

October 13, 2016

Mr. Terry K. Spencer
President and CEO
ONEOK NGL Pipeline, L.P.
100 W. Fifth Street
Tulsa, Oklahoma 74103

Re: CPF No. 3-2013-5015

Dear Mr. Spencer:

With regard to the above-referenced case, this Order is being corrected due to a typographical error in Item 1 of the Civil Penalty Assessment. The Final Order makes findings of violation, withdraws one alleged violation, assesses a civil penalty of \$159,200, and specifies actions that need to be taken by ONEOK 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, Central Region, this enforcement action will be closed. Service of the Final Order is made pursuant to 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Allan Beshore, Director, Central Region, OPS
Mr. Vince Murchison, Murchison Law Firm, PLLC
325 North St. Paul Street, Suite 2700, Dallas, Texas 75201

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

In the Matter of)	
)	
ONEOK NGL Pipeline, L.P.,)	
ONEOK NGL Pipeline, L.L.C., and)	CPF No. 3-2013-5015
ONEOK Underground Storage)	
Company, L.L.C., collectively,)	
)	
Respondent.)	

FINAL ORDER

During the period from May 2008 to April 2011, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted a compliance review of the natural gas liquids facility of ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C., and ONEOK Underground Storage Company, L.L.C. (collectively, ONEOK or Respondent) in Bushton, Kansas.¹ ONEOK operates 11,500 miles of pipeline transporting hazardous liquids, including approximately 11,000 miles transporting highly volatile liquids in Texas, Oklahoma, Kansas and several other states.²

As a result of the inspection, the Director, Central Region, OPS (Director), issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order to Respondent on May 13, 2013 (Notice).³ In accordance with 49 C.F.R. § 190.207, the Notice alleged that Respondent committed six violations of the hazardous liquids pipeline safety regulations and proposed a civil penalty of \$230,800 for the alleged violations. The Notice also proposed corrective action for two of the alleged violations.

After receiving an extension of time, ONEOK responded to the Notice on July 12, 2013. ONEOK contested the jurisdiction of PHMSA, contested the merits of the alleged violations and requested a hearing. Additional written materials were submitted by Respondent on October 15

¹ The three entities own and operate different portions of the Bushton facility. ONEOK Post-hearing Jurisdictional Brief at 5 (Mar. 14, 2014).

² This information is reported by Respondent for calendar year 2015 pursuant to 49 C.F.R. § 195.49.

³ The Director also issued two additional notices of probable violation to Respondent. They were dated May 13, 2013 (CPF No. 3-2013-5014) and July 3, 2013 (CPF No. 3-2013-5020). Final Orders are being issued in those cases separately.

and November 4, 2013. In accordance with 49 C.F.R. § 190.211, a hearing was held in Kansas City, Missouri on November 14-15, 2013, before a Presiding Official from the Office of Chief Counsel, PHMSA.⁴ After the hearing, Respondent submitted additional written materials on March 17, 2014, and May 6, 2016. Pursuant to § 190.209(b)(7), the Director submitted a written evaluation of Respondent's response material on April 1, 2016.

JURISDICTION AND GENERAL ARGUMENTS

As a general matter, Respondent contested the authority of PHMSA to enforce the pipeline safety regulations at the Bushton facility and argued the Notice, proposed civil penalty and proposed compliance order should all be withdrawn due to jurisdictional uncertainty, failure to provide fair notice, and other reasons. These arguments were raised in the related proceedings, CPF No. 3-2013-5014 and CPF No. 3-2013-5020. In the Final Order for CPF No. 3-2013-5014, I addressed these arguments. In particular, I determined the Pipeline Safety Act applies to the Bushton facility because the facility engages in the transportation of hazardous liquids by pipeline. I also determined that an exception in the Act for "refining" does not apply. Respondent's general arguments for withdrawing the Notice, proposed civil penalty and proposed compliance order are dismissed for the same reasons set forth in CPF No. 3-2013-5014.

FINDINGS OF VIOLATION

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

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

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated § 195.402(a) by failing to prepare all of the written procedures that are required for conducting normal operations and maintenance activities and for handling abnormal operations and emergencies at the Bushton facility in accordance with 49 C.F.R. Part 195. The Notice alleged that ONEOK had a manual of procedures for the facility,

⁴ Separate hearings concerning the notices of probable violation in CPF No. 3-2013-5014 and CPF No. 3-2013-5020 were held on January 15, 2014.

but the procedures were for “Process Safety Management” or worker safety and did not meet the pipeline safety requirements under 49 C.F.R. Part 195.

