



August 6, 2013

Ms. Linda Daugherty
Director, Central Region
Pipeline and Hazardous Materials Safety
Administration
Office of Pipeline Safety
901 Locust Street, Suite 462
Kansas City, Missouri 64106-2641

Via Email: Linda.Daugherty@dot.gov
Via FedEx: 796390703559

Re: Notice of Probable Violation CPF 3-2013-5020
ONEOK NGL Pipeline, L.L.C.
Request for Hearing

RECEIVED AUG 7 2013

Dear Ms. Daugherty:

This letter serves a request for a hearing in response to the referenced Notice of Probable Violation dated July 3, 2013, which includes proposed civil penalties (the "NOPV"). The NOPV was received by ONEOK NGL Pipeline, L.L.C. ("ONEOK NGL Pipeline") on July 11, 2013, and, as such, this response is timely.

ONEOK NGL Pipeline, pursuant to 49 C.F.R. §§ 190.209 and 190.211, hereby requests a hearing on the NOPV, with respect only to certain Items, as follows. ONEOK NGL Pipeline requests that Item 2(a) and Item 4 be heard. Enclosed herewith please find ONEOK NGL Pipeline's Statement of Issues which it serves pursuant to 49 CFR § 190.211(a). ONEOK NGL Pipeline will be represented by the undersigned counsel at the hearing. ONEOK NGL Pipeline requests that said hearing be held at PHMSA's Central Region office in Kansas City, Missouri.

ONEOK NGL Pipeline does not contest Item 1 (Warning), Item 2(b) (Warning); or Item 3. ONEOK intends to pay the proposed civil penalty associated with Item 3 in conformance with the Response Options provided with the NOPV.

ONEOK NGL Pipeline also received, on May 13, 2013, two Notices of Probable Violation, CPF 3-2013-5014 and CPF 3-2013-5015 (the "Pending Matters"). ONEOK NGL Pipeline requests that the present case be set for hearing subsequent to any hearing held for the Pending Matters.



Know what's below.
Call before you dig.



ONEOK NGL Pipeline further requests that a transcript of the hearing be prepared by a certified court reporter. ONEOK NGL Pipeline will be pleased to arrange for the transcript and bear the cost of same. ONEOK NGL Pipeline will provide a copy of said transcript to PHMSA and the Presiding Official.

ONEOK NGL Pipeline hereby requests that PHMSA promptly provide all materials in the case file, including but not limited to the underlying Violation Report and any supporting exhibits.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'V. Murchison', with a long horizontal flourish extending to the right.

Vince Murchison

cc: Wesley Christensen
Bill Bromley
Vicky Benedict
Tom Kirby



PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
WASHINGTON, DC 20590

In the matter of:	§	
	§	
ONEOK NGL Pipeline, L.L.C.	§	CPF No. 3-2013-5020
	§	
Respondent	§	
	§	

**STATEMENT OF ISSUES
OF
ONEOK NGL PIPELINE, L.L.C.
TO
NOTICE OF PROBABLE VIOLATION
AND
PROPOSED CIVIL PENALTY**

ONEOK NGL Pipeline, L.L.C.¹ (“ONEOK NGL Pipeline”) submits this Statement of Issues in connection with its request for a hearing pursuant to 49 C.F.R. § 190.209 and 49 C.F.R. § 190.211(a).

By letter dated July 3, 2013, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) served on ONEOK NGL Pipeline a Notice of Probable Violation and Proposed Civil Penalty (collectively, the “NOPV”), CPF No. 3-2013-5020, which was received on July 11, 2013. By separate writing, ONEOK NGL Pipeline has requested a hearing in this matter, and this Statement of Issues is served therewith.

BACKGROUND

This matter results from PHMSA inspections of records and facilities for the Plattsmouth area in Plattsmouth, Nebraska, and the facility known as the “Bushton Facility” located in Bushton, Kansas.

The Bushton Facility receives, stores, refines, and dispatches natural gas liquids (“NGLs”). Movement of NGLs into and out of the Bushton Facility is by pipeline, though a small portion of outbound propane is loaded to truck transports across a truck loading rack. Each of three affiliated entities owns and/or operates different portions of the Bushton Facility:

- (1) ONEOK Hydrocarbon, L.P. (“ONEOK Hydrocarbon”) owns and operates a refining facility which refines Y-grade NGLs² into various products, primarily

¹ ONEOK NGL Pipeline, L.P. is named as respondent in the NOPV. Inasmuch as ONEOK NGL Pipeline, L.L.C. is the successor entity to ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C. is the party responding.

