U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

APR 2 2009

VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED **[7005 0390 0005 6163 7459]**

Mr. Hank True
President
Bridger Pipeline Company, LLC
455 N. Poplar Street
P.O. Drawer 2360
Casper, WY 82602

Re: CPF No. 5-2007-5003

Dear Mr. True:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions that need to be taken by Bridger to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Western Region, this enforcement action will be closed. Your receipt of this Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

William Hoidal

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Chris Hoidal
Director, Western Region, PHMSA

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

In the Matter of	)	
Bridger Pipeline Company, LLC,	)	**CPF No. 5-2007-5003**
Respondent.	)	

FINAL ORDER

On June 6-10, July 18-21, and August 15-18, 2005, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration's Office of Pipeline Safety (PHMSA) conducted a safety inspection of the hazardous liquid pipeline systems operated by Bridger Pipeline Company, LLC (Bridger or Respondent), and several related companies in Montana and Wyoming.[1] Bridger operates crude oil transmission pipelines in Montana and North Dakota. As a result of the inspection, the Director, Western Region (Director), issued a combined notice of probable violation and proposed compliance order (CPF No. 5-2006-5004) by letter dated February 21, 2006, to one of the companies (Belle Fourche), alleging violations of the hazardous liquid pipeline safety regulations with respect to the inspected facilities. By letters dated May 26 and December 26, 2006, Belle Fourche objected to the notice on the grounds that the individual companies were separate and distinct legal entities and should be named separately.

In response to those objections, the Director withdrew the original charges on February 2, 2007, and, on the same date, issued separate enforcement documents to each company, including a Notice of Probable Violation and Proposed Compliance Order (Notice) issued to Bridger in this case.[2] In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Bridger had committed certain violations of 49 C.F.R. Part 195 and proposed that Bridger take measures to correct the alleged violations. In addition, pursuant to 49 C.F.R. § 190.205, the Notice advised Respondent to take appropriate corrective action to address several warning items or face future potential enforcement action.

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[1] The companies inspected were Bridger Pipeline Company, LLC, Belle Fourche Pipeline Company (Belle Fourche), and Butte Pipeline Company (Butte). These companies share the same manual of operating procedures and some of the same employees and officers.

[2] The Director issued separate notices to Belle Fourche (CPF No. 5-2007-5002) and Butte (CPF No. 5-2007-5008). This Final Order concerns only the Notice issued to Bridger. Final agency action has already been taken in the case involving Belle Fourche. The case involving Butte is still pending at this time.

Bridger responded to the Notice by letter dated March 8, 2007 (Response). In its Response, the company contested the allegations of violation and requested a hearing. In accordance with 49 C.F.R. § 190.211, a combined hearing was held on August 31, 2007, in Lakewood, Colorado, with an attorney from the Office of Chief Counsel, PHMSA, presiding. Bridger, Belle Fourche, and Butte were jointly represented by counsel at the hearing. After the hearing, the companies submitted a single post-hearing brief (Brief) on October 11, 2007, and additional information by letter dated December 21, 2007. To the extent that the issues raised at the hearing and in the Brief relate to Bridger, they are addressed below.

As a preliminary matter, the parties agree that in making "Findings of Violation," PHMSA carries the burden of proving the allegations set forth in the Notice.[3] This includes both the burden of production and the burden of persuasion. *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). The standard of proof is the traditional preponderance-of-the-evidence standard. *Steadman v. SEC*, 450 U.S. 91, 102 (1981). Respondent argues in its Brief that PHMSA failed to meet its burden of proof on all contested Items in the Notice (i.e., Items 3, 4, 5, 10, 11, and 14). As discussed more fully below, I find that PHMSA did in fact meet its burden of proof on all the charges.

FINDINGS OF VIOLATION

The Notice alleged that Respondent committed violations of 49 C.F.R. Part 195, as follows:

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.214, which provides:

> **§ 195.214 Welding procedures.**
>
> (a) Welding must be performed by a qualified welder in accordance with welding procedures qualified under Section 5 of API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code (incorporated by reference, *see* §195.3). The quality of the test welds used to qualify the welding procedure shall be determined by destructive testing.
>
> (b) Each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.

The Notice alleged that Bridger violated § 195.214 by failing to perform welding in accordance with procedures that had been qualified by the use of test welds determined to be of acceptable quality through destructive testing. Specifically, the Notice alleged that butt weld and fillet weld procedures used by Respondent for integrity repairs on the Poplar pipeline in 2005 had not been qualified through the use of destructive testing. During the inspection, the PHMSA inspector

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

noted that Respondent's welding procedures did not include results from destructive testing that were required in order to qualify the procedures. Violation Report at 2 (Feb. 7, 2008).[4]

Bridger contended that testimony at the hearing showed the company "used procedures that had been qualified by a predecessor operator of the pipeline. In any event, Bridger now has its own qualified welding procedures." Brief at 14. However, I can find no evidence in the record to substantiate this claim. Both Respondent's procedures and the procedures of the previous operator are in the record, but neither includes any record of qualifications using destructive testing. While Respondent stated in its Brief that testimony at the hearing showed Bridger used procedures that had been qualified, the hearing officer noted that Respondent did not introduce any evidence at the hearing to support this statement, and I find none in the record. Even if I were to assume the previous operator did indeed qualify the procedures properly through the use of destructive testing, the fact remains that Bridger failed to present any tangible evidence of these tests and failed to retain any records of such tests, as required under § 195.214(b). Finally, Bridger's statements concerning its efforts to qualify the procedures *after* PHMSA's inspection are irrelevant to the determination of whether or not the company was in compliance at the time of the inspection.

