA ordered

CITGO to comply through a single method—aerial surveillance—a major deviation from PHMSA's historical practice with other operators. The order is thus arbitrary and capricious because it limits the method of inspection to only aerial surveillance in violation of the regulation, its historical interpretations, industry practice, and CITGO's inspection methods.

This finding also rests on the errant conclusion that CITGO did not contest the allegation of violation of this regulation. Because of this inaccurate finding, PHMSA did not hold OPS to its proof and did not find an identifiable violation. In fact, CITGO opposed the alleged violation and presented evidence and argument to the contrary. That evidence showed an on-going inspection and clearing regime using both aerial and foot patrols. Because the regulations provide the operator with the option of methods, because clearing and maintenance has naturally resulted from the on-going operations of CITGO (and now Explorer), and because canopy growth and clearing occurs in a natural cycle, any compliance order should be directed at the manner in which the inspections are documented. Accordingly, CITGO respectfully asks the Associate Administrator to reconsider this finding.

a. Compliance order number 2 exceeds PHMSA's authority because § 195.412(a) does not require either clearing or aerial inspection.

PHMSA exceeded its authority by mandating a particular type of inspection—aerial surveillance—when § 195.412(a) provides the operator with the choice of inspection method. PHMSA is tasked with issuing compliance orders only to ensure adherence to federal law and regulations. 49 CFR § 190.217. Section 190.217 limits PHMSA's authority "to determin[ing] the nature and extent of the violations and to issu[ing] an order directing compliance." *Id.* Thus, PHMSA does not have the authority to issue an order that requires an operator to do more than established in a regulation.

In this case, § 195.412(a) expressly vests the operator with flexibility to determine the best method for inspections, including walking, driving, flying or other appropriate means of traversing the right-of-way. This regulation provides as follows:

> 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.

Section 195.412(a) thus mandates inspections of the pipeline by a method selected by the operator. An uninterrupted and uniform chain of PHMSA interpretations has consistently determined that PHMSA does not mandate either clearing or a specific method of inspection. For example, in 1980, PHMSA issued the following interpretation:

> Please note that this regulation does not require that trees be removed or that the right-of-way be inspected from the air. Therefore, the growth of trees on pipeline rights-of-way is not covered by the Federal regulations. It normally is a matter subject to negotiation in the right-of-way agreement between the pipeline companies and any landowners involved.

PHMSA Interpretation, No. PI-80001, Jan. 15, 1980; *see also* PHMSA Interpretation, No. PI-88005, Dec. 2, 1988 ("OPS does not require that the surveillance be by air or that any specific width be clearcut, only that the method of surveillance chosen and its implementation allow the surface condition to be adequately surveyed."). As PHMSA reiterated over a decade later: "Since the regulations do not specify the means by which inspections are to be carried out, operators may use either aerial or ground patrols." PHMSA Interpretation, No. PI-91015, May 28, 1991; *see also* PHMSA Interpretation, No. PI-91020, June 26, 1991 ("This standard permits the pipeline operator to select an appropriate method of implementation.").

The flexibility afforded by this regulation confirms sound policy. Whether clearing the right-of-way to facilitate aerial surveillance or using an alternative method of inspection is proper turns on numerous factors that are not regulated by PHMSA, including third-party right-of-way agreements, terrain, remoteness, access, and population density. The regulation reflects the reality that clearing the right-of-way "is a matter subject to negotiation in the rights-of-way agreement between the pipeline companies and the landowners involved." PHMSA Interpretation, No. PI-91015, May 28, 1991. Similarly, aerial inspection may not be sufficient where minimum altitude requirements in urban areas prevent close aerial inspection. *See* PHMSA Interpretation, 1974 WL 187860, July 2, 1974 ("Where a closer inspection is necessary but may not be made by aircraft under FAR 91.79(c), an alterative means of inspection should be used.").

