



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials
Safety Administration**

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

VIA ELECTRONIC MAIL TO: Michael.Gudgeon@pbfenergy.com

March 31, 2022

Mr. Michael Gudgeon
Refinery Manager
Toledo Refining Company, LLC
1819 Woodville Road
Oregon, Ohio 43616

CPF 1-2022-028-NOPV

Dear Mr. Gudgeon:

From August 9, 2021 to September 15, 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 Toledo Refining Company, LLC's (Toledo) procedures and records in Toledo, Ohio.

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. § 194.107 General response plan requirements.**
 - (a) ...**
 - (c) Each response plan must include:**
 - (1) A core plan consisting of –**
 - (i) ...**
 - (viii) Equipment testing,**

Toledo failed to follow its response plan regarding response equipment testing. Specifically, Toledo failed to routinely test its spill response equipment during 2019 and 2020 in accordance

with the *Toledo Refinery Facility Response Plan, dated 09/03/21* (FRP) and § 194.107(c)(1)(viii).

During the inspection, PHMSA reviewed the FRP. FRP Section 5.1 stated in part that “[t]he Facility is equipped with spill response equipment. This equipment is listed in FIGURE 5-2. The equipment listed in FIGURE 5-2 is inspected on a routine basis and is deployed as stated in SECTION 4.”

PHMSA requested recent records for the spill response equipment inspections and Toledo stated that it documents this on Figure 5.2 of the FRP, but that it did not do this in 2019 or 2020.

Therefore, Toledo failed to follow its response plan regarding response equipment testing in accordance with § 194.107(c)(1)(viii).

2. § 195.61 National Pipeline Mapping System.

(a) Each operator of a hazardous liquid pipeline facility must provide the following geospatial data to PHMSA for that facility:

(1) Geospatial data, attributes, metadata and transmittal letter appropriate for use in the National Pipeline Mapping System. Acceptable formats and additional information are specified in the NPMS Operator Standards manual available at www.npms.phmsa.dot.gov or by contacting the PHMSA Geographic Information Systems Manager at (202) 366-4595.

Toledo failed to provide accurate geospatial data to PHMSA of its pipeline facilities. Specifically, Toledo failed to accurately provide its active pipeline mileage to PHMSA in accordance with § 195.61(a)(1).

During the inspection, PHMSA requested records related to abandonment of any pipelines at the Toledo, Ohio facility. Toledo stated that the 6-inch 16-233 hazardous liquid dock line (Line 16-233), acquired by Toledo in 2011, was believed to be formally abandoned and removed from service in 2009 by its prior operator. Toledo provided the *F-195.422 Maintenance Record, dated 07/13/09* (Maintenance Record). The Maintenance Record stated in part: “B1-Description of job: Remove 30' section of 6" dock line, isolate and cap.”

When PHMSA requested additional information, Toledo stated that it did not report Line 16-233 as abandoned to PHMSA. Abandonment of Line 16-233 would result in a reduction of pipeline mileage reported by Toledo from approximately 4.18 miles to 2.08 miles.

Therefore, Toledo failed to provide accurate geospatial data to PHMSA of its pipeline facilities in accordance with § 195.61(a)(1).

3. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals

not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

Toledo failed to follow its manual of written procedures in accordance with § 195.402(a). Specifically, Toledo failed to follow its *Operations, Maintenance, and Emergencies Manual, dated 06/25/20* (OME) for handling abnormal operations as required by § 195.402(d)(1).¹

OME Section 195.402(d)(1) stated in part, “Initiator - T&S Operator and Shift Supervisor (SS) or Facility Shift Superintendent (FSS) are responsible for initiating an investigation based on alarms and indications of an Abnormal Condition” and “The [DOT Program Administrator] shall review the information from the incident and provide the following:

- a. Verify that the incident is not reportable under DOT 195.55.
- b. Verify that the pressures did not exceed 110% of the system maximum allowable operating pressure. Follow Type A Incident Investigation Process if the system did exceed 110% of the system maximum allowable operating pressure.
- c. Provide briefing to operations/engineering of incident.
- d. Verify that all the control devices functioned as designed.
- e. Determine the cause of the upset condition.
- f. Determine if control room actions may have contributed to the event and if so, make needed changes (CRM Sec. 8.2)
- g. Determine if there are any corrective actions that should be taken to minimize or eliminate similar incidents.
- h. File as appropriate.”

During the inspection, PHMSA requested 2019 and 2020 calendar year records related to § 195.402(d)(1). Toledo provided six Abnormal Operation Condition (AOC) Records. The AOC Records failed to include the information required by OME Section 195.402(d)(1), as listed above. PHMSA requested additional information regarding how Toledo followed its OME Section 195.402(d)(1), but Toledo could not provide any additional information.

Therefore, Toledo failed to follow its manual of written procedures in accordance with

¹ 49 C.F.R. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) ...

(d) Abnormal operation. The manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

(1) Responding to, investigating, and correcting the cause of:

(i) Unintended closure of valves or shutdowns;

(ii) Increase or decrease in pressure or flow rate outside normal operating limits;

(iii) Loss of communications;

(iv) Operation of any safety device;

(v) Any other malfunction of a component, deviation from normal operation, or personnel error which could cause a hazard to persons or property.

