

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

CERTIFIED - RETURN RECEIPT REQUESTED

August 30, 2010

Mr. Tim Heilig
Vice President of Mechanical Operations
Norfolk Southern Corporation
1200 Peachtree Street NE (Box 184)
Atlanta, GA 30309

CPF No. 2-2010-6004

Dear Mr. Heilig:

On September 28-29 and on November 30, 2009, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) inspected the Norfolk Southern Corporation (NSC) pipeline system in Macon, Georgia, pursuant to 49 United States Code (USC), Chapter 601.

As a result of the inspection, it appears you have committed probable violations of the pipeline safety regulations in Title 49 of the Code of Federal Regulations. The items inspected and the probable violations are:

1. **§195.505 Qualification program.**
Each operator shall have and follow a written qualification program. The program shall have provisions to:
(a) Identify covered tasks;

NSC's written "*Operator Qualification Plan*" (OQ Plan) dated November 2009 failed to list many covered tasks routinely performed on the pipeline as part of NSC's ongoing operations and maintenance (O&M) program. The covered task list in Section 3.3, Page 5, of the OQ Plan contained only five covered tasks. Moreover, the list was general in content, broad in nature, and was missing many of the specific covered tasks that had been performed on the pipeline system in accordance with NSC's written O&M manual.

The covered tasks identified in NSC's OQ Plan specifically addressed the examination of the pipeline right-of-way (ROW) by a qualified contractor, hydrostatic testing of the pipeline, cathodic protection, valve inspections, and pipeline start-up and shut-down. This covered task list, however, did not contain many other O&M covered tasks that had been performed and should be performed on a pipeline system by a pipeline operator in the performance of O&M duties. Such items would include, but are not limited to, tasks associated with corrosion control (atmospheric corrosion inspection, inspection of removed pipe for internal corrosion, coating inspection and repair), damage prevention activities (line marking, excavation), and maintenance/repair activities (welding, NDE, purging).

2. §195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall have provisions to:

(b) Ensure through evaluation that individuals performing covered tasks are qualified;

[Note: *Qualified* means that an individual has been evaluated and can: (a) perform assigned covered tasks and (b) recognize and react to abnormal operating conditions (see §195.503 Definitions)].

NSC failed to assure that individuals performing covered tasks on its pipeline system were properly OQ qualified because it did not establish abnormal operating conditions (AOCs) for each covered task in its OQ Plan and thus could not evaluate an individual's ability to either recognize or react to an AOC while performing a covered task.

The covered task list in Section 3.3, Page 5, of the OQ Plan, listed examination of the pipeline ROW by a qualified contractor as one of five covered tasks. While the description of this covered task in the OQ Plan included certain items that a contractor should have reported to NSC if observed during a ROW examination, these items were not identified as AOCs in the OQ Plan. Moreover, none of the other four covered tasks in the OQ Plan listed any AOCs or how an individual was to recognize or react to an AOC.

3. §195.507 Recordkeeping.

Each operator shall maintain records that demonstrate compliance with this subpart.

(a) Qualification records shall include:

(1) Identification of qualified individual(s);

(2) Identification of the covered tasks the individual is qualified to perform;

(3) Date(s) of current qualification; and

(4) Qualification method(s).

NSC failed to maintain sufficient records to adequately demonstrate compliance with the OQ regulations. While NSC did provide some records showing the training of certain individuals, these training records did not meet the regulatory requirements for OQ qualification because they did not include information on the methods used to qualify the individuals, on the dates of the qualification, or on the identification of the covered tasks for which the individual was being qualified.

4. §195.509 General.

(e) After December 16, 2004, observation of on-the-job performance may not be used as the sole method of evaluation.

NSC failed to meet the regulation because it has allowed observation of on-the-job performance as a sole method of evaluation after December 16, 2004.

The OQ Plan identifies initial and subsequent evaluation methods for qualification to perform covered tasks as "*knowledge-based classroom presentation and hands-on skills and abilities evaluations.*" Also, NSC uses an "*OQ Ability Evaluation Record*" form to evaluate an individual for one or more covered tasks. When taken together, the statement and the form indicate that using observation of on-the-job performance as the sole method of evaluation is acceptable. This is in direct contradiction to the regulation.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$98,600 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$ 38,300
2	\$ 42,000
3	\$ 18,300

Warning Items

With respect to item 4: 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 this item. Be advised that failure to do so may result in Norfolk Southern Corporation being subject to additional enforcement action.

Proposed Compliance Order

With respect to item(s) 1-3 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Norfolk Southern Corporation. 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 Compliance 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). 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.

In your correspondence on this matter, please refer to **CPF 2-2010-6004** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Wayne T. Lemoi
Director, PHMSA Southern Region
Office of Pipeline Safety

cc: Compliance Registry, PHMSA Headquarters

PROPOSED COMPLIANCE ORDER

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

1. In regard to Item Number 1 of the Notice pertaining to the failure of NSC to adequately identify and list in its written "*Operator Qualification Plan*" (OQ Plan) a comprehensive list of covered tasks, NSC must review its operations and maintenance (O&M) tasks to be performed on the NSC pipeline by using the four part test included in §195.501(b) to ensure that any and all covered tasks to be performed on the NSC pipeline are included on the covered task list.
2. In regard to Item Number 2 of the Notice pertaining to the failure of NSC to assure that individuals performing covered tasks on its pipeline system were properly OQ qualified because it did not establish abnormal operating conditions (AOCs) for each covered task in its OQ Plan, NSC must identify AOCs for each covered task determined in accordance with Item Number 1 of this Compliance Order.
3. In regard to Item Number 3 of the Notice pertaining to the failure of NSC to maintain sufficient records to demonstrate compliance with the OQ regulations, NSC must prepare and maintain records to show
 - a. all OQ covered tasks for the entire NSC pipeline and facilities,
 - b. that AOCs have been reviewed for each covered task with each individual performing an OQ covered task on NSC's pipeline and that each individual is able to recognize and properly react to an AOC,
 - c. the evaluation methods used to establish the qualifications of each individual performing an OQ covered task,
 - d. that when evaluation methods include observation of on the job performance or a review of work performance history, that this was not the sole evaluation method,
 - e. the criteria NSC used with the evaluation methods to establish qualifications for individuals performing covered tasks,
 - f. how NSC evaluates and approves non-NSC OQ and/or other OQ programs to allow individuals qualified under those programs to perform covered tasks on NSC's pipeline,
 - g. the re-evaluation of all NSC employees performing covered tasks,
 - h. the re-evaluation of all contractor individuals qualified under the NSC OQ Plan performing covered tasks; and,
 - i. the evaluation methods and approval process of third party OQ programs that NSC accepts for contractor individuals to perform covered tasks on its pipeline.
4. NSC must provide written documentation to the Director, PHMSA Southern Region, that Items 1 and 2 of this Compliance Order have been completed within 30 days following your receipt of the Final Order. This written documentation must include the covered task list. NSC must make the records required under Item 3 of this Compliance Order available for inspection by PHMSA representatives within 120 days following your receipt of the Final Order.

5. NSC must maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director, PHMSA Southern Region. The costs must 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.