Based on this clear policy, PHMSA has not required other operators to undertake a specific means of inspection. For example, in *In re Alyeska Pipeline Service Co.*, PHMSA rejected an OPS proposal to require clearing and aerial inspection. OPS had faulted the operator for permitting canopy growth on the right-of-way and proposed an order mandating that it be cleared. PHMSA expressly rejected the proposal, noting that "this is not required by the regulation." CPF No. 5-2002-5035, Final Order, at 3 (PHMSA July 19, 2006). PHMSA determined that "OPS has advised that it is up to the operator to choose the method of surveillance" so long as it "allow[s] the surface condition to be adequately surveyed." *Id.*; *see also In re Alyeska Pipeline Serv. Co.*, CPF No. 5-2003-5002, Final Order, at 9 (PHMSA May 5, 2005) ("The method of inspection is left to the operator."). Accordingly, PHMSA withdrew the allegation.[1]

In this case, compliance order number 2 far exceeds the scope of PHMSA's authority because it adds requirements that do not exist in the regulations and is arbitrary and capricious because it diverges from PHMSA's orders to other carriers. PHMSA ordered:

> With respect to the violation of 49 C.F.R. § 195.412(a) (Item 4), Respondent must inspect all of its pipelines to locate areas where the ROW is overgrown with brush or tall grass or is overgrown by a canopy from surrounding trees that prevents visibility from aerial surveillance; develop a plan and schedule to clear brush and canopy from the ROW; and a plan for alternative surveillance method for affected ROWs that are being cleared and made suitable for aerial surveillance.

[1] PHMSA has also issued numerous other contested compliance orders against other pipeline operators, and none of those orders mandate a specific method of inspection. For example *In re ONEOK North System*, PHMSA ordered that "Respondent must develop a plan and schedule of action for clearing areas along its pipeline rights-of-way ***where aerial patrolling will be used***." CPF No. 3-2009-5019, Final Order, at 3 (PHMSA Aug. 6, 2010) (emphasis added).

Despite the clear mandate of flexibility built into § 195.412(a), the compliance order obligates CITGO to clear the right-of-way and conduct aerial inspections. There is no such requirement in any regulation, and PHMSA has consistently interpreted the regulation not to require clearing. OPS provided no evidence that clearing is even feasible for the entire length of CITGO's system. Such clearing will be governed by the specific easements and rights-of-way that are in operation between CITGO (now Explorer for the Eagle Pipeline) and the landowner. The OPS did not suggest that CITGO was exclusively inspecting by air, noting only that aerial inspections were the primary method of compliance. NOPV at 3. Indeed, on numerous right-of-way segments, CITGO conducts ground patrols because the land owners have not authorized clearing. For example, the Louisiana Department of Wildlife and Fisheries obligates CITGO to conduct ground patrols for its regular inspection of certain pipeline sections on the Lakemont system that are in a wildlife management area. *See* Ex. 1, Letter from Department of Wildlife and Fisheries to the District Engineer, Jan. 7, 1994, at ¶ 12.

Accordingly, CITGO requests reconsideration of the terms of the compliance order and the issuance of a revised order, if any, that permits it to conduct inspections pursuant to an appropriate method under § 195.412(a).

b. PHMSA incorrectly determined that CITGO did not oppose the finding of a violation and thus failed to hold OPS to its burden to prove specific violations.

By incorrectly concluding that CITGO did not contest the allegations related to right-of-way inspections, PHMSA failed to require OPS to carry its burden of proof.

The Final Order states that CITGO did not contest the alleged violation of § 195.412(a). Final Order at 5. This is incorrect. CITGO very clearly opposed a finding of a violation. *See* Ex. 2, Letter from S. Rains to R.M. Seeley, May 4, 2007, at 5. CITGO's proposed aerial review in its request for a hearing was not a concession that aerial surveillance was the only method CITGO employed. *Id.* at 2-3. CITGO further stated its position that isolated trees do not obstruct surveillance of the pipeline because it may be surveyed through observation of the adjacent right-of-way. *Id.* Later, in its supplemental submission, CITGO notified PHMSA that it was assessing its rights-of-way and provided evidence of canopy trimming and right-of-way mowing for a 24.5 mile span from Galena Park to North Houston during the fourth quarter of 2006. *See* Exs. 3A-B, Letter from C. Garza to M. Chiranand, June 25, 2007, at 2 and attachments thereto. CITGO's post-hearing submission further documented the results of the aerial inspection and showed a contract to cut additional canopy. *See* Exs. 4A-C, Letter from C. Garza to M. Chiranand, Aug. 23, 2007, at 2 and attachments thereto. Thus, CITGO opposed a finding of violation, and the Final Order contains a facial error.

