



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

901 Locust Street, Suite 462
Kansas City, MO 64106-2641

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

VIA FACSIMILE and UPS NEXT DAY AIR

May 13, 2013

Mr. Wes Christensen
Senior Vice President of Operations
ONEOK NGL Pipeline, L.P.
ONEOK NGL Pipeline, L.L.C.
ONEOK Underground Storage Company, L.L.C.
100 West Fifth Street
Tulsa, OK 74102

CPF 3-2013-5015

Dear Mr. Christensen:

Between May 2008 and April 2011, representatives from the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, conducted an ongoing compliance review following its investigation of repeated overpressure events that occurred on May 17, 2008 at ONEOK's natural gas liquids (NGLs) facility in Bushton, Kansas (the Bushton facility). Initial site investigations were conducted on May 22, 2008 and May 23, 2008. Site investigation activities were also conducted the week of April 11, 2011. ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C., and ONEOK Underground Storage Company, L.L.C. are subsidiaries of ONEOK Partners, L.P.

The Bushton facility includes, among other types of pipeline facilities, storage fields used to store liquid hydrocarbons, a dedicated control room, piping manifold systems, and a fractionation plant that separates Y-grade NGLs into purity products such as liquid propane, butane, ethane-propane mix, and natural gasoline. The products received from the incoming pipelines include both Y-grade NGL mix and purity products. The incoming purity products

are either sent to storage wells or are sent on to other outgoing pipelines. The incoming Y-grade NGL mix is sent either to the fractionation plant for processing, to the storage wells for storage, or are sent on to outgoing pipelines through pipeline manifolds. NGLs can be moved directly through the Bushton facility in continued transportation by pipeline.

During the period from May 2008 and April 2011, PHMSA and ONEOK had additional communications and correspondence involving engineering modeling and evaluation of the circumstances and contributing factors involved in the accident and the overall level of safety and compliance. ONEOK provided procedures, drawings, studies and maintenance records requested by PHMSA. Additionally, ONEOK provided new information to PHMSA in 2011 during a site visit PHMSA reviewed some of these procedures with personnel. ONEOK had replaced two dehydration units with filters and coalescers, installed an accumulator tank monitor with alarm to the newer control room, connected the flare drain system to the plant flare from the storage flare, and the Buckeye Water Knock Out was changed to a manual drain which was locked out of service.

As a result of the investigation, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The probable violations are:

1. § 195.402 Procedure 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.

ONEOK failed to prepare all written procedures necessary for conducting normal operations and maintenance activities and handling abnormal operations and emergencies for its system to meet the requirements of 49 C.F.R. Part 195. ONEOK submitted a manual of written procedures to PHMSA on April 8, 2011. These procedures appeared to have been prepared for purposes of Process Safety Management and worker safety, not Part 195 compliance. Following a Request for Specific Information dated June 23, 2011, and a follow-up email, ONEOK repeated its prior statement that these were the procedures in effect at the time of the 2011 inspection.

PHMSA's review of the procedures provided to PHMSA in 2011 finds that they failed to include provisions to provide safety in conducting normal operations and maintenance as required by Part 195 in the following areas:

- (1) Making construction records, maps, and operating history available as necessary for safe operation and maintenance. [see § 195.402(c)(1)]
- (2) Gathering of data needed for reporting accidents under Subpart B of this part in a timely and effective manner. [see § 195.402(c)(2)]
- (3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part. [see § 195.402(c)(3)]
- (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. [see § 195.402(c)(4)]
- (5) Analyzing pipeline accidents to determine their causes. [see § 195.402(c)(5)]
- (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. [also see § 195.402(c)(6)]
- (7) Starting up and shutting down any part of the pipeline in a manner designed to assure operation within the limits prescribed by paragraph §195.406, consider the hazardous liquid or carbon dioxide in transportation, variations in altitude along the pipeline, and pressure monitoring and control devices. [also see § 195.402(c)(7)]
- (8) In the case of 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. [also see § 195.402(c)(8)]
- (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. [also see § 195.402(c)(9)]
- (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. [also see § 195.402(c)(10)]
- (11) Minimizing the likelihood of accidental ignition of vapors in areas near facilities identified under paragraph (c)(4) of this section where the potential exists for the presence of flammable liquids or gases. [also see § 195.402(c)(11)]

(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 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. [see § 195.402(c)(12)]

(13) Periodically reviewing the work done by operator to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found. [see § 195.402(c)(13)]

(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. [see § 195.402(c)(14)]

A review of the procedures provided to PHMSA in 2011 finds them inadequate to provide safety when operating design limits have been exceeded regarding the following:

- (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.

