



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

1200 New Jersey Ave S E
Washington DC 20590

DEC 15 2008

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Hank A. True III
President
Belle Fourche Pipeline Company
895 W. River Cross Road
Casper, WY 82602

Re: CPF No. 5-2004-5030

Dear Mr. True:

Enclosed is this agency's decision on the petition for reconsideration filed by Belle Fourche Pipeline Company in the above-referenced case. For the reasons specified therein, the petition is denied. Payment of the \$50,000 civil penalty is due within 20 days of service. The Compliance Order and the Amendment Items remain unaltered and stand as stated in the Final Order. Please be advised that appropriate corrective action regarding the remainder of the Compliance Order and all Amendment Items must be taken if such action has not already been completed.

When the civil penalty has been paid and the terms of the Compliance Order and Amendments of Procedures have been completed, as determined by the Director, Western Region, this enforcement action will be closed. Your receipt of this decision constitutes service 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: Chris Hoidal, Director, Western Region

Alternatively, Petitioner contends that the order of amendment should be withdrawn to the extent that it applies to pipeline facilities not owned nor operated by Belle Fourche or to an IMP that was developed for one of Petitioner's related companies. This Decision addresses each of Petitioner's contentions in turn.

I. Timely Response to Notice of Probable Violation

The Final Order found that Petitioner failed to file a timely response to the Notice, thereby waiving Belle Fourche's right to contest the allegations in the Notice and authorizing entry of the Final Order without further notice. Pursuant to 49 C.F.R. § 190.209(c), if an operator fails to respond "within 30 days of receipt of a [N]otice," the Associate Administrator is authorized to find the facts as alleged in the Notice and to issue a Final Order without further notice to the respondent. PHMSA issued the Notice in this case on September 30, 2004. Petitioner has not shown and the record does not reflect the date on which Belle Fourche actually received the Notice. Petitioner has acknowledged, however, that it did receive the Notice and claimed that its counsel, Mr. Manuel A. Lojo, filed a written response on November 4, 2004 (November Letter). Petition, Attachment to Exhibit C.

I have reviewed the record and remain unconvinced that Belle Fourche actually filed a timely response. Petitioner has presented no documentary evidence (e.g., a certified mail return receipt) showing that counsel mailed or otherwise transmitted the November Letter on November 4, 2004. Instead, Belle Fourche submitted Mr. Lojo's affidavit, dated July 20, 2006, in which he stated:

Because OPS has not responded to this matter for nearly two years, I do not have a specific recollection about how I directed that this particular communication (the Response Letter) be sent to the OPS. However, it was my customary practice then and still is today to send any communications to regulatory agencies such as the OPS by expedited means, either by facsimile or overnight mail. I believe that I transmitted the Response Letter to OPS by expedited means on November 4, 2004.

While Mr. Lojo may believe that he filed a response with the Office of Pipeline Safety (OPS) on November 4, 2004, PHMSA has no record of having received the November Letter until it was included with the Petition filed on July 28, 2006, and received by OPS on July 31, 2006. An affidavit made nearly two years after the events in question is insufficient proof that Petitioner responded to the Notice within 30 days of its actual receipt. Upon a careful review of the entire record, I can find no reason to alter the finding in the Final Order that Petitioner failed to file a response within 30 days after receipt of the Notice and that Belle Fourche therefore waived its right to contest the allegations in the Notice and authorized entry of a Final Order under 49 C.F.R. § 190.209(c).

Notwithstanding the foregoing, I have fully reviewed and reconsidered the entire record in this proceeding and all of the substantive issues raised by Petitioner in its November Letter and the Petition. Belle Fourche's arguments relating to Item 2(a) in the Notice, regarding

the company's alleged failure to establish a proper BAP schedule based upon the risk conditions on each pipeline segment, are discussed in Section II below. Its arguments relating to Item 2(b), regarding the company's alleged failure to include a seam failure susceptibility analysis for all pipe segments containing low frequency ERW and lap welded pipe to determine which segments are susceptible to seam failure, are discussed in Section III. Its arguments relating to the civil penalty, the compliance order, and the order directing amendments, are discussed in Sections IV, V, and VI, respectively.

II. Notice Item 2(a).

The Final Order found that Petitioner violated 49 C.F.R. § 195.452(c), as set forth in Item 2(a) of the Notice. That Section states, in relevant part:

§ 195.452 Pipeline integrity management in high consequence areas.