Accordingly, after considering all of the evidence, I find Respondent violated 49 C.F.R. § 195.214 by failing to perform welding in accordance with welding procedures that had been qualified using test welds of acceptable quality, as determined by destructive testing.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.230, which states:

> **§ 195.230 Welds: Repair or removal of defects.**
>
> (a) Each weld that is unacceptable under § 195.228 must be removed or repaired. Except for welds on an offshore pipeline being installed from a pipe lay vessel, a weld must be removed if it has a crack that is more than 8 percent of the weld length.
>
> (b) Each weld that is repaired must have the defect removed down to sound metal and the segment to be repaired must be preheated if conditions exist which would adversely affect the quality of the weld repair. After repair, the segment of the weld that was repaired must be inspected to ensure its acceptability.

The Notice alleged that Respondent violated § 195.230 by failing to repair and re-inspect a weld that was "unacceptable" under § 195.228. Specifically, the Notice alleged that Bridger rejected weld XR-11 because it had a pinhole defect but failed to repair and re-inspect it.[5] Evidence in the record included an inspection form utilized by Bridger's radiographer that shows he had determined this particular weld to be unacceptable. Violation Report Ex. 2. When questioned about this during the PHMSA inspection, Respondent's personnel were unable to produce any record of the weld ever having been repaired and re-inspected. Violation Report at 3.

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[4] The inspector provided copies of Respondent's procedures, dated February 2005, for the record. Violation Report Ex. 1.

[5] This weld was performed by Respondent's personnel during a short segment replacement project on the Poplar pipeline. It is not the same "weld XR-11" that was part of a 17,000-foot repair project on the same pipeline.

In its written submissions and at the hearing, Respondent presented several arguments why it had not violated § 195.230. First, it argued that weld XR-11 should not be considered "unacceptable." Brief at 3-4. Second, it argued that even if PHMSA now deemed the weld to be unacceptable, Bridger had already repaired the weld. Brief at 4. Third, it argued that Bridger did not have fair notice of the agency's interpretation and application of this standard. Response at 4.

As for Bridger's first argument that weld XR-11 should not be considered "unacceptable," the company contends that neither the criteria for the acceptability of welds in § 195.228 nor Section 9 of American Petroleum Institute Welding Standard 1104 (API 1104), which is incorporated therein, specify that pinholes are unacceptable. Respondent's engineer testified in an affidavit that "[s]ection 9.3 [of API 1104] lists and explains the defects that . . . may warrant rejection in connection with radiographic testing. A 'pinhole' is not one of them." Brief Ex. 6 at ¶ 26. In addition, Respondent's consultant expressed the opinion that "[t]he list of unacceptable defects [in Section 9 of API 1104] does not include a 'pinhole.' Therefore . . . the mere fact that a radiographer found a 'pinhole' . . . does not mean that the weld failed the acceptability criteria of API-1104." Brief Ex. 7 at ¶ 12. Because a pinhole is not listed as an unacceptable defect in § 195.228 or Section 9 of API 1104, Bridger argues that § 195.230 does not require that it be repaired. Brief at 3.

Respondent is correct that neither §§ 195.230, 195.228, nor Section 9 of API 1104 expressly states that a "pinhole" is an unacceptable weld defect.[6] Section 9, however, does provide that a company may reject a weld for any reason other than those explicitly referenced in Section 9.3. Section 9.2 states:

> All nondestructive test methods are limited in the information that can be derived from the indications they produce. The company may therefore reject any weld that appears to meet these acceptance standards if, in its opinion, the depth of an imperfection may be detrimental to the weld.

Accordingly, an operator may reject a weld if the company finds an imperfection that it considers "detrimental to the weld," even if the type of imperfection is not explicitly enumerated in Section 9 of API 1104.

This is precisely what Bridger did. The record clearly shows that the inspection was performed by Bridger's welding inspection contractor and that the contractor's radiographer noted his rejection of this particular weld on his inspection form. The form included a column labeled "Weld Acceptability" and two columns beneath that column with headings of "Yes" and "No." Violation Report Ex. 2. The radiographer marked the "No" column under the "Weld Acceptability" heading for weld XR-11, indicating that he had determined the weld was unacceptable.

The radiographer also recorded, under the column entitled "Type of Defects in Rejectable Welds," that the defect type was a pinhole. In his affidavit submitted by Respondent, the radiographer acknowledged that he had "indicated that weld XR-11 was not acceptable." Brief

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[6] In this case, radiographic testing was used by Respondent to examine weld XR-11. Brief at 3. Section 9.3 of API 1104 specifies acceptance standards for weld imperfections located by radiographic testing.

Ex. 5. Since it was Bridger's own contractor who determined that XR-11 was "unacceptable" under § 195.228 and API 1104, the company was required under § 195.230 to repair and re-inspect the weld to ensure integrity.

As for Respondent's second argument that the company had in fact repaired the weld, Bridger acknowledged that it did not have a record of the repair and that such lack of documentation was most likely due to a clerical error. Response at 4. The company argued, however, that normal company practice was to grind down and repair pinhole imperfections in welds. *Id.* Bridger also submitted several affidavits of persons familiar with the matter who attested that weld XR-11 had "likely" been repaired. The affidavit of the radiographer who personally examined weld XR-11 indicated that he "believe[s] that weld XR-11 was repaired."[7] Brief Ex. 5. The testimony and affidavit of another employee, who had spoken to the weld foreman of the repair project, indicated:

> He [the weld foreman] informed me that it was the practice on this project to grind down any "pinhole" anomalies, at which point the weld was not [*sic*] longer considered to be rejectable by T&K. [He also] informed me that it was likely that XR-11 was ground down, and mistakenly not noted in writing by the inspector on the applicable T&K worksheet or any subsequent document.

