

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

| | |
|--|-----------------------------|
| _____) | |
| In the Matter of) | |
|) | |
| ONEOK NGL Pipeline, L.P.,) | |
| ONEOK NGL Pipeline, L.L.C., and) | CPF Nos. 3-2013-5014 |
| ONEOK Underground Storage) | 3-2013-5015 |
| Company, L.L.C., collectively,) | 3-2013-5020 |
|) | |
| Respondents.) | |
| _____) | |

CONSENT AGREEMENT AND ORDER

Whereas, on May 13, 2013, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), issued two Notices of Probable Violation, Proposed Civil Penalties, and Proposed Compliance Orders (NOPVs) to ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C. (ONEOK NGL Pipeline), and ONEOK Underground Storage Company, L.L.C. (ONEOK Underground Storage) (collectively, ONEOK or Respondents).¹ On July 3, 2013, OPS issued a third NOPV to ONEOK.²

Whereas, ONEOK NGL Pipeline operates approximately 11,500 miles of pipeline transporting hazardous liquids, including approximately 11,000 miles transporting highly volatile liquids in Texas, Oklahoma, Kansas and several other states.³ The ONEOK system includes natural gas liquids (NGL) fractionation facilities and associated underground storage facilities located in Bushton, Kansas (Bushton Plant). ONEOK Hydrocarbon, L.P. (ONEOK Hydrocarbon) is the operator of the fractionation facilities and associated piping at the Bushton Plant. ONEOK Underground Storage is the operator of the underground storage facilities and associated piping at the Bushton Plant.

Whereas, at the request of Respondents and in accordance with 49 C.F.R. § 190.211, informal hearings were held in Kansas City, Missouri, before a Presiding Official from the Office of Chief

¹ CPF No. 3-2013-5014 and CPF No. 3-2013-5015.

² CPF No. 3-2013-5020. OPS issued an amended NOPV in CPF No. 3-2013-5020 on August 15, 2013.

³ This information is reported by Respondents for calendar year 2016 pursuant to 49 C.F.R. § 195.49.

Counsel, PHMSA.⁴ The Associate Administrator for Pipeline Safety issued Final Orders in all three enforcement cases on October 12, 2016 (Final Orders), assessing civil penalties in the total amount of \$731,900 and adopting compliance orders requiring that ONEOK implement specified actions at the Bushton Plant.⁵

Whereas, on November 16, 2016, pursuant to 49 C.F.R. § 190.243, and after receiving an extension of time, Respondents filed a Petition for Reconsideration regarding the compliance order issued in CPF No. 3-2013-5015. On December 5, 2016, Respondents also filed a Payment of Penalties Under Protest for CPF No. 3-2013-5020 and CPF No. 3-2013-5014 and paid a total of \$572,900 in civil penalties. On December 15, 2016, ONEOK filed a Compliance Action Made Under Protest for CPF No. 3-2013-5014.

Whereas, on February 25, 2013, ONEOK Hydrocarbon, ONEOK Underground Storage, and ONEOK NGL Pipeline filed a Petition for Review of certain PHMSA letters of interpretation in the United States Court of Appeals for the District of Columbia Circuit in *ONEOK Hydrocarbon, et al. v. U.S. Dep't of Transportation, et al.*, No. 13-1040.

Whereas, on January 6, 2017, ONEOK Hydrocarbon, ONEOK Underground Storage and ONEOK NGL Pipeline filed Petitions for Review of the Final Orders in the United States Court of Appeals for the District of Columbia in *ONEOK Hydrocarbon, et al. v. U.S. Dep't of Transportation, et al.*, Nos. 17-1004, 17-1005, and 17-1006.

