



U.S. Department of Transportation
Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

MAY 13 2010

Mr. Randall L. Crawford
President, EQT Midstream and Distribution
EQT Corporation
625 Liberty Avenue
Pittsburgh, PA 15222

Re: CPF No. 1-2006-1006

Dear Mr. Crawford:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation, withdraws certain allegations, assesses a reduced civil penalty of \$108,600, and specifies actions that need to be taken by Equitable to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Eastern Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Byron Coy, Director, Eastern Region, PHMSA
Mr. David Dewey, Esq., Counsel for Equitable Utilities
Mr. Kirk K. Van Tine, Esq., Counsel for Equitrans, L.P., and Equitable Gas Company

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0043 9443]

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

In the Matter of)

EQT Corporation,)
formerly Equitable Utilities Investments, Inc.,)
and Equitable Resources, Inc.,)

Respondent.)

CPF No. 1-2006-1006

FINAL ORDER

On July 11-15 and 25-28, 2005, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an inspection of the Gas Integrity Management Program (IMP) records of Equitable Resources, Inc., now known as EQT Corporation (Equitable or Respondent), in Pittsburgh, Pennsylvania.¹ Equitable operates natural gas pipelines throughout Kentucky, Pennsylvania and West Virginia.

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated December 28, 2006, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed various violations of 49 C.F.R. Part 192, assessing a civil penalty of \$296,400 for the alleged violations, and ordering Respondent to take certain measures to correct the alleged violations. The Notice also proposed finding that Respondent had committed another probable violation of 49 C.F.R. Part 192 and warning Respondent to take appropriate corrective action to address it or be subject to future enforcement action.

By letter dated February 2, 2007, Equitable requested a hearing and sought and received several extensions of time to reply to the Notice. The company provided a substantive response to the Notice by letter dated February 5, 2007 (Response). Respondent contested all of the allegations and requested a hearing. A hearing was held on December 11, 2007, in Washington, D.C., with

¹ OPS inspected the IMP records of Equitable Resources, Inc., and served the Notice on Equitable Utilities Investments, Inc., which became EQT Corporation in 2009. EQT Corporation is also the parent company of Equitrans, L.P., and the Equitable Gas Company, the two entities that responded to the Notice in this matter.

Jim Curry, Attorney, Office of Chief Counsel, PHMSA, presiding. On January 18, 2008, Respondent provided certain documents and information requested during the hearing. During the hearing, Respondent also requested the opportunity to submit a post-hearing brief and subsequently sought and received various extensions of time to file the post-hearing brief on the basis that Respondent and OPS had undertaken informal settlement discussions. After several extensions, Equitable submitted its post-hearing brief (Closing) on May 16, 2008. Equitable was represented by counsel throughout the proceeding.

FINDINGS OF VIOLATION

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

Item 1(A): The Notice alleged that Respondent violated 49 C.F.R. § 192.917(b), which states:

§ 192.917 How does an operator identify potential threats to pipeline integrity and use the threat identification in its integrity program?

(a) . . .

(b) *Data gathering and integration.* To identify and evaluate the potential threats to a covered pipeline segment an operator must gather and integrate existing data and information on the entire pipeline that could be relevant to the covered segment. In performing this data gathering and integration, an operator must follow the requirements in [American Society of Mechanical Engineers/American National Standards Institute] ASME/ANSI B31.8S, section 4. At a minimum, an operator must gather and evaluate the set of data specified in Appendix A to ASME/ANSI B31.8S, and consider both on the covered segment and similar non-covered segments, past incident history, corrosion control records, continuing surveillance records, patrolling records, maintenance history, internal inspection records and all other conditions specific to each pipeline.

The Notice alleged that Equitable violated 49 C.F.R. § 192.917(b) by failing to properly gather and integrate existing data and information on its pipelines in order to identify and evaluate the potential threats to covered pipeline segments.² Specifically, the Notice alleged three deficiencies in Equitable's procedures. First, it alleged that Equitable's IMP did not contain operator-specific steps for obtaining and documenting required data. Second, it alleged that the IMP did not require data to be obtained from Equitable documents that corresponded to the sources specified in the rule. Third, it alleged that the IMP did not include a detailed plan for the validation of assumed values for missing data. Each of these allegations is discussed separately below.

² Section 192.917(b) incorporates by reference ASME/ANSI B31.8S, section 4, which lists requirements for gathering, reviewing, and integrating IMP data.

As for the first allegation that Equitable failed to have company-specific steps for obtaining and documenting required data, the company submitted evidence in its Closing that it did, in fact, have such procedures in place.³ Upon review of these documents, it is apparent that the cited procedures are general in nature because they often use the term “Company” when describing who is to follow the plan. This alone, however, does not prove that the IMP was not tailored to Equitable’s particular pipeline system. Moreover, OPS did not explain what Equitable-specific steps for obtaining and documenting data were missing, or why this alleged lack of specificity constituted a violation of § 192.917(b). In the absence of a more specific allegation or explanation and in light of the evidence in the record, I withdraw this portion of Item 1A.

As for the second allegation that the company’s IMP did not require the use of documentation from sources specified in the rule, I note that section 4.3 of ASME B31.8S (“ASME Code”) sets out the requirement that data “can be obtained from within the operating company and from external sources....” Equitable’s IMP states that the company will obtain data from sources within the company and from external sources and lists the types of data and their sources.⁴ Therefore, these procedures, on their face, appear to require the collection of data in accordance with the requirements of the regulation. OPS did not present evidence or argument to meet its burden of proof that such procedures are deficient either under 49 C.F.R. § 192.917(b) or the referenced ASME Code. Accordingly, upon review of all of the evidence, I withdraw this portion of Item 1A.

As for the third allegation that the IMP did not include a detailed plan for the validation of missing data, Respondent argued that its IMP did, in fact, provide mechanisms for dealing with “data gaps.”⁵ Careful treatment of missing or questionable data is an important part of the gas IMP framework. If such data are not properly accounted for, the risk assessment required under § 192.917 may produce inaccurate results. Since October 2004, OPS has made available to operators its gas IMP compliance inspection protocols.⁶ Protocol C.02 pertains to inspections for compliance with the data gathering and integration requirements of § 192.917(b).⁷ The Protocol provides that: “If the operator lacks sufficient data or where data quality is suspect, verify that the operator has followed the requirements in [the ASME Code].”⁸

Section 192.917(b) and the referenced ASME Code set out requirements for addressing missing or questionable data. First, section 4.1 of the ASME Code requires operators to use a “systematic process ... to collect and effectively utilize the data elements necessary for risk

³ Closing at 6, citing IMP Sections 4.5.1, 4.5.2, and 4.5.3 as evidence that it had company-specific steps for obtaining and documenting required data.

⁴ Equitable IMP Procedures, section 4.5.2. – Data Sources.

⁵ Closing at 7, citing IMP Section 4.5.2.

