

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

December 18, 2019

Mr. Matt Rowland
President and Chief Executive Officer
Third Coast Midstream, LLC
2103 CityWest Blvd.
Building #4, Suite 700
Houston, TX 77042

CPF 2-2019-1003

Dear Mr. Rowland:

Between February 26, 2018 and May 3, 2018, representatives 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 Destin Pipeline Company, LLC's (Destin) records and procedures in Houston, Texas, and Destin's records and pipeline facilities in Mississippi. Third Coast Midstream, LLC (TCM) is the parent company and majority owner of American Midstream, LLC (AMID) and Destin.

As a result of the inspection, it is alleged that Destin has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. §191.22 National Registry of Pipeline and LNG Operators.

(a) ...

(c) Changes. Each operator of a gas pipeline, gas pipeline facility, underground natural gas storage facility, LNG plant, or LNG facility must notify PHMSA electronically

through the National Registry of Pipeline, Underground Natural Gas Storage Facility, and LNG Operators at <http://opsweb.phmsa.dot.gov> of certain events.

(1) ...

(2) An operator must notify PHMSA of any of the following events not later than 60 days after the event occurs:

(i) A change in the primary entity responsible (i.e., with an assigned OPID) for managing or administering a safety program required by this part covering pipeline facilities operated under multiple OPIDs.

Destin failed to notify PHMSA not later than 60 days after a change in the primary entity responsible for managing or administering a safety program required by this part covering pipeline facilities operated under multiple OPIDs.

AMID became the primary entity responsible for managing or administering the safety programs for Destin Pipeline as of November 1, 2016, as reported on the divestiture notification information submitted by the previous operator of Destin, BP Pipelines (North America) Inc. (BP). Destin was required to notify PHMSA by December 31, 2016, 60 days after the effective date of the change in the primary responsible entity.

Destin submitted the *Type C – Shared Safety Program Change* notification on April 30, 2018, exceeding the required notification date of December 31, 2016 by four hundred eighty-five (485) days.

2. §192.491 Corrosion control records.

(a) ...

(c) Each operator shall maintain a record of each test, survey, or inspection required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. These records must be retained for at least 5 years, except that records related to §§192.465(a) and (e) and 192.475(b) must be retained for as long as the pipeline remains in service.

Destin failed to maintain records of each test, survey, or inspection required by Part 192, subpart I, in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist.

During the inspection, the PHMSA inspector reviewed records documenting Destin's annual cathodic protection (CP) surveys. Review of records documenting the 2016 annual CP survey revealed remarks of "Cannot find" at 15 pipe-to-soil (p/s) potential test stations. Further review of records documenting the subsequent 2017 annual CP survey include p/s potential readings at each of the referenced 15 test points, and do not include a remark of "Cannot find," indicating the existence of these 15 stations.

3. §192.616 Public awareness.

(a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 192.7).

(b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

Destin failed to assess the unique attributes and characteristics of its pipeline and facilities in its Public Awareness (PA) Program baseline message brochures. Destin transports natural gas and it uses the AMID PA Program.

In 2015 and in 2016, AMID on behalf of Destin sent (or otherwise delivered) generic baseline message brochures to the affected public, excavators, emergency responders, and public officials that did not identify the product transported by Destin as natural gas, and did not describe the unique attributes and characteristics of natural gas or a pipeline transporting natural gas.

4. §192.805 Qualification program.

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

(a) ...

(g) Identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed; and

Destin failed to follow the provisions of its written qualification program to determine the intervals at which evaluation of certain covered tasks was needed. Destin uses the AMID Operator Qualification (OQ) Program as its written qualification program.

Section 2.4 of the AMID OQ Plan contains requirements to establish re-evaluation intervals using a DIF analysis, based on each task's difficulty, importance, and frequency of performance. The AMID OQ Plan requires a rating of 1-5 be assigned to difficulty, importance, and frequency for each covered task. These values are then used to determine a re-evaluation interval based on a decision tree included in the above-referenced Section (Figure 2.4.2-1). The values of difficulty, importance, frequency and the established re-evaluation intervals are listed in Appendix 2.1 of the AMID OQ Plan, titled "Covered Task List with Re-Evaluation Interval and Span of Control."

