

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

In the Matter of

Belle Fourche Pipeline Company,

Respondent.

CPF No. 5-2016-5013H

CONSENT AGREEMENT AND ORDER

The U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), and Belle Fourche Pipeline Company (Belle Fourche or Respondent), have engaged in settlement discussions regarding the resolution of PHMSA's enforcement action CPF No. 5-2016-5013H brought against Respondent and the Petition for Review filed by Belle Fourche in the U.S. Court of Appeals for the Tenth Circuit, Case No. 17-9529. As a result of these discussions, PHMSA and Belle Fourche (collectively, Parties) agree that a settlement of this matter is in the best interests of the Parties and the public and will avoid further administrative proceedings or litigation. The Parties further agree that the entry of this Consent Agreement and Order (Agreement and Order) is the most appropriate means of accomplishing that objective.

I. Procedural History.

On December 20, 2016, PHMSA issued a Corrective Action Order (CAO) to Belle Fourche, pursuant to 49 U.S.C. § 60112 and 49 C.F.R. § 190.233, finding that continued operation of Belle Fourche's Bicentennial Pipeline located in Billings County, North Dakota, would be hazardous to life, property, or the environment. The CAO made preliminary findings regarding a release of crude oil from the Bicentennial Pipeline that was discovered on December 5, 2016, near Belfield, North Dakota (Failure), and found that the hazards would continue unless certain corrective measures were taken. The CAO also found that failure to issue the order expeditiously, without prior notice to Belle Fourche, would result in a likelihood of serious harm to life, property, or the environment.

On December 29, 2016, Belle Fourche submitted to PHMSA a Request for Hearing, Request to Temporarily Stay Hearing, and Statement of Issues. After additional discussions between the Parties, and in accordance with 49 C.F.R. §§ 190.211 and 190.233(c), a hearing was scheduled for February 21, 2017, in Lakewood, Colorado, before a Presiding Official from PHMSA's Office of Chief Counsel. At that hearing, Belle Fourche alleged that the CAO should be withdrawn because

PHMSA exceeded its statutory authority, or, in the alternative, that it be amended. After the hearing, the Parties submitted post-hearing briefs.

On March 24, 2017, the Associate Administrator, PHMSA, issued a Post-Hearing Decision Confirming Corrective Action Order (Decision). The Decision found that PHMSA met the threshold determination necessary for issuance of a CAO without notice (namely, that the pipeline is or would be hazardous to life, property or the environment, and that likely serious harm to life, property, or the environment would result absent expeditious issuance of a CAO) and that the Bicentennial Pipeline continued to be hazardous to life, property, or the environment unless corrective measures were taken. The Decision required that the CAO remain in effect, as written, subject to certain clarifications and modifications.

On June 20, 2017, Belle Fourche filed a Petition for Review challenging the Decision in the U.S. Court of Appeals for the Tenth Circuit in Case No. 17-9529, *Belle Fourche Pipeline Company v. Pipeline and Hazardous Materials Safety Administration* (Petition). Under the terms and conditions set forth below, the Parties have reached a settlement on the issues underlying the CAO, the Decision, and the Petition, and wish to reduce their agreement to writing, as follows.

II. General Provisions.

1. Respondent acknowledges that Belle Fourche and its pipeline system, the Bicentennial Pipeline located in North Dakota, is subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Agreement and Order, Belle Fourche further acknowledges that it received proper notice of PHMSA's action in this proceeding and that the CAO states claims upon which relief may be granted pursuant to 49 U.S.C. 60101, *et seq.*, and the regulations and orders issued thereunder.

2. Respondent agrees to complete the corrective actions specified in Section IV of this Agreement and Order (Corrective Measures) and to abide by the terms of this Agreement and Order. This Agreement and Order does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil or administrative proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement and Order. By entering into this Agreement and Order, Respondent does not admit to any fact, allegation or conclusion in the CAO or Decision.

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

4. This Agreement and Order shall apply to and be binding upon PHMSA, and upon Belle Fourche, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and

Order and any incorporated work plans and schedules to all of Belle Fourche's officers, employees, and agents whose duties might reasonably include compliance with this Agreement and Order.