⁶ PHMSA-OPS Gas Integrity Management Protocol Results Form (Oct. 2004) (available at <http://primis.phmsa.dot.gov/gasimp/documents.htm>).

⁷ Id. at Protocol C.02.

⁸ Protocol C.02.d, citing NACE Code Sections 4.2.1, 4.4, Appendix A, and 5.7(e).

assessment” of their pipeline segments. Next, section 4.2.1 provides that if data on a particular threat to a pipeline segment are not available, operators shall assume that such threat applies to that pipeline segment. Finally, section 4.4 requires operators to create

“ . . . a plan for collecting, reviewing, and analyzing the data... [The plan] shall be created and in place from the conception of the data collection effort. These processes are needed to verify the quality and consistency of the data. Records shall be maintained throughout the process that identify where and how unsubstantiated data is used in the risk assessment process, so its potential impact on the variability and accuracy of assessment results can be considered.”

Equitable’s procedures for the validation of assumed values for missing data elements must be assessed in light of these requirements. Equitable offered a section of its IMP procedures as evidence that it had addressed “data gaps.”⁹ Respondent’s procedure deals with data gaps, i.e., plans for data-gathering activities when data is missing, etc, but it does not address the *validation* of data values that have been assumed. Equitable initiated efforts to validate assumed data only after the PHMSA inspection, when it engaged a third-party expert to conduct testing to confirm pipe grades.¹⁰ Accordingly, after considering all the evidence, I find that Equitable violated 49 C.F.R. § 192.917(b), including ASME B31.8S, section 4 referenced therein, by failing to include in its IMP a detailed plan for the validation of assumed values for missing data.

Item 1(B): The Notice alleged that Respondent violated 49 C.F.R. § 192.917(b), as quoted above, by failing to gather certain required data and information on its pipelines. Specifically, the Notice alleged that Equitable failed to gather, from its own records, pipe type and grade, seam type, wall thickness, coating and the basis for calculating a pipeline’s maximum allowable operating pressure (MAOP). It is undisputed that the regulation requires Equitable to “gather and integrate existing data and information” on these pipeline characteristics. It is also undisputed that Equitable did not collect some of this data from its own records.¹¹

Respondent argued, however, that the regulation only required it to gather “existing data,” and that some pipeline characteristics data on its pipelines was not available.¹² Respondent explained that certain of its pipelines were constructed before the implementation of pipeline record-keeping requirements and that some data had been lost in a flood in the mid-1980’s. While it is clear that Equitable did not have records of certain pipeline characteristics, there is no evidence that Equitable failed to gather existing information from available records. Accordingly, based on the foregoing, I find that OPS has failed to meet its burden of proving a violation of 49 C.F.R. § 192.917(b), including ASME B31.8S, section 4 code referenced therein, and therefore order that Item 1B be withdrawn.

⁹ Closing at 7.

¹⁰ *Id.* at 10.

¹¹ *Id.*

¹² Response at 3-4, Closing at 10-11.

Item 1(C): The Notice alleged that Respondent violated 49 C.F.R. § 192.917(b), as quoted above, by failing to maintain pipe characteristics data in its IMP. Specifically, the Notice alleged that the grade of plastic on a certain gas transmission line was listed incorrectly, and that the MAOP and test pressure of the pipeline were incorrectly listed as being the same. Equitable explained that the source data was correct but admitted that it had incorrectly entered this data in the spreadsheet used to collect pipeline data for its IMP.¹³ Equitable argued that this data error was not a pipeline safety issue and that the pipeline segment was low risk.¹⁴ Although this particular inaccuracy caused no apparent harm, accurate data entry is important to the quality of Equitable's IMP. Inaccurate data can result in a failure to identify and address the actual risks on a pipeline segment. Based on the foregoing, I find that Respondent violated 49 C.F.R. § 192.917(b) by failing to maintain pipe characteristics data in its IMP.

Item 1(D): The Notice alleged that Respondent violated 49 C.F.R. § 192.917(b), as quoted above, by failing to follow section 4 of the ASME Code in considering "unavailable data" on its pipeline segments when conducting the required threat identification and risk assessment. The ASME Code provides a process for taking certain actions when an operator lacks the data necessary to identify potential threats to pipeline integrity. Section 4.2.1 of the ASME Code provides that if data needed to perform a risk assessment is unavailable, "it shall be assumed that the particular threat applies to the pipeline segment being evaluated." Section 4.4 further provides that "[r]ecords shall be maintained throughout the process that identify where and how unsubstantiated data is used in the risk assessment process, so its potential impact on the variability and accuracy of assessment results can be considered." Finally, Appendix A of the ASME Code provides that "where the operator is missing data, conservative assumptions shall be used when performing the risk assessment or alternatively the segment shall be placed in a higher priority category." The regulations therefore permit operators to make conservative assumptions in lieu of using actual data but also require that operators show how they made such assumptions and to document them.¹⁵

In response, Equitable argued that it had considered unavailable data by making conservative assumptions where data was not available, as permitted by the regulation.¹⁶ For example, Equitable argued that it considered seam failure threats on pre-1970 pipe even though there was no history of seam failures on its system,¹⁷ yet provided no records or evidence to document any of these conservative assumptions. The OPS Violation Report cited Respondent's IMP procedures and certain data forms as evidence that the company did not adequately consider unavailable data, yet the report failed to indicate how it did so or what records were missing. While Equitable's efforts to address unavailable data may have been inadequate, in the absence of a more detailed allegation or relevant evidence, the record in this case does not support a finding of violation. Accordingly, based on the foregoing, I find that OPS has failed to meet its

¹³ Response at 5, Closing at 12.

¹⁴ Closing at 12.

¹⁵ ASME B31.8S, Sections 4-5 & Appendix A.

¹⁶ Response at 5, Closing at 13.

¹⁷ Closing at 13.

burden of proving a violation of 49 C.F.R. § 192.917(b), including the ASME B31.8S section 4 code referenced therein, and therefore order that Item 1(D) be withdrawn.

Item 1(E): The Notice alleged that Respondent violated 49 C.F.R. § 192.917(b), as quoted above, by failing to make sufficient efforts to obtain required data on its pipelines, as required by section 4 of the ASME Code. Neither the Notice nor the Violation Report explain how or why Equitable's efforts were insufficient to obtain required data. In its Response, Equitable indicated that as part of its data-gathering effort, it used a consultant familiar with the company's pipeline systems to review all engineering records and field data.¹⁸ At the hearing, OPS indicated that Equitable had not employed the necessary resources to obtain pipeline system data because it had only used one consultant to obtain the data. OPS did not provide an explanation as to why using just one consultant was insufficient. The fact that Equitable used one consultant to perform its IMP data collection efforts does not, without more, prove that a violation has occurred. Accordingly, based on the evidence, I find that OPS has failed to meet its burden of proving a violation of 49 C.F.R. § 192.917(b), including the ASME B31.8S section 4 code referenced therein, and therefore order that Item 1(E) be withdrawn.