This error resulted in an inappropriate shifting of the burden of proof onto CITGO. By stopping the review at CITGO's "non-opposition," PHMSA did not require OPS to prove a violation, as required by PHMSA rules. "[I]n making 'Findings of Violation,' PHMSA carries the burden of proving the allegations set forth in the Notice." *In re Bridger Pipeline Co.*, CPF No. 5-2007-5003, 2009 WL 7796887, at *1 (PHMSA Apr. 2, 2009); *see also In re Butte Pipeline Co.*, CPF No. 5-2007-

5008, Final Order, at 6 (PHMSA Aug. 17, 2009).[2] This includes both the burden of production and the burden of persuasion. *Bridger*, 2009 WL 7796887, at *1 (citing *Dir., Office of Workers' Comp. Progs., Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 276 (1994)). Accordingly, PHMSA carries the burden of producing evidence of specific violations and must persuade the Associate Administrator by a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 102 (1981). For example, in *Alyeska*, PHMSA held OPS to its burden and denied OPS's request for an order requiring clearing, holding that while it "understood] OPS's concern that the brush appears to interfere with Respondent's ability to observe right-of-way conditions, OPS did not show Respondent's surveillance was unable to inspect surface conditions along the right-of-way." CPF No. 5-2002-5035, Final Order, at 3.

In this case, because PHMSA failed to hold OPS to its burden of proof, neither the NOPV nor the Final Order provide any notice to CITGO regarding which tracts of pipeline right-of-way supported the finding of a violation. The Pipeline Safety Violation Report notes vaguely that "many areas" have canopy and "some areas" have growth. Considering the substantial time since the inspection and the continuous and natural growth that occurs along the rights-of-way, the Final Order does not provide sufficient notice to CITGO regarding where the violation occurred.

Because of the error, PHMSA also failed to consider evidence of compliance and mitigation presented by CITGO, which is unmentioned in the Final Order. Although CITGO employed aerial surveillance as its primary means of inspection in 2006, aerial surveillance was not the only method it employed. CITGO's operating manual provides for ground patrols. *See* Ex. 5, Excerpts from CITGO Operating Manual, J-All, Inspection and Maintenance, at J-6. And, CITGO in fact engaged in ground patrols to observe its pipelines. *See, e.g.*, Exs. 6A (CPL 3 ground patrol form for Arlington area of Eagle Pipeline), 6B (surface inspection reports from CASA system). Even more, in the Pipeline Safety Violation Report, OPS Inspector Larry Disbrow documented that Glenn Moore, CITGO's area advisor, stated that CITGO "would start walking, riding, or other patrols for areas that were overgrown or encroached by forest."

CITGO also operated and operates an annual clearing program. That program includes mowing and hard cutting of problematical right-of-way segments on a continuing basis. *See* Ex. 7A, April 2007 Summary of 2005 to 2007 ROW Clearing (documenting 9 mowing and clearing events on specific line segments between 2005 and 2007); Exs. 7B-G (contracts and invoices for right-of-way clearing of the Eagle Pipeline).

Practically speaking, it has been five years since the OPS inspections were conducted and over three years since CITGO sold the Eagle Pipeline and ceased its status as "operator" under the regulations. There has been substantial clearing since that time as part of CITGO's maintenance regime—there has also undoubtedly been substantial canopy and vegetation growth. As part of its routine maintenance and in response to the OPS inspection, CITGO cleared canopy in 2006 and 2007 on the Eagle Pipeline before its sale to Explorer. For example, CITGO completed and documented its clearing of the rights-of-way on various portions of the Eagle Pipeline, such as the segment from FM 2920 through Houston PPI area, and FM 2920 to the water plant, and North

[2] Under the Administrative Procedure Act, "the proponent of a rule or order has the burden of proof . . . . A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence." 5 U.S.C. § 556(d).

