

August 29, 2025

**VIA ELECTRONIC MAIL TO: gbacon@eprod.com**

Graham W. Bacon  
Executive Vice President & Chief Operating Officer  
Dixie Pipeline Company LLC  
1100 Louisiana Street  
Houston Texas 77002

Re: CPF No. 4-2023-049-NOPV

Dear Mr. Bacon:

Enclosed please find the Final Order issued in the above-referenced case to Dixie Pipeline Company LLC. It makes a finding of violation and assesses a civil penalty of \$19,300. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 CFR § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Linda Daugherty  
Acting Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Bryan Lethcoe, Director, Southwest Region, Office of Pipeline Safety, PHMSA  
Mr. Zachary Craft, Esq., Counsel for Dixie Pipeline Company LLC, zlcraft@eprod.com  
Ms. Brianne Kurdock, Esq., Babst Calland, Counsel to Dixie Pipeline Company LLC,  
bkurdock@babstcalland.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** )

**Dixie Pipeline Company, LLC,** )

**CPF No. 4-2023-049-NOPV**

**Respondent.** )  
\_\_\_\_\_ )

**FINAL ORDER**

From February 7, 2022 through January 30, 2023, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted a pipeline safety inspection of Dixie Pipeline Company LLC’s (Dixie or Respondent) facilities, records, and procedures in Apex, North Carolina; Milner, Georgia; and Mont Belvieu, Texas. Dixie operates an interstate hazardous liquid pipeline facility in the Southeast United States.

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated August 14, 2023, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 CFR § 190.207, the Notice proposed finding that Respondent had committed one violation of 49 CFR Part 195 and proposed assessing a civil penalty of \$21,200 for the alleged violation.

Enterprise Products Operating LLC responded to the Notice on behalf of Dixie by letter dated September 13, 2024 (Response).<sup>1</sup> Respondent contested the allegation of violation and the proposed civil penalty. Dixie and the Director both submitted additional written material on April 8, 2024 (Pre-hearing submissions). A hearing was subsequently held on April 18, 2024 in Houston, Texas, before a Presiding Official from the Office of Chief Counsel, PHMSA. At the hearing, Respondent was represented by counsel. After the hearing, Respondent provided additional written material for the record by letter dated May 20, 2024 (Post-hearing submission). The Director provided a recommendation for final order on June 20, 2024 (Recommendation), and Dixie submitted a reply to the Recommendation on July 19, 2024 (Reply).

On June 2, 2025, the Director issued a revised recommendation reducing the proposed penalty to \$19,600 pursuant to the May 20, 2025, PHMSA “Policy for Calculating Proposed Civil Penalties

<sup>1</sup> Dixie is a wholly owned subsidiary of Enterprise Products Operating LLC.

in Pipeline Safety Enforcement Proceedings.” Dixie responded to the revised civil penalty recommendation on June 17, 2025.

**FINDING OF VIOLATION**

The Notice alleged that Respondent violated 49 CFR Part 195, as follows:

**Item 1.** The Notice alleged that Respondent violated 49 CFR § 195.583(a), which states:

**§ 195.583 What must I do to monitor atmospheric corrosion control?**

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months
Offshore	At least once each calendar year, but with intervals not exceeding 15 months

The Notice alleged that Respondent violated § 195.583(a) when it failed to inspect portions of its onshore pipeline system that are exposed to the atmosphere for evidence of atmospheric corrosion at least once every 3 calendar years, but with intervals not exceeding 39 months. Specifically, Dixie failed to inspect the exposed pipe at the required intervals at three locations:

- Location 124.7008 (Location 124): Dixie did not conduct an atmospheric corrosion inspection between April 7, 2015 and May 17, 2022;
- Location 125.0193 (Location 125): Dixie had not completed an atmospheric corrosion inspection since June 25, 2018; and,
- Location 133.0786 (Location 133): Dixie had not completed an atmospheric corrosion inspection since May 6, 2015.

In its written submissions and at the hearing, Dixie contested Item 1. Respondent first argued OPS has not met its burden of proof because it has not provided any evidence that the locations cited in the Notice were exposed to the atmosphere. Respondent asserted the “. . . only evidence that OPS presented concerning atmosphere exposure were photographs of two of the pipeline segments taken on May 17, 2022. These photographs do not contradict the information provided in the atmospheric corrosion control records or establish that either of these segments were exposed to the atmosphere for the previous 3 years or any other length of time.”<sup>2</sup> Dixie also argued that it lacked fair notice that the allegations in the Notice constituted violations of §

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<sup>2</sup> Dixie Post-hearing submission at 5.

