

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

VIA ELECTRONIC MAIL TO: jeff.ramsey@fhr.com , Randy.Lenz@fhr.com
and kim.gerold@fhr.com

December 15, 2020

Jeff Ramsey
President and CEO
Flint Hills Resources, LLC
4111 E. 37th Street North
Wichita, KS 67220

CPF 3-2020-5021

Dear Mr. Ramsey:

On March 6, 2019-August 16, 2019, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected your procedures, records and pipeline facilities from the Pine Bend Refinery to the Milwaukee and Madison terminals.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. § 195.403 Emergency Response Training.

(a)

(b) At the intervals not exceeding 15 months, but at least once each calendar year, each operator shall:

(1) Review with personnel their performance in meeting the objectives of the emergency response training program set forth in paragraph (a) of this section;

Flint Hills Resources, LLC (FHR) failed to complete the required annual reviews of its emergency response training program in 2016 as required by 195.403(b)(1). During the inspection, FHR's Emergency Response Manager stated that reviews of the Emergency Plan had been completed on the following dates: 12/27/2014, 12/30/2015, 4/25/2017 and 12/4/2017, and acknowledged no review had been completed in 2016 (or within 15 months of the 12/30/2015 review).

2. § 195.410 Line markers.

(a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:

(1) Markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known.

FHR failed to maintain line markers as required by 195.410(a)(1) between N. Main St. and Damascus Trail in Cottage Grove, Wisconsin, and at the west side of the road crossing at MP 107 between Junction City and Eau Claire, Wisconsin. PHMSA observation of the right-of-way at these locations found sufficient line markers were not present so the location of the pipeline could be accurately known.

3. § 195.412 Inspection of rights-of-way and crossings under navigable waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

FHR failed to conduct acceptable inspections of the right-of-way as required by § 195.412 (a). The Operator did not maintain the pipeline right-of-way conditions at a level that is appropriate for aerial patrolling of the right-of-way and did not select an alternate patrol method that would allow effective patrols based on the condition of the right-of-way. PHMSA's inspection of the right-of-way discovered excessive vegetation cover over the right-of-way at the locations listed below which made it impossible to complete effective aerial patrols of the right-of-way. The aerial patrol records for January 1, 2019 through August 14, 2019 did not identify that the right-of-way was overgrown at the following locations.

- East of County Road Z in Pepin County, WI

- At MP 182, near Stevens Point, WI between the Wisconsin River and West River Drive

4. § 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, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7½ 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.

(c) Aboveground breakout tanks that are constructed or significantly altered according to API Std 2510 (incorporated by reference, *see* § 195.3) after October 2, 2000, must have an overfill protection system installed according to API Std 2510, section 7.1.2. Other aboveground breakout tanks with 600 gallons (2271 liters) or more of storage capacity that are constructed or significantly altered after October 2, 2000, must have an overfill protection system installed according to API RP 2350 (incorporated by reference, *see* §195.3). However, an operator need not comply with any part of API RP 2350 for a particular breakout tank if the operator describes in the manual required by § 195.402 why compliance with that part is not necessary for safety of the tank.

(d) After October 2, 2000, the requirements of paragraphs (a) and (b) of this section for inspection and testing of pressure control equipment apply to the inspection and testing of overfill protection systems.

FHR did not complete the annual overfill protection system inspection of the Tank 541 at the Milwaukee Terminal in 2015. PHMSA's records inspection identified that FHR completed the annual inspections of the overfill protection inspection system on Tank 541 on 9/29/2014 and 11/22/2016. FHR completed quarterly inspections of the Tank 541 overfill protection system in 2015; however, these inspections were not as comprehensive as the regulation requires, and did not meet the requirements of their annual overfill protection inspection.

5. § 195.452 Pipeline integrity management in high consequence areas.

(a)

(l) *What records must an operator keep to demonstrate compliance?*

(1) An operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of this subpart. At a minimum, an operator must maintain the following records for review during an inspection:

(ii) Documents to support the decisions and analyses, including any modifications, justifications, deviations and determinations made, variances, and actions taken, to implement and evaluate each element of the integrity management program listed in paragraph (f) of this section.

FHR did not maintain records of the decisions and analysis for the periodic evaluation of pipeline integrity as required by §§ 195.452(j)(2) and 195.452(l)(1)(ii) in 2018. Records of the periodic evaluations for 2017 were reviewed by PHMSA; however, FHR acknowledged records of the 2018 periodic evaluation were not available.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved for the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$38,300 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$19,000
3	\$19,300

Warning Items

With respect to items 2, 4, 5, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Failure to do so may result in additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be 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).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. 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. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from the receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 3-2020-5021** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Gregory A. Ochs
Director, Central Region, OPS
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Enforcement Proceedings*

Cc: Randy Lenz, Senior VP Operations, Flint Hills Resources, 3120 117th St. E., Inver Grove Heights, MN 55077, Randy.Lenz@fhr.com

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