Houston station through the subdivision south of FM 2920. *See* Exs. 7E (work orders dated in 2007), 7D (competitive bid for clearing), 4B (exhibit B to CITGO's post-hearing submission regarding same bid), 3B (exhibit documenting clearing submitted with CITGO's supplement to its hearing request). In similar situations, PHMSA has recognized such developments as achieving compliance prior to the issuance of the Final Order and obviating any need for a further compliance order. *See In re Buckeye Partners, L.P.*, CPF No. 3-2007-5026, Final Order at 7 (Dec. 30, 2010); *In re Targa Midstream Servs. LP*, CPF No. 4-2007-5048, Final Order (Apr. 2, 2010); *In re ConocoPhillips Pipe Line Co.*, CPF No. 4-2008-5011, Final Order at 2-3 (Dec. 18, 2009).

c. Explorer's acquisition of the Eagle Pipeline renders prospective compliance orders inapplicable to that pipeline.

As regards the Eagle Pipeline, PHMSA's prospective orders are moot. On October 31, 2007, CITGO transferred the Eagle Pipeline to Explorer. That sale transferred all rights-of-way to Explorer. While CITGO operates other pipelines covered by the Final Order, such as the Sour Lake District and CASA systems, it has not been responsible for the inspection of the Eagle Pipeline pursuant to § 195.412(a) since October 31, 2007, because it is not the operator of that pipeline.

As owner of the Eagle Pipeline, Explorer has a separate inspection regime under § 195.412(a) based on its own practices. After CITGO sold the Eagle Pipeline, it ceased ownership over the rights-of-way and ceased having any authority or ability to enter the land and clear the rights-of-way or survey the pipeline. As PHMSA is aware, since the sale, Explorer has continued to monitor and clear the Eagle Pipeline rights-of-way.[3] For example, on September 25, 2009, Explorer and PHMSA held a conference call to discuss safety programs for the Eagle Pipeline. Explorer submitted a follow-up letter on September 30, 2009, that detailed its surveys and prioritization efforts related to pipeline safety. The letter to PHMSA stated that it "has conducted an aerial survey to determine locations where ROW clearing needs to be enhanced to facilitate weekly aerial patrol" and that "[c]ertain ROW clearing has been completed to date." Ex. 8, Letter from C. Craig to C. McLaren, Sept. 30, 2009, at 1.

As PHMSA has acknowledged in other circumstances, the transfer of a pipeline system to a new operator occasions the adoption of new safety regimes and new regulatory evaluations:

> Sale of an existing pipeline, or the complete acquisition or merger of a company may involve the wholesale adoption of standing operating and safety practices and programs. These programs may continue without change, or they may be integrated into the programs of a new owner. . . . . PHMSA must know when changes in responsibility occur, and the parties involved, to accurately evaluate and trend safety performance data through and following periods of change. . . .
>
> Whether ownership change is involved or not, sometimes there is a change in the primary responsibility for managing or administering one or more PHMSA-required safety programs.

[3] After the sale of the Eagle Pipeline, Explorer utilized both aerial inspections and foot patrols. Ex. 8, Letter from C. Craig to C. McLaren, Sept. 30, 2009, at 1. In fact, Explorer's website lists ground patrols as a method by which it performs its inspections. Ex. 9.

D.O.T., PHMSA, Pipeline Safety: Updates to Pipeline and Liquefied Natural Gas Reporting Requirements; Final Rule, 75 Fed. Reg. 72907, 72889 (Nov. 26, 2010). Accordingly, because Explorer become the owner of the Eagle Pipeline in 2007, it assumed responsibility for complying with the inspection regime set out in § 195.412.

d. Conclusion and proposed modification to compliance order.