Item 2(A): The Notice alleged that Respondent violated 49 C.F.R. § 192.925(b)(1), which states:

§ 192.925 What are the requirements for using External Corrosion Direct Assessment (ECDA)?

(a) *Definition.* ECDA is a four-step process that combines pre-assessment, indirect inspection, direct examination, and post assessment to evaluate the threat of external corrosion to the integrity of a pipeline.

(b) *General requirements.* An operator that uses direct assessment to assess the threat of external corrosion must follow the requirements in this section, in ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7), section 6.4, and in NACE RP 0502-2002 (incorporated by reference, *see* § 192.7). An operator must develop and implement a direct assessment plan that has procedures addressing preassessment, indirect examination, direct examination, and post-assessment. If the ECDA detects pipeline coating damage, the operator must also integrate the data from the ECDA with other information from the data integration (§ 192.917(b)) to evaluate the covered segment for the threat of third party damage, and to address the threat as required by § 192.917(e)(1).

(1) *Preassessment.* In addition to the requirements in ASME/ANSI B31.8S, section 6.4 and NACE RP 0502-2002, section 3, the plan's procedures for preassessment must include –

(i) Provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment; and

(ii) The basis on which an operator selects at least two different, but complementary indirect assessment tools to assess each ECDA Region. If an operator utilizes an indirect inspection method that is not discussed in Appendix A of NACE RP0502-2002, the operator must demonstrate the

¹⁸ Response at 5.

applicability, validation basis, equipment used, application procedure, and utilization of data for the inspection method.

The Notice alleged that Equitable violated 49 C.F.R. § 192.925(b)(1), including section 6.4 of the ASME Code and section 3 of NACE RP 0502-2002 (NACE Standard), by failing to conduct an evaluation to determine which data elements were necessary for an adequate External Corrosion Direct Assessment (ECDA) for specific pipelines and High Consequence Areas (HCAs).¹⁹ Specifically, the Notice alleged that Equitable failed to obtain all required or critical data and to make conservative assumptions where data was lacking or questionable, during its ECDA pre-assessment.²⁰ The Notice alleged that Equitable did not know where bare pipe started and ended on Line H-153 and that such pipe transition knowledge was essential data for a proper ECDA pre-assessment.

Section 192.925(b)(1) requires Equitable to follow section 3 of the NACE Standard, which provides that an operator must “define minimum data requirements based on the history and condition of the pipeline segment” and “identify data elements that are critical to the success of the ECDA process.”²¹ Apparently, it is this “critical elements” requirement that Equitable allegedly failed to meet when it lacked basic information about the location of bare- to coated-pipe transitions on the H-153 line.

In response, Equitable argued that there is no evidence showing that the company failed to identify or use all “critical elements” in developing its ECDA pre-assessment process.²² The company argued that section 3.2.2 of the NACE Standard does not require a specific list of data elements, and that the determination of required or “critical elements” is up to the company and not the agency.²³ Respondent is correct that the NACE Standard allows an operator some flexibility in determining “critical elements,” but this judgment is not left entirely to the discretion of the operator. OPS must be able to assess the reasonableness of an operator’s choices in light of the history and condition of its pipelines and in the context of the operator’s own unique IMP.

The problem here is that OPS did not present evidence or analysis proving that Equitable’s choice of “critical elements” was inadequate or why it was essential, for purposes of the regulation, that Equitable know the exact location of bare- to coated-pipe transitions as part of

¹⁹ “High Consequence Areas” are geographic areas located in proximity to gas pipelines where there is a heightened risk of injury to life and property in the event of a pipeline failure. For the definition of HCAs, see 49 C.F.R. § 192.903.

²⁰ The Gas IMP regulations permit Equitable to use the ECDA process, where appropriate, to evaluate external corrosion threats on its pipelines. The first step in the process is pre-assessment. In this step, the operator must determine whether ECDA is feasible and, if so, select at least two indirect inspection tools and identify ECDA regions. NACE RP0502-2002, Section 3. ECDA regions consist of one or more sections of pipeline with similar physical characteristics and operating history and in which the same indirect inspection tools are used. Section 2

²¹ Section 3.2.1.1.

²² Response at 6, Closing at 15.

²³ Closing at 16.

the pre-assessment process. On the contrary, it appears that Equitable took steps during the ECDA process to account for such uncertainties by making conservative assumptions where data was lacking or questionable. Equitable argued that although the exact location of the bare-to-coated-pipe transitions may not have been known, the company extended its electronic surveys beyond the estimated transition points.²⁴ OPS did not rebut Equitable's argument or provide an explanation as to why the extension of electrical surveys was not an appropriate conservative assumption.

Accordingly, based upon a review of all of the evidence, I find that OPS has failed to meet its burden of proving a violation of 49 C.F.R. § 192.925(b)(1), including section 6.4 of the ASME Code and section 3 of the NACE Standard, and therefore order that Item 2(A) be withdrawn.

Item 2(B): The Notice alleged that Respondent violated 49 C.F.R. § 192.925(b)(1), as quoted above, by failing to properly conduct ECDA on Line H-153. Specifically, the Notice alleged that Equitable had indicated that it did not employ ECDA on areas with cased pipeline segments, yet records for H-153 showed a cased section within that ECDA region. The Notice also alleged that the H-153 ECDA data made "suspect" the feasibility of Equitable's use of ECDA as an assessment method and how ECDA regions were determined. During the hearing, Equitable provided a document indicating that it had not applied ECDA to the areas of cased pipeline, as alleged in the Notice.²⁵ OPS acknowledged during the hearing that this document would have changed its view on this Item. Accordingly, based upon a review of all of the evidence, I order that Item 2(B) be withdrawn.

Item 2(C): The Notice alleged that Respondent violated 49 C.F.R. § 192.925(b)(1), as quoted above, including section 3 of the NACE Standard, by failing to properly select indirect examination tools to assess each ECDA region. Specifically, the Notice alleged that excavations performed during the direct examination step revealed that a "coating holiday" which had been detected during an earlier indirect examination actually turned out to a section of bare pipe. The Notice alleged that "[T]his anomalous result raises questions regarding the adequacy of the ECDA process... Specifically, this result makes suspect the choice of indirect examination tools."²⁶

²⁴ Id.

²⁵ Equitable provided a copy of GTI Form C1, "Indication Severity Classification and Priority Category and Reassessment Dates." This form is dated November 5, 2005, which falls after the OPS inspection. During the hearing, Equitable explained that it had mistakenly dated the form "2005," instead of "2004." After the hearing, Equitable provided a signed declaration that the correct date of completion of the form was November 5, 2004, and an explanation of the error.

²⁶ Notice at 6.