Respondent argued the alleged violation should be withdrawn because ONEOK provided several hundred pages of procedures and the Notice failed to explain why the procedures do not comply. For example, Respondent asserted that it has procedures for normal startup and shutdown of certain equipment relevant to § 195.402(c)(7); emergency shutdown of certain piping relevant to § 195.402(e)(4); and inspection, maintenance and calibration of certain equipment relevant to § 195.402(c)(3). Respondent argued OPS never explained why the procedures do not comply with the regulation.

In response to this argument, I find the Notice did allege specifically that Respondent “failed to prepare all written procedures necessary” to comply with the regulation.⁵ The Notice also referenced at least 24 subparagraphs of the regulation that Respondent’s procedures allegedly failed to comply with. Accordingly, the Notice appropriately notified Respondent of the allegation that it failed to have procedures meeting all of the requirements of § 195.402(a).

Respondent’s citation to a 1997 enforcement decision does not support withdrawing the allegation of violation. In *Sonat Exploration Co.*, CPF No. 43906, 1997 WL 34614789 (Aug. 1, 1997), PHMSA withdrew several alleged violations of § 195.402 after the operator demonstrated that the company had written procedures that met the regulatory requirements. The final order in that case noted the “vagueness” of certain allegations in the notice, but the Agency determined the operator had submitted records to prove compliance and otherwise the company’s contentions of compliance were not contradicted in the record.

The present case differs because ONEOK has not made a showing that its procedures comply with each of the requirements in § 195.402. Whereas the operator in *Sonat Exploration* argued that its procedures complied with the regulations and pointed to specific documents in support, ONEOK has not made such an assertion and showing. Instead, Respondent claimed that its procedures were prepared to comply with OSHA PSM requirements,⁶ and that some of those procedures are “relevant” to some of the provisions in § 195.402.⁷ A review of Respondent’s written procedures in the record reveals no apparent correlation between its procedures and each of the requirements in § 195.402.⁸

Respondent argued further that OPS should have issued a notice of amendment rather than a notice of probable violation. A notice of amendment may be issued pursuant to § 190.206 to determine if an operator’s plans or procedures are “inadequate to assure safe operation.” This enforcement tool is often used by the Agency to require an operator to correct issues in its written procedures that might not rise to the level of a regulatory violation.

⁵ Notice at 2.

⁶ ONEOK Post-hearing Merits Brief at 53 (Mar. 14, 2014).

⁷ ONEOK Post-hearing Merits Brief at 54.

⁸ OPS Violation Report, Exhibit H.

When an operator's procedures fail to comply with a regulatory requirement, however, it is more appropriate to issue a notice of probable violation pursuant to § 190.207. In the present case, the Notice alleged that Respondent "failed to prepare all written procedures . . . to meet the requirements of 49 C.F.R. Part 195." Since the allegation is that Respondent failed to comply with a regulation, issuance of a notice of probable violation in this case was appropriate.

For the above reasons, having reviewed the record, I find Respondent violated § 195.402(a) by failing to have written procedures for conducting normal operations and maintenance activities and for handling abnormal operations and emergencies.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), quoted above, by failing to perform a documented review of its manual of written procedures at intervals not to exceed 15 months, but at least once each calendar year for 2008, 2009 or 2010.

Respondent contested the alleged violation only on jurisdictional grounds. Having already rejected those arguments, I find the record demonstrates Respondent violated § 195.402(a) by failing to perform a documented review of its manual of written procedures at the requisite intervals.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(1) and (3), which states:

§ 195.404 Maps and records.

(a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information:

(1) Location and identification of the following pipeline facilities . . .

(iii) Scraper and sphere facilities;

(iv) Pipeline valves;

(v) Facilities to which § 195.402(c)(9) applies . . .

(vii) Safety devices to which § 195.428 applies . . .

(3) The maximum operating pressure of each pipeline.

The Notice alleged that Respondent violated § 195.404(a)(1) and (3) by failing to maintain current maps and records of its pipeline systems at the Bushton facility. The Notice referenced evidence of ONEOK's *Siemens Analysis Pressure Relief System Discussion List*, which allegedly described 45 records that were not current. OPS also alleged piping and instrumentation diagrams (P&ID) did not match the actual facility. Finally, OPS alleged that Respondent failed to have any documentation validating maximum operating pressure (MOP) of certain piping including incoming and outgoing manifolds with interconnecting piping and storage field piping.