Brief Ex. 6 at 4.[8]

While such statements may be helpful in determining the company's standard practices, I find them unpersuasive in this case. First, there is no definitive statement in the record that the repair was actually made. More importantly, Bridger has no documentation of the repair having been made, even though the company was or should have been fully aware of its obligation under 49 C.F.R. § 195.266 to maintain a complete record of all girth welds, including the disposition of each rejected weld. The absence of any record of a repair and re-inspection in this case, when coupled with the lack of other tangible evidence or conclusive testimony, is telling.

Finally, Respondent argued that PHMSA is attempting to punish the company for violating a standard without providing fair notice of the agency's prospective interpretation or application of such standard. According to Bridger, it would violate due process to hold the company liable under PHMSA's interpretation of § 195.230 without fair notice. Response at 4.

Respondent is correct that governmental agencies may not violate a person's right of due process by depriving such person of property without providing a minimum level of "fair notice" as to what may constitute a violation of law. "Due process requires that parties receive fair notice before being deprived of property . . . . In the absence of notice—for example, where the regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing civil or criminal liability." *Gen. Elec. Co. v. U.S. EPA*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995) (citations omitted) (internal quotation marks omitted). *See also*, *United States v. Chrysler Corp.*, 158 F.3d 1350, 1354 (D.C. Cir. 1998);

[7] In its Brief at 4, Bridger misidentified this individual as "the welder who made weld XR-11" when in fact the individual was the *inspector* of the weld, according to the individual's own affidavit.

[8] It is not clear from the record how long ago the witness actually spoke to the weld foreman. Respondent was not able to locate the foreman to offer testimony in this case. Brief at 8.

Trinity Broad. of Fla., Inc. v. FCC, 211 F.3d 618, 628 (D.C. Cir. 2000). When an agency interprets a regulation through enforcement rather than pre-enforcement efforts, the issue of notice rests on "whether the regulated party received, or should have received, notice of the agency's interpretation in the most obvious way of all: by reading the regulations. If, by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with 'ascertainable certainty,' the standards with which the agency expects parties to conform, then the agency has fairly notified a petitioner of the agency's interpretation." *Gen. Elec. Co.*, 53 F.3d at 1329.[9]

In this case, I find, as a matter of law, that Bridger received fair notice of the conduct that was required of the company. Section 195.230 is clear on its face and provided Bridger with adequate notice that each unacceptable weld must either be removed or repaired and re-inspected. Section 195.228, and Section 9 of API 1104, incorporated therein, are also quite clear that a company may deem a weld unacceptable on its own or for a variety of explicitly enumerated reasons. In this case, Bridger itself determined that weld XR-11 was unacceptable; therefore, the company was required to address the weld accordingly. Having considered all of the evidence and issues presented, I find Respondent violated 49 C.F.R. § 195.230 by failing to repair a weld that the company had determined was unacceptable.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(1), which states:

> **§ 195.402 Procedural manual for operations, maintenance, and emergencies.**
>
> (a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies . . . . [A]ppropriate parts shall be kept at locations where operations and maintenance activities are conducted . . . .
>
> (c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:
>
> (1) Making construction records, maps, and operating history available as necessary for safe operation and maintenance . . . .

The Notice alleged that Respondent violated § 195.402 by failing to make updated maps and alignment sheets available as necessary for safe operation and maintenance of the Poplar pipeline. Specifically, the Notice alleged that Bridger maintained only one set of updated alignment sheets, which showed new crossings and other changes to the facility, and kept those documents at the Glendive office rather than making them available to personnel performing operations and maintenance functions in the field. It was impractical for PHMSA's inspector to include a copy of the alignment sheets in the record, but he noted that Bridger's supervisor

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[9] Such "ascertainable certainty" may not be possible where an agency has given conflicting public interpretations of a regulation. In addition, even in those situations where an "agency does not issue contradictory public statements, it may fail to give sufficient fair notice to justify a penalty if the regulation is so ambiguous that a regulated party cannot be expected to arrive at the correct interpretation using standard tools of legal interpretation, must therefore look to the agency for guidance, and the agency failed to articulate its interpretation before imposing a penalty." *United States v. Lachman*, 387 F.3d 42, 57-58 (1st Cir. 2004) (citation omitted).

informed him that the set of alignment sheets at the Glendive office was the only updated (i.e., accurate) copy for the Poplar pipeline. Violation Report at 4.

In its Response, the company stated only that "[a]lignment sheets have been disseminated and Bridger is engaged in an ongoing process of updating." Response at 5. In its Brief, Respondent contended that the requirements of the regulation were met by keeping the updated maps at the Glendive office, "where pipeline operations and maintenance are based." Brief at 14.

Under § 195.402(a) and (c)(1), as quoted above, persons performing operations and maintenance activities in the field, such as excavation activities that require precisely locating underground facilities, must have current maps of the pipeline facility on hand when those activities are being conducted. Performing such activities without any maps or with outdated or inaccurate maps increases the chances that a pipeline will be struck and damaged, causing a release of product harmful to the public and environment. The evidence shows that Bridger had only one set of current alignment sheets and that set did not leave the Glendive office. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(1) by failing to make current maps available as necessary for the safe operation and maintenance of the Poplar pipeline.

Item 10: The Notice alleged that Respondent violated 49 C.F.R. § 195.422(a), which states:

> **§ 195.422 Pipeline repairs.**
>
> (a) Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.

The Notice alleged that Respondent violated § 195.422(a) by failing to ensure that integrity repairs performed on the Poplar pipeline in 2005 were made in a safe manner. Specifically, it alleged that Bridger failed to use a nondestructive testing (NDT) method to examine sleeve-to-pipe fillet welds associated with type-B repair sleeves. The Notice also alleged that industry practice has been to use NDT to ensure that type-B repair sleeves are installed in a safe manner. The Notice alleged further that Respondent's repair records did not even indicate whether visual examinations of such welds had been performed.

