

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 3, 2011

Mr. Gary Loop
Vice President & Chief Operating Officer
Dakota Gasification Company
1600 East Interstate Avenue
Bismarck, North Dakota 58503

CPF 3-2011-5001

Dear Mr. Loop:

On June 21-25, 2010, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code conducted an onsite pipeline safety inspection of your records and facilities at and near your plant in Beulah, North Dakota.

As a result of the inspection, it appears that you have committed probable violations, as noted below, of pipeline safety regulations Title 49, Code of Federal Regulations, Part 195. The items inspected and the probable violations are:

1. §195.420(b) Valve maintenance.

Each operator shall, at intervals not exceeding 7 ½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

Dakota Gasification Company failed to inspect mainline block valves (MLV's) 4, 5, 6 and 7 within the maximum 7 ½ month intervals in 2007. The inspection intervals for these four valves were as follows:

- MLV 4: first inspection: 4/27/07 – second inspection: 12/14/07 (exceeded 7 ½ months by 2 days)
- MLV 5: first inspection: 4/23/07 – second inspection: 12/11/07 (exceeded 7 ½ months by 3 days)
- MLV 6: first inspection: 4/23/07 – second inspection: 12/14/07 (exceeded 7 ½ months by 6 days)
- MLV 7: first inspection: 4/25/07 – second inspection: 12/18/07 (exceeded 7 ½ months by 8 days)

Dakota Gasification was cited for non-compliance of this same regulation in a Warning Letter dated 8/2/2006 (CPF No. 3-2006-5040W) for exceeding the 7 ½ month period.

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 and has recommended that you be preliminarily assessed a civil penalty of \$19,300 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$ 19,300

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 3-2011-5001** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

David Barrett
Director, Central Region
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Compliance Proceedings*