PHMSA's inspection revealed multiple examples of re-evaluation intervals that were not established in accordance with the DIF analysis procedure described in Section 2.4 of the AMID OQ Plan.

5. §192.805 Qualification program.

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

(a) ...

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

Destin failed to comply with § 192.805(b) because the company's written qualification program did not include adequate provisions to ensure through evaluation that individuals performing covered tasks are qualified. As noted above, Destin uses the AMID OQ Program as its written qualification program.

At the time of PHMSA's inspection, the AMID OQ Program relied on evaluation material from three OQ service providers. PHMSA's review of the AMID OQ Program identified several instances where the evaluation material from each of the three service providers was inadequate to evaluate an individual's knowledge, skill and ability to perform a given covered task. Specifically, accepted evaluations for multiple covered tasks were identified that referenced material not applicable to the given covered task, or contained an insufficient number of questions pertinent to the covered task. Moreover, PHMSA's review revealed several instances of accepted performance evaluations which were irrelevant to the task for which they were intended to demonstrate an individual's ability to perform the covered task(s).

6. § 192.805 Qualification program.

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

(a) ...

(c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified;

Destin failed to comply with § 192.805(c) because the company's OQ program did not include adequate provisions to allow individuals that are not qualified to perform an OQ covered task under the direction and observation of a qualified individual. As noted above, Destin uses the AMID OQ Program as its written qualification program.

At the time of the inspection, the PHMSA inspector noted several covered tasks in the AMID OQ Program with spans-of-control for multiple non-qualified individuals to be observed by a single qualified individual not suited to the specific task. It should be noted that during an August 2014 PHMSA inspection of the AMID OQ Plan, the issue of excessive span-of-control values was raised by the PHMSA inspector. At that time, the AMID OQ Plan Administrator agreed to change all spans-of-control to 1:1, except for maintenance welding which was changed to 1:0. A revised AMID OQ Program was submitted at the end of the 2014 inspection to demonstrate the changes.

7. §192.905 How does an operator identify a high consequence area?

(a) General. To determine which segments of an operator's transmission pipeline system are covered by this subpart, an operator must identify the high consequence areas. An operator must use method (1) or (2) from the definition in §192.903¹ to identify a high consequence area. An operator may apply one method to its entire pipeline system, or an operator may apply one method to individual portions of the pipeline system. An operator must describe in its integrity management program which method it is applying to each portion of the operator's pipeline system. The description must include the potential impact radius when utilized to establish a high consequence area. (See appendix E.I. for guidance on identifying high consequence areas.)

¹ Excerpt of the definition of *High consequence area* in §192.903: [w]here a potential impact circle is calculated under either method (1) or (2) to establish a high consequence area, the length of the high consequence area extends axially along the length of the pipeline from the outermost edge of the first potential impact circle that contains either an identified site or 20 or more buildings intended for human occupancy to the outermost edge of the last contiguous potential impact circle that contains either an identified site or 20 or more buildings intended for human occupancy. (See Figure E.I.A. in Appendix E.)

Destin failed to include information required per the definition of a *High Consequence Area* (HCA), as defined in §192.903.

Destin used method 2 to establish the HCAs along its pipeline. Under 49 C.F.R. §192.903, method 2 is defined as:

- (2) The area within a potential impact circle containing—
 - (i) 20 or more buildings intended for human occupancy, unless the exception in paragraph (4) applies; or
 - (ii) An identified site.

Destin did not include the length of HCAs which extends axially along the length of the pipeline from the outermost edge of the first potential impact circle that contains either an identified site or 20 or more buildings intended for human occupancy to the outermost edge of the last contiguous potential impact circle that contains either an identified site or 20 or more buildings intended for human occupancy, as required per §192.903.

In response to the probable violations discovered during the PHMSA inspection, on April 4, 2018, Destin submitted to PHMSA a revised supplemental 2017 Annual Report and revised 2017 Pipeline System Summary HCAs which reflected corrected HCA mileages after properly applying the above-referenced requirements of §192.903.