A review of the procedures provided to PHMSA in 2011 finds that they failed to include provisions to provide safety during abnormal operations and emergencies in the following areas:

- (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. [see § 195.402(e)(1)]
- (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. [see § 195.402(e)(2)]
- (3) Having personnel, equipment, instruments, tools, and material available as needed at the scene of an emergency. [see § 195.402(e)(3)]
- (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 in the event of a failure. [see § 195.402(e)(4)]
- (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. [see § 195.402(e)(5)]
- (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. [see § 195.402(e)(6)]
- (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 transporting a highly volatile liquid. [see § 195.402(e)(7)]
- (8) In the case of failure of a pipeline transporting a highly volatile liquid, use of appropriate instruments to assess the extent and coverage of the vapor cloud and determine the hazardous areas. [see § 195.402(e)(8)]
- (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. [see § 195.402(e)(9)]

2. § 195.402 Procedure 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.

ONEOK did not perform a documented review of the manual of written procedures at intervals not to exceed 15 months, but at least once each calendar year for the years of 2008, 2009 or 2010.

3. §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.

(2)...

(3) The maximum operating pressure of each pipeline.

ONEOK failed to maintain current maps and records of its pipeline systems at the Bushton facility. ONEOK's Siemens Analysis Pressure Relief System Discussion List describes 45 records that were not current. The piping and instrumentation diagrams (P&ID) reviewed by PHMSA in 2011 were also found to not match the actual facility devices.¹ ONEOK also failed to maintain documentation validating the maximum operating pressure of certain facility piping including incoming and outgoing manifolds with interconnecting piping and storage field piping.

4. § 195.420 Valve maintenance.

(b) Each operator shall, at intervals not exceeding 7 ½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

ONEOK failed to perform documented inspections on 124 mainline valves at intervals not to exceed 7 1/2 months but at least twice for the calendar years of 2008. ONEOK

¹ Violation Report Exhibit I containing Siemens Review and Pressure Relief and Discussion.

did not perform and document the first round of inspections by July 15, 2008 and the second round of inspections by December 31, 2008. A total of 248 valve inspections were not performed and documented in this period.²

5. § 195.428 Overpressure safety devices and overflow 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, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7 ½ months, but at least twice 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.

ONEOK failed to inspect, perform and document capacity testing on 80 relief valves at least twice each year from the calendar years of 2008, 2009 and 2010 to determine that they were functioning properly and to confirm the relief valve adequacy from the standpoint of capacity and reliability of operation for the service in which they were used. A total of 147 inspections were not conducted and documented during this period.³

6. §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 disbanded 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 Sec. 195.581.

ONEOK failed to conduct an adequate inspection for atmospheric corrosion on its pipeline exposed to the atmosphere at the Buckeye Water Knockout at the Bushton

² Violation Report Exhibit J ONEOK DOT Valves List

³ Violation Report Exhibit K ONEOK Thorco PSV Listing and PHMSA Spreadsheet Pressure and Control Maintenance, ONEOK Relief Valve Inspection Documents for 2008, 2009, 2010

Facility that gave particular attention to pipe under thermal insulation. During its April 12, 2011 inspection PHMSA found the Buckeye Water Knockout to have severe atmospheric corrosion which was confirmed by ONEOK's Senior Corrosion Technician. The piping was covered with insulation which when removed the technician found the following.

On April 15, 2011, I inspected 4" and 1" drop out piping on SFT B-91 Tank at Bushton Storage facilities. The 1" pipe was horizontal above ground and laying on a concrete support. The measured wt. was .187" - .191". The vertical 4" riser, measured wt. of .195" - .197" and was coated with x-tru plastic coating. Moisture was found under the disbonded coating as well as corroded pipe. The transition area as well as just above this area showed the most severe corrosion.

I did not continue the inspection, due to the substantial amount of heavy scale and rust on the pipe. This line is attached to a flare line. Further inspection can be completed if the line could be isolated or taken out of service.

The technician's photos showed the severe corrosion as described and graded per an attachment titled Atmospheric Corrosion Inspection Guideline.⁴

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$200,000 for each violation for each day the violation persists up to a maximum of \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed \$100,000 per violation per day, with a maximum penalty not to exceed \$1,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$230,800 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$40,400
2	\$23,100
3	\$ 8,700
4	\$61,200
5	\$66,200
6	\$31,200

⁴ Violation Report Exhibit L Atmospheric Corrosion Inspection, Atmospheric Corrosion Inspection Guideline and PHMSA Photo.

