



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

JUN 21 2007

Mr. Tony Finneman  
Executive Vice President  
Williston Basin Interstate Pipeline Company  
1250 West Century Avenue  
Bismarck, ND 58506-5601

Re: CPF No. 3-2005-1008

Dear Mr. Finneman:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$5,500. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds  
Pipeline Compliance Registry  
Office of Pipeline Safety

Enclosure

cc: Ivan Huntoon  
Director, Central Region, PHMSA

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

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

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**In the Matter of** )  
)

**Williston Basin Interstate  
Pipeline Company,** )  
)

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

**CPF No. 3-2005-1008**

**FINAL ORDER**

On August 2-6, 9-13, 16-20, and August 30-September 2, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety conducted an on-site pipeline safety inspection of Respondent's facilities and records in its Glendive, Montana, and the North Dakota and South Dakota operating areas. As a result of the inspection, the Director, Central Region, PHMSA, issued to Respondent, by letter dated February 25, 2005, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed violations of 49 C.F.R. Part 192, and proposed assessing a civil penalty of \$5,500 for the alleged violations.

Respondent responded to the Notice by letter dated March 15, 2005 (Response). Respondent contested the allegations and requested an informal hearing pursuant to 49 C.F.R. § 190.211. The hearing was held by teleconference on November 9, 2005. Larry White of PHMSA's Office of Chief Counsel served as the Presiding Official. Respondent was represented by counsel. After the hearing, Respondent provided additional information for the record on December 1, 2005.

**FINDINGS OF VIOLATION**

The Notice alleged that Respondent violated 49 C.F.R. Part 192 as follows:

**Notice Item 1:**

**49 C.F.R. § 192.465 External corrosion control: Monitoring.**

(a) Each pipeline that is under cathodic protection must be tested at least once each

calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of §192.463. However, if tests at those intervals are impractical for separately protected short sections of mains or transmission lines, not in excess of 100 feet (30 meters), or separately protected service lines, these pipelines may be surveyed on a sampling basis. At least 10 percent of these protected structures, distributed over the entire system must be surveyed each calendar year, with a different 10 percent checked each subsequent year, so that the entire system is tested in each 10-year period.

Specifically, Item 1 in the Notice alleged that Respondent failed to conduct annual cathodic protection testing at five of its electrical test stations for the years specified in the Notice.

In its Response and at the hearing, Respondent acknowledged that it failed to take readings at the five specified test stations during the relevant time periods. Respondent, however, argued that it nevertheless met the § 192.465(a) requirement to test the protection level on the overall “pipeline” because the readings it took at the upstream and downstream stations sufficiently established the adequacy of the cathodic protection of the pipeline.

Under the pipeline safety regulations, each pipeline must have sufficient electrical test stations to determine the adequacy of cathodic protection.<sup>1</sup> When a cathodic protection system is designed and installed, the locations of the test stations correspond to locations where a qualified system designer made a determination that periodic testing of the adequacy of cathodic protection was appropriate, but the regulations do not set any particular spacing or require a certain number of test stations.<sup>2</sup> Unless otherwise provided, once a cathodic protection system and its associated test stations are installed, annual testing at each test station is standard practice.<sup>3</sup> Operators are required to establish written operating and maintenance procedures for their pipelines setting forth the frequency and manner of cathodic protection testing—which must at least meet the regulatory minimums—and operators are required to follow the procedures they establish.

If an operator later decides to deviate from its established procedures and discontinue testing at a particular station or stations, its decision must be based on a determination by a qualified individual that annual testing at that station is no longer necessary to evaluate the effectiveness of the cathodic protection in that area. This determination must be based on technical analysis performed at or before the time the testing for that station was discontinued.<sup>4</sup> An operator must document such a decision and its technical justification in the contemporaneous records in order

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<sup>1</sup> 49 C.F.R. § 192.469.

<sup>2</sup> It is common practice in the industry to locate test stations at approximately one-mile increments when installing cathodic protection in environments like the one in which Respondent’s pipeline system is located.

<sup>3</sup> For purposes of the annual survey, an individual qualified in pipeline corrosion control may decide that test leads (or a spotting bar) should be attached at the locations that person determines to be appropriate for detecting deficiencies which may include locations in addition to those where existing test stations are present.

<sup>4</sup> A documented “close-interval survey” is an example of a technical analysis that could form the basis for a decision to discontinue testing at a particular test station.

to ensure that missed cathodic protection readings are not the result of ad hoc failures on the part of field technicians to take annual readings in accordance with its established procedures—which is a maintenance issue that constitutes non-compliance.