Whereas, on January 12, 2017, the court granted ONEOK's unopposed motion to consolidate all of the Petitions for Review and to hold the consolidated case in abeyance pending resolution of the Petition for Reconsideration filed in CPF No. 3-2013-5015.⁶

Whereas, on June 14, 2017, a meeting between ONEOK and PHMSA (Parties) was held at PHMSA Headquarters in Washington, DC, to discuss resolution of the issues pending in these enforcement cases. The Parties have engaged in good-faith discussions regarding the Final Orders and have agreed that settlement of these proceedings will avoid further administrative proceedings or litigation, and that entry of this Consent Agreement and Order is the most appropriate means of resolving the Final Orders without additional adjudication of any issue of fact or law.

⁴ A hearing concerning the NOPV in CPF No. 3-2013-5015 was held on November 14-15, 2013. A separate hearing concerning the NOPVs in CPF Nos. 3-2013-5014 and 3-2013-5020 was held on January 15, 2014.

⁵ A Corrected Final Order was issued for CPF No. 3-2013-5015 on October 13, 2016, due to a typographical error.

⁶ *ONEOK Hydrocarbon, et al. v. U.S. Dep't of Transportation, et al.*, D.C. Cir. Nos. 13-1040, 17-1004, 17-1005, and 17-1006 (consolidated under No. 13-1040).

NOW, THEREFORE, upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows.

A. PHMSA’s Jurisdiction and Regulatory Oversight

1. ONEOK acknowledges, as operator of the Bushton Plant, that the Bushton Plant is subject to PHMSA’s jurisdiction under the Federal pipeline safety laws, 49 U.S.C. § § 60101, et seq., and the regulations and administrative orders issued thereunder, as found by the Final Orders.
2. Although the parties agree that the Bushton Plant is subject to PHMSA’s jurisdiction, as described in the Final Orders, for purposes of this Consent Agreement and Order, and subject to conditions and limitations set forth herein, the Parties agree that PHMSA will exercise regulatory oversight over certain portions of the Bushton Plant, identified as the “PHMSA Regulated Piping” in the drawing attached as Exhibit A, and the photographs attached as Exhibit B to this Consent Agreement and Order, which exhibits are incorporated herein by reference. Such Exhibits shall be considered Business Confidential Information submitted voluntarily by ONEOK pursuant to the Freedom of Information Act (FOIA) and otherwise to contain critical energy infrastructure information. The scope of the PHMSA Regulated Piping and the Exhibits might change in the future, based on the reviews described by Paragraph 6 below.
3. ONEOK acknowledges that it has marked its physical facilities and revised appropriate drawings to identify the PHMSA Regulated Piping, as reflected in the Exhibits attached hereto, and that, consistent with the provisions of this Consent Agreement and Order, ONEOK will comply with 49 C.F.R. Part 195 with respect to the PHMSA Regulated Piping.
4. The piping at the Bushton Plant that is not identified in the Exhibits to this Consent Agreement and Order as the PHMSA Regulated Piping, and the piping at the Bushton Plant that is not identified as PHMSA Regulated Piping upon review as required in Paragraph 6 of this Consent Agreement and Order, is subject to regulatory oversight by the United States Occupational Safety and Health Administration (OSHA) and is referred to as “OSHA Regulated Piping”. If OSHA expressly declines to apply Process Safety Management (PSM) regulations to any portion of the OSHA Regulated Piping, PHMSA will assume regulatory oversight of that portion. Nothing in this Consent Agreement and Order affects the regulatory oversight of PHMSA and/or OSHA over any portion of the Bushton Plant not specifically identified in the Exhibits to this Consent Agreement and Order.
5. For purposes of this Consent Agreement and Order, PHMSA Regulated Piping shall be identified at the frequency described in Paragraph 6 in accordance with the following criteria:
 - a. For purposes of this Consent Agreement and Order and identifying PHMSA Regulated Piping, the fractionation facilities at the Bushton Plant shall be deemed to be “processing” facilities.
 - b. Piping located downstream of the first inbound pressure control device entering the Bushton Plant and upstream of the last pressure control device leaving the Bushton Plant is PHMSA Regulated Piping if the predominant use of such piping is to bypass

processing (i.e., is used for a predominantly transportation purpose). If the predominant use of such piping is for processing purposes or is only occasionally used to bypass processing (such as to accommodate temporary maintenance or repairs or other short-term events) such piping is OSHA Regulated Piping.