Proposed Compliance Order

With respect to items 1 and 3, pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to ONEOK NGL Pipeline, L.P. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 3-2013-5015** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

A handwritten signature in black ink, appearing to read "DA Barrett", written over a horizontal line.

David Barrett
Director, Central Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to ONEOK NGL Pipeline, L.P. (ONEOK) a Compliance Order incorporating the following remedial requirements to ensure the compliance of ONEOK with the pipeline safety regulations:

1. In regard to Item 1 of the Notice, ONEOK must develop and submit to the Director, Central Region, PHMSA, (Director) a plan and schedule to ensure the pipeline and storage facilities located on the grounds of the Bushton facility that are covered by 49 C.F.R. Part 195 are operated and maintained in compliance with Parts 195 and 199. The plan and schedule must include, among other things, the following:

- (a) No later than July 1, 2013, prepare and submit to the Director, a Part 195 gap analysis that identifies all aspects of Bushton facility operations involving pipeline and storage facilities and operations that require action to bring such facilities and operations into compliance with Part 195 including, but not limited to, requirements for the preparation of plans and procedures; inspections, testing, evaluations, and analysis; personnel qualification and training; and any maintenance and repair work.

- (b) No later than August 1, 2013, prepare and submit to the Director for his approval, a comprehensive written plan and schedule for taking action to bring facilities and operations into compliance with Part 195 that addresses all of the gaps identified by the gap analysis (the Plan). At a minimum, the Plan shall provide for the following:

PART 195 SUBPART B – ANNUAL, ACCIDENT, AND SAFETY RELATED CONDITION REPORTING

1. ONEOK must have and follow procedures to include the ONEOK Bushton jurisdictional facilities in the 2012 Annual Report required by § 195.49.
2. ONEOK must complete procedures for filing all other reports required by this Subpart by June 30, 2013.

SUBPART F – OPERATION AND MAINTENANCE

1. ONEOK must prepare a manual of written procedures in accordance with 195.402 and submit these procedures to PHMSA by September 30, 2013.
2. ONEOK must establish and implement an Emergency Response training program for ONEOK Bushton personnel in accordance with 195.403 by September 30, 2013.
3. ONEOK must assemble current maps and records for the Bushton ONEOK facilities in accordance with 195.404 by September 30, 2013.

4. ONEOK must establish Maximum Operating Pressures (MOP) for all portions of the ONEOK Bushton jurisdictional facilities in accordance with 195.406 by June 30, 2013.
5. ONEOK must confirm to PHMSA that its communication system meets the requirements of 195.408 by June 30, 2013.
6. ONEOK must prepare a list of valves that are necessary for the safe operation of the ONEOK Bushton jurisdictional facilities and submit that list to PHMSA by June 30, 2013.
7. ONEOK must prepare a procedure to determine that each of the valves in the list in (6) above will function properly by August 31, 2013.
8. ONEOK must initiate testing of the valves identified in (6) above in accordance with 195.420 by October 31, 2013 and complete initial testing of these valves by December 31, 2013.
9. ONEOK must confirm compliance of the ONEOK Bushton scraper trap facilities with 195.426 to PHMSA by September 30, 2013.
10. ONEOK must identify all overpressure protection devices that protect ONEOK Bushton jurisdictional facilities and provide a list of those devices to PHMSA by June 30, 2013.
11. ONEOK must submit testing procedures to PHMSA by August 31, 2013 for all overpressure protection devices identified in (10) above to insure the devices meet the requirements of 195.428.
12. ONEOK must confirm that the set pressure of all overpressure protection devices identified in (10) above has been set to maintain the MOP established in (4) above by August 31, 2013.
13. ONEOK must commence testing of the overpressure protection devices identified in (10) above by October 31, 2013 and must complete testing of the devices by December 31, 2013.
14. ONEOK must develop a list of the firefighting equipment available at the ONEOK Bushton facility and must insure that all equipment is maintained in proper working order in accordance with 195.430 by June 30, 2013.
15. ONEOK must incorporate the ONEOK Bushton jurisdictional facilities in their Public Awareness Plan by June 30, 2013.
16. ONEOK must develop a plan to bring the relevant control room(s) into compliance with PHMSA's Control Room Management requirements and bring the control room(s) into compliance with the regulations by October 31, 2013. As an alternative ONEOK may submit documentation that demonstrates that the control room management rules are not applicable.

17. ONEOK must identify any portions of the Bushton facility that could affect an HCA by June 30, 2013.

18. ONEOK must incorporate the ONEOK Bushton jurisdictional facilities in their Integrity Management Program by December 31, 2013.