(c) *What must be in the baseline assessment plan?* (1) An operator must include each of the following elements in its written baseline assessment plan:

(i) The methods selected to assess the integrity of the line pipe. An operator must assess the integrity of the line pipe by any of the following methods. The methods an operator selects to assess low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure must be capable of assessing seam integrity and of detecting corrosion and deformation anomalies....

(ii) A schedule for completing the integrity assessment; [and]

(iii) An explanation of the assessment methods selected and evaluation of risk factors considered in establishing the assessment schedule....

The Notice alleged that as of the date of the inspection, Belle Fourche had not completed an analysis of the risk conditions on each segment of its pipeline system that "could affect" High Consequence Areas (HCAs). Therefore, Petitioner's BAP schedule was not properly based upon an evaluation of the specific risk factors identified for each pipeline segment. Such schedule should prioritize the pipeline segments for assessment based upon risk.¹ In its November Letter and Petition, Belle Fourche contends that it had completed the risk analysis process required under § 195.452(c)(1), as of the May 2004 inspection date, for all

¹ 49 C.F.R. § 195.452(e) states, in relevant part:

(e) *What are the risk factors for establishing an assessment schedule (for both the baseline and continual integrity assessments)?* (1) An operator must establish an integrity assessment schedule that prioritizes pipeline segments for assessment. An operator must base the assessment schedule on all risk factors that reflect the risk conditions on the pipeline segment.

² In its Petition, Belle Fourche reiterated this claim by submitting the affidavit of Mr. Robert Stamp, a Belle Fourche employee, who stated that "At the time of the inspections, [Belle Fourche] had completed the requirements of 29 CFR § 195.452(a) [sic] for its pipeline systems, as of December 1, 2003. Specifically, BFP had identified 'high consequence areas' and performed risk assessments for those segments."

of its facilities. In the November Letter, Belle Fourche stated that its IMP “was, in fact, completed in January 2003 for an operator with less than 500 miles.”²

Petitioner’s defense to this Item is based upon several incorrect assertions. First, Belle Fourche contends that there was confusion about exactly which IMP was being reviewed during the May 2004 inspection. In the November Letter, it stated that its 2003 IMP was one of two plans that were reviewed by the PHMSA inspector. The other was a combined IMP for both Belle Fourche and Bridger Pipeline LLC, which Belle Fourche acquired in December 2003. According to Petitioner, this combined plan was still a work “in progress” at the time of the May 2004 inspection.³

This contention is unfounded. First, the record does not indicate that Belle Fourche provided more than one IMP document to the PHMSA inspector or that the agency reviewed more than one plan. The only IMP that Belle Fourche submitted to PHMSA at the time of the inspection was identified on the cover page as follows:

INTEGRITY MANAGEMENT PLAN

United States Department of Transportation
49 CFR Part 105

Belle Fourche Pipeline Company And Bridger Pipeline LLC

November 2003

Revised

January 2004

The cover page clearly indicates that the IMP was initially effective as of November 2003 and then revised in January 2004, four months *prior* to the inspection. It is this combined IMP (Plan) that is the subject of this proceeding.

It is also apparent that the Plan was used jointly for two separate pipeline operators, namely, Belle Fourche Pipeline Company, which is a party to this proceeding, and Bridger Pipeline, LLC, which is not. Petitioner contends in the November Letter that its risk analysis process had been completed for the Belle Fourche lines as of the date of the inspection, but not for the Bridger lines, which were acquired in January 2004. The November Letter states that “... the BFPL plan was complete, for BFPL assets, as of January 2003 some 16 months prior to the inspection.” For purposes of this Decision, I have reviewed the Plan as it existed on the date of the inspection and as it applied to the Belle Fourche facilities identified in the Plan.

Second, Belle Fourche asserts that it only had three pipeline segments that “could affect” HCAs and that those lines had been assessed as of the inspection date. On the contrary,

³ The November Letter states, “In addition, it is unclear to us exactly on to what plan the violation is being assessed. Item 2(a) states that BFPL ‘had not completed their risk analysis.’ But the BFPL plan was complete, for BFPL assets, as of January 2003 some 16 months prior to the inspection ” Petition, Attachment to Exhibit C

the Plan identifies the following eight lines as “could-affect” segments⁴ operated by Belle Fourche:

- Bicentennial to Baker Segment 1
- Bicentennial to Baker Segment 2
- Dickinson Segment 1
- Dickinson Segment 2
- Dickinson Segment 3
- Twenty-mile to Guernsey Segment 2
- Twenty-mile to Guernsey Segment 3
- Wright Segment 1.⁵

Upon a review of the Plan, it is clear that Belle Fourche operates the pipeline segments listed above. There is no indication in the Plan that a risk analysis for these segments had been conducted as of the date of the inspection.