² Y-grade is a mixture of demethanized natural gas liquids.

ethane, propane, butane, and iso-butane, along with associated storage and in-plant piping, piping manifolds, and other facility components;

(2) ONEOK NGL Pipeline owns and operates inbound and outbound pipelines and the overpressure protection devices that protect those pipelines (collectively, the “Jurisdictional Pipelines”); and

(3) ONEOK Underground Storage Company, L.L.C. (“ONEOK Underground Storage”) owns a system of underground storage caverns, connected to the refining facilities and the Jurisdictional Pipelines by an in-plant piping system, in which Y-grade and refined NGLs are stored, which storage and in-plant piping system are operated by ONEOK Hydrocarbon.

In the NOPV, PHMSA seeks to find violations of certain of the pipeline safety regulations promulgated at 49 C.F.R. Part 195 (“Part 195”) and to impose civil penalties, all pursuant to the procedural and enforcement regulations promulgated at 49 C.F.R. Part 190, Subparts A and B (“Part 190”). ONEOK NGL Pipeline hereby states its issues which are limited to (i) Warning Item 2(a); and (ii) alleged violation Item 4 of the NOPV.

THE ALLEGED VIOLATIONS

Jurisdictional Issues

As to all matters asserted and alleged by PHMSA in the NOPV which regard the Bushton Facility, ONEOK NGL Pipeline disputes and objects to PHMSA’s assertion or presumption of authority to regulate any component of the Bushton Facility, except the Jurisdictional Pipelines, on the following grounds:

1. The Bushton Facility is a refining facility with associated storage and in-plant piping, all of which is excepted from the scope of authority granted to the Secretary of Transportation by the Pipeline Safety Act, 49 U.S.C. § 60101, *et seq.* (“PSA”), 60101(a)(22). Similarly, refining facilities and associated storage and in-plant piping are excepted from regulation under Part 195, 49 C.F.R. § 195.1(b)(8). By virtue of those exceptions, PHMSA lacks authority to regulate any component of the Bushton Facility under the PSA or under Part 195, aside from the Jurisdictional Pipelines, and further lacks authority under the PSA or under Part 190 to find ONEOK NGL Pipeline in violation of the pipeline safety regulations or to impose penalties.³
2. PHMSA previously issued two Notices of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order relating to the Bushton Facility by separate letters both of which are dated May 13, 2013; *see* CPF 3-2013-5014 and CPF 3-2013-5015 (collectively, the “Pending Matters”). The Pending Matters named ONEOK NGL Pipeline and ONEOK Underground Storage as respondents (collectively, the “ONEOK Respondents”). By letters

³ ONEOK NGL Pipeline does not dispute or object to PHMSA exercising the proper scope of its authority over the Jurisdictional Pipelines.

dated July 12, 2013, the ONEOK Respondents requested hearings and served statements of issues therewith in each of the respective Pending Matters.

3. To the extent that PHMSA asserts jurisdiction over the Bushton Facility in the present case on the same bases as jurisdiction is asserted in the Pending Matters, ONEOK NGL Pipeline states the following issues:
 - 3.1. The interpretation letters upon which PHMSA relies to establish jurisdiction (*see* Exhibit C to the underlying Violation Reports in the Pending Matters) are inconsistent with PHMSA's authority under the PSA and erroneously conclude that PHMSA has authority in excess of that granted by the PSA; adopt ad hoc definitions of terms not defined in the PSA or Part 195, which definitions were not subjected to notice and comment rule-making; were promulgated without following the requirements of PHMSA's rulemaking regulations at 49 C.F.R. Part 190, Subpart C and the Administrative Procedure Act ("APA"), 5 U.S.C. § 551, et seq.; and reflect a change in PHMSA's interpretation of the PSA but in the absence of reasoned analysis explaining the change.
 - 3.2. ONEOK NGL Pipeline disputes and objects to any assertion, and rebuts any presumption, that a Federal Energy Regulatory Commission tariff filing by ONEOK North System, L.L.C. establishes PSA and Part 195 jurisdiction over the Bushton Facility.
 - 3.3. To the extent that PHMSA asserts jurisdiction over the Bushton Facility on the basis that ONEOK NGL Pipeline has in the past "admitted" jurisdiction under the PSA or Part 195, ONEOK NGL Pipeline disputes such basis and further contends that ONEOK NGL Pipeline never has admitted or consented to jurisdiction thereunder.
4. ONEOK NGL Pipeline asserts that an issue exists of whether or not PHMSA failed to name and serve the correct entities that own and operate the portions of the Bushton Facility that are the subject of the NOPV.

Issues Stated in the Alternative

In the alternative to the foregoing jurisdictional issues, and solely in the event that PHMSA concludes that the Bushton Facility is subject to PHMSA's legal and regulatory authority, ONEOK NGL Pipeline sets out below its factual, legal and regulatory issues that relate to the allegations of the NOPV. Each paragraph below begins with the NOPV Item number, the cited regulation, and a summary of the allegations.