Overall, reconsideration is warranted in light of (1) the excessive scope of the compliance order; (2) PHMSA's failure to carry its burden of showing a specific violation of § 195.412(a); and (3) the changed circumstance of CITGO's sale of the Eagle Pipeline.

The evidence shows that CITGO was in substantive compliance with § 195.412(a) and it should not be found in violation. To the extent PHMSA disagrees, CITGO proposes the following modification of the compliance order:

> With respect to the violation of 49 C.F.R. § 195.412(a) (Item 4), Respondent must inspect all of its pipelines to locate areas where the ROW is overgrown with brush or tall grass or is overgrown by a canopy from surrounding trees that prevents visibility from aerial surveillance and to develop a plan to comply with section 195.412(a)'s requirements through an inspection method of its choosing; ~~schedule to~~ clear brush and canopy from the ROW if necessary for the chosen inspection method; ~~and a~~ plan for an alternative surveillance method for affected ROWs that are being cleared and made suitable for aerial surveillance; and document its inspections pursuant to section 195.412(a).

This proposal conforms to § 195.412(a), as it provides CITGO with the regulation-mandated flexibility to select the method of inspection, requires clearing only of areas necessary to the type of inspection, and requires those methods to be documented.

Item 7 / Compliance Order No. 4
External Cathodic Protection under § 195.573(d) & (e)

CITGO next seeks reconsideration of the finding of a violation of § 195.573(d) and (e) under Item 7, the corresponding civil penalty of $50,000, and compliance order number 5. Reconsideration is warranted because PHMSA failed to carry its burden of showing any evidence to support a violation of this provision and again improperly transferred the burden of proof to CITGO. Moreover, as demonstrated below, CITGO was at all times in compliance.

The finding of a violation of § 195.573(d) and (e) is unsupported by the record, and PHMSA improperly shifted the burdens of production and proof to CITGO. CITGO fully complied with § 195.573(d) and (e). Section 195.573(d) and (e) requires the inspection of cathodic protection systems used on breakout tanks and the correction of deficiencies in corrosion control:

> (d) Breakout tanks. You must inspect each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank to ensure that operation and maintenance of the system are in accordance with API Recommended Practice 651. However, this inspection is not required if you note in the corrosion

> control procedures established under §195.402(c)(3) why compliance with all or certain operation and maintenance provisions of API Recommended Practice 651 is not necessary for the safety of the tank.
>
> (e) Corrective action. You must correct any identified deficiency in corrosion control as required by §195.401(b).[4] However, if the deficiency involves a pipeline in an integrity management program under §195.452, you must correct the deficiency as required by §195.452(h).

PHMSA found that CITGO violated § 195.573(a) and (e) by failing to have an adequate cathodic protection system for its above ground breakout tanks at the Sour Lake Tank Farm. This finding was based solely on the observation that one of four ground beds in the cathodic protection system was not functioning at the time of inspection. NOPV at 5. CITGO's inspection regime had previously identified that this bed was out of service, and CITGO explained to both the OPS inspector and the hearing officer that the four-bed system was designed with intentional redundancies that did not require all four beds to be in operation to ensure cathodic protection. PHMSA rejected "the company's mere assertion" that its cathodic protection system was built with redundancies. Instead, PHMSA accepted OPS's *mere assertion* that the system was designed to function as a unit. The OPS inspector did not provide any support for that assertion, nor did he test the system to determine if it in fact provided adequate cathodic protection. Quite simply, the record contains no evidence showing that the system's corrosion control was inadequate.

