



PORTLAND PIPE LINE CORPORATION
Safety, Environment, Customer, Community

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November 2, 2018

Mr. Robert Burrough
Director, Eastern Region
Pipeline and Hazardous Materials Safety Administration
Eastern Region, Office of Pipeline Safety
840 Bear Tavern Road, Suite 300
West Trenton, NJ 08628

Subject: Submission of Written Response to Notice of Probable Violation and Proposed
Civil Penalty, **CPF 1-2018-5029**, October 5, 2018

Dear Mr. Burrough:

The purpose of this letter and the accompanying document is to provide written response to the Pipeline and Hazardous Materials Safety Administration (PHMSA) to the above referenced Notice of Probable Violation (NOPV). PHMSA issued the NOPV pursuant to its August 6 through August 10, 2018 inspection of Portland Pipe Line Corporation's (PPLC's) facilities. The NOPV as issued to PPLC by PHMSA was dated October 5, 2018 and was received by PPLC on October 8, 2018. Accordingly, this response is timely. The NOPV alleges one violation and proposes a civil penalty of \$30,900.

PPLC shares PHMSA's commitment to ensuring public safety and pipeline integrity. The overpressure protection devices referenced in the NOPV were and have been successfully tested annually by PPLC and the safety and integrity of the pipeline and public safety were never in jeopardy due to the alleged violation. The requested action in the NOPV has already been addressed by PPLC through the use of a changed form for documenting testing of devices. For the reasons stated in this letter, pursuant to 49 C.F.R. Part 190.208(a)(3) and in lieu of requesting a hearing, PPLC provides this written response to contest NOPV Item 1 and the associated proposed civil penalty. Specifically, PPLC respectfully requests that the alleged violation should either be withdrawn or converted to a Warning Item or Notice of Amendment (NOA). In regards to the proposed penalty, PPLC respectfully requests that given the clarifications submitted in these pleadings, and in light of PPLC's cooperative and proactive response to this action, the amount of penalty should either be withdrawn or reduced.

Response to NOPV Allegation

NOPV Item: *Failure to Follow Written Procedures for Performing Inspections of Overpressure Protection devices, as required by 49 C.F.R. Part 195.402(a)*

PHMSA alleges that PPLC failed to record the "as found" and "as left" set pressure on the 24-inch Main Line Pumping Station Protective Device Testing records, dated 2016-2017 in accordance with *PPLC's Operations & Maintenance Procedures, Section 6.7 – Critical Systems and Equipment*. The inspector identified 59 instances where the documentation did not include the "as found" and "as left" conditions in its testing records.

Documentation provided to the inspector did have the required engineering specified set pressure for the device noted on the inspection forms to guide the technicians and it is clear from the documentation that the devices were tested annually against the appropriate safety standard. PPLC discussed with the inspector that if the "as found" or "as left" conditions were different from the required set pressure on the form "The information would be documented in the remarks section of the record form" based on our interpretation of the procedure. In most cases the "as found" pressure already aligns with the required set pressure noted on the form. The "as left" pressure conforms with the required set pressure as this is the purpose of performing the testing. In the unusual case where an adjustment or replacement is required

for the device, the action taken would have been noted in the remarks section. Therefore, the absence of an entry in the remarks section indicates the “as found” and “as left” set pressure aligns with the required set pressure indicated on the form. Only exceptions to this condition would be noted in the remarks section. At the time of the inspection, when asked directly the inspector confirmed that he did not have any concerns regarding whether the devices had been tested and verified against the established set pressure for the device. The inspector stated it was not a matter of whether the testing was completed, it was a matter of the documentation being incomplete according to his interpretation of the procedure and that either the procedure or the documentation requires revision.

PPLC again notes that PHMSA has not alleged any violation of Part 195.428(a) for testing the protective devices, but instead has alleged the company failed to follow the documentation procedure in the manual. This is therefore an issue of the completeness of the documentation for the test that suggests an improvement to the inspection form would be appropriate. Toward this end the attached document provides PPLC’s amended protective device record form to improve the field documentation on testing these devices. The form now includes a column for entering the “as found” and “as left” set pressure by the technician, thereby reserving the remarks section for noting exceptions. PPLC intends to implement the amended documents through a Management of Change (MOC) process in accordance with PPLC’s Safety Managing System (SMS).