During the PHMSA inspection, the inspector noted that Bridger had made repairs using type-B sleeves, but there was no record that such repairs had been visually inspected or tested using NDT. The inspector documented statements made by two of Respondent's employees that the company had visually inspected the welds but did not need to perform NDT because such testing had been performed on two sleeve repairs on another pipeline operated by a sister company and that such tests had been successful. Violation Report at 5.

Bridger raised several defenses to Item 10. First, it contended that the company ensured type-B repair sleeves were installed in a safe manner by using fully qualified welders and procedures, by visually inspecting the welds, and by performing a
post-repair hydrostatic test of the pipeline. Response at 6. Second, it argued that PHMSA failed to provide the company with fair notice of the agency's interpretation and application of this NDT standard.

As for Bridger's first defense that the company ensured the repairs were made in a safe manner, the company presented one of its engineers, who stated that he had been told by the welding foreman that all of the welds were visually inspected. Brief Ex. 6 at ¶ 9.[10] The witness also testified that, to his knowledge, the company had used qualified welders and procedures and that the company had performed a hydrostatic test on the pipeline. *Id.* at ¶¶ 8 and 10. Respondent maintained these measures constituted compliance with § 195.422 and American Society of Mechanical Engineers (ASME) Standard B31.4, which Respondent referred to as "the relevant professional code governing pipeline transportation systems." Response at 5. In particular, Respondent contended that Section 451.6.3 of ASME B31.4 "allows for 'other methods' along with visual inspection" to ensure the safety of repair welds and that Respondent chose hydrostatic testing in addition to visual inspection. Response at 6.

With regard to the use of qualified workers and procedures, Respondent is correct to point out that these are critical for ensuring repairs are made in a safe manner. However, the use of qualified workers and procedures is not a substitute for post-repair examination. The use of qualified workers and procedures only serve prospectively to make it more likely that repairs *will be* made safely in the future. The use of post-repair examinations is also needed to ensure that repairs *were in fact* made safely. Moreover, I have found that Bridger did not use qualified welding procedures when performing fillet welds on the Poplar pipeline in 2005 (*see* Item 3 of this Order).

With regard to the visual examinations and hydrotest, I find little support in the record for Respondent's assertion that it conducted visual examinations of these repair welds, other than second-hand accounts and hearsay. Even if visual examinations were performed, they do not provide enough information on their own to determine whether repair welds were properly performed. For that reason, another type of post-repair examination method is required. While Respondent asserted that the leading industry standard accepts the use of hydrostatic testing in addition to visual examinations in such circumstances, the standard actually states that "[w]elds should also be examined by at least one other *nondestructive examination* method" in addition to visual examinations. ASME B31.4 § 451.6.3(b) (2002) (emphasis added). Rather than utilize another method of NDT, as recommended in the leading industry standard, Respondent instead chose to hydrotest the pipeline.

At the hearing, the Director explained that hydrostatic testing is not a suitable process for determining the soundness of a type-B sleeve repair. This is because hydrotests are not capable of testing the integrity of the fillet welds on a type-B repair sleeve. In fact, Respondent informed PHMSA, by letter dated December 21, 2007, that it had recently performed NDT on several type-B repair sleeves from the 2005 repair project at issue in this case and found some sleeves had cracks in the pipe-to-sleeve fillet weld that had not been detected by Bridger during any of its previous post-repair examination methods, including the hydrostatic test. Respondent also determined that six of the twelve excavated repairs were not made in their intended locations. The cracks in the repair welds and the incorrect locations of the repair sleeves are further indications that the repairs were not performed in a safe manner.

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[10] The date this witness spoke to the foreman is not evident in the record, but it was likely years ago, since Respondent was not able to locate the foreman to testify. Brief at 8.

While NDT may be an appropriate method to ensure type-B repair sleeves are installed in a safe manner, the text of § 195.422(a) does not explicitly require the use of NDT to determine the safety of such repairs. As Respondent correctly notes, § 195.422(a) is a performance-based regulation that requires a specified minimum level of safety for pipeline repairs but does not prescribe a specific process or method to be used for each type of repair. With regard to the repairs at issue in this case, the question is whether Respondent used an evaluation process capable of ensuring that type-B repair sleeves were installed in a safe manner. For the reasons expressed above, I find the methods used by Respondent to determine the safety of those repairs were inadequate to comply with § 195.422(a).

As for Bridger's second argument that PHMSA failed to provide fair notice of its interpretation and application of this regulation to require NDT, Respondent argued that it "could not have reasonably ascertained that OPS now considers NDT to be a mandatory requirement under 49 C.F.R. § 195.422(a)," because the regulation, on its face, imposes no such requirement. Brief at 10.

Bridger has clearly misinterpreted the agency's application of § 195.422 in this case. As explained above, PHMSA does not take the position that NDT, specifically, is a mandatory requirement of the regulation. Rather, the agency notes the industry practice has been to use NDT to meet the performance-based regulation for the type of pipeline repair at issue in this case. It is clear from the text of § 195.422(a) that in order to ensure a particular pipeline repair has been made in a safe manner, an operator must use an evaluation method that is capable of making that determination. As a matter of law, therefore, I find that Bridger had fair notice of the requirement within § 195.422(a) that it use an evaluation method capable of determining type-B sleeve repairs were made in a safe manner. Unfortunately, for the reasons expressed above, the methods of evaluation used by Bridger were insufficient to comply with this requirement.

Respondent's assertion that the company was not aware NDT was the "industry standard" is specious, as Bridger itself cited the ASME B31.4 standard, which states explicitly that repair welds should be examined by NDT. Whether or not NDT is the industry standard, however, is ultimately irrelevant because § 195.422(a) does not bind Respondent to the industry standard. Respondent may comply with the regulation by using one or more evaluation methods capable of determining that "the repairs are made in a safe manner;" but the operator must be able to demonstrate the chosen method is capable of making such a determination. In this case, I find Bridger's chosen evaluation method was not capable of demonstrating the repairs were made safely.