5. For any transfer of ownership or operating responsibility of Belle Fourche's Bicentennial Pipeline occurring during the term of this Agreement and Order, Respondent will provide a copy of this document to the prospective transferee at least 30 days prior to such transfer and simultaneously provide written notice of the prospective transfer to the PHMSA Western Region Director (Director).

6. This Agreement and Order constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the matters settled herein. The Parties acknowledge that there are no representations, agreements, or understandings relating to settlement other than those expressly contained in this Agreement and Order, except that the terms of this Agreement and Order may be construed by reference to the CAO, the Decision, and the administrative case file [CPF No. 5-2016-5013H].

7. Nothing in this Agreement and Order affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement and Order alters PHMSA's right of access, entry, inspection, and information gathering. Further, this Agreement and Order neither limit nor alters PHMSA's authority to bring enforcement action(s) against Belle Fourche pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law, including additional enforcement action relating to violations of law arising out of the Failure.

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

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

10. Upon issuance of this Agreement and Order, Belle Fourche agrees to perform the Corrective Measures set forth in Section IV below.

11. Upon issuance of this Agreement and Order, PHMSA agrees that the CAO and Decision will be of no further force or effect and that all outstanding CAO corrective actions (Items 3 and 9) will be merged into the provisions of this Agreement and Order, as outlined in Section IV below.

12. For purposes of this Agreement and Order, the following definitions shall apply:

Affected Segment: The Affected Segment is Respondent's crude-oil Bicentennial Pipeline system that runs approximately 58 miles in length, from the Skunk Hill Pump Station in Billings County, North Dakota, to the Bicentennial Station in McKenzie County, North Dakota, as illustrated in Figure 1.

Isolated Segment: The Isolated Segment is that portion of the Affected Segment running approximately 19 miles from the Skunk Hill Pump Station to the Treetop Pump Station, as illustrated in Figure 1.

III. Completed Corrective Actions.

13. As of the date of this Agreement and Order, Belle Fourche has completed the following corrective actions set forth in the CAO, as modified by the Decision, or as modified by the Parties herein:

Item 1: Shutdown of Isolated Segment. Belle Fourche shut down the Isolated Segment on December 5, 2016. This item is complete.

Item 2: Aerial Patrols of Affected Segment. Belle Fourche has reported to PHMSA that it performed weekly aerial patrols of the Affected Segment through February 14, 2018, and has resumed the normal aerial patrolling schedule. To date, Belle Fourche has reported to PHMSA that there have been no issues found through these aerial patrols on or near the pipeline right-of-way. This item is complete.

Item 3: Partial Return to Service. On August 31, 2017, PHMSA approved Belle Fourche's request to restart a portion of the Isolated Segment. This included: (1) Big Stick LACT (Lease Automatic Custody Transfer) to Treetop Station, MP 21.0-21.665; and (2) Treetop Station to West Little Missouri River Block Valve, MP 0-9.1.¹ On September 7, 2017, Belle Fourche restarted this portion of the Isolated Segment. This item is complete.

Item 4: Excavation of Failure Site. The Parties agree that, due to safety concerns outlined in the Trihydro Corporation Geotech Report entitled "May 2017 Subsurface Exploration Ash Coulee Incident S316.2 Belfield, North Dakota," Belle Fourche is not required to excavate the failed pipeline segment, as set forth in Item 4 of the CAO. Instead, pursuant to a September 1, 2017 letter from Belle Fourche to PHMSA (Attachment 1), Belle Fourche excavated, in the presence of PHMSA, a nearby 8-foot section of pipe within the horizontal directionally drilled (HDD) pipe section that failed and that had similar characteristics (i.e., the same material heat number and same welder). This was completed on October 3, 2017. This item is complete.

¹ The Treetop to West Little Missouri River Block Valve, MP 0-9.1, was not subject to Item 1's shut-down requirement in the CAO.

Item 5: Metallurgical Testing. During the period October 11-13, 2017, a Belle Fourche contractor tested and analyzed the "like-pipe" pipe section described in Item 4 above, pursuant to the "Metallurgical Testing Protocol" reviewed and edited by PHMSA. PHMSA observed the testing. A report of the results of the testing and analysis was submitted to PHMSA by Element Labs on November 11, 2017. This item is complete.