Respondent contested the alleged violation on two grounds, first arguing there were not 45 incorrect or missing records, but at most 5 records issues. Second, Respondent produced MOP records and asserted that OPS never requested such records during the inspection.

With regard to the 45 alleged instances of violations, Respondent argued there were actually only eight separate P&IDs that contained issues, and three of those P&IDs related exclusively to

fractionation or truck facilities that are not regulated.⁹ In the Agency's post-hearing recommendation, the Regional Director did not object to Respondent's contention. I find the record supports Respondent's argument that only five P&IDs were inaccurate and noncompliant with § 195.404(a)(1).

Second, Respondent argued that MOP records were available but were never requested by OPS at the time of the inspection. The Regional Director did not object to Respondent's contention that the submitted records demonstrate compliance with § 195.404(a)(3). Accordingly, I am withdrawing the violation with respect to MOP records.

In conclusion, I find Respondent violated § 195.404(a)(1) by failing to have accurate records with respect to five P&IDs. The remaining alleged violations of § 195.404(a)(1) and (3) are withdrawn.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b), which states:

§ 195.420 Valve maintenance.

(a)

(b) Each operator shall, at intervals not exceeding 7 1/2 months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

The Notice alleged that Respondent violated § 195.420(b) by failing to perform documented inspections of 124 mainline valves at intervals not exceeding 7 1/2 months, but at least twice during the 2008 calendar year. Specifically, the Notice alleged that ONEOK did not perform and document inspections prior to July 15, 2008, and did not perform and document a second round of inspections prior to December 31, 2008. The Notice alleged that a total of 248 valve inspections were missed during this period. OPS produced a "DOT Valve" list from ONEOK that documented valve inspections in 2009, but not 2008.

Respondent argued the regulation does not apply to the valves in question because they are not "mainline valves." Respondent noted that mainline valves are required to be located at certain places on a pipeline pursuant to § 195.260, but none of the valves at issue in this item are located in any of those places. Rather all of the valves are on Respondent's access-controlled facility. Moreover, Respondent noted that prior enforcement decisions by the Agency have found mainline valves are those integral to safe operation of the pipeline system, such as those used to isolate a pump station,¹⁰ or used for station isolation, segment isolation and water crossings.¹¹ In contrast, Respondent argued the valves at issue here are "not used in the least to protect any pipeline."¹²

⁹ At the hearing, OPS acknowledged the regulations do not currently apply to fractionation equipment or facilities used for non-pipeline modes of transportation.

¹⁰ Alyeska Pipeline Service Co., CPF No. 55501, 2000 WL 35501193, at *5 (Nov. 30, 2000).

¹¹ Cenex Harvest State Coop., CPF No. 5-2001-5003, 2003 WL 25429837, at *3 (Feb. 10, 2003).

¹² ONEOK Post-hearing Merits Brief at 79.

The list of valves in evidence does not identify them as mainline valves, but only as “DOT valve[s].” Labeling them as DOT valves may imply the valves are subject to the requirements in § 195.420(a) and (c), applicable to all valves, but does not necessarily prove the valves are mainline valves subject to the additional requirements in § 195.420(b).¹³ Respondent, on the other hand, produced evidence that the valves are not mainline valves due to their location and function at the facility.

Given the weight of evidence suggesting the valves in question are not mainline valves subject to the requirements set forth in § 195.420(b), I find OPS has failed to prove the alleged violation. Accordingly, this alleged violation is withdrawn.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overfill protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year . . . inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated § 195.428(a) by failing to inspect and perform documented capacity testing of 80 relief valves at least twice each year during calendar years 2008, 2009 and 2010. In total, the Notice alleged that Respondent failed to conduct and document 147 inspections during the period.

Respondent argued the alleged violation should be withdrawn because “it is not possible to ascertain with any precision the evidence upon which OPS relied.”¹⁴ I reject this argument because Exhibit K of the Violation Report contains approximately 55 pages of ONEOK records, including ONEOK’s Thorco PSV listing with devices that require inspection twice each calendar year, and ONEOK’s relief valve inspection documents. OPS also included a spreadsheet prepared by OPS to summarize ONEOK’s relief valve maintenance activities.