195.583(a).<sup>3</sup> Dixie’s argument relates to its assertions in the record that the three locations described in the notice are submerged in water or buried and therefore not constantly exposed to the atmosphere during the 39-month inspection intervals specified by § 195.583(a).<sup>4</sup> Dixie argued § 195.583(a) does not provide operators with notice of any standard for performing inspections of pipelines that transition between being submerged or buried, and exposed to the atmosphere.<sup>5</sup> In advancing that argument, Respondent posited that § 195.583(a) does not address submerged pipelines at all, instructing that only those pipelines which are exposed to the atmosphere must be inspected for atmospheric corrosion.<sup>6</sup> Dixie’s Reply also argued that the Director’s Recommendation raised positions regarding the applicability of § 195.583(a) to the three locations described in the Notice that were not discussed at the hearing, and therefore the Director waived or forfeited its ability to advance those discussions in its Recommendation.<sup>7</sup> As addressed in detail further below, Respondent also contested the proposed civil penalty for the alleged violation.<sup>8</sup>

The record does not reflect a material dispute over the facts as described in the Notice. Both parties agree the pipeline segments at issue in this proceeding are sometimes exposed.<sup>9</sup> Dixie’s records indicate it performed atmospheric corrosion inspections at Locations 124 and 125 in April 2015, and at Location 133 in May 2015.<sup>10</sup> The atmospheric inspection history for all three locations, since the 2015 inspections were performed, is as follows:

- **Location 124** - Dixie attempted an atmospheric corrosion inspection at Location 124 in June 2018, but did not perform the inspection as its records state the segment was “sumerged [sic] in water”.<sup>11</sup> Dixie again attempted to conduct atmospheric corrosion inspections in July and September 2021, respectively, but did not perform those inspections due to “high vegetation [sic]”.<sup>12</sup> Dixie attempted another atmospheric corrosion inspection

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<sup>3</sup> *Id.* at 7-9.

<sup>4</sup> *Id.* Buried or an underwater (submerged) pipeline are not subject to the atmospheric corrosion inspection requirements of § 195.583(a). Rather, buried or submerged pipelines are subject to other corrosion control provisions in Subpart H of Part 195.

<sup>5</sup> *Id.* at 7.

<sup>6</sup> *Id.*

<sup>7</sup> Dixie Reply at 6-10.

<sup>8</sup> *See* Dixie Post-hearing submission at 9; Dixie Reply at 11-12.

<sup>9</sup> Hearing transcript (Transcript) at 75:9-12. Southwest Region Recommendation (Recommendation) at 3.

<sup>10</sup> Notice at Exhibit (Exh.) B-1.

<sup>11</sup> Notice at Exh. B-2. The spelling of submerged is corrected in the remaining references to such in this Final Order.

<sup>12</sup> Notice at Exh. B-3. The spelling of vegetation is corrected in the remaining references to such in this Final Order. There was discussion during the hearing of the pipeline segments being “silted in” when Dixie attempted to perform

in October 2021, but the inspection was not performed because the location was “submerged in water”.<sup>13</sup> Finally, at the time of PHMSA’s inspection in May 2022, Respondent performed an atmospheric corrosion inspection and indicated no corrosion was found.<sup>14</sup> Dixie did not perform an atmospheric corrosion inspection at Location 124 between April 2015 and May 2022.

- **Location 125** - Dixie performed an atmospheric corrosion inspection at Location 125 in June 2018, during which no corrosion was found.<sup>15</sup> Dixie again attempted to conduct atmospheric corrosion inspections at Location 125 in July and September 2021, respectively, but did not perform those inspections due to “high vegetation”.<sup>16</sup> Dixie attempted another atmospheric corrosion inspection in October 2021, but the inspection was not performed because Location 125 was “submerged in water”.<sup>17</sup> Finally, at the time of PHMSA’s inspection in May 2022, Respondent performed an atmospheric corrosion inspection and indicated no corrosion was found.<sup>18</sup> Dixie did not perform an atmospheric corrosion inspection at Location 125 between June 2018 and May 2022.
- **Location 133** - Dixie attempted an atmospheric corrosion inspection at Location 133 in June 2018, but did not perform such as its records state the segment was “submerged in water”.<sup>19</sup> Dixie again attempted an atmospheric corrosion inspection at Location 133 in August 2021, but its records state the segment was again “submerged in water” and so no inspection was performed.<sup>20</sup> Dixie next attempted an atmospheric corrosion inspection at

