

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

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<b>In the Matter of</b>	)	
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<b>ONEOK NGL Pipeline, L.P.,</b>	)	
<b>ONEOK NGL Pipeline, L.L.C., and</b>	)	<b>CPF No. 3-2013-5020</b>
<b>ONEOK Underground Storage</b>	)	
<b>Company, L.L.C., collectively,</b>	)	
	)	
<b>Respondent.</b>	)	

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**FINAL ORDER**

On April 23 – July 26, 2012 and December 10, 2012 – April 17, 2013, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an inspection of the records and facilities of ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C., and ONEOK Underground Storage Company, L.L.C. (collectively, ONEOK or Respondent) in Plattsmouth, Nebraska; Bushton, Kansas; and Medford, Oklahoma. ONEOK operates 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.<sup>1</sup>

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent a Notice of Probable Violation and Proposed Civil Penalty on July 3, 2013. The Director issued an Amended Notice of Probable Violation and Proposed Civil Penalty on August 15, 2013 (Notice).<sup>2</sup> In accordance with 49 C.F.R. § 190.207, the Notice alleged that Respondent committed two violations of the pipeline safety regulations in 49 C.F.R. Part 195 and proposed a civil penalty of \$45,700 for the alleged violations. The Notice also included two warning items in accordance with 49 C.F.R. § 190.205.

ONEOK responded to the Notice on August 6 and September 3, 2013, contested one of the alleged violations and requested a hearing. Additional written materials were submitted by Respondent on January 6 and 10, 2014. In accordance with 49 C.F.R. § 190.211, a hearing was

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<sup>1</sup> This information is reported by Respondent for calendar year 2015 pursuant to 49 C.F.R. § 195.49.

<sup>2</sup> The Director also issued two additional notices of probable violation to Respondent, both dated May 13, 2013 (CPF No. 3-2013-5014 and CPF No. 3-2013-5015). Final Orders are being issued in those cases separately.

held in Kansas City, Missouri on January 15, 2014, before a Presiding Official from the Office of Chief Counsel, PHMSA.<sup>3</sup> After the hearing, Respondent submitted additional written materials for the record on April 1, 2014, and May 6, 2016. Pursuant to § 190.209(b)(7), the Director submitted a written evaluation of Respondent's response material on April 1, 2016.

### **JURISDICTION AND GENERAL ARGUMENTS**

As a general matter, Respondent contested the authority of PHMSA to enforce the pipeline safety regulations at the Bushton facility and argued the Notice and proposed civil penalty should be withdrawn due to jurisdictional uncertainty, failure to provide fair notice, and other reasons. These arguments were raised in the related proceedings, CPF No. 3-2013-5014 and CPF No. 3-2013-5015. In the Final Order for CPF No. 3-2013-5014, I addressed these arguments. In particular, I determined the Pipeline Safety Act applies to the Bushton facility because the facility engages in the transportation of hazardous liquids by pipeline. I also determined that an exception in the Act for "refining" does not apply. Respondent's general arguments for withdrawing the Notice and proposed civil penalty are dismissed for the same reasons set forth in CPF No. 3-2013-5014.

### **FINDINGS OF VIOLATION**

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 195.452(j)(3), which states:

**§ 195.452 Pipeline integrity management in high consequence areas.**

(a) . . . .

(j) *What is a continual process of evaluation and assessment to maintain a pipeline's integrity?*—(1) *General.* After completing the baseline integrity assessment, an operator must continue to assess the line pipe at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area . . . .

(3) *Assessment intervals.* An operator must establish five-year intervals, not to exceed 68 months, for continually assessing the line pipe's integrity. An operator must base the assessment intervals on the risk the line pipe poses to the high consequence area to determine the priority for assessing the pipeline segments. An operator must establish the assessment intervals based on the factors specified in paragraph (e) of this section, the analysis of the results from the last integrity assessment, and the information analysis required by paragraph (g) of this section.

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<sup>3</sup> The hearing also concerned the notice of probable violation issued in CPF No. 3-2013-5014. A separate hearing concerning the notice of probable violation in CPF No. 3-2013-5015 was held November 14-15, 2013. That hearing also discussed the jurisdictional issues relevant to all the proceedings.

The Notice alleged that Respondent violated § 195.452(j)(3) by failing to reassess the integrity of its Line 110 at an interval not exceeding 68 months. Specifically, the Notice alleged that the previous operator of Line 110 performed an assessment using a dent tool on December 29, 2006, and a mag-flux tool a year later on December 4, 2007. Respondent performed a combined mag-flux and dent tool reassessment on November 7, 2012. As a result, the dent tool run exceeded the maximum 68-month interval by approximately 2 months.

Respondent did not contest the allegation of violation.<sup>4</sup> Having reviewed the record, I find Respondent violated § 195.452(j)(3) by failing to perform a reassessment within 68 months.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e), which states:

**§ 195.573 What must I do to monitor external corrosion control?**

(a) . . . .

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by § 195.401(b). However, if the deficiency involves a pipeline in an integrity management program under § 195.452, you must correct the deficiency as required by § 195.452(h).<sup>5</sup>

The Notice alleged that Respondent violated § 195.573(e) by failing to correct deficiencies in corrosion control. Specifically, the Notice alleged that cathodic protection (CP) readings for several pipelines connected to storage field wells were below the -0.85v criteria for consecutive years. The pipelines connected to Wells S-12, S-13, and S-61 allegedly had low readings for 2010 and 2011 and the pipeline connected to Well S-16 allegedly had low readings for 2010, 2011, and 2012.