Respondent further argued that 103 of the 147 alleged instances of the violation should be withdrawn for the following reasons: 50 alleged instances from calendar year 2010 should be withdrawn because the valves had been permanently removed from service; 49 alleged instances should be withdrawn because the valves are not used in transporting hazardous liquids; and 4

¹³ See, e.g., NuStar Logistics, L.P., CPF No. 4-2005-5048, Item 5(3), 2009 WL 1211363, at *6 (Mar. 11, 2009) (withdrawing a number of valves from the alleged violation of § 195.420(b) because the operator had included “all valves” on the list and not just mainline valves).

¹⁴ ONEOK Post-hearing Merits Brief at 90.

alleged instances should be withdrawn because ONEOK performed documented tests as required under § 195.428(a).

In the Agency’s post-hearing recommendation, the Regional Director did not object to Respondent’s contention. I find the record supports Respondent’s argument that 103 alleged instances should be withdrawn and that no more than 44 alleged violations occurred.

Having reviewed the record, I find Respondent violated § 195.428(a) by failing to inspect and perform documented capacity testing on relief valves 44 times during the calendar years of 2008 and 2009. The remaining 103 alleged instances of violation are withdrawn.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.583, which states:

§ 195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months.
Offshore	At least once each calendar year, but with intervals not exceeding 15 months.

(b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(c) If you find atmospheric corrosion during an inspection, you must provide protection against the corrosion as required by § 195.581.

The Notice alleged that Respondent violated § 195.583 by failing to conduct adequate inspections for atmospheric corrosion on pipeline exposed to the atmosphere. Specifically, the Notice alleged that Respondent failed to give particular attention to a pipe under thermal insulation at the Buckeye Water Knockout. During the OPS inspection, inspectors found the pipe had severe atmospheric corrosion. OPS produced photos of the severely corroded pipe.

Respondent contested the alleged violation only on grounds of jurisdiction and fair notice. Those arguments have already been rejected. Respondent did not otherwise contest the allegation of violation. Accordingly, having reviewed the record, I find Respondent violated § 195.583 by failing to inspect for atmospheric corrosion on pipeline exposed to the atmosphere.

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

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations.¹⁵ The Notice proposed a total civil penalty of \$230,800 for the violations cited above in Items 1 through 6.

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; any effect that the penalty may have on Respondent's 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.

Item 1: The Notice proposed a civil penalty of \$40,400 for Respondent's violation of 49 C.F.R. § 195.402(a). Respondent failed to prepare written procedures required for conducting normal operations and maintenance activities and for handling abnormal operations and emergencies at the Bushton facility in accordance with at least 24 separate subparagraphs of § 195.402(a).

The proposed penalty was based on assertions in the Notice and Violation Report relevant to the penalty assessment criteria in § 190.225. With regard to the *nature* of the violation, the Violation Report noted the violation concerned a failure to have procedures, which is more serious than a records violation, but less serious than a failure of equipment or a facility. With regard to *circumstances*, the Violation Report noted the violation was discovered by PHMSA rather than being self-reported by the Operator and that the violation started January 1, 2008. Respondent argued any consideration of the timeframe from January 1–May 12, 2008 would violate the five-year statute of limitations. Disregarding that period of time has no impact on the amount of the civil penalty.

With regard to *gravity*, the Violation Report suggested that pipeline integrity or safe operation was significantly compromised in an area other than a high consequence area (HCA). This selection is less serious than a violation that compromised safety in an HCA or that caused an accident, but more serious than a violation that minimally affected safety. Respondent argued this selection is unsupported by the record.

Respondent's argument is rejected because the record supports finding that ONEOK's failure to have written procedures for the safe transportation of hazardous materials constitutes a significant safety risk, particularly when the procedures fail to meet at least 24 separate safety

¹⁵ The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a), 125 Stat. 1905 (Jan. 3, 2012) increased the maximum civil penalty for a violation of the pipeline safety standards to \$200,000 per violation for each day, up to a maximum of \$2,000,000 for a related series of violations. These amounts are periodically adjusted for inflation. Inflation Adjustment of Maximum Civil Penalties, 81 Fed. Reg. 42564 (Jun. 30, 2016).

requirements. Respondent also argued it was improper for the Violation Report to mention that an accident occurred. I find that reference to an accident does not impact the amount of the civil penalty.

With regard to the degree of Respondent's *culpability*, the Violation Report suggested a credit because Respondent was cognizant of the regulatory requirement and took some steps to have written procedures. Respondent argued the penalty should be further reduced due to the jurisdictional uncertainty surrounding the Bushton facility. Respondent's jurisdictional uncertainty argument is rejected for the same reasons discussed previously.