PHMSA's conclusion improperly places the burden to disprove a violation on CITGO and fails to hold OPS to its burden of proving a violation. Under the regulations, "PHMSA carries the burden of proving the allegations set forth in the Notice, meaning that a violation may be found only if the evidence supporting the allegations outweighs the evidence and reasoning presented by Respondent in its defense." *In re Butte Pipeline Co.*, CPF No. 5-2007-5008, Final Order, at 2 (PHMSA Apr. 17, 2009) (citing *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 276 (1994); *Steadman v. SEC*, 450 U.S. 91, 102 (1981)). Accordingly, in prior Final Orders, PHMSA required OPS to show a failure of cathodic protection by reference to actual readings. *See In re Holly Energy Partners, L.P.*, CPF No. 4-2010-5007, Final Order, at 3-4 (PHMSA Oct. 18, 2010) (finding that actual pipe-to-soil readings evidenced deficiencies in corrosion control); *In Re Navajo Nation Oil & Gas Co.*, CPF No. 4-2006-5029, Final Order, at 11 (PHMSA Mar. 17, 2010) (rejecting operator's contention that out-of-service rectifier was unnecessary because actual pipe-to-soil readings on pipeline evidenced inadequate voltage); *In re Colonial Pipeline Co.*, CPF No. 2-2008-5005, Final Order, at 5-6 (PHMSA Jul 12, 2010) (documenting actual low CP readings on tanks); *In re Magellan Pipe Line Co.*, CPF No. 4-2007-5050, Final Order, at 3 (PHMSA Dec. 28, 2009) (citing readings taken during the OPS inspection that did not meet minimum API criteria); *In re Rocky Mountain Pipeline Sys., LLC*, CPF No. 5-2006-5031, Final Order, at 3 (PHMSA Jun. 18, 2009) (relying on detailed readings showing below-standard cathodic protection).

---

[4] Section 401(b) requires the following:

> Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it shall correct it within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.

In this case, the finding of a violation of § 195.573(d) and (e) is unsupported by any evidence in the record. The regulation does not mandate that CITGO maintain a fixed quantity of rectifiers and ground beds; instead, the only requirement is adequate cathodic protection to control corrosion. For example, in a prior final order, the Associate Administrator withdrew an allegation of violation based on the expressed holding that "I do not find any apparent requirement in § 195.573(d) that an operator must have a dedicated cathodic protection system for its breakout tank bottoms." *In re Enterprise Products Operating, LLC*, CPF No. 4-2007-5015, Final Order, at 6 (PHMSA Dec. 2, 2009). Nonetheless, the OPS inspector prematurely stopped his analysis once he observed that one of the ground beds was out of service. He did not test the system's corrosion protection. He did not test the actual currents in the ground bed, did not test the soil or tanks for actual corrosive activity, and did not perform a single calculation of current output of the three rectifiers and ground beds that were operating. In other words, there is no record evidence that the rectifier and ground bed system failed to provide adequate corrosion control.

Had the OPS inspector conducted any tests, the results would have proved that the operation of three rectifiers and ground beds was more than sufficient to provide corrosion control to the Sour Lake Tank Farm. In fact, as explained by CITGO at the hearing, rectifier and ground bed systems are routinely designed with excess capacity so that the loss of a portion of the system will not result in a degradation of cathodic protection. In the case of the Sour Lake Tank Farm, three of the four rectifier and ground bed units were capable of providing adequate cathodic protection to the facility. The four rectifier and ground bed units consist of distributed anodes around the tank perimeters. The rectifiers each have a maximum output of 100 amperes, totaling 400 amperes for the system. The total ampere output was between 114 and 225 amperes between 2000 and 2006. During the inspection, CITGO provided records demonstrating that the cathodic protection readings at the Sour Lake Tank Farm met relevant criteria. *See* Ex. 11B-D, Exs. E1-3 to the Supplement.

Indeed, pursuant to its inspection and monitoring regime, CITGO replaced ground bed 3 in March 2006 when the deterioration of the other ground beds (determined by CITGO's frequent testing) necessitated the proactive application of additional current to the system. This replacement was completed prior to the end of the OPS inspection and over a year before the hearing. Even more, by the time of the hearing, CITGO had replaced ground bed 4 as well, consistent with its practice of replacing ground beds when necessary to maintain adequate corrosion protection. Ex. 12A (installation history for current ground beds), 12B (rectifier and ground bed history).[5]