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inspections at the three locations cited in the Notice. *See* Transcript at 38: 5; 52: 3-8. It appears “silted in” is another manner to refer to a buried pipeline. However, Dixie’s own records only reflect that “high vegetation” was found by the employee attempting to perform the atmospheric corrosion inspections. Notice at Exh. B-3. None of the Dixie representatives that appeared at the hearing conducted those 2021 inspections that were recorded as having “high vegetation” conditions (Dixie inspection records reflect the inspections were performed by Daniel Maddox). Dixie’s own inspection records relevant to Locations 124 and 125 make no reference to those segments being “silted in”. The most relevant and direct evidence in the record indicates numerous inspections were not performed due to reason of “high vegetation”. A Dixie representative that appeared at the hearing stated “. . . the vegetation was such that the location was acceptable, but not acceptable for purposes of performing the inspection.” Transcript at 35: 18-22.

<sup>13</sup> Notice at Exh. B-3.

<sup>14</sup> Dixie Pre-hearing submission, Attachment 2 (at 8).

<sup>15</sup> Notice at Exh. B-2.

<sup>16</sup> *Id.* at Exh. B-3.

<sup>17</sup> *Id.*

<sup>18</sup> Dixie Pre-hearing submission, Attachment 2 (at 8).

<sup>19</sup> Notice at Exh. B-2.

<sup>20</sup> *Id.* at Exh. B-3.

Location 133 in in May 2022, or around the time of PHMSA’s inspection described in the Notice.<sup>21</sup> Again no inspection was performed in May 2022 because the segment was “submerged in water”.<sup>22</sup> Dixie attempted two more atmospheric corrosion inspections in October 2022, but did not perform them, first due to a listed reason of “high vegetation, unable to access,” and next because the segment was again “submerged in water”.<sup>23</sup> Therefore, Dixie did not perform an atmospheric corrosion inspection at Location 133 after May 2015.

Section 195.583(a) requires that any hazardous liquid pipeline or portion of pipeline that “. . . is exposed to the atmosphere . . .” must be inspected for evidence of atmospheric corrosion every three years, not to exceed 39 months between such inspections. For Locations 124 and 125, there is substantial evidence in the record indicating that those two pipeline segments were exposed to the atmosphere during the relevant time period implicated by the Notice, and therefore were subject to atmospheric corrosion inspection requirements in § 195.583(a).

First, OPS physically viewed Location 124 during its May 2022 inspection and took photographs of the pipeline segment, showing the pipeline was exposed (the bottom portion of the pipe is partially sitting in what appears to be standing water or a creek- or ditch-bed).<sup>24</sup> Further, Dixie’s own records indicate that in 2021, the pipeline was also not submerged or buried.<sup>25</sup> Rather, the inspections records presented by both the Director and Dixie in this matter reflect that Dixie did not perform two attempted inspections in 2021 due to the presence “high vegetation.”<sup>26</sup> There is no exception described in § 195.583 to performing the required atmospheric corrosion inspections on an exposed pipeline due to the presence of “high vegetation.” Both in 2015 and 2022, Respondent was able to successfully perform the required atmospheric corrosion inspections at Locations 124 and 125 which also indicates the pipeline is exposed.<sup>27</sup> Dixie’s own conduct in this matter also gives weight to the assertion that Location 124 is an exposed pipeline (versus being buried or submerged segments), as evidenced by its atmospheric corrosion inspection records and its attempts to conduct such inspections at the required three-year intervals (and its successful performance of such inspections on different occasions).<sup>28</sup>

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<sup>21</sup> Dixie pre-hearing submission, Attachment 2 (at 8).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Southwest Region Pre-hearing submission at Exh. B-4. *See also* Transcript at 15: 5-9

<sup>25</sup> Notice at Exh. B-3.

<sup>26</sup> *Id.*

<sup>27</sup> Notice at Exh.’s B-1, B-3; Dixie pre-hearing submission, Attachment 2 (at 8).

<sup>28</sup> *See* Dixie Pre-hearing submission at 4; Transcript at 14: 13-22; 19: 10-17; 65: 9-16; Notice at Exh.’s B-1 through B-3; Dixie pre-hearing submission, Attachment 2.

