

September 18, 2025

Via e-mail (linda.daugherty@dot.gov)

Linda Daugherty
Acting Associate Administrator
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

RE: CPF No. 4-2023-049-NOPV: Petition for Reconsideration

Dear Ms. Daugherty:

Pursuant to 49 C.F.R. § 190.243(a), please find attached Dixie Pipeline Company, LLC's Petition for Reconsideration in regards to the above-referenced matter. Please do not hesitate to contact me if you have any questions.

Sincerely,



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Enclosure

cc: Tim O'Shea, Southwest Region Attorney, PHMSA (via email)
Dolores Francis, Esq., Presiding Official, PHMSA (via email)
Bryan Lethcoe, Director, Southwest Region, PHMSA (via email)
Zach Craft, Esq., Counsel for Dixie Pipeline Company (via email)

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY**

	)	
In the Matter of	)	
	)	
Dixie Pipeline Company, LLC,	)	CPF No. 4-2023-049-NOPV
	)	
Respondent.	)	
	)	

**PETITION FOR RECONSIDERATION
SEPTEMBER 18, 2025**

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I. Introduction

Pursuant to 49 C.F.R. § 190.243(a), Dixie Pipeline Company, LLC (Dixie or the Company) respectfully seeks reconsideration of the Final Order issued on August 29, 2025, in the above-captioned proceeding.¹

II. Procedural History

On August 14, 2023, the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) issued a Notice of Probable Violation and Proposed Civil Penalty (Notice) to Dixie.² On September 13, 2023, Dixie responded to the Notice by filing a Request for Hearing and Preliminary Statement of Issues (Response).³ Dixie also filed a pre-hearing brief.⁴ On April 18, 2024, PHMSA held an informal hearing at its Southwest Region office in Houston, Texas (Hearing).⁵

On May 20, 2024, Dixie filed a Post-Hearing Brief (Post-Hearing Brief).⁶ On June 20, 2024, the Office of Pipeline Safety (OPS) submitted its region recommendation (Region Recommendation).⁷ On July 19, 2024, pursuant to 49 U.S.C. § 60117(b)(1)(D), Dixie filed a Reply Brief (Reply)⁸ responding to the Region Recommendation. At a date uncertain after January 20, 2025, the PHMSA hearing officer who presided over the Hearing left the Agency.

¹ *In the Matter of Dixie Pipeline Co., LLC*, CPF No. 4-2023-049-NOPV, Final Order (Aug. 29, 2025) (hereinafter, “Final Order”).

² *Id.*, Notice (Aug. 14, 2023).

³ *Id.*, Response (Sept. 13, 2023).

⁴ *Id.*, Pre-Hearing Brief (Apr. 8, 2024).

⁵ Hearing Transcript and Joint Errata, (Apr. 18, 2024) (submitted on May 13, 2024) (hereinafter, “Hearing Transcript”).

⁶ *In the Matter of Dixie Pipeline Co., LLC*, CPF No. 4-2023-049-NOPV, Post-Hearing Brief (May 20, 2024).

⁷ *Id.*, Region Recommendation (June 20, 2024).

⁸ *Id.*, Reply (July 19, 2024).

On June 2, 2025, OPS issued a revised Region Recommendation⁹ which included a recalculation of the proposed civil penalty based on the Agency’s new Civil Penalty Policy Memo.¹⁰ On June 3, 2025, the parties were notified that a new Presiding Official had been assigned to this matter and an intermediate Presiding Official who did not attend the Hearing had drafted a recommended decision.¹¹ The newly assigned Presiding Official granted Dixie’s request to respond to the Revised Region Recommendation and on June 17, 2025, Dixie filed that response.¹²

On August 29, 2025, PHMSA issued a Final Order finding that Dixie had violated section 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.¹³ PHMSA assessed a civil penalty of \$19,300.

In accordance with § 190.243(a), a petition for reconsideration of a Final Order must be “received no later than 20 days after receipt of the order by the respondent.”¹⁴ Dixie received the Final Order on August 29, 2025. Therefore, this petition is timely.

