

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
WASHINGTON, DC 20590

\_\_\_\_\_  
In the matter of:

Marathon Pipe Line LLC

Respondent  
\_\_\_\_\_

§  
§  
§  
§  
§  
§

CPF No. 4-2015-5024

**STATEMENT OF ISSUES  
OF  
MARATHON PIPE LINE LLC  
TO  
NOTICE OF PROBABLE VIOLATION  
AND  
PROPOSED COMPLIANCE ORDER**

Marathon Pipe Line LLC (“Respondent”) submits this Statement of Issues pursuant to 49 C.F.R. § 190.211(b) in connection with its request for a hearing pursuant to 49 C.F.R. § 190.208(b)(4).

By letter dated October 26, 2015, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) issued to Respondent a Notice of Probable Violation and Proposed Compliance Order (collectively, the “NOPV”), CPF No. 4-2015-5024, which was received by Respondent on November 3, 2015. On November 24, 2015, an extension of time to respond to the NOPV was granted, until December 18, 2015. By separate writing, Respondent has requested a hearing in this matter, and this Statement of Issues is served therewith.

**BACKGROUND**

This matter results from a PHMSA inspection of records and procedures of Respondent at Findlay, Ohio, and inspection of records at Respondent’s offices in Garyville and Zachary, Louisiana, and in Pasadena, Texas.

In the NOPV, PHMSA alleges violations of certain of the pipeline safety regulations promulgated at 49 C.F.R. Part 195 (“Part 195”) and to order actions to bring Respondent into compliance with said regulations, all pursuant to the procedural and enforcement regulations promulgated at 49 C.F.R. Part 190, Subparts A and B, as to each and all of which Respondent states its issues.

## THE ALLEGED VIOLATIONS

Respondent sets out below its factual, legal and regulatory issues that relate to the allegations of the NOPV. The paragraphs below are numbered to correspond with the numbered Items of the NOPV. Each paragraph begins with a citation to the subject regulation and a summary of the allegations.

1. 49 C.F.R. § 195.464 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks: By maintaining a “dike area capacity” that is insufficient under 49 C.F.R. § 195.264(b)(1) and under NFPA 30.

Respondent disputes and objects to the allegations stated in the NOPV, in that:

- 1.1. NOPV Item 1 fails to state any applicable standard from NFPA 30 and therefore is deficient under 49 C.F.R. § 190.207(b)(1);
  - 1.2. The NOPV fails to include a statement of the evidence upon which it is based and therefore is deficient under 49 C.F.R. § 190.207(b)(1);
  - 1.3. The cited regulation, 49 C.F.R. § 195.264(b)(1), fails to state a standard with which Respondent may comply;
  - 1.4. The cited regulation, 49 C.F.R. § 195.264(b)(1), does not apply, and was not intended to apply, retroactively.
  - 1.5. By imposing a design and construction standard to a pipeline facility that was in existence at the time the cited regulation was promulgated, PHMSA would be acting beyond the authority granted to the Secretary of Transportation by the Pipeline Safety Act (49 U.S.C. § 60101 *et seq.*, the “PSA”); and
  - 1.6. By imposing a design and construction standard to a pipeline facility that was in existence at the time the cited regulation was promulgated, PHMSA would be acting in contravention of the Administrative Procedure Act (5 U.S.C. § 551 *et seq.*).
2. 49 C.F.R. § 195.588 What standards apply to direct assessment? By “not follow[ing] the requirements of NACE SP0502 when performing ECDA to assess the integrity of line pipe that could affect a High Consequence Area” with regard to a total of 14 areas of cased pipeline crossings located on four separate pipelines.

Respondent disputes and objects to the allegations stated in the NOPV, in that:

- 2.1. PHMSA’s concerns with Respondent’s procedures should have been the object of a Notice of Amendment pursuant to 49 C.F.R. § 190.206, not a Notice of Probable Violation and Proposed Compliance Order.

## THE PROPOSED COMPLIANCE ORDER

1. Item 1 of the Proposed Compliance Order would direct that Respondent “[e]nsure that the tank dike capacity area for tanks 268-2, 100-3, 80-4 and 210-6 at the Pasadena Station

located in Pasadena, TX are in compliance with §195.264, within 120 days of issuance of a Final Order.”