Third, Belle Fourche asserts that it completed a risk analysis for its facilities as of December 2003 and that it met the requirements of 49 C.F.R. § 452(c). However, it is clear from my review of the Plan that it does not include an adequate explanation of the assessment methods selected or an evaluation of the risk factors considered in establishing an assessment schedule. In the November Letter, Petitioner acknowledges as much, stating:

[T]he BFPL plan had very little in the way of risk analysis as stated in Item 2(a), but that was because there were only 3 “could-affect” line segments for BFPL. The IM plan laid out a schedule of assessment for the 3 segments based on easily identifiable risk characteristics in the text of the plan. A more rigorous risk analysis process was not warranted for these 3 segments.

Section 195.452(b) requires each operator to have an IMP that includes a plan to carry out baseline assessments of all pipeline segments that could affect HCAs. In accordance with § 195.452(c) and (e), an evaluation of risk factors that reflects the conditions on each covered pipeline segment must be included in a BAP in order to enable selection of the proper assessment method(s) and intervals. The Plan obtained from Petitioner during the May 2004 inspection shows that although Belle Fourche had developed the outline of a risk analysis process, the company had not completed a proper risk analysis of each pipeline segment that “could affect” a HCA.

Specifically, the Plan states that the assessment methodologies were chosen by evaluating the risk factors outlined in Appendix A, Section IV.⁶ The Appendix, in turn, included certain worksheets designed to assist with and reflect the risk conditions on each particular

⁴ See Plan at Introduction, p. 1, and Appendix C

⁵ Although the Wright System is not identified as a Belle Fourche asset in the introduction to the Plan, the System description in Appendix C indicates that the line is operated by Belle Fourche

⁶ See Plan at Introduction, p. 3.

pipe segment. These worksheets, however, were blank and apparently never used to complete an actual risk analysis.

Accordingly, I find that the Plan reviewed during the May 2004 inspection did apply to facilities operated by Belle Fourche, that it included eight pipeline segments that “could affect” HCAs, and that an adequate risk analysis was not reflected in the Plan for each of these eight segments. Therefore, I find no basis to modify the finding in the Final Order that Petitioner violated § 195.452(c) by failing to establish a baseline assessment schedule based upon an evaluation of risk factors identified for each pipeline segment.

III. Notice Item 2(b).

Item 2(b) in the Final Order found that Petitioner violated 49 C.F.R. § 195.452(c), as stated above, by failing to perform a seam failure susceptibility analysis on all pipeline segments that contained low frequency electric resistance welded (ERW) and lap welded pipe to determine which segments were susceptible to seam failure, prior to selecting appropriate assessment methods for each segment. Such an analysis is necessary because the assessment method chosen must be based on the actual risk conditions of each pipeline segment and whether the selected method is capable of adequately assessing pipe integrity. In this case, a seam failure susceptibility analysis is needed because Belle Fourche operates pipe segments that contain low frequency ERW pipe and at least one of Belle Fourche’s ERW pipelines, the Donkey Creek to Guernsey line, has experienced a pipeline release associated with longitudinal seam failure.

In its Petition, Belle Fourche raises three defenses to this allegation. First, it contends that one of the cited releases was from a 10-inch portion of the Poplar Pipeline and one was from a 16-inch portion of the Butte Pipeline, neither of which is owned or operated by Petitioner.⁷ Assuming this is correct, the one failure that did occur on Petitioner’s Donkey Creek to Guernsey line still establishes the need for Belle Fourche to conduct a seam failure susceptibility analysis for all those segments constructed of similar pipe.

Second, the Petition states that Belle Fourche was not required under 49 C.F.R. § 452(d) to complete an “actual seam failure baseline assessment[s]...until (as applicable to BFP) 2005 (for at least 50 percent of the line) and 2009 for the remainder of the line.” Petition at 5. This is correct but not responsive to the violation cited in Item 2(a). Section 195.452(c) requires that Petitioner have had a completed plan at the time of the May 2004 inspection, not a completed assessment, and that the plan include a seam failure susceptibility analysis to determine the extent to which pipeline segments containing low frequency ERW or lap welded pipe were susceptible to seam failure. Because Belle Fourche operated segments containing low frequency ERW pipe,⁸ it was required to perform an analysis to determine which, if any, of them were susceptible to seam failure. If any segments were found to be susceptible, then Petitioner was required to choose an assessment method capable of assessing seam integrity.

⁷ According to Petitioner, both the Poplar and Butte Pipelines are owned and operated by Bridger Pipeline, LLC.