III. Summary

The conclusions in the Final Order cannot be supported by the case file or discussions at the Hearing. Therefore, Dixie seeks reconsideration of the Final Order for three key reasons: (1) the Agency has erred in its finding that OPS presented substantial evidence establishing a violation; (2) PHMSA also erred by failing to respond to any of the case law presented on waiver

⁹ *Id.*, Revised Region Recommendation (June 2, 2025).

¹⁰ “Policy for Calculating Proposed Civil Penalties in Pipeline Safety Enforcement Proceedings,” PHMSA Chief Counsel Memo (May 20, 2025).

¹¹ Emails from PHMSA Presiding Official dated June 3, 2025; *See also*, Dixie Response to Revised Region Recommendation, at 1.

¹² *In the Matter of Dixie Pipeline Co., LLC*, CPF No. 4-2023-049-NOPV, Dixie Response to Revised Region Recommendation (June 17, 2025)

¹³ Final Order, at 11.

¹⁴ 49 C.F.R. § 190.243(a) (2025).

and forfeiture; and (3) PHMSA misunderstood the evidence provided at the Hearing on the existence of high vegetation.

IV. Discussion

A. The Agency erred in its finding that OPS presented substantial evidence establishing a violation.

As discussed throughout the briefing in this case, OPS, not Dixie, bears the burden of proof and must present sufficient evidence to prove that the operator has committed the alleged violation.¹⁵ This responsibility includes the “burden of production,” *i.e.*, which party bears the obligation to come forward with the evidence at different points in the proceeding and the “burden of persuasion,” *i.e.*, which party loses if the evidence is closely balanced.”¹⁶

1. Burden of Production

As discussed in the briefing in this case and in numerous PHMSA enforcement cases, to satisfy the burden of production, OPS must present sufficient evidence to sustain an allegation of violation.¹⁷ In order to do so, OPS must “prove, by a preponderance of the evidence, that all of the elements necessary to sustain a violation are present in a particular case.”¹⁸ The elements of a section 195.583 violation include (1) whether the pipelines were exposed to the atmosphere; and (2) whether the operator inspected those pipelines within the required interval.¹⁹

¹⁵ See Dixie Pre-Hearing Brief at 9-10; Post-Hearing Brief, at 3-7; *See also*, 49 U.S.C. § 60117(b)(1)(F).

¹⁶ See Dixie Pre-Hearing Brief at 9-10 and fn. 17 (The Supreme Court explained in *Schaffer v. West* that the burden of proof includes two distinct burdens: the burden of production and the burden of persuasion).

¹⁷ See Dixie Pre-Hearing Brief at 9 and fn. 19.

¹⁸ *In the Matter of CITGO Petroleum Corporation*, CPF No. 4-2007-5010, Decision on Reconsideration (Dec. 29, 2011)(citing *In the Matter of Alyeska Pipeline Service Co.*, Decision on Reconsideration, CPF No. 5-2005-5023 at 405 (Dec. 16, 2009); *In the Matter of Butte Pipeline Co.*, Final Order, CPF No. 5-2007-5008, at 2, fn. 3 (Aug. 17, 2009); and *Schaeffer v. West*, 546 U.S. 49, 556-58 (2005)). *See also*, *In the Matter of Air Products and Chemicals, Inc.*, CPF No. 4-2013-1001, at 4 (Aug. 10, 2015)(OPS did not provide any evidence to support its position and therefore has not met its burden of proof); *In re ANR Pipeline Co.*, Final Order, CPF No. 3-2011-1011, 2012 WL 7177134, at *3 (D.O.T. Dec. 31, 2012).

¹⁹ 49 C.F.R. § 195.583(a).

In this case, OPS did not present any evidence at the Hearing and did not provide any witness testimony.²⁰ OPS began the Hearing with a recitation of the allegation but did not come forward with its own evidence to sustain the allegation.²¹ Instead, OPS referenced Dixie's inspection reports (Exhibits B-1, B-2, and B-3).²² Those reports only demonstrate that Dixie proactively included intermittently submerged pipeline segments in its atmospheric corrosion program. That is not sufficient evidence of a section 195.583 violation.²³

In the Final Order, PHMSA attempted to cure OPS's failure to meet its burden of production by stating that "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."²⁴ PHMSA's burden of production requires the Agency to present sufficient evidence to sustain an allegation of violation. The filing of a reply brief by Respondent, which is permitted by statute, is irrelevant to whether OPS has met its burden of proof.