Next, similar to Location 124, PHMSA also viewed Location 125 during its May 2022 inspection and took photographs of the pipeline segment that are in the record in this matter, showing the pipe was exposed (top of the pipe visible amidst what appears to be mowed down vegetation).<sup>29</sup> Further, Dixie's own records indicate that in 2021 on two occasions when it attempted to perform the inspections but ultimately did not, that the pipeline was not submerged or buried.<sup>30</sup> Rather, the inspections records reflect that Dixie did not perform two attempted 2021 inspections due to "high vegetation."<sup>31</sup> There is no exception in § 195.583 to performing the required atmospheric corrosion inspections on an exposed pipeline due to the presence of "high vegetation." In 2015, 2018, and 2022, respectively, Respondent was able to successfully perform the required atmospheric corrosion inspections, evidencing that the pipeline was exposed.<sup>32</sup> Dixie's own conduct also indicates it considered Location 125 to be exposed to the atmosphere (versus being buried or submerged segments), as evidenced by its atmospheric corrosion inspection records and its attempts to conduct such inspections at the required three-year intervals.<sup>33</sup>

However, there is a lack of evidence in the record indicating that Location 133 is still an exposed pipeline. Unlike for locations 124 and 125, no photographs of the location evidencing its status as an exposed pipeline were presented by OPS, and it is not clear from the record in this matter whether any PHMSA inspection staff physically visited Location 133 and observed that it was indeed an exposed pipeline.<sup>34</sup> Also in contrast with Locations 124 and 125, Dixie's own records indicate that at the time of the attempted 2018, 2021, and May 2022 inspections, the pipeline at Location 133 was submerged.<sup>35</sup> The only point after Dixie's May 2015 inspection in which there is any evidence to show the pipeline was an exposed was during an October 2022 attempted inspection that reflects "high vegetation" was present.<sup>36</sup> However, that inspection was conducted after the May 2022 inspection timeframe for the allegation of violation described in the Notice. That October 2022 inspection was also not reflected in the exhibits accompanying the Notice.<sup>37</sup> In sum, I find that OPS has not satisfied its burden of prove that Location 133 was

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<sup>29</sup> Southwest Region Pre-hearing submission at Exh. B-4. *See also* Transcript at 15: 5-9.

<sup>30</sup> Notice at Exh. B-3.

<sup>31</sup> *Id.*

<sup>32</sup> Notice at Exh.'s B-1, B-2; Dixie pre-hearing submission, Attachment 2.

<sup>33</sup> *See* Dixie Pre-hearing submission at 4; Transcript at 14: 13-22; 19: 10-17; 65: 9-16; Notice at Exh.'s B-1 through B-3; Dixie pre-hearing submission, Attachment 2.

<sup>34</sup> *See* Transcript at 15: 5-9. The Notice also does not specify that Location 133 was physically observed during PHMSA's May 2022 inspection.

<sup>35</sup> Notice at Exh.'s B-2, B-3; Dixie pre-hearing submission, Attachment 2.

<sup>36</sup> Dixie pre-hearing submission, Attachment 2.

<sup>37</sup> *See* Notice at Exh.'s B-1 through B-3.

an exposed pipeline subject to the required atmospheric corrosion inspections under § 195.583 after May 2015.

At the time of PHMSA's May 2022 inspection, and as based on the date of its last atmospheric corrosion inspections in 2015, Location 124 should have been inspected at least twice since 2015 (*e.g.*, no later than in July 2018 and October 2021) via the permissible 39-month maximum interval.<sup>38</sup> As based on the date of its June 2018 atmospheric corrosion inspection, Location 125 should have been inspected at least once more (no later than September 2021) via 39-month maximum by the time of PHMSA's 2022 inspection.<sup>39</sup> Neither Location 124 nor 125 was buried or submerged at the time of certain attempted 2021 atmospheric corrosion inspections listed above.<sup>40</sup> Dixie's records instead indicate there was only "high vegetation" at those two locations.<sup>41</sup> Therefore, the required atmospheric corrosion inspections of the exposed pipeline segments at Locations 124 and 125 were not completed within the intervals required by § 195.583 or by commencement of PHMSA's 2022 inspection.