With regard to the *good faith* of Respondent in attempting to comply, the Violation Report suggested no credit. Respondent argued that it demonstrated good faith by asking PHMSA for clarification of its jurisdiction on several occasions, even though the Agency has not clearly articulated an answer. This argument is rejected for the same reasons previously discussed with respect to jurisdiction.

With regard to the history of Respondent's prior offenses, the Violation Report noted a total of two prior offenses in the five-year period prior to issuance of the Notice.

I find the proposed penalty amount is appropriate under the assessment factors. Accordingly, having reviewed the record and considered the assessment criteria, PHMSA assesses a civil penalty of \$40,400 for Respondent's violation of 49 C.F.R. § 195.402(a).

Item 2: The Notice proposed a civil penalty of \$23,100 for Respondent's violation of 49 C.F.R. § 195.402(a). Respondent failed to perform a documented review of its procedures at requisite intervals.

The proposed penalty was based on assertions in the Notice and Violation Report relevant to the penalty assessment criteria in § 190.225. With regard to *nature* and *circumstances*, OPS noted in the Violation Report that this violation concerned a failure to have records, which is the least serious nature of violation. It was also discovered by PHMSA. With regard to *gravity*, OPS noted that safe operation was potentially compromised in a non-HCA area and the violation occurred for three annual review cycles. With regard to *culpability* and *good faith*, the Violation Report suggested no credit under these factors.

With respect the penalty for Item 2, Respondent submitted many of the same arguments that I rejected in Item 1. I find the proposed penalty amount is appropriate under the required assessment factors. Accordingly, having reviewed the record and considered the assessment criteria, PHMSA assesses a civil penalty of \$23,100 for Respondent's violation of 49 C.F.R. § 195.402(a).

Item 3: The Notice proposed a civil penalty of \$8,700 for Respondent's violation of 49 C.F.R. § 195.404(a)(1) and (3). Respondent failed to have accurate records for five P&IDs in violation of § 195.404(a)(1), but the remaining alleged violations of § 195.404(a)(1) and (3) were withdrawn.

With regard to *nature* and *circumstances*, OPS noted in the Violation Report this violation concerned a failure to have accurate records and was discovered by ONEOK. With regard to *gravity*, OPS noted that pipeline integrity or safe operation was minimally affected and there were 45 alleged instances of the violation. Because I found only 5 instances of violation, the penalty must be reduced.

With regard to *culpability* and *good faith*, the Violation Report suggested a credit under both factors because Respondent had the records but they were not current. Respondent argued the penalty should be further reduced because the time period of the violation stated in the Violation Report was unsupported and there was an improper reference to overpressure violations. I find these assertions do not impact the amount of the civil penalty. Respondent also submitted other arguments that have already been rejected.

The proposed penalty amount must be reduced because there were only 5 instances of the violation, not 45. Accordingly, having reviewed the record and considered the assessment criteria, PHMSA assesses a civil penalty of \$4,500 for Respondent's violation of 49 C.F.R. § 195.404(a)(1).

Item 4: The Notice proposed a civil penalty of \$61,200 for Respondent's violation of 49 C.F.R. § 195.420(b). Since this alleged violation is withdrawn, a civil penalty is not assessed.

Item 5: The Notice proposed a civil penalty of \$66,200 for Respondent's violation of 49 C.F.R. § 195.428(a). Respondent failed to inspect and perform documented capacity testing on relief valves 44 times during the calendar years of 2008 and 2009. The remaining 103 alleged instances of violation were withdrawn.

With regard to *nature* and *circumstances*, OPS noted in the Violation Report this violation concerned a failure to perform inspections and the violation was discovered by PHMSA. With regard to *gravity*, OPS noted that safe operation was significantly compromised in a non-HCA area and there were 147 alleged instances of the violation. Because I found only 44 instances of the violation, the penalty must be reduced. With regard to *culpability* and *good faith*, the Violation Report did not suggest a credit under either factor.

With respect to the civil penalty for Item 5, Respondent submitted the same arguments that I have already rejected in the Items above. The proposed penalty amount must be reduced to reflect that only 44 instances of the violation occurred. Accordingly, having reviewed the record and considered the assessment criteria, PHMSA assesses a reduced civil penalty of \$60,000 for Respondent's violation of 49 C.F.R. § 195.428(a).¹⁶

¹⁶ When a civil penalty is assessed for more than one instance of a violation (e.g., 44 valves with missed inspections), each additional instance beyond the first typically elevates the total penalty by less than the amount assessed for the first instance, with each additional instance representing a smaller increase in proportion to the total. *See, e.g.*, Plains Pipeline, L.P., CPF No. 4-2013-5007, n.61, 2015 WL 4397455, at *17 (May 22, 2015) (explaining each additional tank out of compliance elevated the civil penalty by less than the amount assessed for the first tank out of compliance).

