

# Mississippi Hub, LLC

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August 10, 2018

**Via email and Federal Express**

Mr. James A. Urisko  
Director, Southern Region  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
233 Peachtree Street Ste. 600  
Atlanta, GA 30303

**Re: CPF No. 2-2018-1005: Request for an Informal Meeting, and Alternative Request for a Hearing and Preliminary Statement of Issues**

Dear Mr. Urisko:

In response to the above-referenced Notice of Probable Violation and Proposed Compliance Order ("Notice") issued by the Pipeline and Hazardous Materials Safety Administration ("PHMSA") on July 18, 2018, Mississippi Hub, L.L.C. ("MS Hub") requests an informal meeting to discuss and resolve its concerns with the Notice, specifically concerns related to Item 2 of the Notice. MS Hub further, submits that the concerns raised in Item 1 of the Notice should be addressed in a warning letter rather than a notice of probable violation.

In order to preserve its rights, MS Hub also submits the attached Request for Hearing and Statement of Preliminary Issues in Response to Notice of Probable Violation and Proposed Compliance Order pursuant to 49 C.F.R. § 190.211, contesting the Notice. Pursuant to the Notice and 49 C.F.R. § 190.208(b)(4), the Request for Hearing is timely, and as prescribed by 49 C.F.R. § 190.211(b), MS Hub advises that it will be represented by counsel at any such Hearing.

MS Hub looks forward to discussing and resolving PHMSA's concerns at or before the Hearing. MS Hub hopes that a formal Hearing will be unnecessary, and that the parties can resolve this matter informally.

MS Hub takes pipeline safety and any allegation of probable violations by PHMSA seriously. However, MS Hub believes that the alleged probable violation in this case is not supported by the facts, the regulations, agency guidance, or past practice.

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Please contact me with any questions regarding this response.

Respectfully submitted,



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Attachments

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY**

**In the Matter of**

**Mississippi Hub, LLC**

**Respondent.**

**CPF 2-2018-1005**

**REQUEST FOR HEARING AND PRELIMINARY STATEMENT OF ISSUES  
IN RESPONSE TO NOTICE OF PROBABLE VIOLATION AND  
PROPOSED COMPLIANCE ORDER**

**I. Request for Hearing**

Pursuant to 49 C.F.R. §§ 190.208(a)(4) and 190.211(b), Mississippi Hub, LLC (“MS Hub”) respectfully requests an in-person hearing to discuss Item 2 of the alleged violations and the related proposed compliance order contained in the above-referenced Notice of Probable Violation and Proposed Compliance Order (“Notice”) issued by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) on July 18, 2018 and received on July 23, 2018. MS Hub requests a formal hearing in that matter. MS Hub will be represented by counsel at the hearing.

**II. Request for Documents**

Pursuant to 49 C.F.R. § 190.209(b), MS Hub requests a copy of PHMSA’s case file in this matter, including any evidence or other documents supporting the alleged violation set forth in Item 2 of the Notice.

**III. Preliminary Statement of Issues**

The facts presented by the Notice do not support a violation of the regulation cited in Item 2. Specifically, the Notice cites 49 C.F.R. § 192.805, which, as stated in the Notice, requires that “[e]ach operator shall have and follow a written qualification program...” The Notice claims that MS Hub violated this regulation because it allegedly “did not follow its written qualification program.” Notice at p. 2. However, the Notice alleges neither that MS Hub failed to maintain a written qualification plan nor that it engaged in activity contrary to that plan. Rather, the Notice cites to section 8.0 of MS Hub’s Operator Qualifications (“OQ”) Program, which states that the “[a]ppropriateness and effectiveness of established span of control limits shall be evaluated as part of the Company’s quality assurance and program evaluation efforts.” Again, the Notice does not cite MS Hub for failing to engage in any review required by its OQ Program, nor could it have

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done so, as discussed below. Rather, the Notice identified two instances of covered tasks (Task 411OP and 702OP), which the Notice asserted, without explanation or support, were associated with “inappropriate or ineffective span of control limits.”