Item 6: Root Cause Failure Analysis. Belle Fourche provided a copy of its Root Cause Failure Analysis to PHMSA on March 30, 2018. PHMSA responded by letter dated April 12, 2018 that the Root Cause Failure Analysis satisfies the general requirement for such a report. This item is complete.

Item 7: Emergency Response. On September 12, 2017, Belle Fourche received from PHMSA a Letter of Approval of the Belle Fourche Pipeline Company and Bridger Pipeline LLC's amended *Combined Systems Facility Response Plan*, dated August 2017. The approval is valid for five years from the date of the letter. This item is complete.

Item 8: Geotechnical Evaluation of Existing HDD-installed Pipe Segments. Belle Fourche has reported to PHMSA that it has completed a geohazard evaluation and analysis of the existing HDD pipe segments on the Affected Segment, the surrounding subsoil conditions, and any waterways crossed within the Affected Segment, to ensure that the existing HDD pipe segments have been installed in such a manner as to minimize potential damage to the pipe. This analysis was facilitated by Braun Intertec Corporation, an independent third-party geotechnical specialist acceptable to the Director, and that documented the soil parameters, topography, river flow, and other design factors to assess the existing HDD segments and evaluate whether a significant risk of pipeline damage exists. Belle Fourche submitted a final report of the geohazard analysis of the existing HDD segments to the Director, entitled "Geotechnical Hazard Review - Little Missouri River Crossing," on June 29, 2017. This item is complete.

Item 10: Records Verification. This item is complete.

Item 11: In-line Inspection. At the hearing, the parties agreed to withdraw this item. The Decision, however, required Belle Fourche to reevaluate its pigging intervals based on the relative risk of slope movement. This item is complete.

Item 12: Reporting. At the hearing, the Parties agreed to withdraw this item because the reporting was redundant of other reporting requirements in the CAO.²

Item 13: Leak Detection. This requirement was withdrawn pursuant to the Decision.

² On August 31, 2017, PHMSA approved Belle Fourche's request to submit quarterly status reports to PHMSA in lieu of monthly status reports under the "1. Reporting" under "Other Requirements" of the CAO.

IV. Corrective Measures.

14. ***Return to Service.*** Belle Fourche must obtain written approval from the Director prior to resuming operation of the remaining portion of the Isolated Segment that is currently shut down.

15. ***Future Geotechnical Evaluation and Remediation.*** Within 12 months of the Effective Date of this Agreement Belle Fourche must perform a risk assessment of all slopes in proximity to the Affected Segment that are steeper than 3H:1V, to determine whether slope movement could damage the pipeline. For purposes of this paragraph, the term "in proximity" is defined as 250 feet on either side of the pipeline, and limited to 3:1 slopes of 30 feet or more vertical to eliminate short slopes of 3:1 inclines (such as road ditches) that present no risk to pipeline safety. Within 90 days of completion of this assessment, Belle Fourche must submit to the Director for approval an analysis of whether HDD crossings should be installed at these locations or whether the pipeline should be rerouted or reinstalled deeper to avoid unstable areas. If so, the report should include a remediation plan. If not, the report shall provide a sound engineering analysis to explain why remediation is unnecessary.

V. Additional Provisions.

16. ***Extensions of Time.*** The Director may grant an extension of time for compliance with any of the terms of the Agreement and Order upon a written request submitted at least 30 days prior to a stated deadline, demonstrating good cause for an extension.

17. ***Dispute Resolution.*** PHMSA and Belle Fourche will informally attempt to resolve any disputes arising this Agreement and Order. Belle Fourche and a lead inspector designated by the Director will first confer in an effort to resolve any dispute. If Belle Fourche and the lead inspector are unable to informally resolve a dispute within 15 calendar days, Belle Fourche may request in writing, within 10 days, a written determination resolving the dispute from the Director. The request will provide all information that Belle Fourche believes is relevant to the dispute. If the request is submitted as provided herein, the Director will issue a determination in writing. Belle Fourche shall notify the Director in writing within 7 days of receipt of the Director's determination whether Belle Fourche intends to proceed in accordance with the Director's determination. The Director's determination shall no longer be subject to dispute pursuant to this Consent Agreement, unless within 7 days of receipt of the Director's determination, Belle Fourche files an appeal with the Associate Administrator for Pipeline Safety. Belle Fourche shall notify the Director and the Associate Administrator in writing within 7 days of receipt of the Associate Administrator's decision whether Belle Fourche intends to proceed in accordance with the Associate Administrator's decision.