Dixie's argument in relation to the applicability of § 195.583(a) to situations where a pipeline may sometimes be submerged would add specificity or exception language to the regulation text that does not exist (*e.g.*, that the regulation only applies to pipeline segments that are always or constantly exposed; are exposed during the entirety of a 39-month maximum atmospheric corrosion inspection interval, *etc.*). Section 195.583(a) was adopted in a 2001 DOT final rule, and simply requires that any pipeline that ". . . is exposed . . ." to the atmosphere is subject to the atmospheric corrosion inspection requirements in that section.<sup>42</sup> The regulation text contains no exceptions, nor adjusts the inspection intervals should a pipeline temporarily be submerged. The regulation also does not state that a pipeline must not be submerged at any point during the entirety of a 39-month interval in order that the atmospheric corrosion inspection requirement applies. In short, the language of § 195.583(a) is unambiguous.

Dixie's argument regarding a pipeline that might sometimes be submerged and therefore also unable to be visually inspected is not persuasive to overcome the lack of performance of required inspections in this matter. Dixie's own records indicate that the pipelines were not always submerged at the time of attempted atmospheric corrosion inspections, but rather were just

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<sup>38</sup> 49 CFR § 195.583(a).

<sup>39</sup> *Id.*

<sup>40</sup> Notice at Exh. B-3.

<sup>41</sup> *Id.*

<sup>42</sup> Controlling Corrosion on Hazardous Liquid and Carbon Dioxide Pipelines 66 Fed. Reg. 66,994, 67,001 (Dec. 27, 2001).

obscured by “high vegetation.”<sup>43</sup> In other instances, the pipeline segments at Locations 124 and 125 were indeed exposed and actually inspected as required.<sup>44</sup> OPS also physically observed that those two locations were exposed during its May 2022 inspection and had not been inspected within a previous 39-month period.<sup>45</sup>

Next, § 195.583 contemplates situations relevant under the facts of this case. Paragraph (b) of that section addresses that particular attention in the conduct of the required atmospheric inspections must be paid to pipelines at soil-to-air interfaces, in splash zones, and in spans over water, among others. These situations contemplate potential submergence of exposed pipes at various junctures. The final rule adopting § 195.583 actually discussed the visual inspections of “. . . pipe spans over creeks and ravines . . .,” and did not reflect any exceptions to visual inspection requirements in such situations.<sup>46</sup> Dixie was also not so limited to only the performance of a visual inspection for atmospheric corrosion of the three segments cited in the Notice. The final rule promulgating § 195.583 stated that section does not exclusively require visual inspections.<sup>47</sup> DOT stated pipeline operators are not limited to using visual means of inspection, rather “. . . any means capable of detecting atmospheric corrosion . . .” may be permissible to satisfy the atmospheric corrosion inspection requirements of that section.<sup>48</sup> The record does not indicate Dixie attempted any other atmospheric corrosion inspections when it chose not to conduct scheduled visual inspections at Locations 124 or 125 due to the presence of “high vegetation”.<sup>49</sup> Nor does the record reflect that Dixie took any action to address the presence of the “high vegetation” to perform the visual inspections.<sup>50</sup>

Respondent argues that it lacked fair notice of the requirements of § 195.583(a) as to a pipeline that may sometimes be submerged.<sup>51</sup> As discussed above, however, the plain language of §

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<sup>43</sup> See, e.g., Notice at Exh. B-3

<sup>44</sup> See, e.g., Notice at Exh.’s B-1 and B-2.

<sup>45</sup> Southwest Region Pre-hearing submission at Exh. B-4. See also Transcript at 15: 5-9.

<sup>46</sup> 66 Fed. Reg. at 67,001. The relevant discussion was in relation to a pipeline operator’s concern over bank erosion.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> See Notice at Exh.’s B-2 and B-3; Transcript at 35: 18-22.

<sup>50</sup> See *In the Matter of ExxonMobil Pipeline Co.*, Final Order, CPF No. 1-2013-5008, 2016 WL 8315622 (Sept. 30, 2016), where PHMSA found a violation of § 195.583(a) occurred when rocks obstructed a pipeline operator’s visual inspection of an exposed pipeline segment and were not removed during the conduct of such inspection.