Item 6: The Notice proposed a civil penalty of \$31,200 for Respondent's violation of 49 C.F.R. § 195.583. Respondent failed to inspect a pipeline for atmospheric corrosion.

With regard to *nature* and *circumstances*, OPS noted in the Violation Report this violation concerned a failure to perform an inspection and was discovered by PHMSA. With regard to *gravity*, OPS noted that safe operation was significantly compromised in a non-HCA area. With regard to *culpability* and *good faith*, the Violation Report did not suggest a reduction under either factor.

With respect to the civil penalty for Item 6, Respondent submitted the same arguments that I have already rejected in the Items above. I find the proposed penalty amount is appropriate under the required assessment factors. Accordingly, having reviewed the record and considered the assessment criteria, PHMSA assesses a civil penalty of \$31,200 for Respondent's violation of 49 C.F.R. § 195.583.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$159,200**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require the payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S Macarthur Blvd, Oklahoma City, OK 73169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$159,000 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 district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to the violations cited above in Item 1 and Item 3. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids by pipeline or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601.

Item 1. Respondent submitted several arguments for withdrawing the proposed compliance order for Item 1. First, Respondent argued that the terms of the proposed compliance order exceed the authority of the Agency. In particular, Respondent argued the cited regulation that was violated, § 195.402(a), concerns only procedures, but the proposed compliance order

requires extensive activities and testing related to MOP, communication systems, and other areas.

Section 60118(b) of title 49, United States Code, authorizes PHMSA to “issue orders directing compliance with . . . a regulation prescribed under this chapter.” Pursuant to that authority, 49 C.F.R. § 190.217 states that a Regional Director may issue a notice of probable violation to determine the extent of any violations “and for the issuance of an order directing compliance.”

PHMSA has determined that ONEOK violated § 195.402(a). This regulation requires Respondent to have written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. The regulation also requires Respondent to follow those procedures. PHMSA therefore has the authority to order compliance with § 195.402(a) by requiring actions on the part of ONEOK to demonstrate not only that it has the mandated written procedures for its Bushton facility, but also that it has implemented and is following those procedures. Respondent’s argument that the compliance order must be limited only to the amendment of procedures is rejected.

Respondent is correct, however, that OPS has not established a sufficient basis in the Notice for some of the corrective actions proposed in Item 1. For example, the Notice did not allege any violations with regard to Part 199 drug and alcohol testing regulations, yet OPS proposed actions to comply with Part 199. OPS also proposed certain testing and other activities that were not included in the allegation of violation. Accordingly, I am revising the compliance order to follow the text of the regulation more closely, while still ordering that Respondent complete those actions necessary to comply with § 195.402.

Second, Respondent argued the proposed compliance order is vague and ambiguous in that it fails to identify the components of the Bushton facility subject to Part 195. Respondent’s argument is rejected because as the operator of the pipeline system, ONEOK is in the best position to prepare a Part 195 Analysis that identifies all pipeline and storage facilities and all other operations at the Bushton facility that are required to be covered by a manual of written procedures under § 195.402. Respondent must submit its Part 195 Analysis to the Director for review and prior approval. Given the differences among unique pipeline systems, it is not unusual for PHMSA to order a respondent to develop a plan for coming into compliance.¹⁷

Third, Respondent argued many of the dates in the proposed compliance order have passed. Respondent is correct. The dates are therefore revised to run from the date of issuance of this order.

Fourth, Respondent argued OPS has not explained why a proposed compliance order is warranted. Respondent’s argument is rejected. The record supports finding that the risks posed by the transportation of hazardous liquids without written procedures that comply with the established minimum safety standards warrants ordering Respondent to come into compliance.

¹⁷ See, e.g., Florida Gas Transmission Co., CPF No. 4-2013-1019, at 11, 2015 WL 9943167, at *8 (Dec. 14, 2015) (ordering an operator to identify actions that must be taken to ensure future compliance and to create a schedule for completing those actions within six months).

A compliance order is also necessary in light of the fact that ONEOK has previously made assurances to OPS that it would take certain steps to comply with the pipeline safety regulations and then failed to do so.