- c. Piping that predominantly bypasses a pressure control device or that bypasses a processing facility that is no longer in service is PHMSA Regulated Piping.
 - d. Piping that is located on the grounds of the Bushton Plant that connects two (2) processing units, or is otherwise used for a processing purpose, is OSHA Regulated Piping if the piping is located downstream of the first pressure control device entering the Bushton Plant and upstream of the last pressure control device leaving the Bushton Plant.
 - e. Pumps and associated controls used predominantly to move product for transportation purposes are subject to the requirements of 49 C.F.R. Part 195.
 - f. Piping associated with underground storage used for the purpose of managing the processing facility inventory is OSHA Regulated Piping. Piping associated with storage caverns used for transportation is PHMSA Regulated Piping.
6. ONEOK will review the predominant use of the PHMSA Regulated Piping and the OSHA Regulated Piping at intervals not exceeding 15 months, but at least once each calendar year, to determine whether or not the predominant use of piping has changed. ONEOK will also review the predominant use of any newly constructed pipe at the Bushton Plant upon construction completion. If, after conducting the review required by this Paragraph, ONEOK determines that any portion of the PHMSA Regulated Piping or newly constructed piping is predominantly used for processing purposes, that portion shall thereafter be considered OSHA Regulated Piping. If, after conducting the review required by this Paragraph, ONEOK determines that any portion of the OSHA Regulated Piping or newly constructed piping is predominantly used for transportation purposes, that portion shall thereafter be considered PHMSA Regulated Piping. If any such changes occur, ONEOK will revise the physical demarcations and appropriate drawings and procedures, and other relevant records, consistent with current PHMSA regulations and policy or consistent with current OSHA regulations and policy, as the case may be. ONEOK will revise its records, as necessary, to incorporate new information obtained during these reviews. ONEOK will give written notice to the Director of any changes to the classification of piping as PHMSA Regulated Piping or OSHA Regulated Piping, and will submit to the Director copies of drawings, similar in form to the Exhibits, that are revised as a result of a review undertaken pursuant to this Paragraph. The Parties agree that, if PHMSA objects to any change in classification of piping as PHMSA Regulated Piping or OSHA Regulated Piping, the parties will meet and confer to resolve their disagreement.
7. The underground storage caverns at the Bushton Plant, which store hazardous liquid petroleum products, are subject to the safety regulations and requirements of the Kansas Department of Health and Environment. This does not preclude future regulation of

ONEOK's underground storage caverns by PHMSA should PHMSA issue minimum safety standards for underground hazardous liquid storage facilities.

B. Implementation of Part 195

8. According to the timing and deadlines set forth herein, and subject to the conditions and scope limitations set forth herein, the PHMSA Regulated Piping shall be subject to PHMSA's 49 C.F.R. Part 195 regulations. With respect to existing piping that will become PHMSA Regulated Piping on the Effective Date of this Consent Agreement and Order, ONEOK shall implement the applicable requirements of Part 195 no later than 90 days after such Effective Date. The date on which such implementation is completed will be the "In-Service Date" for such piping. With respect to any OSHA Regulated Piping that becomes PHMSA Regulated Piping in the future pursuant to Paragraphs 5 & 6 hereof, ONEOK shall implement the applicable requirements of Part 195 no later than 90 days after the date that ONEOK provides notification to the Director pursuant to Paragraph 6 hereof that such piping has become PHMSA Regulated Piping. ONEOK may request an extension of time beyond the 90-day period by providing a written request to the Director along with a reasonable basis no later than fifteen (15) business days before the completion deadline. Not later than five (5) business days following receipt of a request for an extension of time, the Director shall grant or deny such request in writing. The Director shall provide a reasonable basis for any denial of a request for an extension of time.

