



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

JUN 12 2014

Mr. Terry K. Spencer
President
ONEOK NGL Pipeline, LP
100 West 5th Street
Tulsa, Oklahoma 74103

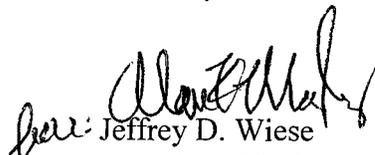
Re: CPF No. 3-2012-5012

Dear Mr. Spencer:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$78,600, and specifies actions that need to be taken by ONEOK NGL Pipeline, LP, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Central Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,


cc: Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Linda Daugherty, Central Region Director, OPS
Mr. Wes Christensen, Sr. Vice President-Operations, ONEOK NGL Pipeline, LP

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. . . .

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1) . . .

(13) Periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13) by failing to follow, for the company's Medford area and North System, its own manual of written procedures for periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance. Specifically, the Notice alleged that ONEOK's procedures indicated the "[b]usiness manager or designee shall be responsible for conducting a review of the work done by personnel, incident, and near miss reports to determine the effectiveness of operating procedures at intervals not exceeding 15 months, but at least once each calendar year." According to the Notice, ONEOK failed to follow its own procedures requiring such periodic reviews.

In its Response, ONEOK contested this allegation of violation, asserting that it conducts weekly meetings with supervisors from across the operating organization to evaluate "near miss" events. According to ONEOK, the meetings are conducted to discuss and evaluate such events to identify any necessary changes to operations, procedures, etc. When procedural deficiencies are identified, the matter is entered into its near-miss database and tracked through to completion. ONEOK also referred to PHMSA inspection guidance regarding documentation of accident and near-miss data, submissions from employees, and meetings to discuss procedures as possible means of determining the adequacy of operator procedures.

ONEOK conceded that "execution of the procedure was not well-documented" but contended that Part 195 did not require such documentation. "As such, failure to maintain documentation does not equate to failure to follow the procedure."²

I find Respondent's arguments unpersuasive. First, it appears that the company's weekly meetings, as documented by "Weekly Event Review Reports," are basically a routine means of noting problems in the field and documenting discussions regarding "near miss" events. While such meetings are certainly important in identifying problem areas, they do not demonstrate

² Response at 5.

compliance with the requirement that ONEOK have and follow a process for undertaking a comprehensive or organized review of all company procedures to evaluate their overall effectiveness, nor do they constitute evidence of the results of such comprehensive reviews. For example, ONEOK was unable to provide any annual review records from the company's business manager or his designee, nor any examples of suggested changes in company procedures arising out of the reviews.

Second, ONEOK was unable to provide any information demonstrating compliance with its own procedure during the PHMSA inspection and was only able to provide supporting evidence (e.g., the compliance manager's email explaining his role in the weekly meetings) as part of its Response in this proceeding.³

Third, PHMSA's published guidance does not suggest that routine weekly meetings, such as those held by ONEOK to discuss security incidents and "near miss" events, constitute the sort of procedure review contemplated by the regulation. In fact, the guidance indicates that an operator should be able to produce documentation showing that it had conducted an actual analysis of its procedures used in normal operation and maintenance, that it had implemented a process by which it had determined whether its procedures were adequate or not, and that it had corrected any procedures found to be deficient.⁴ ONEOK was unable to document this sort of ongoing and comprehensive process.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(13) by failing to follow, for the company's Medford area and North System, its own procedures for periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b), which states:

§ 195.406 Maximum operating pressure.

(a) ...

(b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b) by failing to provide adequate controls and protective equipment to control the pressure in a pipeline during surges or other variations from normal operations exceeding 110 percent of the operating pressure limit established under paragraph (a) of § 195.406. Specifically, the Notice alleged that on May 23, 2008, Respondent reduced the maximum operating pressure (MOP) on Line 102 between Massena to Des Moines to 1950 psig. The overpressure protection was then reset to

³ Response at Attachment F.

⁴ PHMSA Operations and Maintenance Enforcement Guidance, Part 195. See <http://www.phmsa.dot.gov/foia/e-reading-room>, at 43-44.

1930 psig at the Winterset pump station. After a failure occurred on May 31, 2008, the MOP was lowered downstream of this segment to 1704 psig, but the overpressure protection set-point at the Winterset pump station was never reset to reflect that the MOP had been lowered downstream of this segment. It remained at 1930 psig until the time of the inspection.

