



Kevin E. Brown  
Administrator  
DOT and Regulatory Compliance

P. O. Box 2650  
Tulsa, Oklahoma 74101  
Phone 918-493-5104  
Fax 866-780-3598  
kbrown@expl.com

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Mr. David Barrett  
Director  
Central Region  
U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
901 Locust Street, Suite 462  
Kansas City, Missouri 64106-2641

Via UPS Delivery  
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**RE: Request for Hearing  
Explorer Pipeline Company – NOA - CPF No. 3-2013-5010M**

Explorer Pipeline Company (“Explorer”) requests a hearing (without counsel present) to contest Notice of Amendment (NOA) CPF No. 3-2013-5010M.

The basis for the hearing is to appeal the findings in items 1 and 2 of the NOA, at present on the following grounds:

- Request for amendments are not supported by regulation or interpretation in 49 CFR §195; and
- Procedures adequately support the requirements.

**Notice of Amendment Finding Number 1:**

**§195.404 Maps and records.**

(c) Each operator shall maintain the following records for the periods specified:

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

**Pipeline and Hazardous Materials Safety Administration Comment(s) to NOA 1:**

Explorer procedures for documentation of inspection of overpressure safety devices to §195.428(a) are inadequate. Per §195.428(a), inspections of overpressure safety devices include determination that equipment is functioning properly, and is adequate for the standpoint of capacity and reliability of operations. However, Explorer’s procedures are forms for safety device inspections do not include provisions for recording “as-found” and “as-left” settings which are necessary for proper documentation that devices function adequately at the time of inspections and are reliable based on the ongoing results of safety device inspections.

**Explorer Pipeline Response to NOA 1:**

Explorer Pipeline had documented inspections for all the overpressure safety devices on its system and provided documentation of the inspections for the 3 previous years. Explorer additionally provided its procedure demonstrating that it had implemented the NTSB's recommendation (P-02-4) for relief valves that PHMSA issued as a Safety Advisory Bulletin ADB-05-05. The PHMSA Safety Advisory Bulletin was intended to provide pipeline operators guidance on whether their inspection and test procedures are adequate to determine if these valves function properly.

During the field inspection the referenced regulation in §195.428 was reviewed with PHMSA and indicates the following:

**§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 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.

When Explorer inquired about PHMSA interpretation for the "as found" issue identified during the field inspection portion of the audit. PHMSA inspectors referenced their internal Operations and Maintenance Enforcement Guidance document as the requirement. The NOA only indicates the regulation in §195.428. The Guidance document indicates the following:

*"The materials contained in this document consist of guidance, techniques, procedures and other information for internal use by the PHMSA pipeline safety enforcement staff. This guidance document describes the practices used by PHMSA pipeline safety investigators and other enforcement personnel in undertaking their compliance, inspection, and enforcement activities.*

*This document is U.S. Government property and is to be used in conjunction with official duties. The Federal pipeline safety regulations (49 CFR Parts 190-199) discussed in this guidance document contains legally binding requirements. This document is not a regulation and creates no new legal obligations." (Emphasis added)*

§195.428 does not provide for an "as found" notation on the inspection documentation of the relief valves nor does the Final Rule for §195.428 or the preamble to any of the associated amendments to the regulation. In the absence of a requirement in §195.428 Explorer established its procedures and supporting documentation for the required pressure settings for the relief valves. If the notations that are subject of this NOA are to be required then these should be included in the regulation.

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

(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:

(4) Determining which pipeline facilities are located in areas that would require an immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned.

## Notice of Amendment Finding Number 2:

### **Pipeline and Hazardous Materials Safety Administration Comment(s) to NOA 2:**

Explorer procedures are inadequate because they do not identify all areas that would require immediate response. Explorer's procedures only identify immediate response areas based on GIS analysis using their pipeline location data and an institutional database that identifies the locations of Hospital, Cemeteries, Churches, Government Facilities and Schools. Some pipe segments that are located within the primary levee and adjacent to the banks of the Mississippi River are not included. The considerations of navigable waterways and drinking water sources are also not present in the identification process.

### **Explorer Pipeline Response to NOA 2:**

Explorer clearly demonstrated its process for identifying High Consequence Area segments and how it *augments* this standard process to include sites of impaired mobility, above and beyond §195 regulatory requirements. In the HCA process, in addition to Commercially Navigable Waterways, Highly Populated Areas, Other Populated Areas, Critical Public Drinking Water Areas, and Ecological Sensitive Areas, Explorer Pipeline captured institution locations where impaired mobility for evacuation or high density population institutions exist.

From the [2012 Emergency Response Guidebook](#), Guide 111, Page 160, Explorer used the recommended evacuation distance of ½ mile to identify *additional* HCA impact if it did not already exist. Explorer calls this additional HCA layer "Immediate Response Zone" to help highlight its importance during emergency response activities.

During the audit, Explorer presented its Operations and Maintenance Manual, §195.402(c)(4): The procedure for determining facilities that are located in areas requiring immediate response is contained under Explorer's System Report that identifies HCA Impact Area. Impact areas include Commercially Navigable Waterways (NAV), Highly Populated Areas (HPA), Other Populated Areas (OPA), Critical Public Drinking Water Areas (DWA), and Ecological Sensitive Areas (ECO). Explorer has additionally included Additionally Populated Areas (APA) to the HCAs." All of the piping described is clearly within our list of HCA segmentation and was demonstrated as such.

Explorer can modify the header of its HCA Report shown during the audit to reiterate the language shown in its existing procedure to make it redundantly clear that every HCA segment in the report requires immediate response. However, Explorer already met and exceeded the requirements.

Please advise of potential dates for the hearing and PHMSA attendees.

If there is a Pipeline Safety Violation Report for this matter please forward a copy of this to me.

If you have any questions, please contact me at (918) 493-5104.

Sincerely,



Kevin E. Brown

CC:  
Craig Curtis, Vice President & General Counsel, Tulsa  
Jensen Tom, Vice President & COO, Tulsa  
Konell Jeremiah, Director Asset Integrity, Tulsa  
Sieck Jim, Director HSSE/Engineering, Tulsa  
Ysebaert Dave, President & CEO, Tulsa