In response, Equitable argued that the indirect examination tool it had selected was capable of providing accurate results at bare- to coated-pipe transitions.²⁷ Equitable explained that when it performed the survey, the “tool identified an area of pipe consistent with bare pipe” and that it had verified the tool results by performing an excavation of the indication at the suspected bare-to coated-pipe transition.²⁸

Although the excavations performed by Equitable may have “raised questions” about the adequacy of its ECDA process, such doubts do not constitute proof of a violation of § 192.925(b)(1). The regulation requires Equitable to follow section 3.4 of the NACE Standard when selecting assessment tools and to select a minimum of two tools for all ECDA regions. The tools must complement each other, based on their ability to reliably detect corrosion activity and/or coating holidays under the specific pipeline and environmental conditions anticipated. In other words, an operator must use tools suited to the type of pipe being inspected and the environment in which it is buried. Tool selection is important because certain tools are less effective, or not effective at all, on bare versus coated pipe. If Equitable’s tool selection did not account for the location of bare versus coated pipe, the company might be applying tools which would not provide accurate results.

OPS cited various Equitable documents as evidence that the company had not properly selected indirect examination tools, including IMP procedures and inspection results. Yet it is not clear why, how, or what parts of these documents prove a violation. The cited documents do not appear relevant to the allegation and OPS did not provide an explanation as to how the documents proved a violation. Absent any such explanation and in light of Equitable’s reasonable arguments supporting its ECDA tool selection process, I find that OPS has failed to meet its burden of proving a violation of 49 C.F.R. § 192.925(b)(1) and therefore order that Item 2(C) be withdrawn.

Item 2(D): The Notice alleged that Respondent violated 49 C.F.R. § 192.925(b)(1), as quoted above, by failing to document the basis on which it selected at least two different, but complementary, indirect assessment tools to assess each ECDA region. Specifically, the Notice alleged that Respondent did not document the basis for the selection of tools actually used to assess Line H-153. It is undisputed that during the pre-assessment stage, Equitable planned to use Close Interval Survey (CIS) and Direct Current Voltage Gradient (DCVG) tools on H-153 but later opted to use a Pipeline Current Mapper (PCM) tool instead of DCVG.

In response, Equitable argued that the regulation does not require it to document the basis for its selection of indirect assessment tools.²⁹ I disagree. The regulation requires an operator, as part of its pre-assessment procedures, to include “the basis on which an operator selects at least two different, but complementary indirect assessment tools *to assess each ECDA Region*” (emphasis added).³⁰ In addition, the 2004 OPS IMP Inspection Protocols indicated that OPS would verify

²⁷ Closing at 20.

²⁸ *Id.*

²⁹ Equitable supplementary information, Jan. 18, 2008, at 2.

³⁰ 49 C.F.R. § 912.925(b)(1)(ii).

documentation of the basis for tool selections during inspections.³¹ While the record contains documents showing which tools Equitable used, as well as general guidance on when certain tools should and should not be used, none of these documents explains the *basis* on which specific tools were selected for particular ECDA regions.

Absent such documentation, neither Equitable nor OPS can verify that proper tools were selected. In its Closing, Equitable argued that it had documented its basis for tool selection by adopting the Gas Technology Institute (GTI) ECDA Implementation Protocol as part of its IMP procedures.³² Respondent also explained why it changed from using DCVG to PCM as its second indirect tool.³³ Neither Equitable's adoption of the GTI protocol nor its explanation during and after the hearing constitutes adequate documentation of the basis for selecting two different but complementary tools for each particular ECDA region. Regardless of the merits of Respondent's explanation of the switch from DCVG to PCM, the record fails to show, as of the date of the inspection, that Equitable had included a documented basis for tool selection as part of its pre-assessment procedures.

Accordingly, after considering all of the evidence in the record, I find that Respondent violated 49 C.F.R. § 192.925(b)(1) by failing to document the basis on which it selected at least two different but complementary indirect assessment tools to assess each ECDA region.

Item 2(E): The Notice alleged that Respondent violated 49 C.F.R. § 192.925(b)(1), as quoted above, including section 3 of the NACE Standard, by failing to properly identify ECDA regions on Line H-153. Specifically, it alleged that Equitable failed to base the selection of ECDA regions on certain pipeline construction specifications and environment factors, including soil, environment, corrosion protection history, or uncertainties about pipe design information (e.g., wall, grade, and coating). The Notice also alleged that Equitable did not adjust ECDA regions after finding different-than-expected conditions and that it improperly grouped cased and non-cased pipe in the same region.

In response, Equitable argued that under § 192.925(b)(1) and the NACE Standard, it was not required to base its identification of ECDA regions on particular factors, and that, even if it were, the company in fact considered a variety of factors in selecting the regions. Section 3.5 of the NACE Standard requires an operator to define the criteria it uses for identifying ECDA regions.

³¹ Protocol D.02.c.

³² Closing at 21.

³³ Closing at 22.

The NACE Standard states: “An ECDA region is a portion of a pipeline segment that has similar physical characteristics, corrosion histories, expected future corrosion conditions, and that uses the same indirect inspection tools.”³⁴ In defining such criteria, operators must “consider all conditions that could significantly affect external corrosion.”³⁵

In this case, however, OPS presented no evidence or explanation as to why Equitable was required to consider the additional factors listed in the Notice (i.e., “soil, environment, or CP history”) in order to satisfy the requirements of section 3.5 of the NACE Standard. OPS did not show how or why Equitable selected ECDA regions on the H-153 pipeline. As a result, there is inadequate information in the record to show that Respondent failed to properly select ECDA regions.

Equitable further argued that it did not adjust ECDA regions because it did not find any differences between expected and as-found conditions. Here, again, there is no evidence in the record that shows a difference between expected and as-found conditions that would have required Respondent to adjust ECDA regions.

Finally, Equitable argued that it did not put cased pipe into ECDA regions with uncased pipe, as alleged in the Notice. Respondent explained that it extended some of its surveys beyond the ends of uncased pipe simply to ensure that no uncased pipe was overlooked. Respondent also provided a document showing that it did, in fact, exclude the H-153 cased pipe from its ECDA.³⁶

Accordingly, after considering all of the evidence in the record, I order that Item 2(E) be withdrawn.

Item 2(F): The Notice alleged that Respondent violated 49 C.F.R. § 192.925(b)(2), which states:

**§ 192.925 What are the requirements for using External Corrosion
Direct Assessment (ECDA)?**

- (a) ...
- (b) *General requirements.* An operator that uses direct assessment to assess the threat of external corrosion must follow the requirements of this

³⁴ Section 3.5.1.1.1.

