

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

November 14, 2018

Mr. Paul Bieniawski
Chief Executive Officer
ENSTOR Gas, LLC
20329 State Highway 249, Suite 500
Houston, TX 77070

CPF 2-2018-1007

Dear Mr. Bieniawski:

From July 16 to July 17, 2018, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected Freebird Gas Storage, LLC (Freebird) facilities in Alabama. Freebird is a subsidiary of ENSTOR Gas, LLC.

As a result of the inspection, it is alleged that Freebird has committed a probable violation of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The item inspected and the probable violation is:

- 1. §192.463 External corrosion control: Cathodic Protection.**
 - (a) Each cathodic protection system required by this subpart must provide a level of cathodic protection that complies with one or more of the applicable criteria contained in appendix D of this part. If none of these criteria is applicable, the cathodic protection system must provide a level of cathodic protection at least equal to that provided by compliance with one or more of these criteria.**

Freebird failed to meet the regulation because it did not provide a level of cathodic protection that complies with or is at least equal to one or more of the applicable criteria contained in Appendix D of Part 192.

Freebird performed annual cathodic protection (CP) surveys of its gas storage and pipeline facilities near Sulligent, Alabama in 2015, 2016, and 2017. For the surveys, Freebird referenced the -.850V criterion. PHMSA's review of records documenting these surveys revealed that only "current applied" pipe-to-soil potentials were recorded, with values ranging from -0.813V to -3.6V. Freebird personnel were unable to provide explanation as to how IR drop was considered as required by Appendix D, Sections I and II.

Furthermore, Section 10.7 of Freebird's Operations & Maintenance (O&M) Manual, titled "*Cathodic Protection Survey 192.465(a)*," does not include consideration of IR drop for the adopted -.850V criterion, as required by Appendix D. The above-referenced Section allowed the use of other criteria in Appendix D, but consideration of IR drop was also not included for the other relevant criterion. Moreover, Freebird records do not indicate that any criteria other than the -.850V criterion was used to determine the level of CP on the Freebird system.

Proposed Compliance Order

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$209,002 per violation per day the violation persists, up to a maximum of \$2,090,022 for a related series of violations. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations.

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.

With respect to Item 1, pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Freebird Gas Storage, 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 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).

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 2-2018-1007** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

James A. Urisko
Director, Office of Pipeline Safety
PHMSA Southern Region

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

PROPOSED COMPLIANCE ORDER

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

1. In regard to Item 1 of the Notice pertaining to Freebird's failure to provide a level of cathodic protection that complies with or is at least equal to one or more of the applicable criteria contained in Appendix D of Part 192,
 - a) Freebird must modify its procedures to comply with applicable criteria contained in Appendix D of Part 192.
 - b) Freebird must submit the modified procedure to the Director, PHMSA Southern Region for approval.
 - c) Upon approval of the modified procedure, Freebird must perform and document a cathodic protection survey using the approved procedure.
 - d) Freebird must submit the results of the cathodic protection survey and any proposed remedial actions (if any) to the Director, PHMSA Southern Region.
2. Freebird must complete the above items within the following time requirements.
 - a) Within 30 days of issuance of the Final Order, Freebird must complete the requirements of 1a and 1b above.
 - b) Within 180 days of approval of the procedure, Freebird must complete the requirements of 1c and 1d above.
3. It is requested (not mandated) that Freebird maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Director, Office of Pipeline Safety, PHMSA Southern Region.

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.