C. Record-Keeping

9. ONEOK will retain records relating to compliance with Part 195 with respect to piping that becomes PHMSA Regulated Piping on or after the In-Service Date in conformance with the recordkeeping provisions of Part 195.
10. Subject to the provisions of this Consent Agreement and Order, ONEOK's historical (i.e., for the time period prior to the In-Service Date of any piping that becomes PHMSA Regulated Piping hereunder) records of maintenance and operations, pipeline integrity, and testing related to the PHMSA Regulated Piping and OSHA Regulated Piping shall be available to PHMSA for informational purposes. Such historical records include, but are not limited to, records pertaining to inspections, corrosion control, leaks, abnormal operating conditions, failure records, along with any related with root cause analysis reports, mill test reports (MTR) and hydrostatic pressure testing. ONEOK will maintain any such historical records, existing upon the Effective Date, for the life of the facility.
11. The Parties acknowledge that, with respect to the PHMSA Regulated Piping and the OSHA Regulated Piping, Respondents do not possess complete historical documentation related to compliance with Part 195 of PHMSA's regulations. Therefore, this Consent Agreement and Order shall not be interpreted as establishing an obligation or creating a liability with respect to any provision of Part 195 for the period before any In-Service Date on which piping becomes PHMSA Regulated Piping pursuant to this Consent Agreement and Order.

12. ONEOK agrees to maintain records of review, demarcation, and drawings related to the facility reviews that ONEOK will perform under Paragraph 6 for a period of at least five (5) years following completion of each review.
13. For any review documentation or other deliverables required to be submitted to PHMSA pursuant to this Consent Agreement and Order, ONEOK may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Consent Agreement and Order in accordance with 49 C.F.R. Part 7. Any claim of confidentiality shall be marked in writing on each page, and shall include a statement specifying the grounds for each claim of confidentiality. PHMSA will determine whether to release any such information submitted pursuant to this Consent Agreement and Order in accordance with 49 C.F.R. Part 7, the Freedom of information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

D. The Administrative and Judicial Proceedings

14. PHMSA accepts the payment of \$572,900 which ONEOK remitted under protest to PHMSA on December 5, 2016, as full accord and satisfaction of Respondents' civil penalty assessment in these enforcement proceedings.
15. Immediately upon the Effective Date, the Parties will file a joint motion of voluntary dismissal asking the Court to dismiss, with prejudice, the Petitions for Review filed in *ONEOK Hydrocarbon, et al. v. U.S. Dep't of Transportation, et al.*, D.C. Cir. Nos. 13-1040, 17-1004, 17-1005, and 17-1006 (consolidated under No. 13-1040), with each Party bearing its own costs and fees.
16. Upon issuance of this Consent Agreement and Order and the Court's dismissal of the Petitions for Review, these enforcement proceedings will be closed, and ONEOK's Petition for Reconsideration of the Final Order issued in CFP No. 3-2013-5015 and protests will be deemed moot.

E. Miscellaneous Provisions

17. The terms of this Consent Agreement and Order shall become effective (*i.e.* "Effective Date") upon the last day of execution by the Parties' respective authorized representatives. This Consent Agreement and Order may be modified only by written agreement signed by both Parties.
18. ONEOK consents to the issuance of this Consent Agreement and Order, and hereby waives any further procedural requirements with respect to its issuance. ONEOK waives all rights to contest the adequacy of notice, or the validity of this Consent Agreement and Order, including all rights to administrative or judicial hearings or appeals; provided, however, that any dispute concerning the implementation of this Consent Agreement and Order shall be resolved in the manner provided in Paragraph 28.