VI. Dismissal of Petition for Review.

18. Within five business days after the Effective Date of this Agreement and Order, Belle Fourche shall file with the U.S. Court of Appeals for the Tenth Circuit a Stipulation to Dismiss the Petition, with prejudice, pursuant to Rule 42 of the Federal Rules of Appellate Procedure, specifying that the Parties shall bear their own costs.

VII. Enforcement.

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

VIII. Recordkeeping and Information Disclosure.

20. Except as otherwise provided herein, Belle Fourche agrees to maintain records demonstrating compliance with all requirements of this Agreement and Order for a period of at least five years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement and Order, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement and Order in accordance with 49 C.F.R. Part 7 and 49 C.F.R. § 190.343. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA will determine the releasability of any information submitted pursuant to this Agreement and Order, in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

IX. Effective Date.

21. The term "Effective Date," as used herein, is the date on which this Agreement and Order is fully executed by the Parties. Unless specified to the contrary, all deadlines for actions required by this Agreement and Order run from the Effective Date.

X. Modification.

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

XI. Termination.

23. This Agreement and Order terminates upon completion of Paragraph 18 and all terms set forth in Section IV (Corrective Measures) as determined by the Director, or in accordance with Dispute Resolution in paragraph 17. Belle Fourche may request written confirmation from PHMSA when this Agreement and Order is terminated and the Director will provide such confirmation within three months of the written request. Nothing in this Agreement and Order prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement and Order.

XII. Ratification.

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

25. The Parties hereby agree to all conditions and terms of this Agreement and Order.

For Belle Fourche Pipeline Company (Respondent):



Vice President

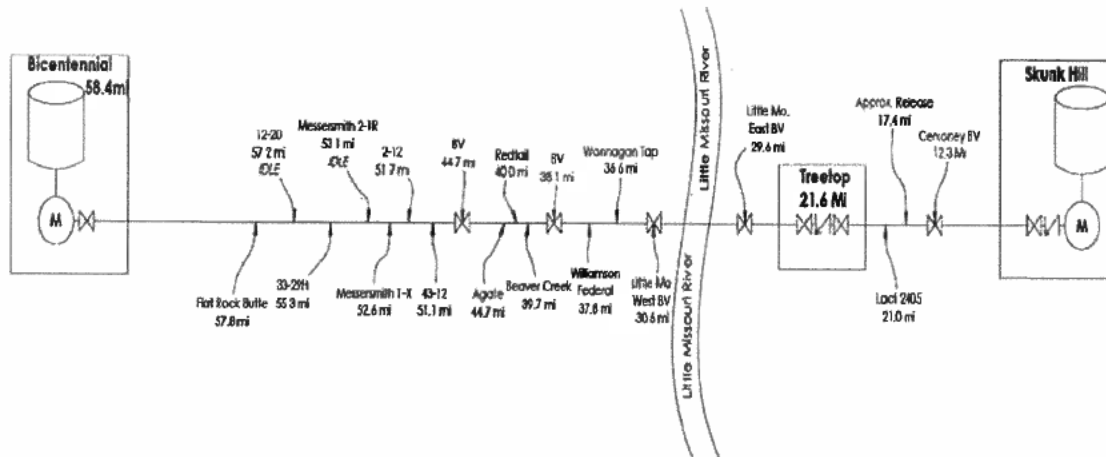
June 12, 2018
Date

For PHMSA:



Alan K. Mayberry
Associate Administrator for Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation

7-2-18
Date



**Figure 1. Affected Segment and Isolated Segment
Skunk Hill to Bicentennial 6"**

Provided by Belle Fourche