§ 195.402(a).

4. § 195.403 Emergency response training.

(a) ...

(c) Each operator shall require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under 195.402 for which they are responsible to ensure compliance.

Toledo failed to verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance. Specifically, Toledo was unable to provide records indicating compliance with § 195.403(c).

During the inspection, PHMSA requested § 195.403(c) emergency response supervisor training records for calendar years 2019 and 2020. Toledo stated that it conducts a facility response plan emergency response redbook review. However, Toledo was unable to provide any related records. After the inspection, Toledo provided *OPA 90 Sign-in Sheets, dated 2019 and 2020* (Sign-in Sheets). The Sign-in Sheets did not demonstrate how the OPA 90 training verifies that supervisors are maintaining thorough knowledge of that portion of the emergency response procedures for which they are responsible to ensure compliance. The Sign-in Sheets only contained names and signatures, not topics addressed in the training.

Therefore, Toledo failed to verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance in accordance with § 195.403(c).

5. § 195.406 Maximum operating pressure.

(a) Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following:

(1) The internal design pressure of the pipe determined in accordance with § 195.106. However, for steel pipe in pipelines being converted under § 195.5, if one or more factors of the design formula (§ 195.106) are unknown, one of the following pressures is to be used as design pressure:

(i) Eighty percent of the first test pressure that produces yield under section N5.0 of appendix N of ASME/ANSI B31.8 (incorporated by reference, see § 195.3), reduced by the appropriate factors in §§ 195.106 (a) and (e); or

(ii) If the pipe is 12 3/4 inch (324 mm) or less outside diameter and is not tested to yield under this paragraph, 200 p.s.i. (1379 kPa) gage.

(2) The design pressure of any other component of the pipeline.

(3) Eighty percent of the test pressure for any part of the pipeline which has been pressure tested under subpart E of this part.

(4) Eighty percent of the factory test pressure or of the prototype test pressure for any individually installed component which is excepted from testing under § 195.305.

(5) For pipelines under §§ 195.302(b)(1) and (b)(2)(i) that have not been pressure tested under subpart E of this part, 80 percent of the test pressure or highest operating pressure to which the pipeline was subjected for 4 or more continuous hours that can be demonstrated by recording charts or logs made at the time the test or operations were conducted.

Toledo failed to maintain adequate records that demonstrate that the maximum operating pressure (MOP) of its jurisdictional pipeline segments were determined in accordance with § 195.406(a). Specifically, the documents provided by Toledo failed to include details of an overall calculation of the MOP on the pipeline considering all factors required by § 195.406(a).

During the inspection, PHMSA requested records supporting the MOP of the Toledo pipelines. Toledo provided the following records:

- *Kiefner and Associates Inc. Pipeline Incident Background Data, dated 03/18/08*
- *Determination of Stresses in 8" Dock Pipeline, dated 01/01/02*
- *F-195.310 Certification of Pressure Test, dated 07/09/04*
- *F-195.310 Certification of Pressure Test, dated 06/24/04*
- *Sunoco Toledo Refinery – Failure Investigation Final Report, dated 09/22/08*
- *F-195.422 Maintenance Record, dated 07/13/09*

Toledo did not provide any documentation related to the calculation of internal design pressure as required by § 195.406(a)(1) pursuant to § 195.106(a) for its 6" and 8" pipeline. Also, records were not provided demonstrating compliance with § 195.406(a)(2) and (a)(4). The *F-195.310 Certification of Pressure Test, dated 07/09/04* record was related to a 6" pipeline. The *Sunoco Toledo Refinery – Failure Investigation Final Report, dated 09/22/08* was a failure investigation report. The *Kiefner and Associates Inc. Pipeline Incident Background Data, dated 03/18/08* record was related to a third-party pipeline investigation. The *Determination of Stresses in 8" Dock Pipeline, dated 01/01/02* was a third-party calculation for maximum operating stress. The *F-195.310 Certification of Pressure Test, dated 06/24/04* record was a certification of a pressure test conducted on the pipeline. The *F-195.422 Maintenance Record, dated 07/13/09* was a maintenance record for a 6" pipeline.

None of the documents provided by Toledo included details of an overall calculation of the MOP on the pipeline considering all factors required by § 195.406(a). When PHMSA asked for additional information regarding records related to calculation of the MOP on the pipeline, Toledo did not provide any additional information. Toledo stated that the MOP was 701psi but did not have a calculation to support that assertion.

Therefore, Toledo failed to maintain adequate records that demonstrate that the maximum operating pressure (MOP) of its jurisdictional pipeline segments were determined in accordance with § 195.406(a).

6. § 195.404 Maps and records.

(a) ...

(c) **Each operator shall maintain the following records for the periods specified;**

(1) ...