Finally, Respondent objected to ONEOK NGL Pipeline being named in the proposed compliance order. This argument is rejected because Respondent has previously stated the named parties own and operate various parts of the Bushton facility. In conclusion, the compliance terms for Item 1 are included in this Order, subject to the revisions discussed above.

Item 3. Respondent argued the terms of the proposed compliance order for Item 3 exceed the authority of the Agency because they go beyond § 195.404 recordkeeping requirements to order physical testing to validate records.

Section 195.404 requires an operator to maintain current maps and records of its pipeline systems. These maps and records must be accurate. The Agency is within its authority to require that Respondent produce documents to support the accuracy of its records. I agree, however, that OPS has not established a basis in this proceeding to require additional testing provided there are other ways Respondent can validate the accuracy of its records. The proposed compliance order is revised to follow the text of the regulation more closely and to ensure compliance with § 195.404, while removing the reference to MOP records that was withdrawn from the alleged violation.

Second, Respondent argued OPS has not explained why a proposed compliance order is warranted. Respondent's argument is rejected for the same reasons outlined above in Item 1. Finally, Respondent argued the proposed compliance order is vague and ambiguous in that it fails to identify the components of the Bushton facility subject to Part 195. This argument is also rejected for the same reasons outlined above.

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 § 195.402(a) (**Item 1**), ONEOK must develop and submit to the Director, Central Region, OPS (Director) for approval an Analysis, Plan, Schedule, and Procedures that comply with this Paragraph and that ensure the pipeline and storage facilities located on the grounds of the Bushton facility are operated and maintained in accordance with written procedures that comply with § 195.402(a). ONEOK must perform the following:
 - (a) Not later than 60 days from issuance of this Compliance Order, ONEOK must prepare and submit to the Director for prior approval a Part 195 Analysis that identifies all pipeline and storage facilities and all other operations at the Bushton facility required to be covered by a manual of written procedures under § 195.402.
 - (b) Not later than 90 days from issuance of this Compliance Order, ONEOK must prepare and submit to the Director for prior approval a manual of written Procedures that

complies with § 195.402 and a Plan and Schedule for taking all actions necessary to ensure the pipelines, storage facilities, and operations at the Bushton facility are governed by the Procedures.

- (c) *Maintenance and normal operations.* At a minimum, the manual of written Procedures prepared under this Item must include procedures for the following to provide safety during maintenance and normal operations:
- (1) Making construction records, maps, and operating history available as necessary for safe operation and maintenance.
 - (2) Gathering of data needed for reporting accidents under 49 C.F.R. Part 195, subpart B in a timely and effective manner.
 - (3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of Part 195, subparts F and H.
 - (4) Determining which pipeline facilities are located in areas that would require an immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned.
 - (5) Analyzing pipeline accidents to determine their causes.
 - (6) Minimizing the potential for hazards identified under paragraph (c)(4) of this section and the possibility of recurrence of accidents analyzed under paragraph (c)(5) of this section.
 - (7) Starting up and shutting down any part of the pipeline system in a manner designed to assure operation within the limits prescribed by § 195.406, consider the hazardous liquid or carbon dioxide in transportation, variations in altitude along the pipeline, and pressure monitoring and control devices.
 - (8) In the case of a pipeline that is not equipped to fail safe, monitoring from an attended location pipeline pressure during startup until steady state pressure and flow conditions are reached and during shut-in to assure operation within limits prescribed by § 195.406.
 - (9) In the case of facilities not equipped to fail safe that are identified under § 195.402(c)(4) or that control receipt and delivery of the hazardous liquid or carbon dioxide, detecting abnormal operating conditions by monitoring pressure, temperature, flow or other appropriate operational data and transmitting this data to an attended location.
 - (10) Abandoning pipeline facilities, including safe disconnection from an operating pipeline system, purging of combustibles, and sealing abandoned facilities left in place to minimize safety and environmental hazards. For each abandoned offshore

pipeline facility or each abandoned onshore pipeline facility that crosses over, under or through commercially navigable waterways the last operator of that facility must file a report upon abandonment of that facility in accordance with § 195.59 of this part.