On at least three occasions during the Hearing, the Presiding Official asked OPS if it wanted to provide any comments or discussion, and on each occasion, OPS declined.²⁵ Yet, even with this lack of a prima facie case presented at the Hearing, PHMSA still concluded in the Final Order that "there is substantial evidence in the record that Respondent committed a violation..."²⁶ The Agency cannot support this conclusion and should reconsider its Final Order.

²⁰ See Transcript, 12-15 (OPS' Recitation of the Allegation); 20:25; 57:5; 72:14-23.

²¹ *Id.*

²² Transcript, at 14:13-17 (OPS stated that "Exhibits B-1, B-2, and B-3 are Dixie's atmospheric inspection reports, which show that these three segments are included in the atmospheric corrosion program and inspection list.")

²³ The finding of violation in this case is inconsistent with the decision in *Inland Corp*, CPF No. 1-2017-5003 (Mar. 7, 2018). In that case, PHMSA determined that because OPS only relied on photographs taken by Respondent and OPS did not provide any other record to support its contention, OPS had not presented sufficient evidence.

²⁴ Final Order, at 11.

²⁵ See Transcript, at 20:25; 57:5; 72:14-23.

²⁶ Final Order, at 13.

2. Burden of Persuasion

For the burden of persuasion, OPS must demonstrate that “the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent.”²⁷ If the evidence is “closely balanced,” the Agency has not met its burden of persuasion and the allegation must be withdrawn.²⁸ In the Final Order, the Agency found that Dixie’s evidence and arguments at the Hearing do not “overcome the substantial evidence the Director has entered into the record of the violation.”²⁹ PHMSA did not support this statement with any footnote or other reference. The evidence section of the Violation Report was limited to a list of dates of Dixie’s attempts to inspect the submerged or otherwise buried segments for atmospheric corrosion.³⁰ There were no witness statements included in the Violation Report.³¹ The only exhibits attached to the Violation Report were Dixie’s inspection reports documenting their attempts to verify whether the segments had become exposed.³² At the Hearing, OPS did not present any evidence and did not call any witnesses.³³ Given this lack of support for the allegation, it is questionable how PHMSA could conclude that OPS provided ‘substantial evidence’ or that Dixie’s arguments “do not overcome” the region’s evidence.

Dixie noted in its Post-Hearing Brief that OPS failed to rebut its arguments at the Hearing which is also relevant to an analysis of the burden of persuasion.³⁴ In the Final Order, PHMSA does not note the burden of persuasion specifically but states that “there does not appear to be any dispute as to material fact in this present matter.”³⁵ This conclusion is incorrect. Whether or not

²⁷ See Dixie Pre-Hearing Brief at 9, fn 20.

²⁸ *Id.* at 9, fn. 17.

²⁹ Final Order, at 10.

³⁰ CPF No. 4-2023-049-NOPV, Violation Report, at 5.

³¹ *Id.* (Interview Summary).

³² *Id.* at 11 (Evidence Exhibit A).

³³ Transcript, at 12:21-25; 13: 1-25; 14:1-25; 15:1-16.

³⁴ *In the Matter of Dixie Pipeline Co., LLC*, CPF No. 4-2023-049-NOPV, Post-Hearing Brief at 6 (May 20, 2024).

³⁵ Final Order, at 10.

the identified pipeline segments were exposed to the atmosphere during the inspection interval and therefore triggered a section 195.583 obligation is clearly in dispute. In a different section of the Final Order, PHMSA references a statement by Dixie’s counsel at the Hearing acknowledging that on April 7, 2015, and May 17, 2022, the segments were exposed and Dixie was able to conduct inspections.³⁶ The Presiding Official who wrote this Final Order misunderstood the discussion, and did not account for the full context of that discussion, which included the Hearing Officer recognizing evidence that the line was submerged in between those dates.³⁷ Inspections did occur in 2015 and 2022. However, PHMSA did not offer any evidence that these segments were exposed between those dates, *i.e.*, during the 2015-2018 or 2018-2021 inspection intervals. OPS has not proven that the identified segments were exposed to the atmosphere during the inspection interval.