Respondent disputes and objects to such proposed compliance actions, in that:

- 1.1. A Compliance Order cannot be imposed absent “reason to believe” that Respondent is engaging in conduct that violates the PSA or Part 195, and, absent proof of a violation, PHMSA has not proved a reason to believe that Respondent is engaging in conduct that violates the PSA or Part 195; therefore, PHMSA has failed to satisfy the regulatory precedent to the imposition of a compliance order; *see* 49 C.F.R. 190.217.
- 1.2. The 120-day deadline in the Proposed Compliance Order has no basis in fact, is not supported by any engineering analysis or assessment, and fails to consider design requirements, resource and materials procurement timing, or construction methods; and would preclude alternative methods of achieving compliance.
- 1.3. PHMSA has neither proffered any evidence, made any factual findings, nor provided any explanation, discussion or analysis of the manner in which the nature of the alleged violations, or the public interest, warrant issuance of the proposed compliance order as required by 49 C.F.R. 190.217.

On the foregoing grounds, Item 1 of the Proposed Compliance Order must be withdrawn in its entirety, or, in the alternative, be modified to account for relevant factual, engineering, resource, and construction requirements.

2. Item 2 of the Proposed Compliance Order would direct that Respondent perform the following actions with regard to 14 pipeline segments identified in the Proposed Compliance Order:
  - a. Notify the OPS Southwest Region of the assessment method(s) to be utilized, provide the procedures or processes for performing the assessment, and the planned dates for performing each assessment, within 90 days of the issuance of the Final Order.
  - b. Assess the line pipe in cased crossings listed above in accordance with §195.452(j)(5), within 180 days of the issuance of the Final Order.
  - c. Provide the OPS Southwest Region a report of each completed assessment performed and any remedial actions performed or scheduled on the cased crossings noted above, within 60 days of completing the assessment.

Respondent disputes and objects to such proposed compliance actions, in that:

- 2.1. Proposed Compliance Order Item 2 directs assessment of the subject pipeline segments; however, the basis of the alleged violation, 49 C.F.R. § 195.588, goes only to the means for performing external corrosion direct assessment and does not impose an assessment requirement. As such, PHMSA may impose a compliance order only with regard to achieving compliance with 49 C.F.R. § 195.588; and, therefore, PHMSA lacks the regulatory basis upon which to order assessment of the subject pipeline segments; *see* 49 C.F.R. 190.217.

- 2.2. In the alternative to the foregoing, the time deadlines that would be imposed for each action stated in the Proposed Compliance Order have no basis in fact; are not supported by any engineering analysis or assessment; fail to consider pipeline design and specifications or resource and materials procurement timing; necessary permits or authorizations; the potential need for land rights; or the potentially varying timing requirements associated with various potential assessment methods.
- 2.3. PHMSA has neither proffered any evidence, made any factual findings, nor provided any explanation, discussion or analysis of the manner in which the nature of the alleged violations, or the public interest, warrant issuance of the proposed compliance order; *see* 49 C.F.R. 190.217.

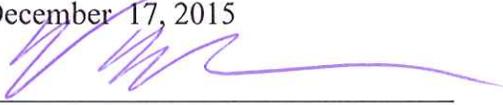
On the foregoing grounds, Item 2 of the Proposed Compliance Order must be withdrawn in its entirety, or, in the alternative, be modified to account for relevant factual, engineering, resource, land, and permitting requirements.

## CONCLUSION

At the hearing in this matter, Respondent intends to bring forth evidence in the form of documents and/or witness testimony, as well as to present its arguments, in support of the issues stated heretofore. Respondent reserves the right to amend and supplement this Statement of Issues at or before the hearing.

## COUNSEL FOR RESPONDENT MARATHON PIPE LINE LLC

December 17, 2015



---

William V. Murchison  
Texas Bar No. 14682500  
325 North St. Paul Street  
Suite 2700  
Dallas, Texas 75201  
(214) 716-1923 – Telephone  
[Vince.Murchison@PipelineLegal.com](mailto:Vince.Murchison@PipelineLegal.com)

J. Gregory Smith  
Senior Counsel  
Marathon Petroleum Company LP  
539 South Main Street  
Findlay, Ohio 45840  
(419) 421-3355  
[jgsmith@marathonpetroleum.com](mailto:jgsmith@marathonpetroleum.com)