CITGO has subsequently contracted with Mr. Terry May, P.E., NACE Corrosion Specialist #2564 and President of Mesa to review the cathodic protection system at the Sour Lake Tank Farm. A copy of a letter from Mr. May, dated May 10, 2011, with the details of that review is attached. After reviewing contemporaneous records documenting the rectifier and ground bed system performance, Mesa issued a report confirming that the three operational units were more than adequate to provide corrosion protection. Ex. 10, Letter from Terry May to Carter Fairless, May 10, 2011. Mesa analyzed the site plan, the cathodic protection ("CP") plan, the tank installation history, the ground bed replacement history, the rectifier bi-monthly operating history, and the annual CP survey data, and determined that for each year from 2000 to 2006, "[a]ll values meet acceptable protection criteria." *Id.* at 2-3. In particular, it concluded that "the evidence suggests that a total applied current in the order of 120 amperes is sufficient to maintain polarization on all tanks in the terminal" and

[5] Ground beds 1 and 2 had been replaced in 2000 and 2002, and ground bed 2 was replaced again in 2009.

there is "no evidence that the outage of the Unit 3 ground bed from 2003 to 2006 created any deficiency in cathodic protection levels." *Id.* at 3. In other words, Mesa provides additional support to the evidence CITGO provided at the hearing that the rectifier and ground bed system in fact provided adequate corrosion protection at the time of the inspection—"the system is sufficiently overdesigned to allow the failure of at least one (1) ground bed without falling below minimum acceptable levels." *Id.* The OPS inspector did not conduct any testing and presented no evidence that could give rise to any conclusion to the contrary.

In addition, there is no evidence that CITGO failed to inspect the cathodic protection system pursuant to § 195.573(d) and (e) at the Sour Lake Tank Farm to ensure operation in accordance with API Recommended Practice 651. In fact, the evidence relied on by OPS supports only one conclusion—that CITGO inspected the system. CITGO documented and submitted to PHMSA the rectifiers' bi-monthly operating history and conducted annual CP surveys. *See* Ex. 11B-D, Ex. E1-3 to the Supplement. The CP surveys from 2003 through 2006 included measurements of tank-soil potentials on each tank, and under-tank potentials on four tanks at the Sour Lake Tank Farm. Exs. 11A-D. Neither the OPS inspector nor PHMSA cited any evidence showing that CITGO failed to perform an inspection under the regulations. Moreover, in determining that ground bed 3 was out of service, OPS relied on CITGO's inspection logs. *See* Ex. 13, Pipeline Safety Violation Report, Exhibit No. 7. All of the evidence shows that CITGO tested the cathodic protection offered by the rectifiers and ground beds on a systematic and consistent basis.

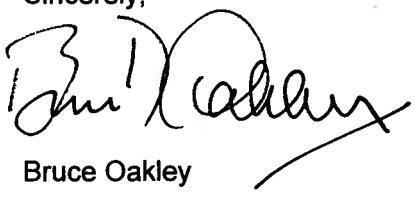
In summary, reconsideration is warranted because PHMSA's finding of a violation is unsupported by any evidence in the record. CITGO respectfully requests that PHMSA remove this item from the Final Order and rescind the civil penalty of $50,000.

Conclusion

Based on these considerations and the attached evidence, CITGO respectfully requests reconsideration of the final order rulings outlined above.

Please do not hesitate to contact me if you have any questions or require any additional information from CITGO.

Sincerely,



Bruce Oakley

Partner
bruce.oakley@hoganlovells.com
D 713-632-1420

cc: Keith J. Coyle, Attorney Advisor, Office of Chief Counsel [*via e-mail and certified mail*]
May Chiranand, Presiding Official, Office of Chief Counsel [*via e-mail and certified mail*]
Benjamin Fred, Counsel, Southwest Region, PHMSA [*via certified mail*]
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue SE, Rm E26-301
Washington, D.C. 20590

R.M. Seeley, Director, Southwest Region, PHMSA [*via e-mail and certified mail*]
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
8701 South Gessner, Suite 11 10
Houston, TX 77074

Jim Sanders, CITGO Pipeline Company [*via e-mail*]
Chris Garza, CITGO Pipeline Company [*via e-mail*]

Joshua Newcomer, Hogan Lovells US LLP [*Firm*]