Dixie had cited PHMSA decisions in its Post-Hearing brief to support the notion that the Agency has withdrawn allegations of violation where OPS did not rebut the evidence provided by the operator.³⁸ In the *Rocky Mountain* case, PHMSA noted that “OPS did not present any evidence contradicting Respondent’s assertions. Therefore, this allegation of violation is withdrawn and this case is closed.”³⁹ In the Final Order issued to Dixie, PHMSA determined that these previous decisions were “not analogous” concluding that OPS did make an evidentiary presentation at the hearing.⁴⁰ The transcript in this case does not reflect an evidentiary presentation at the Hearing and the *Rocky Mountain* case is definitely relevant here. Similar to *Rocky Mountain*, OPS did not present any evidence contradicting Dixie’s assertions. Therefore, the allegation of violation in this case should have been withdrawn.

³⁶ Final Order, at 3, fn. 9 (citing Transcript, 75:2-12).

³⁷ See Transcript, 74:24-75:1 (characterization by Hearing Officer, “So it’s in between those dates [in 2015 and 2022] when we saw the Google Earth photos and things that – that showed it being submerged.”).

³⁸ Post-Hearing Brief, at 6.

³⁹ *In the Matter of Rocky Mountain Pipeline System*, CPF No. 5-2003-5015 at 3 (Dec. 23, 2004).

⁴⁰ Final Order, at 10.

3. Preponderance Standard

It is well-settled that PHMSA must apply the preponderance of the evidence standard when issuing Final Orders.⁴¹ Courts have recognized that “Congress was primarily concerned with the elimination of agency decision-making premised on evidence which was of poor quality—irrelevant, immaterial, unreliable, and nonprobative—and of insufficient quantity—less than a preponderance.”⁴² This is exactly what occurred in this case. The Agency did not present sufficient evidence to sustain a violation. The preponderance of the evidence standard requires agency adjudicators to do more than just declare that an agency has met it. The Presiding Official must analyze the evidence presented by OPS and determine if the standard has been met. In the Final Order, the Agency references the preponderance standard only once (on page 10 of the Order) and finds that “the Director has proved by a preponderance of the evidence (via evidence accompanying the Notice and discussed at the hearing...) that Dixie violated the requirements of the unambiguous language in section 195.583 when it failed to perform atmospheric corrosion inspections at the required intervals at Locations 124 and 125.”⁴³ As discussed above and in the briefing in this case, the only evidence accompanying the Notice, and discussed by OPS at the Hearing were Exhibits B-1, B-2, and B-3 which do not sustain a violation. Those inspection reports are Dixie’s reports and merely document that the operator had included the identified segments in its atmospheric corrosion control program. PHMSA still needs to prove that the two segments

⁴¹ *In the Matter of CITGO Petroleum Corporation*, CPF No. 4-2007-5010, Decision on Reconsideration (Dec. 29, 2011)(citing *In the Matter of Alyeska Pipeline Service Co.*, Decision on Reconsideration, CPF No. 5-2005-5023 at 405 (Dec. 16, 2009); *In the Matter of Butte Pipeline Co.*, Final Order, CPF No. 5-2007-5008, at 2, fn. 3 (Aug. 17, 2009); and *Schaeffer v. West*, 546 U.S. 49, 556-58 (2005)).

⁴² *Steadman v. SEC*, 101 S. Ct. 999, 1008 (1981)(citing S.Doc.No. 248, 79th Cong., 2d Sess., 320–322 and 376–378 (1946); n. 21). *See also*, *U.S. Steel Mining Co. v. Office of Workers’ Compensation Programs*, 187 F. 3d. 384 (4th Cir. 1999). PHMSA often cites both of these cases to establish that OPS must meet the burdens of production and persuasion and the standard is the preponderance of the evidence. *See In the Matter of Golden Pass Pipeline, LLC*, CPF No. 4-2008-1017 (Mar. 22, 2011); *In the Matter of Belle Fourche Pipeline Co.*, CPF No. 5-2007-5002 (July 14, 2008); *In the Matter of Bridger Pipeline Co., LLC*, CPF No. 5-2007-5003 (Apr. 2, 2009).