The conclusion expressed in the Notice is unsupported by the record inasmuch as it claims that because the span of control ratios were allegedly inadequate this amounted to a failure to “follow the requirements of its [OQ] Program to evaluate the appropriateness and effectiveness of established span of control limits.” Contrary to the implication in the Notice, MS Hub conducts periodic reviews (at least once per calendar year not to exceed fifteen months) to assess, among other things, the appropriateness and effectiveness of task-specific span of control limits. The notes from the two most recent reviews conducted on March 31, 2017 and March 29, 2018 are attached to this request. The span of control limits are discussed in the seventh numbered item in the notes of each review. Although records reflecting MS Hub’s periodic evaluations of its span of control limits were not requested during the inspection, MS Hub can provide additional examples from previous years, if necessary. The Notice does not establish how the span of control ratios for the cited covered tasks are either inapplicable or ineffective, much less how the establishment of those ratios in MS Hub’s OQ Program constitutes a violation of the cited regulation. Accordingly, MS Hub requests that Item 2 of the Notice be withdrawn and the Proposed Corrective Action Order amended accordingly.

Notwithstanding the fact that the record in this proceeding does not support the allegation in the Notice that MS Hub violated the regulation cited, the Notice is also procedurally flawed. If not withdrawn, Item 2 should have been issued as a Notice of Amendment rather than a Notice of Probable Violation. PHMSA’s action in issuing a Notice of Probable Violation under these circumstances is inconsistent with the agency’s own enforcement guidance and its prior practice in similar proceedings. This alleged violation is the type of alleged procedural inadequacy that PHMSA guidance indicates should be issued as a Notice of Amendment rather than a Notice of Proposed Violation. *See* Operator Qualification Enforcement Guidelines at 20 (Dec. 7, 2015) (noting that certain situations, including where an operator does not consider all relevant factors when establishing a span of control ratio for a covered task, may constitute an example of inadequate procedures rather than a probable violation and the appropriate enforcement tool to address such circumstances is a Notice of Amendment rather than a Notice of Probable Violation). Consistent with its enforcement guidance, in past situations where PHMSA has alleged inadequate span of control ratios involving nearly identical circumstances, it has issued a Notice of Amendment, rather than a Notice of Probable Violation to address the alleged inadequacy. *See* Texas Gas Transmission, LLC, CPF No. 2-2015-1006M (Oct. 13, 2015) (Notice of Amendment issued to correct alleged inadequacies with span of control ratios for certain covered tasks); Air Products and Chemicals, Inc., CPF 4-2017-1010M (Aug. 24, 2017) (same); Williams Energy, LLC, CPF 4-2017-2004M (Aug. 24, 2017) (same). In fact, Notice of Amendments have been issued in situations involving much more serious situations than the one alleged in the Notice to MS Hub. *See, e.g.*, Resolute Natural Resources Co., CPF 5-2018-5001M (Mar. 16, 2018) (Notice of Amendment issued to an operator that, among other things, failed entirely to establish adequate written OQ program to define a span of control for each covered task); Markwest Energy Appalachia, LLC, CPF 2-2011-5004M (Mar. 14, 2011) (Notice of Amendment issued to an operator that applied a 7:1 span of control ratio for all covered tasks rather than examining features unique to each task). PHMSA’s decision now to issue a Notice of Probable Violation under these circumstances is therefore arbitrary and capricious.

With respect to Item 1, MS Hub has taken steps to address the concern identified in the Notice. Further inspection and testing was completed to determine the adequacy of the cathodic protection for the referenced area. This included additional IR drop measurements (with foreign line CP turned on and off), inspection and repair of test lead, and excavation of location to inspect coating. A third party corrosion SME was hired to observe testing and evaluate findings resulting in a determination that the pipeline is adequately protected and meets the requirements of 192.463 and NACE Standard SP-0193.

Given the nature of the issue raised in Item 1 and MS Hub's efforts to address it, the objection raised with Item 2 above, and MS Hub's prior record of compliance, MS Hub submits that PHMSA should resolve the matter by withdrawing the Notice and issuing a Warning Letter with respect to Item 1 in place of the Notice.

Accordingly, MS Hub respectfully contests the allegations of violation and the proposed compliance order contained in Item 2 of the Notice. MS Hub further submits that Item 1 should be addressed in the form of a Warning Letter instead of a Notice of Probable Violation, in light of the circumstances. MS Hub intends to raise the following issues at the Hearing:

**A. Allegation of Probable Violation, Notice Item 1 – 49 C.F.R. § 192.13**

- 1. Whether, in light of the circumstances, the Notice of Probable Violation should be withdrawn with respect to Item 1 and a Warning Letter issued to address the matter instead.