19. This Consent Agreement and Order affirms and upholds all findings of violation of PHMSA regulations set forth in the Final Orders. This Consent Agreement and Order supersedes the Compliance Order contained in the Corrected Final Order issued by PHMSA in CPF No. 3-2013-5015 on October 13, 2016. Each allegation of violation cited in the Notice may be considered by PHMSA as a prior offense in any future enforcement action brought against Respondents by PHMSA. This Consent Agreement and Order, however, does not constitute a finding of violation of any other Federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Consent Agreement and Order.
20. This Consent Agreement and Order shall apply to and be binding upon PHMSA and its successors and upon ONEOK and its successors and assigns. ONEOK agrees to provide a copy of this Consent Agreement and Order to the officers of ONEOK NGL Pipeline and ONEOK Underground Storage who are responsible for pipeline operations. A copy of this Consent Agreement and Order and any incorporated work plans and schedules will be maintained at the Bushton Plant and will be made available to ONEOK employees whose duties might reasonably include compliance with the terms of the Consent Agreement and Order.
21. For all transfers of ownership interests or operating responsibility of the Bushton Plant, ONEOK shall provide a copy of this Consent Agreement and Order to the prospective transferee at least 30 days prior to such transfer and subsequently shall provide written notice of any such transfer to the Director not more than 60 days following any such transfer.
22. All references to “Director” in this Consent Agreement and Order shall refer to the Director, Central Region, PHMSA Office of Pipeline Safety. Information, reports, and notifications required by this Consent Agreement and Order shall be submitted to: Director, Central Region, PHMSA Office of Pipeline Safety, 901 Locust Street, Suite 462, Kansas City, MO 64106.
23. Subject to the terms of this Consent Agreement and Order, no provision contained herein affects or relieves ONEOK of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. §§ 60101, et seq., and the regulations and orders issued thereunder regarding the PHMSA Regulated Piping. Nothing in this Consent Agreement and Order shall limit or reduce PHMSA's right of access, entry, inspection, and information-gathering or its authority to bring enforcement actions against ONEOK pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other applicable provision of Federal or State law.
24. This Consent Agreement and Order does not waive or modify any Federal, State, or local laws or regulations that are applicable to ONEOK’s pipeline systems. This Consent Agreement and Order is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. ONEOK remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

25. This Consent Agreement and Order does not create rights in, or grant any cause of action to, any third person not a party to this Consent Agreement and Order. The U.S. Department of Transportation (DOT) is not liable for any injuries or damages to persons or property arising from acts or omissions of ONEOK or its officers, employees, or agents carrying out the work required by this Consent Agreement and Order.
26. This Consent Agreement and Order shall be subject to all enforcement authorities available to PHMSA under 49 U.S.C. §§ 60101, et seq., and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. § 60122, of up to \$205,638 per violation for each day the violation continues. This shall include any failure of ONEOK to comply with the terms of this Consent Agreement and Order. All maps, drawings, schematics, and associated schedules set forth or referenced in this Consent Agreement and Order, or attached as an exhibit to this Consent Agreement and Order, shall be automatically incorporated into this Consent Agreement and Order and shall be enforceable in the same manner.
27. This Consent Agreement and Order constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Agreement and Order, and the Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Agreement and Order.
28. The Director and ONEOK will attempt to resolve any disputes arising under this Consent Agreement and Order informally. If Respondents and the Director are unable to informally resolve the dispute within forty-five (45) days of receipt of Respondents' written notice invoking dispute resolution, Respondents may request in writing, within fifteen (15) days thereafter, a written determination resolving the dispute from the Associate Administrator for Pipeline Safety, along with all information that Respondents believe is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a final determination in writing. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process, except as otherwise agreed by the Director or the Associate Administrator in writing.

F. Ratification

29. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Consent Agreement and Order and to execute and legally bind each such Party.

30. The Parties hereby agree to all conditions and terms of this Consent Agreement and Order:

For PHMSA:

For Respondents:

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Wesley Christensen
Senior Vice President,
Operations

Date

Date