1. **Item 2(a):** 49 CFR § 195.402(a) Procedural manual for operations, maintenance, and emergencies; by failing to review "the site specific emergency response plan on an annual basis for the Bushton facility."

ONEOK NGL Pipeline disputes and objects to the allegations stated in the NOPV, in that:

- 1.1. ONEOK NGL Pipeline neither owns nor operates the components of the Bushton Facility which are the subject of this alleged violation;
 - 1.2. The NOPV omits to present a statement of the evidence upon which this alleged violation is based;
 - 1.3. The subject facility components are not part of a pipeline system or a pipeline facility;
 - 1.4. PHMSA has failed to meet its burden of proof that a violation occurred; and
 - 1.5. The NOPV fails to make factual findings or to explain, discuss, or analyze the conclusion that ONEOK NGL Pipeline is in violation of the subject regulation.
2. **Item 4:** 49 CFR § 195.573 What must I do to monitor external corrosion control? By failing to correct identified deficiencies in corrosion control.

ONEOK NGL Pipeline disputes and objects to the allegations stated in the NOPV, in that:

- 2.1. ONEOK NGL Pipeline neither owns nor operates the components of the Bushton Facility which are the subject of this alleged violation;
- 2.2. The subject facility components are not part of a pipeline system or a pipeline facility;
- 2.3. PHMSA has failed to meet its burden of proof that a violation occurred; and
- 2.4. The NOPV fails to make factual findings or to explain, discuss, or analyze the conclusion that ONEOK NGL Pipeline is in violation of the subject regulation.

PROPOSED CIVIL PENALTY

Jurisdictional Issues

As to all matters asserted and alleged by PHMSA with regard to the proposed civil penalty associated with alleged violation Item 4, ONEOK NGL Pipeline disputes and objects to any assertion or presumption of authority by PHMSA to impose a civil penalty with respect to any alleged violation related to any component of the Bushton Facility, except the Jurisdictional Pipelines, on the basis of the Jurisdictional Issues stated above with respect to the Alleged Violations (Paragraphs 1–4), which Jurisdictional Issues ONEOK NGL Pipeline restates and incorporates herein by this reference.

Issues Stated in the Alternative

With respect only to the proposed civil penalty associated with alleged violation Item 4, in the alternative to the foregoing jurisdictional issues, and solely in the event that PHMSA concludes that the Bushton Facility is subject to PHMSA's legal and regulatory authority, ONEOK NGL Pipeline sets out below its factual, legal and regulatory issues that relate to the proposed civil penalty.

PHMSA proposes a civil penalty of \$23,200 in connection with alleged violation Item 4, as to which ONEOK NGL Pipeline states the following issues:

1. The NOPV provides insufficient evidentiary basis for, and no explanation, discussion or analysis of, the manner in which the penalty amounts were determined, and thus ONEOK

NGL Pipeline has no reasonable opportunity to prepare an adequate defense to contest the proposed civil penalty, and on those grounds the proposed civil penalty should be withdrawn in its entirety.

2. PHMSA has failed to make available to the public, as required by the APA, the methods and procedures by which PHMSA determines the amount of proposed civil penalties and the amounts eventually assessed, and, thus, the proposed civil penalty should be withdrawn in its entirety.
3. The NOPV provides insufficient evidentiary basis for, and no explanation, discussion or analysis of, the penalty assessment considerations of 49 CFR §190.225 in support of the proposed civil penalty, and thus ONEOK NGL Pipeline has no reasonable opportunity to prepare an adequate defense to contest the proposed civil penalty, and on those grounds the proposed civil penalty should be withdrawn in its entirety.
4. To the extent that the related alleged violation is not supported by substantial evidence, a rational connection between facts found and conclusions drawn, regulation, or law, the proposed civil penalty may not be imposed and must be withdrawn in its entirety.
5. ONEOK NGL Pipeline objects to the magnitude of the proposed civil penalty as unreasonable; disproportional to any of the penalty assessment considerations of 49 C.F.R. § 190.225; unsupported by sufficient evidence, or analysis that applies, the penalty assessment considerations; arbitrary, capricious or otherwise not in accordance with the law; and an abuse of discretion. On those grounds the proposed civil penalty should be withdrawn in its entirety.

CONCLUSION

At the hearing in this matter, ONEOK NGL Pipeline intends to bring forth evidence in the form of documents and/or witness testimony, as well as to present its arguments, in support of the issues stated heretofore. ONEOK NGL Pipeline reserves the right to supplement this Statement of Issues at or before the hearing.

COUNSEL FOR ONEOK NGL Pipeline, L.L.C.

August 6, 2013



William V. Murchison
Texas Bar No. 14682500
325 North St. Paul Street, Suite 2700
Dallas, Texas 75201
(214) 716-1923 – Telephone
(214) 965-8209 – Facsimile
Vince.Murchison@PipelineLegal.com