³⁵ Section 3.5.1.1 provides that “pipeline operators *should* define criteria for identifying ECDA regions” (emphasis added). PHMSA expects operators to implement “should” statements in industry standards that are invoked by regulation. PHMSA communicates this expectation and other gas IMP guidance to operators via the Gas Transmission Pipeline Integrity Management website at <http://primis.phmsa.dot.gov/gasimp>. Frequently Asked Question No. 244 provides: “...OPS expects operators to implement “should” statements in industry standards that are invoked by the rule. Operators may choose to implement an alternative approach in meeting the recommendations of invoked standards. If this approach is taken, program requirements for the alternative approach must exist in IM Program documents and records must be generated by the alternative approach. The IM Program documents must also technically justify that the alternative approach provides an equivalent level of protection. If an operator chooses not to implement a “should” statement in an invoked standard, a sound technical basis for why it has not been implemented must be documented in the IM Program documents.”

³⁶ GTI Form C-1, for Line H-153.

section in ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7), section 6.4, and in NACE RP 0502-2002 (incorporated by reference, *see* § 192.7). An operator must develop and implement a direct assessment plan that has procedures addressing preassessment, indirect examination, direct examination, and post-assessment. If the ECDA detects pipeline coating damage, the operator must also integrate the data from the ECDA with other information from the data integration (§ 192.917(b)) to evaluate the covered segment for the threat of third party damage, and to address the threat as required by § 192.917(e)(1).

(1) ...

(2) *Indirect examination.* In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE RP 0502-2002, section 4, the plan's procedures for indirect examination of the ECDA regions must include-

(i) Provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment;

(ii) Criteria for identifying and documenting those indications that must be considered for excavation and direct examination. Minimum identification criteria include the known sensitivities of assessment tools, the procedures for using each tool, and the approach to be used for decreasing the physical spacing of indirect assessment tool readings when the presence of a defect is suspected;

(iii) Criteria for defining the urgency of excavation and direct examination of each indication identified during the indirect examination. These criteria must specify how an operator will define the urgency of excavating the indication as immediate, scheduled or monitored; and

(iv) Criteria for scheduling excavation of indications for each urgency level.

The Notice alleged that Equitable violated 49 C.F.R. § 192.925(b)(2)(ii), by failing to document the criteria it used for decreasing the physical spacing of indirect assessment tool readings when the presence of a defect was suspected. Specifically, it alleged that Equitable did not document the criteria for changing the spacing of PCM tool readings on Line H-153. OPS asserted that Equitable had used a different PCM tool spacing than what was recommended in the tool manual. Equitable admitted this but argued that it had done so to allow for a greater number of PCM readings and not in response to a suspected defect.³⁷ Accordingly, based on the foregoing, I find that OPS has failed to meet its burden of proving a violation of 49 C.F.R. § 192.925(b)(2) and therefore order that Item 2F be withdrawn.

Item 2G: The Notice alleged that Respondent violated 49 C.F.R. § 192.925(b)(2), as quoted above, including section 4 of the referenced NACE Standard, by failing to perform an alignment and comparison of the data from the ECDA inspection tools used on Line H-153. Section 4.3 of the NACE Standard, entitled "Alignment and Comparison," requires that after an operator has gathered all indirect inspection data, it must identify and align all indications or deviations

³⁷ Closing at 25-26.

revealed by different ECDA tools for comparison. The Notice also alleged that Equitable's IMP failed to describe an Equitable-specific process for this data alignment and comparison process.

In response, Equitable first argued that it had properly aligned and compared ECDA data on Line H-153 by reviewing three separate contractor ECDA reports, and by comparing the indications in each report according to common pipeline stationing and above-ground references.³⁸ I find Respondent's argument unpersuasive. Equitable's procedures for alignment and comparison required the company first to "align two or more sets of tool data for the region by comparing start and stop locations, as well as above ground reference locations."³⁹ Next, the procedures required Equitable to "overlay two or more data sets on top of a virtual centerline for comparison."⁴⁰

Equitable's review of the three separate tool reports failed to comply with the alignment and comparison procedures required either by the regulation or the company's own procedures. I interpret the use of the word "alignment" in the NACE Standard to require Equitable to put separate ECDA data together in a common format or document and to compare that data by the use of a common reference point. Equitable's own alignment and comparison procedures are consistent with this interpretation because they require the company to "overlay" data onto a "virtual centerline for comparison."⁴¹ When Equitable performs an undocumented review of three separate ECDA reports, alignment and comparison only takes place, if at all, in the mind of the person performing the review. This does not allow either Equitable or PHMSA to determine whether the alignment and comparison process has been done properly. I find that section 4.3 of the NACE Standard requires an operator to define the criteria it uses for identifying ECDA regions and to undertake an alignment and comparison of the data in a manner that is documented and verifiable, a process that Equitable failed to perform.

Equitable next argued that it was not required to have an "Equitable-specific process" for the alignment and comparison of ECDA data. OPS did not explain what it meant by an Equitable-specific process, or why Equitable's existing procedures violated the regulation. In the absence of an explanation of the alleged inadequacies, or other evidence of a violation, I withdraw this portion of Item 2G.

Accordingly, based upon a review of the record, I find that Equitable violated § 192.925(b)(2), including section 4 of the referenced NACE Standard, by failing to perform an adequate alignment and comparison of ECDA inspection tool results.

Item 2H: The Notice alleged that Respondent violated 49 C.F.R. § 192.925(b)(2), as quoted above, and § 192.925(b)(3), which provides:

³⁸ Id. at 27.

³⁹ IMP Section 7, GTI Protocol Section 4.5

⁴⁰ Id.

⁴¹ Id.

§ 192.925 What are the requirements for using External Corrosion Direct Assessment (ECDA)?

(a) ...

(b) ...

(1) ...

(2) *Indirect examination.* In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE RP 0502-2002, section 4, the plan's procedures for indirect examination of the ECDA regions must include- . . .

(iii) Criteria for defining the urgency of excavation and direct examination of each indication identified during the indirect examination. These criteria must specify how an operator will define the urgency of excavating the indication as immediate, scheduled or monitored:

(3) *Direct examination.* In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE RP 0502-2002, section 5, the plan's procedures for direct examination of indications from the indirect examination must include-

(i) Provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment;

(ii) Criteria for deciding what action should be taken if either:

(A) Corrosion defects are discovered that exceed allowable limits (Section 5.5.2.2 of NACE RP0502-2002), or

(B) Root cause analysis reveals conditions for which ECDA is not suitable (Section 5.6.2 of NACE RP0502-2002);

(iii) Criteria and notification procedures for any changes in the ECDA Plan, including changes that affect the severity classification, the priority of direct examination, and the time frame for direct examination of indications; and

(iv) Criteria that describe how and on what basis an operator will reclassify and reprioritize any of the provisions that are specified in section 5.9 of NACE RP0502-2002.

The Notice alleged that Equitable failed to comply with § 192.925(b)(2)(iii) and (b)(3), by failing to document or apply criteria for defining the urgency of excavation and direct examination of each corrosion indication identified during the indirect examination process. The Notice also alleged that Equitable did not use criteria that took into account the likelihood of current corrosion and an evaluation of corrosion history. The Notice referenced section 7 of Equitable's IMP and the inspection results for Line H-153 as evidence in support of this allegation.