The Company believes that given that the devices were properly tested annually and that the inspector only found issue with the documentation, that this NOPV should have been addressed through a Warning Letter or NOA requiring PPLC to improve its testing documentation and without a proposed civil penalty. PHMSA’s own Pipeline Safety Enforcement Procedures emphasize that “A Warning Letter/Item is generally used for lower risk items” and for those issues where a proposed civil penalty and a proposed compliance order are not appropriate (*PHMSA Pipeline Safety Enforcement Procedures, Sec. 3.1.2.1, p. 3, (rev. 2017)*). In this instance, PHMSA has alleged only a minor recordkeeping discrepancy where PPLC’s procedures and forms could benefit from clarification. If not a Warning Item, PHMSA should have included this alleged violation in the NOA that it issued to PPLC in September 2018 as a result of this same inspection (*In re Portland Pipe Line, CPF. 1-2018-5028M (Sep. 13, 2018)*). PHMSA has explained that NOAs are appropriate where the Agency identifies deficiencies related to an operator’s procedures, including where they “provide instructions for compliance in a vague, general or conflicting manner” and that “increases the likelihood of error, confusion, or the exercise of poor judgment” (*PHMSA Pipeline Safety Enforcement Procedures, Sec. 3.1.3, p. 5, (rev. 2017)*). In other words, the Agency issues NOAs for the very type of violation alleged in the NOPV.

Response to Proposed Civil Penalty

For the reasons noted above, PPLC respectfully requests that the proposed civil penalty of \$30,900 be withdrawn. In addition, PHMSA has explained that a proposed civil penalty should be considered to draw attention to a problem area, emphasize the need for lasting attention, and deter future violations, citing examples where a violation is the causal factor in an accident, egregious or willful, a repeat violation, significantly increased the likelihood of a pipeline failure, significantly and adversely impacted a program that is critical to assuring pipeline integrity, etc. (*Id. at Sec. 3.1.2.2, p. 4, (rev. 2017)*). None of these situations are at issue in this NOPV.

In the alternative, PPLC requests that PHMSA reduce the proposed civil penalty to properly account for the statutory and regulatory factors that the Agency is required to consider and apply, including but not limited to the nature of the violation, circumstances, gravity, culpability, good faith and other matters as justice may require (*49 U.S.C. 60122; 49 C.F.R. Part 190.225*). At most, this could be considered a documentation and recordkeeping violation with zero impact to the public, the environment and pipeline integrity. PHMSA Administrator Elliot addressed the Pipeline Leadership group last week regarding enforcement actions and noted that good companies with good intentions should receive the benefit of the doubt and those who knowingly ignore or circumvent safety should get no sympathy. PPLC is a good company with good intentions and we believe that the proposed civil penalty for this NOPV should be withdrawn or, in the alternative, reduced.

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Summary

For the reasons stated above in response to the NOPV and the fact that the testing of the devices had been completed in accordance with the timing and requirements of the regulations, that the nature and circumstances of the failure to document the "as found" and "as left" conditions did not cause any increased risk to safety or integrity or have other adverse impact and that PPLC's timely efforts to make the changes required of the form as attached, PPLC respectfully requests that the alleged violations should either be withdrawn or converted to a Warning Item or NOA. In regards to the proposed penalty, PPLC respectfully requests that given the clarifications submitted in these pleadings, PHMSA's own procedures, and in light of PPLC's cooperative and proactive response to this action, the amount of penalty should either be withdrawn or significantly reduced.

If you have any questions about the response to the NOPV, or about this matter generally, please do not hesitate to contact Ken Brown, PPLC Engineering Manager, at (207) 767-0449.

Sincerely,



Thomas A. Hardison

Enclosure

cc: J.C. Gillies, N.D. Payeur, K.P. Brown, File EG 174

Figure 6-17

EXAMPLE OF ANNUAL PROTECTIVE DEVICE TESTING FORM

24" Annual Protective Device Testing

[STATION IDENTIFICATION]

* Device shall be calibrated if activation is not at the Specified Set Pressure but within 5%, if not, replace device

Symbol	Function	Manufacturer	Specified Set Pressure	"As Found" Set Pressure	Calibration Required?* Y/N	"As Left" Set Pressure	Tested By (Name)	Date (DD/MM/YYYY)	Remarks
SCP	# 6 High Station Case Pressure	Rosemount	1390 psi						
SDP	# 6 High Discharge Pressure	Rosemount	830 psi						

Engineering specified Set Pressure

Technician's "As Found" set pressure before testing

Technician's entry of "Y" or "N" if calibration was necessary

Technician's "As Left" set pressure after testing

Technician's remarks regarding exceptions or notes of interest during testing