⁴³ Final Order, at 10.

were exposed to the atmosphere during the time periods for which Dixie was cited for not performing an inspection. OPS must point to “reliable, probative, and substantial” evidence in the record to establish that essential element of its case.⁴⁴ The absence of such evidence is fatal from a burden of proof perspective.

B. PHMSA did not respond to Dixie’s cited case law on waiver and forfeiture.

Dixie argued in its Reply Brief that the doctrines of waiver and forfeiture prevent OPS from introducing new arguments for the first time in its Region Recommendation.⁴⁵ Dixie cited extensive federal caselaw in support of these doctrines and their application in adversarial administrative proceedings.⁴⁶ PHMSA did not respond to or attempt to distinguish this caselaw in the Final Order.⁴⁷ Instead, PHMSA referenced the Part 190 regulations that allow a region to file a region recommendation and the fact that these hearings are conducted without strict adherence to federal rules of evidence.⁴⁸ These references to Part 190 are not responsive to the waiver and forfeiture arguments and do not distinguish the federal case law that was cited.

C. PHMSA misunderstood the evidence provided at the Hearing discussing the existence of high vegetation.

In the Final Order, PHMSA determined that because the identified segments were covered in high vegetation during Dixie’s attempt to inspect for atmospheric corrosion, that those pipeline segments were exposed.⁴⁹ There is no evidence connecting high vegetation with exposure to the atmosphere. OPS offered no testimony on this point at the Hearing. During the Hearing, one of Dixie’s witnesses discussed the content for the inspection notes about high vegetation, and did not

⁴⁴ *U.S. Steel Mining Co. v. Office of Workers’ Compensation Programs*, 187 F. 3d. 384, 389 (4th Cir. 1999) (as cited in Reply Brief, at 4-5).

⁴⁵ Reply Brief, at 6-10.

⁴⁶ *Id.*

⁴⁷ Final Order, 10.

⁴⁸ *Id.*

⁴⁹ *Id.*

once suggest that a high vegetation note indicated that a location was exposed to the atmosphere; OPS did not question the witness on this subject.⁵⁰ Throughout the briefing in this case, Dixie discussed that these segments were either submerged or buried in silt and therefore could not be inspected for atmospheric corrosion because they were not exposed to the atmosphere.⁵¹ Dixie discussed the Agency's guidance on the definition of "exposed to the atmosphere"⁵² at the Hearing and at the request of the then-Presiding Official, included a copy of the Agency's guidance in its Post-Hearing Brief.⁵³ Yet, the Final Order does not discuss that definition or distinguish the Dixie segments. It merely concludes that high vegetation does not "excuse the conduct of these required inspections" or "overcome the substantial evidence the Director has entered into the record of the violation."⁵⁴ There is no basis for this conclusion. PHMSA has to prove that segments 124 and 125 were exposed to the atmosphere and Dixie could have inspected for atmospheric corrosion. As discussed above, "substantial evidence" supporting the allegation of a violation in this case does not exist.

V. Conclusion

This case is the perfect example of where the regulation is not clear (it does not recognize intermittently submerged pipelines), unforeseen events have occurred (no one could have predicted the length of time that the pipeline segments were submerged), and yet in good faith, Dixie took additional steps prior to the OPS inspection to include these pipeline segments in both its atmospheric and external corrosion control procedures, and attempted to inspect for atmospheric corrosion on numerous occasions. OPS did not meet its burden of proof establishing

⁵⁰ See Transcript, at 35:7-36:16.

⁵¹ Pre-Hearing Brief, at 3, 11.

⁵² PHMSA states in its Corrosion Control Enforcement Guidance that a pipeline is "exposed to the atmosphere" if it "is not buried or submerged in an electrolyte such as soil or water." PHMSA's Corrosion Control Enforcement Guidance, at 87.

⁵³ See Transcript, at 54:4-22; Post-Hearing Brief, at 4.

⁵⁴ Final Order, at 10.

that these segments were exposed to the atmosphere, an essential element of section 195.583(a). Based on the foregoing, Dixie respectfully requests that PHMSA reconsider its decision in the Final Order and withdraw the alleged violation and proposed civil penalty.

Respectfully submitted this 18th day of September 2025.



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