⁸ The Twenty-mile to Guernsey line is constructed of low frequency ERW pipe, which is particularly susceptible to longitudinal seam failure. The Bicentennial to Baker system, the Wright system, and the Dickinson system are also constructed of low frequency ERW pipe. Belle Fourche was required to analyze the susceptibility of each of these ERW pipe segments to longitudinal seam failure.

Petitioner's Plan states that its assessment methodologies were chosen "by evaluating specific risk factors" and refers to Appendix A of the document. Appendix A states that Appendix C of the Plan lists the assessment method(s) selected for each segment of pipeline, which was an in-line inspection device known as a standard magnetic flux leakage tool. However, the Plan acknowledged that seam evaluation analysis was not available with in-line inspection tools for pipes with a diameter of less than 24 inches and that the assessments scheduled in its Plan would not be able to address seam integrity. Furthermore, Petitioner failed to provide any analysis to show that its low frequency ERW pipe was not susceptible to longitudinal seam failure and therefore that a susceptibility analysis was not needed.

Third, the Petition contends, in the alternative, that even if Belle Fourche did not conduct a proper seam failure susceptibility analysis, it nevertheless met the requirements of Section 452(c) by timely reducing the operating pressure on segments susceptible to longitudinal seam failure. In his affidavit dated July 27, 2006, and attached to the Petition, Mr. Stamp states that Subpart E of 49 C.F.R. Part 195⁹

.... allows an operator to reduce maximum operating pressure (MOP) by 80% in lieu of pressure testing. BFP has elected to "assess" and mitigate the risk of seam failure on the applicable pre-1970 low frequency ERW pipeline by reducing MOP by 80%. This was done in January 2005.

This argument is also without merit. First, a pressure reduction is not an assessment method.¹⁰ Although a pressure reduction can provide a margin to failure equivalent to a hydrostatic pressure test, a pressure reduction provides no information about the *condition* of the pipeline. One of the primary objectives of § 195.452(c) is to ensure that operators gain a better understanding of the condition of their pipe so they can make well-founded technical decisions to reduce risk and protect HCAs. In addition, Section 195.452(h)(1) specifies that a reduction in operating pressure taken to provide an immediate improvement in safety cannot extend more than 365 days without the operator taking additional remedial action. Finally, the Plan does not indicate that a pressure reduction is the intended assessment method, so it is not clear how Petitioner believes that a pressure reduction could fulfill its obligations to complete a BAP.

Accordingly, I find that Belle Fourche operates eight line segments that are potentially susceptible to longitudinal seam failure and therefore that the company is required under § 195.452(c) to perform a seam failure susceptibility analysis as part of its overall risk analysis in determining the appropriate methods to perform baseline assessments. I further find that a pressure reduction of 80% is not permitted under § 195.452(c) in lieu of performing such an analysis. For these reasons, I affirm the finding in the Final Order that Petitioner violated § 195.452(c) by failing to include a seam failure susceptibility analysis on all pipeline segments containing low frequency ERW and lap welded pipe to determine which segments were susceptible to seam failure and that such analysis needed to be

⁹ The Stamp affidavit misidentifies this as 29 C.F.R. instead of 49 C.F.R.

¹⁰ See Frequently Asked Questions 6 10 and 6 15 at http://primis.phmsa.dot.gov/uum/docs/faq_text.htm#s6

performed prior to Belle Fourche selecting appropriate baseline integrity assessment methods for each pipe segment.

IV. Civil Penalty Assessment

The Final Order assessed a civil penalty of \$50,000 under 49 U.S.C. § 60122 for the violation listed in Item 2(a) of the Final Order. Under 49 U.S.C. § 60122, a violator is subject to a civil penalty not exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000.

As required by 49 C.F.R. 60122 and indicated in the Final Order, OPS considered the following criteria in determining the penalty amount: the nature, circumstances and gravity of the violation; the degree of the Petitioner's culpability; Petitioner's history of prior offenses; Petitioner's ability to pay the penalty; Petitioner's good faith in attempting to achieve compliance; the effect on Petitioner's ability to continue in business; and such other matters as justice may require.

In its Petition, Belle Fourche argues that the civil penalty should be eliminated on the basis of the substantive grounds discussed above. In the alternative, Petitioner argues that the penalty should be reduced for several reasons. First, it argues that it made "good faith efforts to comply by timely completing an IMP plan," that "it recognized its obligation to conduct a risk analysis," and that it did not "simply disregard its regulatory obligations." Second, it argues that no environmental harm resulted from the alleged violation and that Petitioner did not realize any economic benefit from non-compliance because it committed the necessary resources to prepare an IMP and performed a risk analysis. Third, it argues that given the confusion over the facilities covered by Belle Fourche's IMP (and the fact that it did not own or operate some of the facilities upon which the penalty was based), it would be "unjust and inequitable to impose anything but a de minimis penalty..."