- (11) Minimizing the likelihood of accidental ignition of vapors in areas near facilities identified under paragraph (c)(4) where the potential exists for the presence of flammable liquids or gases.
 - (12) Establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication.
 - (13) Periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.
 - (14) Taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available when needed at the excavation, emergency rescue equipment, including a breathing apparatus and, a rescue harness and line.
 - (15) Implementing the applicable control room management procedures required by § 195.446.
- (d) *Abnormal operation.* The manual must also include Procedures for the following to provide safety when operating design limits have been exceeded:
- (1) Responding to, investigating, and correcting the cause of:
 - (i) Unintended closure of valves or shutdowns;
 - (ii) Increase or decrease in pressure or flow rate outside normal operating limits;
 - (iii) Loss of communications;
 - (iv) Operation of any safety device;
 - (v) Any other malfunction of a component, deviation from normal operation, or personnel error which could cause a hazard to persons or property.
 - (2) Checking variations from normal operation after abnormal operation has ended at sufficient critical locations in the system to determine continued integrity and safe operation.
 - (3) Correcting variations from normal operation of pressure and flow equipment and controls.

- (4) Notifying responsible operator personnel when notice of an abnormal operation is received.
 - (5) Periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.
- (e) *Emergencies.* The manual must include Procedures for the following to provide safety when an emergency condition occurs:
- (1) Receiving, identifying, and classifying notices of events which need immediate response by the operator or notice to fire, police, or other appropriate public officials and communicating this information to appropriate operator personnel for corrective action.
 - (2) Prompt and effective response to a notice of each type emergency, including fire or explosion occurring near or directly involving a pipeline facility, accidental release of hazardous liquid or carbon dioxide from a pipeline facility, operational failure causing a hazardous condition, and natural disaster affecting pipeline facilities.
 - (3) Having personnel, equipment, instruments, tools, and material available as needed at the scene of an emergency.
 - (4) Taking necessary action, such as emergency shutdown or pressure reduction, to minimize the volume of hazardous liquid or carbon dioxide that is released from any section of a pipeline system in the event of a failure.
 - (5) Control of released hazardous liquid or carbon dioxide at an accident scene to minimize the hazards, including possible intentional ignition in the cases of flammable highly volatile liquid.
 - (6) Minimization of public exposure to injury and probability of accidental ignition by assisting with evacuation of residents and assisting with halting traffic on roads and railroads in the affected area, or taking other appropriate action.
 - (7) Notifying fire, police, and other appropriate public officials of hazardous liquid or carbon dioxide pipeline emergencies and coordinating with them preplanned and actual responses during an emergency, including additional precautions necessary for an emergency involving a pipeline system transporting a highly volatile liquid.
 - (8) In the case of failure of a pipeline system transporting a highly volatile liquid, use of appropriate instruments to assess the extent and coverage of the vapor cloud and determine the hazardous areas.

- (9) Providing for a post-accident review of employee activities to determine whether the procedures were effective in each emergency and taking corrective action where deficiencies are found.
- (10) Actions required to be taken by a controller during an emergency, in accordance with §195.446.
- (f) *Safety-related condition reports.* The manual must include Procedures and instructions enabling personnel who perform operation and maintenance activities to recognize conditions that potentially may be safety-related conditions that are subject to the reporting requirements of § 195.55.
2. With respect to ONEOK's submissions to satisfy this Compliance Order, the Director may: (a) approve, in whole or in part, the submission; (b) approve the submission on specified conditions; (c) disapprove, in whole or in part, the submission, or (d) any combination of the foregoing. In the event the Director disapproves all or any portion of a submission, ONEOK must correct the deficiencies within the time specified by the Director and resubmit it for approval. Upon approval by the Director, ONEOK must implement the submission as approved.
3. ONEOK must submit documentation that demonstrates: the Plan has been completed according to the Schedule approved by the Director; the Procedures approved by the Director are being followed at the Bushton facility; and Paragraph 1 of this Compliance Order has been satisfied in full no later than 30 days after completion of the Plan.
4. With respect to the violation of § 195.404(a)(1) (**Item 3**), ONEOK must submit maps and records of its pipeline systems that include, at a minimum, the location and identification of the following pipeline facilities: scraper and sphere facilities; pipeline valves; facilities to which § 195.402(c)(9) applies; and safety devices to which § 195.428 applies. All pipe, valves, fittings, and components must be identified and accompanied by supporting documentation to demonstrate accuracy. ONEOK must also submit its procedures for documenting changes made to the system and for reflecting those changes in the records, drawings, maps, and other records of the Bushton facility. This information must be submitted to the Director no later than 30 days from issuance of this Compliance Order.
5. It is requested that ONEOK maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

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 the amounts set forth in 49 C.F.R. § 190.223 (currently \$205,638 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.

Under 49 C.F.R. § 190.243, Respondent may submit a petition for reconsideration of this Final Order to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, D.C. 20590, no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Date Issued