

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

VIA ELECTRONIC MAIL TO: troby@bayoumidstream.com; tnellermoe@bayoumidstream.com

November 8, 2022

Travis Roby
Chief Executive Officer
Bayou Midstream
820 Gessner RD 1450
Houston, Texas 77024

CPF 3-2022-055-NOPV

Dear Mr. Roby:

On various dates between August 2021 and October 2021, 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 Bayou Midstream's subsidiary NST Transload Operating Company, LLC's (NST) East Fairview, North Dakota pipeline terminal.

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

- 1. §195.452 Pipeline integrity management in high consequence areas.**
 - (a)....**
 - (b) *What program and practices must operators use to manage pipeline integrity? Each operator of a pipeline covered by this section must:***
 - (1) Develop a written integrity management program that addresses the risks on each segment of pipeline....**
 - (5) Implement and follow the program.**

NST failed to follow its integrity management procedure for risk analysis in Section 6 of the Northstar Midstream IMP to evaluate the consequences of a potential pipeline failure, as required by §195.452(f)(3). Specifically, NST failed to evaluate the consequences of a failure at its East Fairview terminal because it did not estimate the extent of dispersion of hazardous

materials that could result from a failure of the breakout tanks or piping. During the inspection NST could not provide records demonstrating that an analysis of a potential crude oil release had been conducted.

2. §195.563 Which pipelines must have cathodic protection?

(a) Each buried or submerged pipeline that is constructed, relocated, replaced, or otherwise changed after the applicable date in §195.401(c) must have cathodic protection. The cathodic protection must be in operation not later than 1 year after the pipeline is constructed, relocated, replaced, or otherwise changed, as applicable.

NST failed to demonstrate that it had a functional cathodic protection (CP) system installed in its East Fairview station within one year of operation. During the inspection NST provided a map of the existing test points on its mainline pipe; however, there were no test points shown within the station. Additionally, PHMSA found from observation that electrical isolation kits had been installed between the mainline and station piping, indicating that the CP system in place for mainline pipe was not designed for the station piping.

The pipeline was fully operational in 2017, however NST failed to install a CP system within one year of operation and could not provide a justification for not installing CP; therefore, NST was operating without adequate CP.

Proposed Compliance Order

With respect to items 1, and 2, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to NST Express LLC. 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 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 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 3-2022-055-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

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

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

cc: Travis Nellermoe, Area Operations Manager, Bayou Midstream Bakken,
tnellermoe@bayoumidstream.com

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to NST Transload Operating Company, LLC (NST), a Compliance Order incorporating the following remedial requirements to ensure the compliance of NST with the pipeline safety regulations:

- A. In regard to Item 1 of the Notice pertaining to the failure to follow its integrity management procedure for risk analysis at its facilities, NST must, within 90 days of the receipt of the Final Order:
 - i. Perform a study to determine the extent of dispersion of hazardous materials released from its facilities as a result of a possible failure, and evaluate the severity of consequences of the failure for possible mitigation.
 - ii. Provide the Director, PHMSA Central Region, a report summarizing the results of the study.

- B. In regard to Item 2 of the Notice, pertaining to NST's failure to demonstrate that it had a functional cathodic protection system within one year of operation at East Fairview station, NST Transload must:
 - i. Within 30 days of receipt of the Final Order, ensure that cathodic protection (CP) is applied to the buried pipe in its facilities.
 - ii. Within 60 days of receipt of the Final Order:
 - 1. Install sufficient test stations in its facilities to monitor cathodic protection and submit a report to PHMSA of the monitored level of CP at each test station.
 - 2. Verify that any electrical isolation devices are functioning as intended.
 - iii. Within 90 days of the Final Order, provide a report to the Director, PHMSA Central Region, outlining the completion of the requirements above, and any deficiencies found by the CP monitoring. Additionally, NST shall provide the ongoing schedule for completion of any installation or remediation activities necessary to achieve compliance with CP requirements.

- C. It is requested NST Transload Operating Company, LLC maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Gregory A. Ochs, Director, Central Region, 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.