ONEOK contested this violation, arguing that the pipeline pressure did not exceed 110% of the MOP of 1704; therefore, ONEOK argued that it had fulfilled its primary performance obligation.⁵ ONEOK also argued that even though it failed to reset the Winterset pump station's overprotection device as part of the company's Management of Change (MOC) process, there was no violation because the company's control center had adjusted programmable logic control points in the company's Supervisory Control and Data (SCADA) System, which served as the "primary" pressure control device for the Winterset pump station. According to ONEOK, such administrative change control procedures are considered under PHMSA's enforcement guidance to be part of an operator's pressure control system. Therefore, the points set at the control center were enough to satisfy the requirements of § 195.406(b).⁶

I disagree. First, the issue at hand is not whether the pipeline exceeded the MOP by 110% but whether ONEOK failed to provide adequate controls and protective equipment to control the pressure within this limit. Second, ONEOK's failure to re-set the local set-points at the Winterset pump station left that local station inadequately protected from an overpressure event over a long period of time that could not be properly monitored by SCADA personnel. Third, PHMSA's enforcement guidance does not suggest that an operator's SCADA system may serve as a substitute for proper local protective equipment.

By setting the local overpressure protection above 110% of MOP, ONEOK failed to meet the requirement of § 195.406. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.406(b) by failing to provide adequate controls and protective equipment to control the pressure in a pipeline during surges or other variations from normal operations not to exceed 110 percent of the operating pressure limit established under paragraph (a) of § 195.406.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overfill protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it

⁵ By email dated March 19, 2012, ONEOK provided PHMSA with records of the pipeline control-center discharge pressures over the relevant time period, arguing that the records supported the conclusion that pipeline operating pressure in the subject system did not exceed the MOP (except as allowed for surges) and at no time did it exceed 110% of MOP.

⁶ Response at 8.

is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test its Winterset pump station overpressure protection device to determine that it was functioning properly, was in good mechanical condition, and had adequate capacity and reliability for the service in which it was used. Specifically, the Notice alleged, as discussed above in Item 5, that in May 2008 ONEOK issued an MOC directive regarding the Des Moines to Massena section of Line 102 to change the overpressure protection set-point to 1930 psig. This set-point remained in effect until the PHMSA inspection in 2011. According to the Notice, the semiannual inspection of the transmitter utilized as over-pressure protection of the new MOP simply documented that the transmitter had been calibrated and spanned, but did not establish that the device had been tested or activated at the actual set-point at which the programmable logic controller (PLC) would send the signal to shut down the pumps.

Respondent contested this allegation of violation on two grounds. First, the company asserted that PHMSA had failed to comply with the requirement in 49 C.F.R. § 190.207(b)(1) insofar as the Notice did not include “a statement of the evidence upon which the allegations are based.” According to ONEOK, the Notice simply stated a “conclusion” but did not include a proper statement of the evidence upon which the allegation was based.⁷

I reject this argument. The Notice charged that the company’s records failed to indicate that the overpressure device had actually activated at the proper set-point. When read as a whole, Item 6 of the Notice provides sufficient information to apprise Respondent of the nature of the allegation and the evidence upon which it is based, which meets the purpose and intent of § 190.207(b)(1). In addition, detailed evidence and exhibits were attached to the supporting Violation Report,⁸ a copy of which was provided to Respondent and which provides all of the evidence upon which the Item is based.

Second, ONEOK contended that it had provided documentation to PHMSA showing the company had, in fact, inspected and tested the overpressure protection equipment to ensure it was working properly. Specifically, it contended that:

[a]t the time a technician performs the necessary inspection and test, the technician attaches a test set (an electronic instrument) to the local programmable logic controller (“PLC”) and causes the transmitter electronically to detect a pressure that exceeds the maximum set point limits (HI and HIHI) during the process of checking the transmitter span.

ONEOK asserted that, depending on whether or not the system was in operation at the time,

⁷ Response at 9.

⁸ Pipeline Safety Violation Report (Violation Report), (June 15, 2012) (on file with PHMSA).

these alarms would be recorded in the company's PLC alarm log and uploaded to its SCADA System central alarm log. The company provided copies of several of these logs as examples, asserting that the alarms were logged at the same points at which the transmitter had been calibrated and spanned. According to ONEOK, these records confirmed that the company had properly inspected and tested the PLC in accordance with the regulation.