<sup>51</sup> Respondent additionally asserts that at some point in time, every pipeline is exposed to the atmosphere, giving examples of a pipe being uncovered to conduct a repair, or prior to a pipe’s installation. See Reply at 4-5. I disagree that the inspection intervals § 195.583 apply to such situations, noting that pipeline construction requirements are governed by the requirements in Subpart D of Part 195, and repairs of buried pipeline segments are generally

195.583 contains no exception to performing the required atmospheric corrosion inspections for a pipeline segment that is exposed. The regulation text and the rulemaking documents promulgating the requirement to conduct atmospheric corrosion inspection address situations such as water crossings and splash zones. Respondent's own conduct also undercuts its assertion, in that its records indicate its successful inspections of the relevant exposed segments for atmospheric corrosion in the past, and indeed within the required three-year intervals specified in § 195.583(a), and its regular attempts to do so at those intervals.<sup>52</sup>

Further, the record also reflects that past publicly available PHMSA enforcement matters where PHMSA had warned pipeline operators about their failure to conduct atmospheric inspections in situations where pipelines may be temporarily submerged, analogous to this case.<sup>53</sup> Both cases involved instances where exposed pipeline segments, which were submerged at the time of inspection by small streams, had not been inspected for atmospheric corrosion and were not included in the respective operators' list of segments requiring such inspections.<sup>54</sup> OPS' allegation in those matters for exposed pipeline segments were consistent with the plain language of § 195.583 and also with the facts of this matter. PHMSA's past guidance on this point has also been posted to the agency's public website for many years and is cited by both parties in this matter.<sup>55</sup> That guidance mirrors the text of § 195.583, and it addresses exposed water crossing situations as being subject to the requirements of that section, and that particular attention must be paid to the conduct of atmospheric corrosion inspections in such situations.<sup>56</sup>

Respondent also argues that OPS did not challenge evidence presented by Dixie at the hearing, and therefore on the basis of two past PHMSA enforcement cases OPS has not met its burden of proof and that the allegation in the Notice should be withdrawn.<sup>57</sup> However, those matters are

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governed by the Operations and Maintenance and requirements found in Subpart F. Unlike in the particular matter at issue here, there is no evidence § 195.583 has ever applied, or was intended to apply, to such situations.

<sup>52</sup> See Dixie Pre-hearing submission at 4; Transcript at 14: 13-22; 19: 10-17; 65: 9-16; Notice at Exh.'s B-1 through B-3; Dixie pre-hearing submission, Attachment 2

<sup>53</sup> See *In the Matter of Marathon Pipe Line, LLC*, Final Order, CPF No. 3-2007-5024, 2008 WL 5264711 (Nov. 7, 2008): <https://primis.phmsa.dot.gov/enforcement-data/case/320075024>; and, *In the Matter of BP Pipelines (North America), Inc.*, Final Order, CPF No. 3-2009-5009, 2011 WL 2937936 (June 14, 2011): <https://primis.phmsa.dot.gov/enforcement-data/case/320095009>.

<sup>54</sup> *Id.*

<sup>55</sup> PHMSA Corrosion Enforcement Guidance Part 195, at 93-98 (June 22, 2016), [https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/Corrosion\\_Enforcement\\_Guidance\\_Part195\\_6\\_22\\_2016.pdf](https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/Corrosion_Enforcement_Guidance_Part195_6_22_2016.pdf).

<sup>56</sup> *Id.*

<sup>57</sup> Dixie cites *In the Matter of Rocky Mountain Pipeline System*, Final Order, CPF No. 5-2003-5015, 2004 WL 5150202, Final Order (Dec. 23, 2004): <https://primis.phmsa.dot.gov/enforcement-data/case/520035015> and, *In the Matter of ExxonMobil Pipeline Co.*, Final Order CPF No. 4-2017-5027, 2019 WL 6840343 (Apr. 3, 2019): [https://primis.phmsa.dot.gov/enforcement-documents/420175027/420175027\\_Final%20Order\\_04032019\\_text.pdf](https://primis.phmsa.dot.gov/enforcement-documents/420175027/420175027_Final%20Order_04032019_text.pdf).

not analogous to the situation here. As discussed above, the Director made an evidentiary presentation at the hearing proving the occurrence of the alleged violations described in the Notice. There also does not appear to be any dispute as to material fact in this present matter.<sup>58</sup> Rather, there is a disagreement between the Director and Dixie as to the applicability § 195.583 to Respondent's exposed pipelines as based on those facts. I find that the Director has proved by a preponderance of the evidence (via evidence accompanying the Notice and discussed at the hearing as described above) that Dixie violated the requirements of the unambiguous language in § 195.583 when it failed to perform atmospheric corrosion inspections at the required intervals at Locations 124 and 125. The arguments presented by Dixie at the hearing and in its submissions (as related to other actions taken to address corrosion that are outside the requirements of § 195.583 and as to its rationale in not performing the required inspections at Locations 124 and 124 due to "high vegetation"), do not excuse the conduct of those required inspections, nor overcome the substantial evidence the Director has entered into the record of the violation.

