

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

**ELECTRONIC MAIL - RETURN RECEIPT REQUESTED**

October 31, 2022

Greet Gatlin  
Vice President of Operations  
Breitburn Operating L.P.  
1111 Bagby Street  
Suite 1600  
Houston, Texas 77002

**CPF 4-2022-061-NOPV**

Dear Mr. Gatlin:

From February 22 to June 22, 2022, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected Breitburn Operating L.P.'s (Breitburn) carbon dioxide (CO<sub>2</sub>) transmission pipeline facilities in Oklahoma, New Mexico, and Texas.

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

**1. § 195.49 Annual report.**

**Each operator must annually complete and submit DOT Form PHMSA F 7000-1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year. An operator must submit the annual report by June 15 each year, except that for the 2010 reporting year the report must be submitted by August 15, 2011. A separate report is required for crude oil, HVL (including anhydrous ammonia), petroleum products, carbon dioxide pipelines, and fuel grade ethanol pipelines. For each state a pipeline traverses, an operator must separately complete those sections on the form requiring information to be reported for each state.**

Breitburn failed to complete and submit its annual report for calendar year 2020 by June 15, 2021 in accordance with § 195.49. Specifically, Breitburn submitted the 2020 annual report on July 8, 2021, 24 days after the submission deadline of June 15, 2021.

Therefore, Breitburn failed to complete and submit its annual report for 2020 in accordance with § 195.49.

**2. § 195.402 Procedural manual for operations, maintenance, and emergencies.**

**(a) . . . .**

**(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:**

**(1) . . . .**

**(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.**

Breitburn failed to conduct periodic reviews of the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance, and take corrective action where deficiencies were found in accordance with § 195.402(c)(13). Specifically, Breitburn failed to provide records or other documentation that demonstrated the work done by operator personnel was periodically reviewed.

Breitburn stated that its periodic review consisted of a discussion with the Breitburn field staff about the operations and maintenance manual procedures, but it did not conduct a review of the work performed.

Therefore, Breitburn failed to conduct periodic reviews of the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance, and take corrective action where deficiencies were found in accordance with § 195.402(c)(13).

**3. § 195.403 Emergency response training.**

**(a) Each operator shall establish and conduct a continuing training program to instruct emergency response personnel to:**

**(1) Carry out the emergency procedures established under 195.402 that relate to their assignments;**

**(2) Know the characteristics and hazards of the hazardous liquids or carbon dioxide transported, including, in case of flammable HVL, flammability of mixtures with air, odorless vapors, and water reactions;**

**(3) Recognize conditions that are likely to cause emergencies, predict the consequences of facility malfunctions or failures and hazardous liquids or carbon dioxide spills, and take appropriate corrective action;**

**(4) Take steps necessary to control any accidental release of hazardous liquid or carbon dioxide and to minimize the potential for fire, explosion, toxicity, or environmental damage; and**

**(5) Learn the potential causes, types, sizes, and consequences of fire and the appropriate use of portable fire extinguishers and other on-site fire control equipment, involving, where feasible, a simulated pipeline emergency condition.**

Breitburn failed to provide records demonstrating compliance with § 195.403(a) in accordance with § 195.452(1)(1). Specifically, Breitburn failed to provide records indicating it conducted its periodic emergency response training.

Breitburn's written procedure P-195.403: Emergency Response Training (Dec. 2020) requires at least "one emergency response drill or table top exercise at intervals not exceeding 15 months." Breitburn must document this training on Form F-195.403: Emergency Response Training. However, Breitburn failed to provide the required records of its emergency response training.

Therefore, Breitburn failed to provide records demonstrating compliance with § 195.403(a) in accordance with § 195.452(1)(1).

**4. § 195.440 Public awareness.**

**(a) . . . .**

**(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.**

Breitburn failed to follow the general program recommendations, including baseline and supplemental requirements of API RP 1162 in accordance with § 195.440(c). Specifically,

Breitburn failed to measure bottom line results as part of its public awareness program effectiveness evaluation.

API RP 1162, Section 8.4.4 states that an “operator should track the number of incidents and consequences caused by third-party excavators. This should include reported near misses; reported pipeline damage occurrences that did not result in a release; and third-party excavation damage events that resulted in pipeline failures.” Operators must follow all general program recommendations, including baseline and supplemental requirements of API RP 1162.

However, Breitburn’s Public Awareness Program, Section 12.3, Effectiveness Evaluation does not require the operator to measure bottom line result. Rather, it states that Breitburn “may use” bottom line results to measure program effectiveness. Therefore, Breitburn’s public awareness programs fails to follow the general program recommendations in API RP 1162.

In addition, as required by API RP 1162 operators must use data on “near misses” to determine whether the public awareness program is achieving bottom line results. However, Breitburn failed to incorporate its aerial patrol findings, which included near misses, in its public awareness program effectiveness evaluation. Although Breitburn provided a list of documented near misses, there is no documentation indicating how the data was evaluated and if conclusions from the evaluations were provided to the contractor.

Therefore, Breitburn failed to follow the general program recommendations, including baseline and supplemental requirements of API RP 1162 in accordance with § 195.440(c).

#### Proposed Compliance Order

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For a violation occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For a violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For a violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not 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 a 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 a 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.

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

### Warning Item

With respect to Item 1, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement actions 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.

### Proposed Compliance Order

With respect to Items 2, 3, and 4, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Breitburn Operating 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 Enforcement 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).

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 4-2022-061-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Bryan Lethcoe  
Director, Southwest Region  
Pipeline and Hazardous Materials Safety Administration

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

cc: Austin Tramell, Regulatory Manager, Breitburn Operating L.P.,  
austin.tramell@mavresources.com

## **PROPOSED COMPLIANCE ORDER**

Pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Breitburn Operating L.P. (Breitburn) a Compliance Order incorporating the following remedial requirements to ensure the compliance with the pipeline safety regulations:

- A. With regard to Item 2 of the Notice pertaining to Breitburn's failure to conduct periodic reviews of the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance, and take corrective action where deficiencies are found, Breitburn must conduct a review of the work done by operator personnel and provide documentation of the review to the Director, Southwest Region, PHMSA within **30** days of the issuance of the Final Order.
- B. With regard to Item 3 of the Notice pertaining to Breitburn's failure to provide records demonstrating compliance with § 195.403, Breitburn must conduct emergency response training and provide the records to the Director, Southwest Region, PHMSA within **30** days of the issuance of the Final Order.
- C. With regard to Item 4 of the Notice pertaining to Breitburn's failure to measure the bottom-line results and review the effectiveness of its public awareness program, Breitburn must amend its public awareness program to ensure that all general program recommendations of API RP 1162 are included as requirements and provide the updated procedures to the Director, Southwest Region, PHMSA within **30** days of the issuance of the Final Order. Breitburn must also conduct an effectiveness review of its public awareness program by measuring the bottom-line results and providing documentation of the review to the Director, Southwest Region, PHMSA within **30** days of the issuance of the Final Order.

It is requested (not mandated) that Breitburn maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Bryan Lethcoe, Director, Southwest 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.