

March 24, 2025

VIA ELECTRONIC MAIL TO: aguilarcomayor@gmail.com

Erlinda Encinias
Mayor
Town of Aguilar
101 W. Main St.
PO Box 538
Aguilar CO, 81020

CPF No. 5-2024-028-NOPSO

Dear Mayor Encinias:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Town of Aguilar, which was executed on January 10, 2025. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission and acknowledgment of receipt, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

for Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosures: Consent Agreement and Consent Order

cc: Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA

Tonya Jez, Supervisor, Western Region, Office of Pipeline Safety, PHMSA
Casey Hensley, Program Manager, Colorado Public Utilities
Commission, casey.hensley@state.co.us
Sara Porras, Deputy Clerk, aguilardeputyclerk@gmail.com

CONFIRMATION OF RECEIPT REQUESTED

Date Issued

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

)	
In the Matter of)	
)	
Town of Aguilar,)	CPF No. 5-2024-028-NOPSO
)	
Respondent.)	

CONSENT AGREEMENT

On July 23, 2024, pursuant to 49 C.F.R. § 190.239, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS or Agency), issued a Notice of Proposed Safety Order (Notice) to the Town of Aguilar (TOA or Respondent). The Notice alleged that conditions existed on Respondent's pipeline system that proposed a pipeline integrity risk that could potentially affect public safety, property, or the environment. The Notice also proposed that TOA take certain corrective measures to remedy the alleged conditions and ensure that the public, property, and the environment were protected from the potential risk.

On August 26, 2024, and October 22, 2024, TOA responded to the Notice by timely submitting a written request for a 30-day extension and request for informal consultations under 49 C.F.R. § 190.239(b)(2). Informal consultations were held on September 4, 2024, and November 4, 2024.

As a result of the informal consultations, PHMSA and the Respondent (the Parties) agreed that settlement of this proceeding will avoid further administrative proceedings or litigation of the Notice and that entry into this Consent Agreement (Agreement) is the most appropriate means of resolving the issues raised in the Notice and is in the public interest. Therefore, pursuant to 49

C.F.R. Part 190, without adjudication of any issue of law or fact, and upon consent and agreement of the Parties, the Parties agree to the following terms and conditions.

I. General Provisions

1. Respondent acknowledges that as the operator of the pipeline facilities subject to the Notice, Respondent and its referenced pipeline facilities are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Agreement, Respondent acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder.

2. Respondent agrees, for purposes of this Agreement, to address the integrity risks identified in the Notice by completing the actions specified in Section II of this agreement (Corrective Measures) and to abide by the terms of this agreement. This Agreement does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil or administrative proceeding of any kind as evidence of proof of any fact, fault, or liability, or as evidence of the violation of any law, rule, regulation, or requirement, except in a proceeding to enforce the provisions of this Agreement.

3. After Respondent returns this signed Agreement to PHMSA, the Agency's representative will present it to the Associate Administrator for Pipeline Safety, recommending that the Associate Administrator adopt the terms of this Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement.

4. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals, except for the Dispute Resolution provisions set forth herein.

5. This Agreement shall apply to and be binding upon PHMSA and Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this Agreement.

6. For all transfers of ownership or operating responsibility of Respondent's pipeline system referenced herein, Respondent will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer and provide written notice of the transfer to the PHMSA Western Region Director (Director) no later than 30 days after the transfer occurs.

7. This Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating

to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

8. Nothing in this Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

9. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

10. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. Respondent agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Agreement.

11. Except as set forth herein, this Agreement does not constitute a finding of violation of any other federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of a violation of any law, rule, regulation, or requirement, except in a proceeding to enforce the provisions of this Agreement or in future PHMSA enforcement actions.

12. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. Respondent agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Agreement.

II. Corrective Measures:

13. Upon issuance of the Consent Order, the Respondent agrees to perform the following Corrective Measures set forth below.

- A. Since the issuance of the Notice, the City of Walsenburg's (Walsenburg) has provided monthly odorant records to TOA from January 2022 through August 2024.