In response, Equitable argued that its IMP did include adequate criteria for classifying and prioritizing corrosion indications.⁴² A review of the record indicates that Equitable's IMP did contain procedures for classifying indication severity, including a table for determining severity on the basis of results from several types of ECDA tools, and procedures for prioritizing the

⁴² Closing at 29, citing Sections 4.6. and 5.3.6 of the GTI ECDA Implementation Protocol.

direct assessment of corrosion indications. The company's procedures also required Equitable to consider corrosion history.⁴³ At the hearing, Equitable provided evidence that showed it had documented the severity of indications and prioritized direct assessments based on a ranking of corrosion severity.⁴⁴ OPS offered no other evidence or explanation to rebut the company's arguments and evidence. Accordingly, based upon a review of the record, I find that OPS has failed to meet its burden of proving a violation of 49 C.F.R. §§ 192.925(b)(2) and (b)(3) and therefore order that Item 2H be withdrawn.

Item 2I: The Notice alleged that Respondent violated 49 C.F.R. § 192.925(b)(2), as quoted above, by failing to properly perform the indirect assessment step of the ECDA process. Specifically, it alleged that the ECDA results "and/or Equitable's interpretation of these indications" were inadequate because, during a subsequent direct assessment excavation, Equitable found bare pipe where it had suspected a coating anomaly on coated pipe. The Notice referenced section 7 of Equitable's IMP and the inspection results for Line H-153 as evidence in support of this allegation. The Notice further alleged that this discovery of bare pipe was "indicative of the inadequacy of the Equitable ECDA process" and made "suspect" the adequacy of the indications obtained from the tools, but the Notice failed to tie Equitable's conduct to any specific requirement in § 192.925(b)(2).

In response, Equitable argued that it had extended its ECDA surveys beyond suspected bare- to coated-pipe transitions as a conservative measure to ensure that both bare and coated pipe were properly assessed. The company contended that the indication in question occurred in the vicinity of a known bare- to coated-pipe transition. Equitable explained that it excavated the indication and confirmed that it was on bare pipe and that the ECDA tool was functioning properly. OPS offered no other evidence or explanation to rebut the company's arguments and evidence. Accordingly, based upon a review of the record, I find that OPS has failed to meet its burden of proving a violation of 49 C.F.R. § 192.925(b)(2) and therefore order that Item 2I be withdrawn.

Item 2J: The Notice alleged that Respondent violated 49 C.F.R. § 192.925(b)(2), as quoted above, and § 192.917(e)(1), which provides:

§ 192.917 How does an operator identify potential threats to pipeline integrity and use the threat identification in its integrity program?

(a) ...

(e) *Actions to address particular threats.* If an operator identifies any of the following threats, the operator must take the following actions to address the threat.

(1) *Third party damage.* An operator must utilize the data integration required in paragraph (b) of this section and ASME/ANSI B31.8S, Appendix A7 to determine the susceptibility of each covered segment to the threat of third party damage. If an operator identifies the threat of third party damage, the operator must implement comprehensive additional

⁴³ GTI ECDA Implementation Protocol, Section 5.3.7.

⁴⁴ Closing at 29, citing GTI Form C-1 for Line H-153.

preventive measures in accordance with § 192.935 and monitor the effectiveness of the preventive measures. If, in conducting a baseline assessment under § 192.921, or a reassessment under § 192.937, an operator uses an internal inspection tool or external corrosion direct assessment, the operator must integrate data from these assessments with data related to any encroachment or foreign line crossing on the covered segment, to define where potential indications of third party damage may exist in the covered segment.

An operator must also have procedures in its integrity management program addressing actions it will take to respond to findings from this data integration. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 192.917(e)(1) by failing to address third-party damage data as part of its pre-assessment process. The Notice also alleged that Respondent violated 49 C.F.R. § 192.925(b)(2) by failing to have a sufficiently documented process for integrating and analyzing ECDA and third-party damage data or for identifying potential areas of third-party damage that required remedial action. Specifically, it alleged that Equitable failed to perform such an analysis during the ECDA for Line H-153.

In response, Equitable argued that it did consider third-party damage data in the pre-assessment phase by adopting procedures that required the collection of such data.⁴⁵ The company also argued that it had included a specific process for integrating and analyzing such data, along with ECDA results, in its IMP procedures.⁴⁶ However, in its Response, the company also admitted that only after the PHMSA inspection had it reviewed Line H-153 data alongside aerial alignment maps and in the field to determine the location of foreign utility crossings. While Equitable appears to have had some process for integrating and analyzing third-party damage and ECDA data, such process was not actually implemented until after the OPS inspection. Accordingly, based on the foregoing, I find that Equitable violated 49 C.F.R. §§ 192.917(e)(1) and 192.925(b)(2) by failing to have an adequate process for integrating and analyzing ECDA data with data related to third-party damage and that it failed to perform such an analysis for Line H-153.

⁴⁵ Closing at 31. Equitable explained that its ECDA Implementation Protocol required the collection of third-party damage data. Respondent cited elements 2.11 and 5.8 of its *Data Element Tables (DETs)*, which require it to collect data on the proximity of its pipelines to other pipelines, structures, electric lines and rail crossings, as well as data on historical third-party damage.

⁴⁶ Closing at 31, citing Equitable *ECDA Implementation Protocol, Section 4.5*. This section requires Equitable to overlay the pre-assessment data it has collected in its DET with the data collected from its ECDA process. The DETs contain elements for third-party damage, including proximity to other structures such as pipelines and railroads, and history of third-party damage.

Item 2K: The Notice alleged that Respondent violated 49 C.F.R. § 192.925(b)(3), as quoted above, by failing to include in its ECDA plan, as required by § 192.925(b), the “Criteria and notification procedures for any changes in the ECDA Plan, including changes that affect the severity classification, the priority of direct examination, and the time frame for direct examination of indications.”⁴⁷ Specifically, it alleged that Equitable’s procedures for making changes were “too general” because they did not directly refer to ECDA indication severity, priorities or time frames.⁴⁸ The Notice also alleged that Equitable’s ECDA plan did not include steps to ensure communication of changes regarding direct examination priority and scheduling.⁴⁹ The Notice referenced Equitable’s IMP and the inspection results for Line H-153 as evidence in support of these allegations.

In its Response, Equitable argued that its procedures for making changes to its ECDA plan were general in nature, covered many different integrity-related activities, and could not specifically address every possible type of potential change.⁵⁰ Equitable explained that IMP changes were communicated to affected personnel in monthly operations meetings. Equitable argued that this method of notifying personnel of IMP changes was very effective. Respondent did not address the allegation that its ECDA plan did not include any procedures to provide notification of changes made specifically to that portion of its IMP.