SUBPART H –CORROSION CONTROL

1. ONEOK must submit a written corrosion control program describing its procedures to comply with Subpart H to PHMSA by September 30, 2013.
2. ONEOK must identify and evaluate its steel pipelines to be protected against corrosion by December 31, 2013.
3. ONEOK must complete atmospheric corrosion evaluations by September 30, 2013.
4. ONEOK must inspect all above ground jurisdictional piping and paint piping as needed by June 30, 2014.

PART 199 - DRUG AND ALCOHOL TESTING

1. ONEOK must insure compliance with Part 199 Drug and Alcohol Testing by September 30, 2013.
2. In regard to Item 3 of the Notice, submit plan and schedule to conduct documented testing as necessary to validate the maximum operating pressure of the lines as required by 49 CFR Part 195. The records used to validate the MOP must be traceable, reliable, and complete. The pipe characteristics must be validated by appropriate records or by actual measurements and destructive testing using coupons taken from the pipeline in various specified locations. All pipe, valves, fittings, and components must be identified and accompanied by supporting documentation for the rated operating pressure. ONEOK must also define and implement a means to document any changes made to the system and reflect these changes in the records, drawings, maps, etc., of the Bushton facility.
3. Documentation of completion of all items in each subpart must be provided to the Director within 30 days of the completion date of that subpart.
4. It is requested that ONEOK NGL Pipeline, LP maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to David Barrett, Director, Central, Pipeline and Hazardous Materials Safety Administration. 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.

Response Options for Pipeline Operators in Compliance Proceedings

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

a. When the Notice contains a proposed CIVIL PENALTY* --

1. If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to issue an order making findings of violation and upon confirmation that the payment has been received PHMSA will close the case with prejudice to the respondent. Payment terms are outlined below;
2. If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order assessing a penalty amount up to the amount proposed in the Notice. Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$200,000 per violation per day the violation persists up to a maximum of \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum civil penalty may not exceed \$100,000 per violation per day, with a maximum penalty not to exceed \$1,000,000 for a related series of violations. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based;

3. If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination or mitigation of the proposed civil penalty; or
4. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

b. When the Notice contains a proposed **COMPLIANCE ORDER*** --

1. If you are not contesting the compliance order, notify the Regional Director that you intend to take the steps in the proposed compliance order;
2. If you are not contesting the compliance order but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and issue a compliance order;
3. If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part; or
4. Request a hearing as described below to contest the allegations and/or proposed compliance order items.

c. When the Notice contains a **WARNING ITEM** --

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. **Procedures for Responding to a NOTICE OF AMENDMENT*--**

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. If you are not contesting the Notice, notify the Regional Director of your plans to address the inadequacies identified in the Notice;
- b. If you are not contesting the Notice but wish to submit written explanations, information, or other materials you believe warrant modification of the Notice of Amendment in whole or in part, or you seek clarification of the terms of the Notice of Amendment, you may submit such materials. This authorizes PHMSA to make findings and issue an Order Directing Amendment;
- c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or
- d. Request a hearing as described below to contest the allegations in the Notice.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

III. **Procedure for Requesting a Hearing**

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

IV. **Extensions of Time**

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

V. **Freedom of Information Act**

Any material provided to PHMSA by the respondent, and materials prepared by PHMSA including the Notice and any order issued in this case, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If you believe the information you are providing is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **The Rights of Small Entities To Enforcement Fairness and Policy Against Retaliation**

The Department of Transportation has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights. Our objective is to ensure a fair regulatory enforcement environment. If you feel you have been treated unfairly or unprofessionally, you may contact the PHMSA Office of Chief Counsel. You also have the right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of this agency.

The Department of Transportation strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about compliance and enforcement activities.

VII. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to http://www.sba.gov/ombudsman/dsp_faq.html.

VIII. **Payment Instructions**

Civil Penalty Payments of Less Than \$10,000

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number

for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration
Mike Monroney Aeronautical Center
Financial Operations Division (AMZ-341) P.O. Box 269039
Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

Civil Penalty Payments of \$10,000 or more

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) <u>RECEIVER ABA NO.</u> 021030004	(2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank)
(3) <u>SENDING BANK ABA NO.</u> (Provided by sending bank)	(4) <u>SENDING BANK REF NO.</u> (Provided by sending bank)
(5) <u>AMOUNT</u>	(6) <u>SENDING BANK NAME</u> (Provided by sending bank)
(7) <u>RECEIVER NAME</u> TREAS NYC	(8) <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)
(9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> 69140001	(10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

Block #7 - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "**69140001**". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - "**AC-payment for PHMSA Case # / To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country.**"

NOTE: A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

February 7, 2013