8. §192.947 What records must an operator keep?

An operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of this subpart. At minimum, an operator must maintain the following records for review during an inspection.

... (d) Documents to support any decision, analysis and process developed and used to implement and evaluate each element of the baseline assessment plan and integrity management program. Documents include those developed and used in support of any identification, calculation, amendment, modification, justification, deviation and determination made, and any action taken to implement and evaluate any of the program elements;

Destin failed to comply with the regulation because it did not maintain, for the useful life of the pipeline, records to support their decisions, analysis and processes developed and used to implement and evaluate each element of the integrity management program. Specifically, Destin personnel were not able to produce the following records to support BP's and AMID's decisions, analyses, and processes used to implement and evaluate each element of the integrity management program:

- In-line inspection (ILI) tool validation records for reassessments conducted in October 2013 and November 2014 (36" Sandhill Compressor Station to Pascagoula Gas Plant Line and 16" Pascagoula Gas Plant to Chevron Refinery Line, respectively). Section 192.947(c)(1) requires operators to follow Section 6.2 of ASME/ANSI B31.8S when selecting the appropriate ILI tool. Section 6.2.5 of ASME/ANSI B31.8S requires operators to assess the general reliability of the ILI method by considering the confidence level of the ILI method (e.g., probability of detecting, classifying, and sizing the anomalies). During PHMSA's inspection, Destin personnel were unable to produce

records of such validations of the above-referenced October 2013 and November 2014 reassessments.

- Records documenting Destin's decision to reduce HCA mileage. During PHMSA's records review, it was noted that Destin reported 10.5 miles of HCAs in its 2016 Annual Report versus 1.89 miles in its 2017 Original Annual Report and 2.28 in its 2017 Supplemental Annual Report. This decision followed a review of HCAs after transfer of ownership of the pipeline from BP to AMID in 2016. The PHMSA inspectors noted this change in HCA mileage during their records review during the week of April 30, 2018. AMID's Management of Change Report, Form 11.1, documenting the decision and reason for the HCA mileage change, was not submitted to PHMSA until May 1, 2018.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to 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. 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 Items 5 and 6, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Destin Pipeline Company, LLC. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Warning Items

With respect to Items 1, 2, 3, 4, 7, and 8, 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.

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. All material 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 the 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 2-2019-1003** 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 Destin Pipeline Company, LLC (Destin Pipeline) a Compliance Order incorporating the following remedial requirements to ensure the compliance of Destin Pipeline with the pipeline safety regulations:

1. In regard to Item Number 5 of the Notice pertaining to evaluation of individuals performing covered tasks, Destin Pipeline must:
 - a. Review all written, electronic and oral examinations to assure they contain a sufficient number of questions with sufficient detail and complexity to establish an individual's knowledge of the given covered task.
 - b. Review all performance verification materials to assure they provide for actual performance of the covered task.
 - c. Replace, modify or supplement all evaluation material to assure the material will adequately establish an individual's knowledge, skill and ability to perform a covered task properly.
2. In regard to Item Number 6 of the Notice pertaining to Destin Pipeline's failure to include adequate provisions to allow individuals that are not qualified to perform an OQ covered task under the direction and observation of a qualified individual, Destin Pipeline must review and update the span of control limits for all covered tasks included in its OQ Program to ensure each's appropriateness and effectiveness.
3. Destin Pipeline must complete the above items within the following time requirements:
 - a. Within 90 days of issuance of the Final Order, Destin Pipeline must complete the requirements of Numbers 1a, 1b, and 1c of proposed compliance order above. Destin pipeline must submit to the Director, Office of Pipeline Safety, PHMSA Southern Region, a list of all covered tasks with evaluation material that was replaced, modified, or supplemented.
 - b. Within 90 days of issuance of the Final Order, Destin Pipeline must complete the requirements of Number 2 of proposed compliance order above. Destin pipeline must submit to the Director, Office of Pipeline Safety, PHMSA Southern Region, a list of covered tasks reviewed and span-of-control limits that were changed.
4. It is requested (not mandated) that Destin Pipeline maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the 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.