Accordingly, after considering all of the evidence and arguments presented, I find Respondent violated 49 C.F.R. § 195.422(a) by failing to ensure that type-B repairs sleeves were completed in a safe manner.

Item 11: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

> **§ 195.428 Overpressure safety devices and overfill protection systems.**
> (a) [E]ach operator shall, at intervals not exceeding 15 months, but at least once each calendar year . . . inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to

> determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated § 195.428(a) by failing to inspect and test certain pressure control equipment on the Poplar pipeline to determine that such equipment was functioning properly, was in good mechanical condition, and adequate in terms of capacity and reliability of operation. Specifically, the Notice alleged that Bridger failed to test or calibrate "transducers that transmit data" to the company's Supervisory Control and Data Acquisition (SCADA) center. The Notice alleged that such devices were part of the company's pressure control system and therefore had to be inspected and tested periodically under § 195.428(a). The Director's Violation Report also referenced an enforcement action brought against the previous operator of the Poplar pipeline in 2004 for the same issue. Violation Report at 6.[11]

Bridger raised several defenses to Item 11. First, the company argued that the requirements in § 195.428(a) do not apply to pressure "transmitters," which the company termed the equipment at issue in the Notice. Response at 7. Second, the company argued that Bridger did not have fair notice of this interpretation and application of § 195.428(a). *Id.*

As a general matter, the parties discussed at the hearing whether a distinction could be drawn between the terms "transducer" and "transmitter" and, if so, whether that distinction had any bearing on the allegation. A "transducer" is a generic term referring to a device that reads data in one form (for example, pipeline pressure measured in pounds) and translates that data into an electronic signal that can be transmitted, usually by wire. A "transmitter" is an electronic assembly with a transducer at the front end and that transmits the signal. Although there is a technical distinction between the two terms, in this case the terms refer to the same piece of equipment that, for ease of discussion, I will refer to simply as a "pressure transmitter."

The company offered several reasons why § 195.428(a) does not apply to pressure transmitters. First, it explained that Bridger's pipeline uses on-site devices that are "hard-wired to mechanically shut down the system locally and independently of the SCADA system" when pressure reaches a certain level. Brief at 12. Respondent distinguished those devices from pressure transmitters that send pressure data to a SCADA center, arguing that the regulation only applies to local mechanical devices and not to pressure transmitters.

While Respondent is correct to point out that local mechanical pressure control equipment is covered by § 195.428(a), the regulation is not so limited as to exclude other types of devices used to monitor and control operating pressure on a pipeline. By its terms, § 195.428(a) requires "each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment" to be tested and inspected at specified intervals. The regulation does not explicitly define "pressure control equipment," but the ordinary meaning of those terms would include devices used to control pipeline operating pressure. The requirements within § 195.428(a) do not distinguish between local and remote control devices, nor does the regulation differentiate between devices used to control emergency overpressures and those used to control pressure during normal operations.

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[11] *In the Matter of Shell Pipeline Company L.P.*, CPF No. 5-2004-5020, Warning Letter (Sept. 23, 2004).

Regulated hazardous liquid pipelines have controls and protective equipment to control pressure during emergency pressure surges and other variations from normal operations. *See* § 195.406(b). A pipeline operator may establish set points for the activation of emergency shutdown and overpressure devices as high as 110% of the established maximum operating pressure (MOP) of a pipeline. *Id.* During normal operations, however, pipeline operators utilize electronic pressure monitoring equipment to assist in operating the pipeline within the established MOP. When pressure transmitters are used to monitor pipeline pressure, the transmitters send pressure data to a program logic computer or SCADA control center where persons and computers make operational decisions based on such data. Safe operation of a pipeline facility depends on the accuracy of the pressure data being transmitted.

If pressure transmitters are not calibrated, they may send inaccurate pressure data to the program logic computer or SCADA center, potentially resulting in the operation of a pipeline at a pressure higher than intended, perhaps even higher than the MOP, without the controller's knowledge. In fact, erroneous pressure data may result in a pipeline being operated at an unsafe pressure as high as 110% of MOP without the controller's knowledge and without triggering any automatic remote or local emergency overpressure protection devices. Regular operation of a pipeline above MOP is a significant safety risk to the public, employees, and the environment, and is not permitted by the pipeline safety regulations. *See* § 195.406(a). For these reasons, regular testing and calibration of pressure transmitters that send pressure signals to on-site devices and to off-site locations that control pipeline pressure is important for public safety and is a requirement under § 195.428(a).

Second, Respondent argued that PHMSA's interpretation of § 195.428(a) to include pressure transmitters would logically require the agency to extend the applicability of the regulation to all other SCADA-related equipment, such as computers, software, alarms, displays, databases, and even satellite communications. Brief at 12. PHMSA has never suggested or actually applied the regulation so broadly as to require annual testing of all SCADA-related equipment. In addition, it would be neither logical nor necessary to extend the application of the regulation to every component arguably associated with a SCADA system. On the other hand, pressure transmitters that actually monitor pipeline pressure, convert such data to electronic signals, and transmit such data to an operator's SCADA system reasonably fall within the scope of the regulation. For these reasons, I find Respondent's argument unpersuasive.

Third, Respondent argued that PHMSA's position on testing pressure transmitters "contradict[s]" other pipeline regulations. Brief at 12. Respondent's argument is based on language within the proposed compliance order in the Notice that would require Bridger to test all pressure transmitters, including those that are "part of the computational pipeline monitoring (CPM) system." Respondent argued that CPM systems, including associated pressure transmitters, are required to be tested under § 195.444 and that subjecting such devices to both §§ 195.428(a) and 195.444 would result in conflicting requirements. Brief at 12-13.