Again, I disagree. Under 49 C.F.R. § 195.428, every pressure regulator or other equipment designed to control pressure, including electronic equipment such as a PLC or a series of PLCs, must be inspected and tested "to determine that it is functioning properly." This means that the communication paths between the PLC and the end device (e.g., a mechanical pump or valve) and the pressure at which the pressure limiting device is set to activate must all be checked and documented to ensure that the PLC system is functioning properly. Although ONEOK may have provided an explanation as to how its PLC system is *supposed* to function and may have properly tested the transmitter itself, there is still no indication at what pressure the PLC was tested and what, if any, readings or calibrations of pressure or signal transmittal were required to verify that the PLC was properly limiting maximum operating pressure to satisfy 49 C.F.R. § 195.406.

Without verification of this pathway and the pressure at which the PLC actually activated, there is no way to ensure that the PLC device was functioning properly. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test its Winterset pump station overpressure protection device to determine it was functioning properly, was in good mechanical condition, and had adequate capacity and reliability for the service in which it was used.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$78,600 for the violations cited above.

Item 3: The Notice proposed a civil penalty of \$32,100 for Respondent's violation of 49 C.F.R. § 195.402(c)(13), for failing to follow its own procedure for periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance. ONEOK argued that the civil penalty for Item 3 should be

withdrawn on several grounds.

First, it argued that no violation occurred. As discussed above, I found that ONEOK did not conduct the type of generalized review of normal operating procedures called for in the regulation. The purpose of this regulation is not only to ensure that an operator routinely review “near miss” events and incidents but also to periodically review and improve all of the company’s operation and maintenance procedures.

Second, ONEOK asserted that the penalty assessment considerations of 49 C.F.R. § 190.225 were unsubstantiated in both the Notice and the Violation Report. ONEOK argued that a simple conclusion was made in the Violation Report as to the consideration of the gravity assessment criterion, stating that “the pipeline integrity or safe operation was potentially compromised in others areas.”⁹ However, PHMSA did address the gravity factor when it stated in the Violation Report: “Failure to meet this requirement that refines and improves the procedure can lead to consequences that endanger the lives of the public and company personnel.”

ONEOK further claimed that the culpability factor was only addressed by the conclusory statement in the Violation Report that the “operator failed to take any action or made a minimal attempt to comply with a regulatory requirement that was clearly applicable.” Again, PHMSA did support this allegation by stating in the Violation Report that ONEOK “specified what they would do to meet the requirements of 195.402(c)(13) and they did not follow that for several years.”

In other words, the Violation Report alleged that by adopting procedures for the periodic review of its normal operating procedures, ONEOK had demonstrated an awareness of the regulatory requirements of § 195.402(c)(13) but then failed to take any meaningful steps to implement its own periodic review process. This means that under PHMSA’s penalty assessment criteria, the company is not entitled to a penalty reduction on the basis of diminished culpability. As for the good-faith factor, the Violation Report stated that “ONEOK did not follow the requirements of their own [Operations & Maintenance] manual.” Again, this means that ONEOK is not entitled to a penalty reduction based upon a reasonable interpretation of the regulation or a credible belief that it had faithfully met its regulatory obligations.

Respondent has not presented any evidence or legal argument regarding any of these penalty factors that would warrant a reduction. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$32,100 for violation of 49 C.F.R. § 195.402(c)(13).

Item 6: The Notice proposed a civil penalty of \$46,500 for Respondent’s violation of 49 C.F.R. § 195.428(a), for failing to inspect and test its Winterset pump station overpressure protection device to determine it was functioning properly, was in good mechanical condition, and had adequate capacity and reliability for the service in which it was used. As discussed above, I found that ONEOK failed to properly test its PLC system pathways to determine that the company’s overpressure protection equipment actually functioned properly. ONEOK objected to the proposed penalty, raising similar arguments as those discussed above in Item 3, including

⁹ Response at 12-13.

that the Violation Report merely stated conclusions, without any substantiation.

I disagree. The Violation Report does include facts to support the statement that “[c]hecking the set points of the over pressure protection equipment is essential to ensuring the integrity of the line.” The report goes on to state: “The line from Winterset to Des Moines is pretty rural for the most part, but does cross several public highways and [High Consequence Areas]. Overpressuring the line could result in harm to the public and result in significant damage to property.”¹⁰ Inspection and testing of overpressure protection devices in such higher-risk areas increases the gravity of the violation; if the devices fail to work properly, a pipeline failure in such an area could result in more serious consequences than lower-risk areas.