I next address Respondent's argument that discussions contained in the Director's Recommendation are subject to the doctrine of waiver and forfeiture and should be rejected.<sup>59</sup> The regulations governing this proceeding in Part 190 expressly permit the Director to make a recommendation for final order, and the Recommendation is included as part of the Case File in this matter.<sup>60</sup> Further, hearings conducted under Part 190 are ". . . conducted informally without strict adherence to rules of evidence." Dixie had the opportunity to review the Recommendation and had the opportunity to respond to that document in writing on July 19, 2024 (Reply). The Recommendation also did not introduce any new facts, evidence, or allegations, but rather explained the Director's opinion that Dixie violated § 195.583 as alleged in the Notice and recommended that I issue a final order in this matter. Some discussions that Dixie cites in the Director's Recommendation are recitations of the contents of the publicly available rulemaking and other documents addressing the applicability of § 195.583 as published in the Federal Register or that have otherwise long been available on PHMSA's website (and which Dixie also cites in its Post-hearing submission). I also disagree with Dixie's assertion that ". . . OPS states (without citing to any legal authority) that 'seasonal, situational, or periodic weather-related water fluctuations that cause the pipeline to be intermittently covered with water do not excuse performance of the required inspection'"<sup>61</sup> somehow implicates waiver and forfeiture. The Director appeared to directly address its position at the hearing that the applicable pipeline segments were exposed and the justifications presented by Dixie did not excuse the performance of the required inspections.<sup>62</sup>

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<sup>58</sup> The parties agree that the pipeline segments in question may have intermittently been exposed or submerged during the relevant time periods implicated by PHMSA's 2022 inspection. There is also no dispute that Dixie attempted, but did not actually perform, the atmospheric corrosion inspections contemplated by § 195.583 during the same time period. Notice at Exh.'s B-1 through B-3; Transcript at 24: 12-25; 35: 1-21

<sup>59</sup> Reply at 6-10.

<sup>60</sup> 49 CFR § 190.209(b)(7).

<sup>61</sup> Reply at 8.

<sup>62</sup> Transcript at 14: 11-25; 15: 1-9.

Next, the same as Dixie cites case law and other legal resources to support its position in its two Post-hearing submissions, but which Dixie did not discuss at the hearing, the Director's Recommendation also cites publicly available regulatory and legal resources in support of its own Recommendation in this matter. Further, the conduct of the hearing does not alone constitute the entirety of the record in this case, as evidenced by Dixie's two additional and substantive Post-hearing submissions, one of which was actually a response to the Recommendation. The Director's position regarding the applicability § 195.583 to Respondent's pipeline system and the alleged violation as conveyed in the Notice and the Recommendation were presented and considered as part of the record and the decision in this matter.

In sum, § 195.583 applies to a pipeline segment that is exposed to the atmosphere. The text of that section does not contain any limiting exclusions or specify any minimum time periods that a pipeline must be exposed for inspections to be required. The record in this matter contains substantial evidence that Locations 124 and 125 are exposed to the atmosphere. While these segments may sometimes be temporarily submerged due to the rise of water,<sup>63</sup> the facts in evidence make clear those segments are indeed exposed to the atmosphere and are not permanently submerged. Their exposure is evidenced by Dixie's own records showing actual performance of required atmospheric corrosion inspections in 2015, 2018 and 2022, respectively, as well as other attempted atmospheric corrosion inspections within required intervals as required by § 195.583. In several instances listed above where the required atmospheric corrosion inspections were attempted but not performed at Locations 124 and 125, the pipelines were not submerged or buried in water. Rather, it was only presence of "high vegetation" that was recorded as the reason for not performing the inspections. Section 195.583 contains no exception to the atmospheric corrosion inspection requirements for instances where high vegetation is present. Also evidencing the exposure of the pipeline segments at Locations 124 and 125 are the photographs and in-person observations made during PHMSA's May 2022 inspection.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 CFR § 195.583(a) by failing to inspect portions of its pipeline system that are exposed to the atmosphere for evidence of atmospheric corrosion at least once every three calendar years, but with intervals not exceeding 39 months.