This is incorrect. Section 195.444 regulates CPM *leak detection systems*. A CPM leak detection system may use a variety of techniques for detecting leaks, including physical inspections, hydrocarbon detection sensors, software-based monitoring, and SCADA monitoring. *See* API standard 1130, incorporated by reference at § 195.444. If an operator uses SCADA monitoring as a part of its CPM leak detection system regulated under § 195.444, that does not negate or conflict with the requirement under § 195.428(a) to test pressure transmitters if they also

function as part of a pressure control device. The proposed compliance order likely used the term "CPM system" to cover pressure transmitters that send signals to a SCADA system or other device that controls pressure. Moreover, Respondent did not offer any evidence demonstrating that compliance with both regulations was somehow inconsistent or impracticable. Accordingly, I find this argument unconvincing. To avoid further confusion, however, I have replaced "CPM system" with "device or a SCADA system that controls pressure" in the compliance order.

Finally, Respondent argued that PHMSA failed to provide the company with fair notice of its interpretation and application of § 195.428(a) to require testing of SCADA pressure transmitters. Brief at 13. In particular, Bridger argued that the company could not have reasonably ascertained that § 195.428(a) applies to SCADA pressure transmitters because "the industry understanding and custom was that such devices were not considered to be the sort of mechanical 'pressure control equipment' that the regulation was intended to cover." *Id.*

On the contrary, Bridger had abundant notice that § 195.428(a) has been interpreted to include pressure transmitters sending signals to a SCADA system or other device that controls pressure. The language of the regulation itself is broadly worded to apply generally to equipment used to control pipeline pressure. Moreover, the agency's interpretation of the regulation with regard to pressure transmitters has been communicated to the regulated pipeline industry through various enforcement actions over a number of years.[12]

Furthermore, in this case, the agency also provided actual notice of its interpretation to Bridger's sister company, Belle Fourche Pipeline Company, and to the previous operator of Bridger's Poplar pipeline, Shell Pipeline Company. On May 19, 2004, the Director notified Belle Fourche that it had allegedly violated § 195.428(a) by failing to calibrate pressure transmitters to make sure that accurate data was being transmitted.[13] In addition, the Director issued an enforcement action on September 24, 2004, to Shell Pipeline Company, warning the operator that failure to produce documentation showing the company had tested and inspected SCADA pressure

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[12] *See, e.g., In the Matter of BP Transportation (Alaska) Inc.*, CPF No. 5-2002-5011W, Warning Letter (Apr. 30, 2002); *In the Matter of Cenex Harvest States*, CPF No. 5-2003-5029, Warning Letter (Nov. 18, 2003); *In the Matter of Kinder Morgan Energy Partners*, CPF No. 2-2004-6008M, Notice of Amendment (Apr. 15, 2004); and *In the Matter of ExxonMobil Pipeline Company*, CPF No. 5-2005-5008, Notice of Probable Violation, Proposed Compliance Order, Proposed Civil Penalty, and Notice of Amendment (Feb. 18, 2005), Final Order (Jan. 9, 2007), *pending reconsideration on other grounds.*

In *ExxonMobil,* the operator argued that pressure transmitters sending pressure and flow rate signals to control logic devices or a remote operating control center were not pressure control equipment. The Final Order found, however, that "a pressure transmitter . . . sending signals to another device or a SCADA system that controls pressure . . . is considered to be a pressure control device and as such must be tested and inspected and the data . . . recorded once each calendar year not to exceed 15 months in accordance with 49 C.F.R. § 195.428(a)" because "these devices are integral in the control of pressures for the . . . pipeline."

[13] *In the Matter of Belle Fourche Pipeline Company*, CPF No. 5-2004-5010, Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Notice of Amendment (May 19, 2004), Final Order (Dec. 11, 2006), *pending reconsideration on other grounds.* Belle Fourche is a separate legal entity from Respondent; however, the two companies share many of the same employees and officials. For example, Bridger's lead engineer was the official addressee in the 2004 Belle Fourche enforcement action. The companies also share the same president, who was the official recipient of both the Final Order issued in the 2004 Belle Fourche case and the present enforcement action against Bridger.

transmitters for the Poplar pipeline constituted a probable violation of § 195.428(a).[14] Bridger was or should have been aware of the aforementioned enforcement actions by which PHMSA stated publicly that pressure transmitters were covered by the testing requirements of § 195.428(a). Accordingly, I find, as a matter of law, Bridger had fair notice of the agency's interpretation and application of this requirement.

Respondent did not refute the factual allegation in the Notice that it had failed to test or calibrate the SCADA pressure transmitters on the Poplar pipeline at intervals not exceeding 15 months, but at least once each calendar year. Therefore, upon consideration of all of the evidence and issues discussed above, I find that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test the pressure transmitters on the Poplar pipeline at specified intervals.

Item 14: The Notice alleged that Respondent violated 49 C.F.R. § 195.583, 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 . . . . |
>
> (b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.
> (c) If you find atmospheric corrosion during an inspection, you must provide protection against the corrosion as required by § 195.581.

The Notice alleged that Respondent violated § 195.583 by failing to perform documented atmospheric corrosion inspections. Specifically, that Bridger did not have records of any completed atmospheric corrosion inspections and that none of the pipe supports appeared to have been inspected. Violation Report at 14. When the PHMSA inspector asked company officials whether Bridger planned to inspect pipe surfaces that were in contact with concrete supports, Respondent's lead engineer indicated that the company did not have procedures to examine those pipe surfaces and had not documented any external corrosion inspections. Violation Report at 14. The inspector photographed a pipe at a support location at Glendive and included the photograph as evidence in the record. Violation Report Ex. 5.