In challenging the finding of culpability, ONEOK argued that the Violation Report focused on the resetting of the set-point rather than on the testing or inspection of the devices, and in doing so, stated a conclusion that was “inapposite and misdirected.”¹¹ Upon review of the Violation Report, I find that it provides an adequate rationale for a proposed penalty based, at least in part, on the full responsibility or culpability of Respondent. According to the Notice and Violation Report, the company, by failing to reset the set point properly, did not take any action or made only a minimal attempt to comply with the regulatory requirements of § 195.428(a). The effect of this allegation was to hold the company fully responsible for the violation and not to *reduce* the penalty amount based on a partial or good-faith effort by ONEOK to comply.

Respondent has not presented any evidence or legal argument regarding any of these penalty factors that would warrant a reduction. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$46,500 for violation of 49 C.F.R. § 195.428(a).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$78,600**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The telephone number is (405) 954-8845.

Failure to pay the \$78,600 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

¹⁰ Violation Report at 20.

¹¹ Response at 14.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 3 and 5 in the Notice for violations of 49 C.F.R. §§ 195.402(c)(13) and 195.406(b), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.402(c)(13) (**Item 3**), within 60 days of the date of the Final Order, Respondent must submit a revised O&M *Procedure PRC 1410.100, Section 3.1* to better define how ONEOK plans to review the company's work to determine the effectiveness of the procedures used in normal operation and maintenance. Implementation of the procedure must begin immediately. Records verifying compliance with the new procedure must be submitted to the Director within one year from the effective date.
2. With respect to the violation of 49 C.F.R. § 195.406(b) (**Item 5**), Respondent must conduct an investigation to determine why the set-point of the shutdown devices was set too high and left at that set-point for multiple years. This investigation shall include the review and revision (if necessary) to the MOC procedures to determine why the Winterset Station was missed in the MOC. The review shall also look into how ONEOK ensures that the conditions of the MOC are implemented. The results of the investigation and any revised procedure due to the investigation must be submitted to PHMSA Central Region within 180 days of the date of this Final Order.
3. It is requested that ONEOK maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Ms. Linda Daugherty, Director, Central Region, Pipeline and Hazardous Materials Safety Administration. 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.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 1, 2, 4 and 7, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.49 (**Item 1**) — Respondent's alleged failure to annually complete and submit separate forms for each type of hazardous liquid pipeline facility operated by ONEOK at the end of the previous year. Respondent did not contest this allegation of probable violation, but did provide information that it had corrected its process for filing annual reports and had completed and timely submitted its DOT Form PHMSA F 7000-1.1 report for 2011, which was due on or before June 15, 2012.

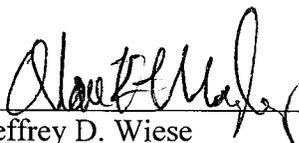
49 C.F.R. § 195.402(d)(1) (**Item 2**) — Respondent's alleged failure to follow its own procedure to respond to and correct the cause of an abnormal operation. ONEOK contested this allegation of probable violation and provided documents in its response to the Request for Specific Information (RFSI), demonstrating that the follow-up actions were taken and completed. Additionally, ONEOK contended that its records showed "multiple" conversations with the PHMSA inspector between September 7 and 9, 2011, in which ONEOK indicated that it had taken long-term corrective action to upgrade its SCADA system, as mandated by Safety Order 3-2011-5008S. While it is true that the records sent by ONEOK as a result of the RFSI show the current documentation, the records at the time of the inspection did not show either the dates of completion or the additional text now included in the records.

49 C.F.R. § 195.422(a) (**Item 4**) — Respondent's alleged failure to repair its pipeline systems in a safe manner so as to prevent damage to persons or property. Respondent did not contest this allegation of probable violation. According to ONEOK, the company has reviewed and refined its procedures to ensure that the circumstance identified in the Notice will not occur in the future.

49 C.F.R. § 195.569 (**Item 7**) — Respondent's alleged failure to examine the exposed portion of a buried pipeline for evidence of external corrosion if the pipe were bare or the coating deteriorated. ONEOK contested this allegation of probable violation and asked to have the warning item withdrawn. ONEOK contended that when it uses a process of "hydro-vacing" a pipe location, it produces a hole, akin to a bore hole, that does not allow adequate access to examine the pipe or coating condition.

ONEOK presented information in its Response showing that it had taken certain actions to address some of the cited items. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.



Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

JUN 12 2014

Date Issued