Following the *Effective Date* of this agreement, TOA must conduct the required testing to verify odorant levels meet the requirements of § 192.625(a) to ensure the safety of its pipelines. TOA must submit monthly odorant records to the Director biannually, at intervals not to exceed 6 months. The testing must be conducted by an operator qualified (OQ) personnel possessing the requisite operator qualifications as required by § 192.805(b). If odorant levels are determined to not meet the requirements of § 192.625(a), TOA shall notify PHMSA and submit a proposed plan for compliance within 30 days to be approved by the Director.

- B. Following the issuance of the Notice, TOA has established written procedures to minimize the hazard resulting from a gas pipeline emergency, as required by § 192.615(a), and submitted these procedures to PHMSA on October 25, 2024.

TOA has not had an OQ gas operator since August 2022. On October 18, 2022, TOA entered into an intergovernmental agreement (IGA) with Walsenburg to receive assistance from Walsenburg's gas department, including emergency response call outs.

Within one year of the *Effective Date* of this agreement, TOA must hire and train an OQ gas operator employed by the Town to respond to emergencies, ensure that the operator is knowledgeable about the emergency procedures, and verify that the training is effective, as required by § 192.615(b)(2). Once per quarter, at intervals not to exceed 3 months, TOA will submit a written summary detailing progress on the hiring and training of the OQ gas operator until the OQ gas operator has been hired and has completed all required operator qualifications.

- C. Since the issuance of the Notice, Black Hills Energy has provided annual inspection and testing records for TOA's district pressure limiting and regulating station on July 9, 2021, May 26, 2022, June 5, 2023, and July 3, 2024.

Black Hills Energy has also provided annual leak survey records on September 24, 2021, October 7, 2022, September 7, 2023, and August 23, 2024. The August 23, 2024, survey indicated two Grade 3 Non-Hazardous leaks. These Grade 3 Non-Hazardous leaks must be scheduled for permanent repair, with all required repairs completed by August 23, 2025, in accordance with TOA's Maintenance

723 procedure. TOA shall submit repair records to the Director within 30 days of completing the repairs.

Following the *Effective Date* of this agreement, TOA must conduct the required leakage surveys on its distribution lines in accordance with § 192.723 to ensure the safety of its pipelines. TOA must repair leaks in accordance with its Maintenance 723 Procedure, which specifies the following repair schedule for completion:

- i. Grade 1 Hazardous leaks must be continually monitored until repaired. Prompt remedial action must be undertaken for leaks classified as hazardous.
- ii. Grade 2 Intermediate leaks must be scheduled for permanent repair within two work weeks from the date of discovery.
- m. Grade 3 Non-Hazardous leaks must be scheduled for permanent repair within one year from the date of discovery. During the scheduled repair period, these leaks will be re-evaluated on a six-month interval or by the end of the calendar year of discovery, whichever occurs first.

TOA must submit to the Director all leak survey results and a report detailing leak repairs annually, at intervals not to exceed 15 months.

- D. Since the issuance of the Notice, Black Hills Energy conducted an annual cathodic protection (CP) survey on October 10, 2024. The annual survey identified a CP deficiency. Specifically, Black Hills Energy Senior Corrosion Tech noted: "CP Zone 4 with test point at 401 East St. has no cathodic protection and has seemed to have been isolated off with a read of -0.317 VCSE". According to § 192.465(d), TOA must document and repair the identified deficiency by December 31, 2025. TOA shall submit repair records to the Director within 30 days of completing the repairs.

Following the *Effective Date* of this agreement, TOA must conduct annual CP surveys on all distribution lines according to § 192.465 to ensure the safety of the pipelines. In instances where inadequate potentials are a result of an electrical short to an adjacent foreign structure, a rectifier malfunction, an interruption of power source, or an interruption of CP current due to other non-systemic or location-specific causes, TOA must document and repair these instances in accordance with the timelines prescribed in § 192.465(d). TOA must submit to the Director all CP survey results and a report detailing repairs annually, at intervals not to exceed 15 months.

- E. Should TOA receive notice from either Walsenburg or Black Hills Energy that either entity will no longer be able to provide supportive services to TOA as described above, TOA shall immediately notify PHMSA and submit a proposed plan for compliance within 30 days to be approved by the Director.

14. **Reporting.** TOA will submit documentation demonstrating compliance with each provision of paragraph 13 to the Director as specified in provisions A, B, C, D and E.