The bottom line, however, is that Equitable’s ECDA plan failed to address the required procedures for notification of changes that were made to such plan. Equitable’s practice of notifying its personnel of ECDA plan changes via monthly meetings does not constitute the sort of documented procedures required by the regulation. Accordingly, based upon a review of the record, I find that Equitable violated § 192.925(b)(3) by failing to include in its ECDA plan the criteria and notification procedures for any changes that it has made in its ECDA plan, including changes that affect the severity classification, the priority of direct examination, and the time frame for direct examination of indications.

Item 2L: The Notice alleged that Respondent violated 49 C.F.R. § 192.925(b)(4), which provides:

**§ 192.925 What are the requirements for using External Corrosion
Direct Assessment (ECDA)?**

- (a) ...
- (b) ...
- (4) *Post assessment and continuing evaluation.* In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE RP 0502-2002,

⁴⁷ The Notice also alleged that Equitable violated 49 C.F.R. § 192.925(b)(4). However, the Notice did not explain why a separate violation of (b)(4) occurred and no reason is evident from a review of the record.

⁴⁸ The Notice cited Section 14.4.2, *Management of Change*, of Equitable’s IMP Plan.

⁴⁹ The Notice cited Sections 5.9.7 and 5.10 of the GTI ECDA Implementation Protocol which Equitable had adopted into Section 7 of its IMP.

⁵⁰ Response at 12.

section 6, the [ECDA] plan's procedures for post assessment of the effectiveness of the ECDA process must include –

- (i) Measures for evaluating the long-term effectiveness of ECDA in addressing external corrosion in covered segments; and
- (ii) Criteria for evaluating whether conditions discovered by direct examination of indications in each ECDA region indicate a need for reassessment of the covered segment at an interval less than that specified in § 192.939. (See Appendix D of NACE RP 0502-2002).

The Notice alleged that Respondent violated 49 C.F.R. § 192.925(b)(4) by failing to develop and implement an ECDA plan that included adequate post-assessment and continuing evaluation procedures, as set forth in ASME/ANSI B31.8S, section 6.4, and NACE RP 0502-2002. Specifically, it alleged that Equitable had neither documented feedback during the ECDA process nor documented how feedback would be applied to future assessments.

Equitable argued that this allegation was untimely because the company was still in the Direct Assessment step of the ECDA process at the time of the inspection and that no feedback was required until after that step had been completed.⁵¹ Equitable's argument is not persuasive. Although feedback and continuous improvement requirements are set out in the post-assessment provisions of the NACE Standard, section 6.5 of that standard also requires that feedback and continuous improvement activities are to be undertaken at *all* stages of the ECDA process.⁵² This means that an operator may not wait until the end of the ECDA process to begin incorporating and documenting feedback. Accordingly, based on a review of the record, I find that Equitable violated 49 C.F.R. § 192.925(b)(4), including section 6 of the NACE Standard, by failing to incorporate feedback into its ECDA process.

Item 3A: The Notice alleged that Respondent violated 49 C.F.R. § 192.911(l), which provides:

§ 192.911 What are the elements of an integrity management program?

An operator's initial integrity management program begins with a framework (*see* § 192.907) and evolves into a more detailed and comprehensive integrity management program, as information is gained and incorporated into the program. An operator must make continual improvements to its program. The initial program framework and subsequent program must, at minimum, contain the following elements. (When indicated, refer to ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7) for more detailed information on the listed element.)

- (a) ...
 - (l) A quality assurance process as outlined in ASME/ANSI B31.8S, section 12.

⁵¹ Closing at 33.

⁵² Section 6.5.1 provides “throughout the ECDA process, as well as during scheduled activities and reassessment, the pipeline operator shall endeavor to improve the ECDA applications by incorporating feedback at all appropriate opportunities.”

The Notice alleged that Respondent violated 49 C.F.R. § 192.911(l) by failing to implement a quality assurance process, as outlined in ASME/ANSI B31.8S, section 12, in its initial IMP. Specifically, it alleged that Equitable had not reviewed missing or questionable data or made efforts to improve data quality.

In response, Equitable argued that at the time of the PHMSA inspection, its IMP had not been in place for a sufficient amount of time for the company to have remedied all of the weaknesses in existing data. Equitable argued that PHMSA had recognized the initial process of data gathering was likely to uncover shortcomings.⁵³ The company further argued that it had taken steps to improve the quality of its data, both before and after the inspection. Respondent quoted OPS's own Violation Report, which stated that "[p]rior to the inspection, Equitable had recognized its data problem and was undergoing an 'engineering analysis' in order to establish transmission system pipeline attributes system wide."⁵⁴ Equitable also described the data quality improvements it had made subsequent to the OPS inspection.

This quoted statement from the OPS Violation Report is, on its face, inconsistent with the allegation in the Notice that "the poor quality, or lack of, data needed for threat evaluation and ECDA was not reviewed nor were any corrective actions taken to improve the quality of the data." Neither at the hearing nor in the other documents in the case file did OPS explain this inconsistency or provide additional evidence to support the allegation in the Notice. Accordingly, based on the foregoing, I find that OPS has failed to meet its burden of proving a violation of 49 C.F.R. § 192.911(l) and therefore order that Item 3A be withdrawn.

Item 3B: The Notice alleged that Respondent violated 49 C.F.R. § 192.911(l), as quoted above, by failing to perform a quality assurance process on Line H-153 that conformed to ASME/ANSI B31.8S, section 12, which provides that "when an operator chooses to use outside resources to conduct any process (for example, pigging) that affects the quality of the integrity management program, the operator shall ensure control of such processes and document them within the quality program." Specifically, the Notice alleged that Equitable failed to perform quality control on the Line H-148 in-line inspection (ILI) results produced by an outside tool vendor. The Notice further alleged that Equitable improperly used certain "unity charts" by placing two different sets of H-148 data on one chart that did not adequately evaluate ILI tool vendor performance.

In response, Equitable argued that it had in fact performed quality control on the ECDA vendor who performed work on Line H-153 and the ILI vendor who performed work on Line H-148. The Respondent also provided resumes and operator qualification records for personnel who performed the ECDA on H-153 and the ILI on H-148, but failed to demonstrate how such records related to an effective quality control program. Regarding H-148, Equitable contended that it did not use the unity charts to confirm ILI vendor data and performance, but instead used them to compare ILI data spreadsheets with verification dig data. Equitable did not submit copies of these spreadsheets.

⁵³ Closing at 35, citing PHMSA Gas IMP Frequently Asked Question #222: Gathering Information from Entire Pipeline (Sept. 19, 2004).

⁵⁴ Closing at 34, citing OPS Violation Report at 5.

On the other hand, OPS failed to present sufficient evidence as to what quality assurance measures were missing from Equitable's quality assurance checks of its outside consultants and vendors. Similarly, the agency neither included the unity charts as part of the Violation Report or as evidence at the hearing, nor did the agency establish why it was improper to place two sets of data on the same chart. Accordingly, based on the foregoing, I find that OPS has failed to meet its burden of proving a violation of 49 C.F.R. § 192.911(l) and therefore order that Item 3B be withdrawn.