I have reviewed the civil penalty in light of the discussion in the preceding Sections and have determined that the penalty imposed in the Final Order is reasonable and fully supported by the evidence. It is true that PHMSA recognizes the "good faith efforts" of operators to achieve full compliance with the pipeline safety regulations before an inspection has occurred. In this case, however, the IMP that Belle Fourche had in place at the time of the inspection fell so far short of the regulatory requirements of 49 C.F.R. § 452(c)(1) that the company could not have reasonably expected its Plan to pass muster.

As for the lack of environmental harm, this factor was considered in setting the initial penalty. As for the lack of economic benefit derived from Petitioner's non-compliance, this claim is questionable and not supported by any evidence submitted by Petitioner. Finally, the amount of the penalty is not based upon the number of line segments or line mileage ostensibly in Petitioner's system; therefore, no reduction in penalty is warranted by the fact that some of the lines covered by the Plan may have been owned and operated by Bridger Pipeline LLC. Accordingly, I find that the civil penalty imposed by the Final Order reasonably addresses Petitioner's failure to complete an IMP that included a comprehensive risk analysis process and a prioritized schedule based upon the risks posed by each pipeline segment.

V. Compliance Order

In its Petition, Belle Fourche requests that the compliance terms of the Final Order be rescinded because the company was in compliance with 49 C.F.R. § 195.452(c)(1), as discussed above. In the alternative, Petitioner contends that it did not own or operate some of the pipeline segments identified in the Notice and therefore that the compliance order should be modified to exclude these segments. Having fully considered these issues above, I affirm the terms of the compliance order as they apply to pipeline facilities operated by Belle Fourche.

The compliance order requires Petitioner to determine the susceptibility to seam failure for all segments containing low-frequency ERW pipe and lap welded pipe. The compliance order does not require Petitioner to actually *complete* the integrity assessment for those segments within 60 days. Therefore, the schedule specified in the regulations for completion of baseline integrity assessments continues to apply.

To date, Petitioner has not provided any information to PHMSA demonstrating that it has a BAP in place that meets the requirements of the regulations. In order to do so, Petitioner must determine the susceptibility of its line pipe segments to seam failure and determine an appropriate method and schedule for completing the integrity assessment based on its evaluation of risks. Therefore, the compliance order remains unchanged with regard to the lines operated by Belle Fourche but is hereby amended to delete any reference to the “10-inch portion of the Poplar Pipeline” and the “16-inch Butte Pipeline.”¹¹

VI. Order Directing Amendments

In its Petition, Belle Fourche requests that items in the Notice “that were not directed at [Belle Fourche]’s plan or assets be withdrawn.” As there are no provisions in the Final Order specific to a particular pipeline, Petitioner’s request is denied. Petitioner is ordered to make the revisions to its plans and procedures as indicated in the Final Order.

VII. Conclusion

I have considered Petitioner’s petition for reconsideration and the additional information submitted with it, including the November Letter, and have reviewed the entire record of the May 2004 inspection. Accordingly, I find that Belle Fourche failed to file a timely Response to the Notice issued on September 30, 2004, and that it therefore waived its right to a hearing and authorized the findings of fact as alleged in the Notice and entry of the Final Order without further notice. In the alternative, I find that Belle Fourche violated 49 C.F.R. § 195.452(c), as set forth in Items 2(a) and 2(b) in the Notice and discussed more fully above, and that the \$50,000 penalty assessed for Item 2(a) is reasonable and fully supported by the evidence. Accordingly, the assessment of the civil penalty remains unchanged.

¹¹ To the extent that Bridger Pipeline, LLC, is operating under the same IMP as Belle Fourche, the former is advised to take corrective actions similar to those outlined herein

In addition, I find that Petitioner has failed to demonstrate that its plans and procedures comply with the integrity management requirements in 49 C.F.R. § 195.452, as more fully described in Items 1-11 of the Notice. Therefore, all terms of the Final Order shall remain in effect, including the compliance order and the order directing amendments to Petitioner's plans and procedures, except insofar as they apply to pipeline facilities owned and operated by Bridger Pipeline, LLC.

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 Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the 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. 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.

This decision on reconsideration is the final administrative action in this proceeding.

William H. Gault
for

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

DEC 5 2008

Date Issued