15. **Extensions of Time.** The Director may grant an extension of time for compliance with any of the terms of the Agreement upon a written request timely submitted demonstrating good cause for the extension. The Director shall respond in writing to any such request.

III. Review and Approval Process:

16. With respect to any submission under Section II (Corrective Measures) of this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission; (b) approve the submission on specified, reasonable conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the foregoing. If the Director approves, approves in part, or approves with conditions, Respondent will take all actions as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures with respect to any conditions the Director identifies. If the Director disapproves all or any portion of the submission, the Director will provide Respondent a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval. If the Director does not act on a submission or any document or plan submitted under this paragraph within 60 days of submission and Respondent has indicated the submission requires timely action, the Director will provide an estimated date of completion or otherwise provide guidance to Respondent on how to proceed.

IV. Dispute Resolution:

17. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement, including any decision of the Director under the terms of Section II (Corrective Measures). If Respondent and the Director are unable to informally resolve the dispute within 15 calendar days after the dispute is first raised, in writing, to the Director, Respondent may submit a written request for a determination resolving the dispute from the Associate Administrator for Pipeline Safety, PHMSA. Such request must be made in writing and provided to the Director, counsel for the Western Region, and to the Associate Administrator for Pipeline Safety, no later than 10 calendar days from the 15-day deadline for informal resolution referenced in this paragraph. Along with its request, Respondent must provide the Associate Administrator with all information Respondent believes is relevant to the dispute. Decisions of the Associate Administrator under this paragraph will constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process.

V. Enforcement:

18. This Agreement is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190. All work plans and associate schedules set forth or referenced in Section II will be automatically incorporated into this Agreement and are enforceable in the same manner.

VI. Effective Date:

19. *Effective Date*, as used herein, is the date on which the Consent Order is issued by the Associate Administrator, PHMSA, incorporating the terms of this Agreement.

VII. Recordkeeping and Information Disclosure:

20. Unless otherwise required in this Agreement, Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five (5) years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA determines release of any information submitted pursuant to this Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

VIII. Modification:

21. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

22. Respondent agrees to perform all the terms of this Agreement within the timeframes established within this Agreement, including pursuant to modifications under Section VIII, unless performance is delayed by a force majeure. For purposes of this Agreement, a force majeure is defined by an event arising from causes beyond the control of the Operator, or any entity controlled by Operator or Operator's contractors, which delays or prevents performance of any obligation under this Agreement despite Respondent's commercially reasonable efforts to fulfill the obligation.

23. If a force majeure event occurs or has occurred that may delay the performance of any term of this Agreement beyond the approved timeframe, Respondent shall notify the Director, in writing, within 5 business days of when Respondent knew that the event might cause a delay. Such notice shall identify the cause of the delay or anticipated delay and the anticipated duration of the delay, state the measures taken or to be taken to prevent or minimize the delay, and estimate the timetable for implementation of those measures. Failure to comply with the notice provision of this paragraph and to undertake reasonable efforts to avoid and minimize the delay shall waive any claim of force majeure by Respondent.

24. If the Director determines, upon notification by Respondent, that a delay or anticipated delay in performance is or was attributable to a force majeure, then the Director will extend the time period for the performance of that term for a reasonable period. The Director will notify Respondent, in writing, of the length of any extension of performance of such terms

affected by the force majeure. Any such extensions shall not alter Respondent's obligation to perform or complete other terms of this Agreement that are not affected by the force majeure.

X. Termination:

25. This Agreement will remain in effect until the Corrective Measures in Section II are satisfied, as reasonably and timely determined by the Director. The Agreement shall not terminate until the Director confirms, in writing, that the Agreement is terminated in accordance with this paragraph. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement. Respondent may request written confirmation from PHMSA when this Consent Agreement is terminated, and the Director will provide such confirmation.

XI. Ratification:

26. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

27. The Parties hereby agree to all findings, conditions, and terms of this Agreement.

For Town of Aguilar:

 Erida Encinas, Mayor, Town of Aguilar

Date

For PHMSA:

Dustin Hubbard, Director, Western Region, Office of Pipeline Safety

Date
