



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

233 Peachtree Street Ste. 600
Atlanta, GA 30303

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 11, 2019

Mr. Wayne Simmons
Chief Operating Officer
Plantation Pipe Line Company
1001 Louisiana Street, Suite 1000
Houston, TX 77002

CPF 2-2019-5004

Dear Mr. Simmons:

From April 17 to April 21, 2017, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected Plantation Pipe Line Company's (Plantation) Operator Qualification (OQ) Program in Alpharetta, Georgia. Plantation is a subsidiary of Kinder Morgan (KM).

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

1. §195.505 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;

Plantation failed to comply with the regulation because it did not ensure through evaluation that individuals performing covered tasks were qualified. Plantation uses the KM Operator OQ Program as its written qualification program.

At the time of PHMSA's inspection, Plantation's OQ program relied on KM evaluation material, as well as material from numerous OQ service providers. Further, Plantation relied on a third-party to maintain a database of acceptable evaluation methods specific to each covered task. PHMSA's review of KM's OQ Program identified several instances where the evaluation material from each of the above-referenced sources 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. Further, multiple instances of inconsistent or conflicting evaluation methods were identified across all referenced OQ service providers. Moreover, PHMSA's review revealed several instances of accepted performance evaluations which were irrelevant to the task for which they were intended to demonstrate personnel's ability to perform.

2. §195.505 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...

Plantation failed to comply with the regulation because it'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.

The KM OQ Program allowed for multiple non-qualified individuals to be observed by a single qualified individual for covered tasks not suited to such spans of control.

Specifically, the following are examples of covered tasks allowing for 2 non-qualified individuals to perform the task concurrently while under the direction and observation of a single qualified individual (1:2 span of control).

- Covered Task 104.15 - General Pipeline Repair – Stoppling (1:2 span)
- Covered Task 104.16 - General Pipeline Repair – Hot Tap (1:2 span)

Due to the complexity and the potential for error associated with each of the above-referenced tasks, there is no practical way that one qualified individual could be reasonably expected to provide direction and observation to two individuals performing either task at the same time. Plantation personnel responsible for administering the OQ Program were unable to provide an explanation or justification for any excessive spans-of-control noted by PHMSA personnel.

Proposed Compliance Order

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$213,268 per violation per day the violation persists, up to a maximum of \$2,132,679 for a related series of violations. 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 1 and 2, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Plantation Pipe Line Company. 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 2-2019-5004** 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 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Plantation Pipe Line Company (Plantation) a Compliance Order incorporating the following remedial requirements to ensure the compliance of Plantation with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to evaluation of individuals performing covered tasks, Plantation 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 and a knowledge of Plantation's procedures for performing the covered task.
 - b. Review all performance verification materials to assure they provide for actual performance of the covered task in accordance with Plantation's procedures.
 - 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 and in accordance with Plantation procedures.
2. In regard to Item Number 2 of the Notice pertaining to Plantation's failure to follow the requirements of its Operator Qualification (OQ) Program to evaluate the appropriateness and effectiveness of established span of control limits, Plantation 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 in accordance with Plantation's OQ Program.
3. Plantation must complete the above items within the following time requirements:
 - a. Within 90 days of issuance of the Final Order, Plantation must complete the requirements of Items 1a, 1b, and 1c above including, at a minimum, a list of all evaluation that were replaced, modified, or supplemented.
 - b. Within 90 days of issuance of the Final Order, Plantation must complete the requirements of Item 2 above including, at a minimum, a list of covered tasks reviewed and span of control limits that were changed.
4. It is requested (not mandated) that Plantation 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.