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

### **ASSESSMENT OF PENALTY**

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<sup>63</sup> At the hearing, Dixie presented satellite imagery in an attempt to show submerged pipeline segments at various points in time. However, those photographs are not dispositive, and also are not of the quality or clarity to ascertain whether the pipeline segments are submerged, or even whether a pipeline segment is even present in the locations depicted. Further, as discussed above, there is no disagreement between the parties that Locations 124 and 125 were sometimes submerged during the relevant time periods implicated by the Notice during which atmospheric corrosion inspections should have been conducted. Therefore, these photographs are not relevant to resolving any factual dispute between the parties in this matter.

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.<sup>64</sup>

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; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 \$21,200 for the violations cited above, however the June 2, 2025 revised recommendation reduced the proposed penalty to \$19,600.

**Item 1:** The Notice proposed a civil penalty of \$21,200 (reduced to \$19,600) for Respondent's violation of 49 C.F.R. § 195.583(a) for failing to inspect portions of its pipeline system that are exposed to the atmosphere for evidence of atmospheric corrosion at least once every 3 calendar years, but with intervals not exceeding 39 months. Respondent contested the proposed civil penalty, stating it was unreasonable.<sup>65</sup> Respondent explained it had developed a corrosion control program that sought to address PHMSA requirements related to both atmospheric and external corrosion control for the three pipeline segments described in the Notice.<sup>66</sup> Dixie stated it applied the provisions in two corrosion control programs relevant to the segments identified in the Notice, and described cathodic protection- and pressure test-related actions it had taken for those segments in the past.<sup>67</sup> As such, Dixie asserts that, at a minimum, a good faith credit (ten point reduction) was warranted on the civil penalty worksheet, and states the proposed civil penalty should have been \$2,606.80.<sup>68</sup>

As discussed above, there is substantial evidence in the record that Respondent committed a violation of § 195.583(a) when it failed to conduct atmospheric corrosion inspections of two pipeline segments that are exposed to the atmosphere at least every three years but not more than 39 months apart. The past pressure tests of, and cathodic protection provided to, the pipeline segments at issue in this matter did not fulfill the specific inspection requirements of

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<sup>64</sup> These amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223 for adjusted amounts.

<sup>65</sup> *See* Dixie Post-hearing submission at 9; Transcript at 19: 24-25; 20: 1-17; 70: 12-25; 71: 1-25; 72: 1-8. In its response to the revised recommendation, Dixie reiterated the arguments made in its pre-hearing, post-hearing and reply briefs.

<sup>66</sup> *See, e.g.*, Dixie Pre-hearing submission at 14-16.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

§ 195.583(a). Requirements addressing the installation and maintenance of cathodic protection and to conduct pressure testing are addressed by other sections of Part 195 and are not germane to the alleged violation here for failing to conduct required atmospheric corrosion inspections at required intervals. The Director has not made any allegations of violation involving Part 195's cathodic protection or pressure testing requirements, and the proposed civil penalty already reflected that pipeline safety was minimally affected as considering the gravity of the violation alleged in the Notice.

Further, a good faith reduction is warranted if the operator's interpretation of the requirements was reasonable, and it had a creditable justification for its actions or lack of actions.<sup>69</sup> Here, however, Dixie had the opportunity to inspect the pipeline segments in question, and according to its own records and actions was aware of the inspection interval requirement for the exposed segments described in the Notice.<sup>70</sup> The text of § 195.583(a) does not describe that the presence of "high vegetation" excuses the atmospheric corrosion inspection requirements. The plain language of § 195.583(a) is unambiguous as to the requirement to conduct atmospheric corrosion inspections at the required intervals. PHMSA's own past enforcement guidance and actions described above are also consistent with the text of that section.<sup>71</sup> The evidence in the record does not support that a good faith reduction is warranted as to the proposed civil penalty.

As discussed above, however, I did find that for Location 133, OPS did not meet its burden of proof in showing that location was an exposed pipeline segment during the applicable timeframes implicated by the allegation in the Notice. Therefore, I find that only two instances of violation occurred for purposes of calculating the assessed civil penalty, versus the three instances described in the Notice, the revised recommendation, and the proposed civil penalty worksheets.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$19,300** for violation of 49 C.F.R. § 195.583(a).

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. 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 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

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<sup>69</sup> See 81 Fed. Reg. 71,566 (Oct. 16, 2016).

<sup>70</sup> See, e.g. Notice at Exh.'s B-1 through B-3.

<sup>71</sup> *Supra* notes 52-54.

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.

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, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a brief 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 any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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

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Linda Daugherty  
Acting Associate Administrator  
for Pipeline Safety

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Date Issued