**B. Allegation of Probable Violation, Notice Item 2 – 49 C.F.R. § 192.805**

- 1. Whether the Notice's allegation is supported by the record in this case, the text of the regulations, PHMSA guidance materials, and prior enforcement orders.
- 2. Whether the Notice's allegation reflects a new interpretation of the regulations that differs from prior agency interpretations but without any reasoned explanation.
- 3. Whether a span of control of 1:3 for the tasks listed in the Notice (Task 411OP, "Inspect/Test to Assure Electrical Isolation is Adequate" and Task 702OP, "Leakage Survey with Leak Detection Device") is appropriate, practicable and reasonable.
- 4. Whether a 1:1 span of control for Task 411OP and 702OP reflects a change in policy that would have implications across the pipeline industry.
- 5. Whether PHMSA has met its burden of proof that a violation of its regulations has occurred.
- 6. Whether the PHMSA's decision to address the span of control issue through the issuance of a Notice of Probable Violation pursuant to 49 C.F.R. § 190.207, rather than through a Notice of Amendment pursuant to 49 C.F.R. § 190.206 is inconsistent with the agency's own internal guidance and past practice.

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**C. Proposed Compliance Order**

1. Whether the record supports the need for the Proposed Compliance Order
2. Whether the Proposed Compliance Order is overbroad, unreasonable, and must be withdrawn or modified.

At the hearing in this case, MS Hub intends to present evidence and engage with PHMSA in discussion on these issues. MS Hub reserves the right to revise and supplement this Preliminary Statement of Issues at or before the hearing based on a review of any evidence MS Hub obtains in the course of this proceeding. MS Hub also reserves the right to respond to any assertions and arguments introduced by PHMSA during the proceedings in this case, and to supplement the record accordingly.



Sempra Midstream

March 31, 2017

<b>Company Attendees:</b>	<i>Todd Cash</i>
<b>Veriforce Attendees:</b>	<i>Dennis Kuhn</i>

Veriforce and the Company's Management attempt to meet annually for the purpose of program monitoring and to discuss opportunities for program improvement. The annual meeting included a review of each of the following:

<b>1. Program modifications since date of last annual meeting</b>
None
<b>2. Compliance with the written program</b>
No issues
<b>3. Adequacy/currency of the written program</b>
No issues
<b>4. Adequacy/currency of the covered task list</b>
Company CTL is reviewed on a continual basis to assure task list is appropriate to company's OQ requirements. Company OQ administrator is a member of the Veriforce CCTLC.
<b>5. Adequacy/currency of task-specific evaluation criteria</b>
No issues
<b>6. Appropriateness of task-specific re-qualification intervals</b>
No issues
<b>7. Appropriateness/effectiveness of task-specific span of control limits</b>
No issues
<b>8. Program performance related to the OQ rule and DOT/OPS enforcement-related activities</b>
No issues
<b>9. Compliance with regulatory and other external requirements</b>
No issues
<b>10. Issues/challenges discovered as a result of Quality Assurance efforts</b>
No issues
<b>11. Proposed program improvements/enhancements</b>
None
<b>12. Issues/challenges encountered to date</b>
No issues
<b>13. Other issues</b>
No issues
<b>14. OQ Plan revisions</b>
See OQ Plan revision dated

Sempra LNG & Midstream

29 March 2018

<b>Company Attendees:</b>	<i>Todd Cash</i>
<b>Veriforce Attendees:</b>	<i>Dennis Kuhn</i>

Veriforce and the Company's Management attempt to meet annually for the purpose of program monitoring and to discuss opportunities for program improvement. The annual meeting included a review of each of the following:

<b>1. Program modifications since date of last annual meeting</b>
No issues
<b>2. Compliance with the written program</b>
No issues
<b>3. Adequacy/currency of the written program</b>
No issues
<b>4. Adequacy/currency of the covered task list</b>
Company CTL is reviewed on a continual basis to assure task list is appropriate to company's OQ requirements. Company Operations Compliance Manager is a member of the Veriforce CCTLC responsible for development and review of CCT's.
<b>5. Adequacy/currency of task-specific evaluation criteria</b>
No issues
<b>6. Appropriateness of task-specific re-qualification intervals</b>
No issues
<b>7. Appropriateness/effectiveness of task-specific span of control limits</b>
No issues
<b>8. Program performance related to the OQ rule and DOT/OPS enforcement-related activities</b>
No issues
<b>9. Compliance with regulatory and other external requirements</b>
No issues
<b>10. Issues/challenges discovered as a result of Quality Assurance efforts</b>
None
<b>11. Proposed and or implemented program improvements/enhancements</b>
Company utilizes a Veriforce compliance specialist to assist with its annual review of the OQ program.
<b>12. Issues/challenges encountered to date</b>
None
<b>13. Other issues</b>
No issues
<b>14. OQ Plan revisions</b>
No revisions made during the review.