At the hearing, Respondent's lead engineer stated that while the company had not used specific forms to document its atmospheric corrosion inspections, the company did perform generic inspections and identified corrosive surfaces at times. In its Brief, Bridger introduced an affidavit from the same person, stating that "specific external corrosion inspection procedures were not necessarily written down," but that the company had "routine inspection procedures for pipelines," and that "any significant external corrosion that was found would have been addressed appropriately." The witness also stated that the company had a reference to external corrosion in its operations and maintenance (O&M) manual. Brief Ex. 6 at ¶ 28. Respondent

[14] *In the Matter of Shell Pipeline Company L.P.*, CPF No. 5-2004-5020, Warning Letter (Sept. 23, 2004).

contended that "Bridger [was] in material compliance, *or* [has] been addressing the alleged deficiencies." Brief at 13-14 (emphasis added).

While Bridger's lead engineer testified that the company performed "routine" O&M inspections, the company could not state explicitly how or when these inspections occurred, whether such inspections occurred at the requisite intervals under the regulation, whether the company always checked for atmospheric corrosion during such inspections, or whether such inspections specifically checked pipe surfaces that were in contact with concrete supports—all requirements under § 195.583. Bridger was also unable to produce any records of having performed such inspections, which the company is required to keep under § 195.589(c). Furthermore, a photograph taken at Respondent's pipeline facility indicates that atmospheric corrosion had gone undetected, further evidence that Bridger had not performed atmospheric corrosion inspections within the required intervals.

Finally, Respondent's statements concerning efforts to improve its forms and procedures *after* the PHMSA inspection are not relevant to the determination of whether or not Respondent was in compliance at the time of the inspection. Accordingly, after considering all of the evidence, I find Bridger violated 49 C.F.R. § 195.583 by failing to perform documented atmospheric corrosion inspections, particularly at pipe surfaces in contact with concrete supports.

Freedom of Information Act (FOIA) Issue: Respondent objected generally to the setting of a hearing in this proceeding while the company still had a FOIA request for documents pending with the agency. Bridger argued in its Brief that PHMSA's decision to go forward with the hearing, despite the company's FOIA request and over its objections, constituted "a violation of Respondent's due process rights." Brief at 14. Respondent did not present any evidence or cite any legal authority in support of this claim.

PHMSA has specific procedures in place to guarantee a respondent's procedural due process rights in informal adjudications. *See* 49 C.F.R. Part 190. In accordance with those procedures, PHMSA provided Bridger with all of the materials from the agency's case file well in advance of the date set for the hearing.[15] Therefore, Bridger cannot reasonably assert that its procedural due process rights were violated.

Furthermore, the law is quite clear that an agency may proceed with an adjudication despite a respondent's filing of a FOIA request. As the Supreme Court has stated, "[I]nterference with the agency proceedings opens the way to the use of the FOIA as a tool of discovery, over and beyond that provided by the regulations issued." *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974); *see also*, *Columbia Packaging Co. v. U.S. Dep't of Agric.*, 563 F.2d 495, 499-500 (1st Cir. 1977) (stating that "FOIA was not enacted to provide litigants with an additional discovery tool" and that "discovery in the different types of agency litigation is primarily a matter either for agency regulation or separate Congressional determination").

Based upon the foregoing, I find Respondent's due process rights were not violated by the setting of a hearing in this proceeding while Bridger's FOIA request for documents was still pending.

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[15] *See* 49 C.F.R. § 190.211(e). It should also be noted that PHMSA responded to Bridger's FOIA request on March 7, 2007, approximately six months prior to the hearing. The agency responded to the company's FOIA appeal on October 2, 2008.

The findings of violation contained in this Order will be considered prior offenses in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 3, 4, 5, 10, 11, and 14 in the Notice for violations of §§ 195.214, 195.230, 195.402(c)(1), 195.422(a), 195.428(a), and 195.583, respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids by pipeline or who owns or operates a hazardous liquid pipeline facility is required to comply with the applicable safety standards established under chapter 601.

With respect to several of the proposed compliance order items, Respondent argued that "a grant of jurisdiction to require remedial measures is not an absolute duty to do so under any circumstances," and that a "cost-benefit assessment" of the proposed compliance terms shows that they would be "unnecessary or excessive." Response at 4 and 6–8. At the hearing, Respondent argued that the proposed compliance terms would be very expensive and the cost would far exceed any benefit gained from the remedial measures.

While PHMSA considers expected costs and benefits when promulgating new safety regulations, each operator must comply with them once they become final unless the company has requested and received a waiver. 49 U.S.C. § 60118(a) and (c). PHMSA does not permit the noncompliant operation of a pipeline facility merely because it would be expensive for the operator to adhere to the established set of safety standards. Furthermore, it is entirely possible that Respondent realized an economic *benefit* by avoiding certain activities otherwise required by the regulations. Accordingly, I reject Respondent's argument that PHMSA should refrain from ordering the company to come into compliance with applicable safety regulations.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is hereby ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.214 (Item 3), Bridger shall submit to the Director for approval its welding procedures and supporting documentation showing that such procedures have been qualified using destructive testing in accordance with § 195.214. The procedures must address welding that may be performed during construction, operations, and maintenance activities, including the installation of in-service repair sleeves.

2. With respect to the violation of § 195.230 (Item 4), Bridger shall submit to the Director documentation that weld XR-11 has been excavated, examined, and removed or repaired, as appropriate, in accordance with § 195.230.