(3) **A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.**

Toledo failed to maintain an adequate record of each inspection and test required by 49 C.F.R. Part 195, Subpart F in accordance with § 195.404(c)(3). Specifically, Toledo failed to maintain adequate records indicating the completion of periodic reviews of 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 as required by § 195.402(c)(13).²

During the inspection, PHSMA requested normal operation and maintenance effectiveness review records for calendar years 2019 and 2020. Toledo provided *TRC Pipeline Risk Review, dated 01/01/18*, *TRC Pipeline Risk Review, dated 01/01/20* and *IMP Performance Metrics, dated 01/12/21* (Risk Reviews). However, the Risk Reviews did not include details on periodic effectiveness reviews of the procedures used in normal operation and maintenance. After the inspection, Toledo provided *AOC Records (dated 2019 and 2020)*. However, the AOC Records contained effectiveness reviews of abnormal operations procedures, not effectiveness reviews of normal operation and maintenance procedures.

Therefore, Toledo failed to maintain an adequate record of each inspection and test required by 49 C.F.R. Part 195, Subpart F in accordance with § 195.404(c)(3).

7. § 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) ...

(5) **Implement and follow the program.**

Toledo failed to follow its integrity management program in accordance with § 195.452(b)(5). Specifically, Toledo failed to follow its *Pipeline Integrity Management Plan, dated 12/10/20*

² 49 C.F.R. § 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.

(IMP) Section 10 regarding performance metrics for calendar years 2019 and 2020 as required by § 195.452(k).³

During the inspection, PHMSA reviewed Toledo's IMP. The IMP Section 10 stated in part "The performance of the prior year's integrity management activities will be measured, as described below, by August 31st of each year. The results of the following measures will be used to establish goals for the next year. Specific measures may be modified, added or removed as the Pipeline Integrity Management Plan undergoes continual improvement."

PHMSA requested records demonstrating compliance with the requirements of § 195.452(k) and the IMP. Toledo provided 8" *Pipeline Risk Review, dated 01/01/20* and *IMP Performance Matrix 01/12/2021* (Effectiveness Reviews). However, the Effectiveness Reviews did not include an evaluation of the measures to determine whether the program is effective in assessing and evaluating the integrity of each pipeline segment. Furthermore, the Effectiveness Reviews failed to provide any interpretation of the performance metrics.

Therefore, Toledo failed to follow its integrity management program in accordance with § 195.452(b)(5).

8. § 195.452 Pipeline integrity management in high consequence areas.

(a) ...

(i) What preventive and mitigative measures must an operator take to protect the high consequence area?

(1) ...

(3) Leak detection. An operator must have a means to detect leaks on its pipeline system. An operator must evaluate the capability of its leak detection means and modify, as necessary, to protect the high consequence area. An operator's evaluation must, at least, consider, the following factors—length and size of the pipeline, type of product carried, the pipeline's proximity to the high consequence area, the swiftness of leak detection, location of nearest response personnel, leak history, and risk assessment results.

Toledo failed to conduct an evaluation of the capability of its leak detection in accordance with § 195.452(i)(3).

During the inspection, PHMSA requested records demonstrating compliance with the requirements of § 195.452(i)(3). Toledo failed to produce any records demonstrating that it had conducted a leak detection evaluation and could not provide any additional information.

³ 49 C.F.R. § 195.452 Pipeline integrity management in high consequence areas.

(a) ...

(k) *What methods to measure program effectiveness must be used?* An operator's program must include methods to measure whether the program is effective in assessing and evaluating the integrity of each pipeline segment and in protecting the high consequence areas. See Appendix C of this part for guidance on methods that can be used to evaluate a program's effectiveness.

Therefore, Toledo failed to conduct an evaluation of the capability of its leak detection in accordance with § 195.452(i)(3).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to 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 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 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 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.

We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of \$81,400 as follows:

<u>Item number</u>	<u>PENALTY</u>
4	\$19,300
5	\$15,500
8	\$46,600

Warning Items

With respect to Items 1, 3, 6, and 7, 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.

Proposed Compliance Order

With respect to Items 2 and 5, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Toledo Refining Company, 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 1-2022-028-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Robert Burrough
Director, Eastern Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

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

PROPOSED COMPLIANCE ORDER

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

- A. In regard to Item 2 of the Notice pertaining to the failure to submit accurate geospatial data to PHMSA, Toledo must verify and notify PHMSA of the correct operating status (abandoned or active) of its 2.1 mile Line 16-233 hazardous liquid pipeline within **60** days of receipt of the Final Order. Additionally, if confirmed to be properly abandoned, Toledo must also submit corrected Annual Reports and NPMS submittals to PHMSA at the time of notification.
- B. In regard to Item 5 of the Notice pertaining to the failure to maintain adequate records supporting and demonstrating the calculation of maximum operating pressure (MOP), Toledo must review the entirety of its historical records and pipe characteristics and provide a written justification which confirms the MOP of its pipeline is 701psi in accordance with 49 C.F.R. § 195.406(a)(1)-(5) within **60** days of receipt of the Final Order. If unable to confirm through records that this MOP is valid and complies with § 195.406(a)(1)-(5), Toledo must take additional measures on the pipeline such as investigating its pipe characteristics or reducing the pipeline MOP, until the pipeline MOP is able to be confirmed via a substantiative record.
- C. It is requested (not mandated) that Toledo Refining Company, LLC maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Robert Burrough, Director, Eastern 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.