ASSESSMENT OF PENALTY

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$296,400 for the violations cited above.

As noted above, I have withdrawn Items 1B, 1D, 1E, 2A, 2B, 2C, 2E, 2F, 2H, 2I, 3A and 3B. As a result, the proposed penalties associated with those Items are also withdrawn.

Item 1A: The Notice proposed a civil penalty of \$3,100 for Respondent's violation of 49 C.F.R. § 192.917(b), for failing to include in its IMP a detailed plan for the validation of assumed values for missing data. As discussed above, certain allegations in the Notice for Item 1A have been withdrawn. The withdrawal of these allegations reduces the gravity of the violation and warrants a commensurate reduction in the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$1,550 for Item 1A.

Item 1C: The Notice proposed a civil penalty of \$8,100 for Respondent's violation of 49 C.F.R. § 192.917(b), for failing to maintain accurate pipe characteristics data in its IMP. In its Closing, Respondent argued that although it had incorrectly listed the grade pipe for Line H-127 in its data-gathering spreadsheet, it had used the correct pipe grade when it risk-ranked the line. The record indicates that Equitable made an inadvertent data entry error, with a limited effect on pipeline safety. A reduction in the civil penalty is therefore warranted on that basis. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$4,050 for Item 1C.

Item 2D: The Notice proposed a civil penalty of \$20,600 for Respondent's violation of 49 C.F.R. § 192.925(b)(1), for failing to document the basis on which it selected at least two different, but complementary, indirect assessment tools to assess each ECDA region. Respondent argued that the penalty was unjustified on the basis of its indirect assessment efforts. However, Equitable failed to properly document the basis for the indirect assessment tools actually used on Line H-153. The company presented no information that would warrant a

reduction in the civil penalty for this Item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$20,600 for Item 2D.

Item 2G: The Notice proposed a civil penalty of \$20,600 for Respondent's violation of 49 C.F.R. § 192.925(b)(2), for failing to perform an alignment and comparison of ECDA inspection tool results. As discussed above, Respondent's efforts at alignment and comparison of ECDA data failed to comply with the regulation and its own procedures. While a portion of this allegation in Item 2G was withdrawn, such withdrawal does not reduce the gravity of the violation and does not warrant reduction of the civil penalty. Furthermore, Respondent presented no information that would warrant a reduction in the civil penalty for this Item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$20,600 for Item 2G.

Item 2J: The Notice proposed a civil penalty of \$20,600 for Respondent's violation of 49 C.F.R. §§ 192.917(e)(1) and 192.925(b)(2), for failing to address encroachment, one-call, and third-party damage data in its IMP pre-assessment process. As discussed above, I found that Equitable failed to have an adequate process for integrating and analyzing such data and that it failed to perform such an analysis for Line H-153. Respondent presented no information that would warrant a reduction in the civil penalty for this Item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$20,600 for Item 2J.

Item 2K: The Notice proposed a civil penalty of \$20,600 for Respondent's violation of 49 C.F.R. § 192.925(b)(3), for failing to include in its ECDA plan the criteria and notification procedures for any changes in the plan, including changes that would affect the severity classification, the priority of direct examination, and the time frame for direct examination of indications. Equitable argued that a penalty was not appropriate for this Item because of considerable uncertainty in the industry regarding how to comply with the new IMP rule.⁵⁵ I disagree. The requirement to have a procedure for notification of any ECDA plan changes is set out clearly in the regulation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$20,600 for Item 2K.

Item 2L: The Notice proposed a civil penalty of \$20,600 for Respondent's violation of 49 C.F.R. § 192.925(b)(4), for failing to develop and implement an ECDA plan that included adequate post-assessment and continuing evaluation procedures. As discussed above, Equitable was required to incorporate feedback throughout the ECDA process, not just at the end. Respondent presented no information that would warrant a reduction in the civil penalty for this Item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$20,600.

In summary, I assess Respondent a reduced total civil penalty of **\$108,600**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal

⁵⁵ Closing at 32.

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-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$108,600 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1A, 1B, 1C, 1D, 1E, 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, 2K, 2L, 3A, and 3B in the Notice for violations of 49 C.F.R. Part 192. I have withdrawn several of these Items. The remaining compliance order requirements are set out below.

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is 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 § 192.917(b) (**Item 1A**), Respondent must confirm or validate assumed or unverified pipeline data (for the set of data that was assumed, or unverified, or based on the personal recollection of the analyst). Until data is confirmed or validated, Respondent must make conservative assumptions when performing the risk assessment.
2. With respect to the violation of § 192.917(b) (**Item 1C**), Respondent must perform quality checks or otherwise verify or correct erroneous pipeline characteristics data for all covered segments.
3. With respect to the violation of § 192.925(b)(1) (**Item 2D**), Respondent must document the basis for its selection of indirect examination tools that are actually used when conducting ECDA integrity assessments, for both completed and future assessments. The documentation must include a justification for using different tools than the ones selected during the pre-assessment step.
4. With respect to the violation of § 192.925(b)(2) (**Item 2G**), Respondent must establish and apply criteria for the alignment and comparison of

indirect examination results with completed ECDA examinations and future assessments.

5. With respect to the violation of § 192.917(e)(1) and § 192.925(b)(2) (**Item 2J**), Respondent must integrate and analyze encroachment, one-call and third-party damage data in the ECDA pre-assessment step and when evaluating tool results. Equitable must integrate such data and perform an analysis for completed ECDA examinations and future assessments.
6. With respect to the violation of § 192.925(b)(3) (**Item 2K**), Respondent must develop and implement the criteria and notification procedures for any changes it makes in its ECDA plan on the basis of direct assessment findings.
7. With respect to the violation of § 192.925(b)(4) (**Item 2L**), Respondent must develop and implement criteria to document feedback from lessons learned during each step in the ECDA process and to use such feedback in subsequent ECDA assessments.

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 ITEM

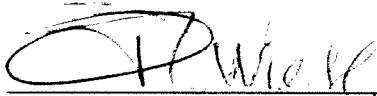
With respect to Item 2M, the Notice alleged a probable violation of Part 192 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 192.927(b) — Respondent's alleged failure to develop an Internal Corrosion Direct Assessment (ICDA) plan applicable to wet gas systems, or to specify a different, suitable assessment method capable of assessing internal corrosion threats in wet gas systems.

In its Response, Equitable explained that it had no plans to use Direct Assessment to assess any of its wet gas pipelines and therefore § 192.927(b) was not applicable. Having considered such information, I agree and therefore order that Item 2M be withdrawn.

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 sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590. A copy of the petition should also be sent to: Assistant Chief Counsel for Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590.

PHMSA will accept petitions received within 20 days of Respondent's receipt of this Final Order, provided that they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon receipt of service.



Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

MAY 13 2010

Date Issued