In this case, Respondent did not provide any documented procedures or technical analysis showing how the spacing between its test stations was originally established by the designer, nor did Respondent provide any documented procedures or technical analysis demonstrating that any of the specified test stations had been designated as stations not to be used during annual surveys at the time the readings were missed. Respondent did provide the field records for the annual surveys it conducted during the relevant periods of time. According to these records, the reasons its field technicians failed to take readings at the specified test stations were more or less random events including temporary flooding, locked gates, and in one instance the presence of buffalo in the field. The regulatory formulation of “once each calendar year, but with intervals not exceeding 15 months” provides operators with the flexibility to return to a test location if follow-up is needed due to seasonal issues such as weather or temporary flooding. Respondent had no explanation for the absence of follow-up visits to these test stations. Respondent failed to demonstrate in its Response or during the hearing that a decision to deviate from its established procedures and discontinue annual testing at these five test stations was made by qualified personnel based on technical analysis performed at or before the time the readings were missed.

After considering all the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 192.465(a) by failing to conduct annual cathodic protection testing at five electrical test stations as more fully described in the Notice.

**Notice Item 2:**

**49 C.F.R. § 192.471 External corrosion control: Test leads.**

- (a) Each test lead wire must be connected to the pipeline so as to remain mechanically secure and electrically conductive.

Specifically, Item 2 in the Notice alleged that Respondent failed to reconnect a test lead on the Safeguard System at Mile Post 21.72 after discovering that it was broken during the 2002 annual survey.

In its Response and during the hearing, Respondent acknowledged that although its personnel identified the test lead as broken in 2002, it failed to reconnect the lead until October 6, 2004. However, Respondent again argued that its failure to reconnect the test lead should not be considered a violation because despite the omission of testing at this station, it had reason to believe that the cathodic protection level in the area was adequate.

Section 192.471(a) states that “Each test lead wire must be connected to the pipeline so as to remain mechanically secure and electrically conductive.” As we have already discussed, if Respondent had been able to demonstrate that it made a technically justified decision to discontinue testing at this station (or remove it) at the relevant time, this regulation would have

been inapplicable to that particular location. Respondent, however, made no such demonstration. There is nothing in the record that would warrant a conclusion that Respondent's failure to repair the broken test lead was anything other than a lack of maintenance. After considering all the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 192.471(a) by failing to reconnect a test lead on the Safeguard System as more fully described in the Notice.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

### ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

With respect to Item 1, the Notice proposed a civil penalty of \$4,750 for Respondent's failure to conduct annual cathodic protection testing at five of its test stations as specified in the Notice. Pipeline operators are obligated to perform maintenance activities in a thorough and consistent manner to ensure safe operation of their pipelines. Checking the adequacy of cathodic protection by conducting electrical surveys on an annual basis is particularly important for pipeline safety because it is a key aspect of ensuring that pipelines are protected from corrosion. At the hearing, Respondent provided information that it compiled after the PHMSA inspection concerning the readings taken from test stations upstream and downstream of the stations that were missed, along with information concerning the output of the rectifiers. Respondent asserted that this information showed that the cathodic protection levels in the vicinity of the missed stations were adequate during the period when the readings were missed. Respondent also noted the absence of leaks on the pipeline and argued that the results from subsequent internal inspections showed the absence of corrosion in the pipe, arguing that this constitutes evidence that the cathodic protection levels must have been adequate.

The purpose of cathodic protection, however, is preventative. If no corrosion occurred, Respondent is fortunate but the purpose of periodically testing the adequacy of cathodic protection is to ensure corrosion does not occur, as opposed to identifying it after it occurs. Pipeline operators are obligated to ensure that personnel performing maintenance activities do not deviate from normal testing and inspections unless a decision to do so has a sound technical basis and is made by appropriate personnel in a transparent and accountable manner. Respondent has presented no information that would warrant a reduction in the civil penalty

amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$4,750 for violating 49 C.F.R. § 192.465(a).

With respect to Item 2, the Notice proposed a civil penalty of \$750 for Respondent's failure to reconnect a test lead on the Safeguard System. At the hearing, Respondent provided information concerning the readings taken from the nearest upstream and downstream stations. Respondent, however, has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$750 for violating 49 C.F.R. § 192.471(a).

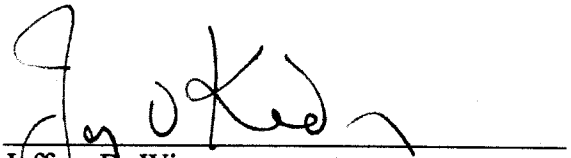
For the foregoing reasons, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$5,500. There is nothing in the record indicating that payment of this penalty would adversely affect Respondent's ability to continue in business.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-300), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this 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 (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$5,500 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, the petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of a petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for 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 on receipt.



Jeffrey D. Wiese  
Acting Associate Administrator  
for Pipeline Safety

for

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Date Issued