3. With respect to the violation of § 195.402(c)(1) (Item 5), Bridger shall submit to the Director for approval its written procedures for ensuring that construction records, maps, and operating history are made available to persons needing them in the field

and any other location as necessary for safe operations and maintenance. Bridger shall update all maps and alignment sheets of the Poplar pipeline used by operations and maintenance personnel so that each document accurately reflects the location of the following: breakout tanks; pump stations; scraper and sphere facilities; pipeline valves; facilities to which § 195.402(c)(9) applies; rights-of-way; safety devices to which § 195.428 applies; all crossings of public roads, railroads, rivers, buried utilities; and foreign pipelines. Each document shall also indicate the following: maximum operating pressure of each pipeline; and diameter, grade, type, and nominal wall thickness of all pipe. Submit documentation of compliance, including a copy of the updated alignment sheets, to the Director.

4. With respect to the violation of § 195.422(a) (Item 10), pursuant to the Notice of Proposed Compliance Order, and based upon Bridger's post-hearing disclosure dated December 21, 2007 (which revealed that certain excavated sleeve-to-pipe fillet welds associated with type-B repair sleeves installed on the Poplar pipeline in 2005 were found to have "toe cracks"), Bridger shall excavate and examine all sleeve-to-pipe fillet welds associated with type-B repair sleeves installed on the Poplar pipeline as part of the referenced integrity repairs of 2005. The method of examination shall be NDT unless Bridger submits to the Director for prior approval a proposal to use another method of examination capable of complying with § 195.422(a). Each excavated weld that has an indication of cracking or other cause for repair must be repaired in accordance with procedures that comply with 49 C.F.R. Part 195 and that have been submitted to the Director for prior approval. Documentation of each excavation, examination, and repair must be maintained and submitted.

5. With respect to the violation of § 195.428(a) (Item 11), Bridger shall ensure that each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment, including pressure transmitter sending signals to another device or a SCADA system that controls pressure, has been inspected and tested in accordance with § 195.428(a) to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used. Develop procedures to ensure future inspections and tests take place at the requisite intervals. Submit documentation of completion, including inspection and test results and developed procedures.

6. With respect to the violation of § 195.583 (Item 14), Bridger must develop and follow procedures for performing atmospheric corrosion inspections of all piping exposed to the atmosphere, giving particular attention to pipe surfaces at soil-to-air interfaces and at pipe supports, among other locations, in accordance with § 195.583. Remediate any atmospheric corrosion found during the inspection in accordance with § 195.583. Documentation of these actions must be maintained and submitted.

7. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and report the cost as follows: (a) total cost associated with preparation, revision of plans and procedures, and performance of studies and analyses; and (b) total cost associated with physical changes to the pipeline infrastructure, including replacements and additions.

8. Documentation of compliance with each item shall be submitted within 60 days of receipt of this Final Order to the Director, Western Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 12300 W. Dakota Ave. # 110, Lakewood, CO 80228-2585.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed $100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 1, 2, 6(a), 6(b), 7, 8(a), 8(b), 9, 12, and 13, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.49 (Notice Item 1) – Respondent's alleged failure to submit an accurate form RSPA F 7000-1.1 for calendar year 2004. The report submitted did not report the correct number of electronic resistance weld pipe miles installed between 1950 and 1959.

49 C.F.R. § 195.204 (Notice Item 2) – Respondent's alleged failure to perform documented inspections of construction and weld repairs in 2005 to ensure they were performed as required by regulation; also, the company's alleged failure to utilize inspectors who were properly trained and qualified in construction and welding processes.

49 C.F.R. § 195.402(a) (Notice Item 6a) – Respondent's alleged failure to follow its own written procedures for conducting periodic reviews of work completed to determine the adequacy of the company's written procedures for *normal* operations and maintenance.

49 C.F.R. § 195.402(a) (Notice Item 6b) – Respondent's alleged failure to follow its own written procedures for conducting periodic reviews of work completed to determine the adequacy of the company's written procedures for *abnormal* operations.

49 C.F.R. § 195.402(c)(12) (Notice Item 7) – Respondent's alleged failure to establish and maintain liaison with local emergency responders, including those at remote locations, to learn their responsibilities and resources when responding to pipeline emergencies and to acquaint the officials with Respondent's ability in responding to emergencies and means of communication.

49 C.F.R. § 195.403(b)(1) (Notice Item 8a) – Respondent's alleged failure to review with personnel at intervals not exceeding 15 months, but at least once each calendar year, their performance in meeting the objectives of Respondent's emergency response training program.

49 C.F.R. § 195.403(c) (Notice Item 8b) – Respondent's alleged failure to verify that its supervisors have a thorough knowledge of the emergency response procedures for which they are responsible to ensure compliance.

49 C.F.R. § 195.410(a) (Notice Item 9) – Respondent's alleged failure to maintain several line markers that were discovered to be down along the Poplar pipeline segment north of Glendive and just south of the Highway 254 crossing.

49 C.F.R. § 195.440 (Notice Item 12) – Respondent's alleged failure to establish an adequate public education program that enables the general public to recognize a pipeline emergency and to report it to the operator or appropriate emergency responders.

49 C.F.R. § 195.579(c) (Notice Item 13) – Respondent's alleged failure to inspect the internal surface of pipe upstream and downstream of pipe replacements that were part of integrity repairs for the Poplar pipeline.

Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. § 195.49 (Notice Item 1), § 195.204 (Notice Item 2), § 195.402(a) (Notice Item 6a), § 195.402(a) (Notice Item 6b), § 195.402(c)(12) (Notice Item 7), § 195.403(b)(1) (Notice Item 8a), § 195.403(c) (Notice Item 8b), § 195.410(a) (Notice Item 9), § 195.440 (Notice Item 12), and § 195.579(c) (Notice Item 13) have occurred and Respondent is hereby advised to correct such conditions. In the event that PHMSA finds a violation for any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. 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 terms of the order, including any required corrective action, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.

William H Gute
for

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

APR 2 2009
Date Issued