Respondent acknowledged the pipelines had inadequate CP readings in 2010, but argued they were timely corrected as required under the regulation. Respondent explained that by October and November 2011, prior to performing the next required annual survey, all of the pipelines had CP readings that met applicable criteria. Respondent acknowledged that it provided OPS records containing a data entry error related to the 2011 reading for S-16. In addition, Respondent accepted that in 2012, the reading for S-16 again fell below criteria, but the reading was corrected before the next annual survey.

Respondent has produced information demonstrating compliance with the regulation cited in the Notice. Specifically, Respondent provided documentation that the inadequate cathodic protection readings were remediated by November 2011, which is within 15 months following the prior annual survey. At the hearing, Respondent produced additional information to

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<sup>4</sup> ONEOK Merits Brief at 3 (Mar. 31, 2014).

<sup>5</sup> Section 195.401(b)(1) provides: “Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time.”

demonstrate that it took actions prior to October 2011 to attempt to remediate the deficiencies. The Director recommended this alleged violation be withdrawn based on Respondent's submission of additional information. Having reviewed the record, I find Respondent did not violate § 195.573(e) in the manner alleged by the Notice. Accordingly, this item is withdrawn.

### 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.<sup>6</sup> The Notice proposed a civil penalty of \$45,700 for the violations cited above in Items 3 and 4.

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; any effect that the penalty may have on Respondent's 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.

**Item 3:** The Notice proposed a civil penalty of \$22,500 for Respondent violation of 49 C.F.R. § 195.452(j)(3). Respondent failed to perform an integrity reassessment within 68 months of a prior assessment. Respondent did not contest the violation and agreed to pay the civil penalty.<sup>7</sup> Having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty of \$22,500 for the violation of § 195.452(j)(3).

**Item 4:** The Notice proposed a civil penalty of \$23,200 for the alleged violation of 49 C.F.R. § 195.573(e). As discussed above, this allegation is withdrawn. Accordingly, the civil penalty proposed for this item is not assessed.

In summary, Respondent is assessed a total civil penalty of **\$22,500**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require the 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 (AMZ-325), Federal Aviation Administration, Mike

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<sup>6</sup> The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a), 125 Stat. 1905 (Jan. 3, 2012) increased the maximum civil penalty for a violation of the pipeline safety standards to \$200,000 per violation for each day, up to a maximum of \$2,000,000 for a related series of violations. These amounts are periodically adjusted for inflation. Inflation Adjustment of Maximum Civil Penalties, 81 Fed. Reg. 42564 (Jun. 30, 2016).

<sup>7</sup> ONEOK Hearing Request at 1 (Sept. 13, 2013).

Monroney Aeronautical Center, 6500 S Macarthur Blvd, Oklahoma City, OK 73169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$22,500 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.

### **WARNING ITEMS**

With respect to Items 1 and 2, the Notice alleged probable violations of Part 195, but considered them to be warning items. Pursuant to 49 C.F.R. § 190.205, a warning may be issued by a Regional Director to notify an operator of a potential issue, which if found in a future inspection may subject the operator to enforcement. An operator may respond to a warning, but is not required to.

Respondent indicated that it did not contest the allegations in Items 1 and 2(b), but contested the allegation in Item 2(a). Respondent objection to the Item 2(a) is noted, but pursuant to § 190.205, PHMSA does not adjudicate warning items to determine if a violation has been proved.<sup>8</sup> Respondent is advised that a warning is not considered a prior violation in any future enforcement action. If a probable violation of a regulation cited in a warning is identified in the future, Respondent may be subject to enforcement, including a compliance order or civil penalty, but the warning will not serve as the basis for increasing the civil penalty. The warnings in the Notice were for the following:

49 C.F.R. § 195.59 (**Item 1**) – Respondent’s alleged failure to file an abandonment report with the National Pipeline Mapping System (NPMS) after abandoning a pipeline crossing at the Missouri River near Plattsmouth, Nebraska.

49 C.F.R. § 195.402(a) (**Item 2(a)**) – Respondent’s alleged failure to review its emergency response plan for the Bushton facility on an annual basis. Respondent objected to this warning on two grounds. Respondent contested the warning on the jurisdictional grounds, and also argued that OPS did not produced evidence sufficient to support the allegation.

49 C.F.R. § 195.402(a) (**Item 2(b)**) – Respondent’s alleged failure to follow its procedures for evaluating atmospheric corrosion on Line 110 following an atmospheric survey in 2011. Respondent’s procedures allegedly required the Company to review issues noted during the atmospheric survey within six months and to review any new exposures within 60 days.

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<sup>8</sup> See *Magellan Pipeline Co.*, CPF No. 4-2012-5010, 2014 WL 5431188, at \*16 (Sept. 2, 2014) (explaining “[u]nlike other alleged violations, PHMSA does not make a finding as to whether an allegation contained in a warning was proven by evidence in the record”).

Respondent is warned that if a probable violation of these provisions is identified in the future, Respondent may be subject to additional enforcement.

Under 49 C.F.R. § 190.243, Respondent may submit a petition for reconsideration of this Final Order to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, D.C. 20590, no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

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Alan K. Mayberry  
Acting Associate Administrator  
for Pipeline Safety

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Date Issued