

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

December 15, 2016

Mr. Randy Lentz
Vice President
Flint Hills Resources Pine Bend, LLC
4111 East 37th Street North
Wichita, KS 67220

CPF 3-2016-5011

Dear Mr. Lentz:

On October 7 and 8, 2014, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected your Flint Hills Resources Pine Bend, LLC (FHR) facilities at Waupun and Milwaukee, Wisconsin.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1) §195.132 Aboveground breakout tank.

(b) For aboveground breakout tank first placed in service after October 2, 2000, compliance with paragraph (a) of this section requires one of the following:

(3) Vertical, cylindrical, welded steel tanks with internal pressures at the tank top approximating atmospheric pressures (i.e., internal vapor space pressures not greater than 2.5 psig (17.2 kPa), or not greater than the pressure developed by the weight of the tank roof) must be designed and constructed in accordance with API Std 650 (incorporated by reference, see § 195.3).

FHR failed to adequately follow the requirements of API 650 for breakout tank number 541, located at the Milwaukee facility. Tank 541 was constructed in 2013 and did not meet the API Standard 650 requirements for peaking and banding at weld joints. API Standard 650, Section 7.5.4 Local Deviations, specifies that peaking deviations at vertical weld joints shall not exceed 13 mm (1/2 in.). API 650 also specifies that banding deviations at horizontal weld joints shall not exceed 13 mm (1/2 in.). During construction three shell plates were removed and reinstalled. There is no documentation that the tank was inspected for peaking and banding other than a certification letter from Landmark stating that tank number 541 was constructed per API 650.

During PHMSA's inspection, peaking and banding was observed that exceeded the API 650 maximums. FHR performed additional studies on the tank, and the findings showed 100's of feet of peaking and banding that exceeds the API 650 maximums. As a result of PHMSA's observations, FHR also commissioned a fitness-for-service evaluation, and the report states that the tank would be fit-for-service assuming there are no crack-like flaws in the welds or no locally thin areas, blisters, grooves or cracks in the deformed areas in the parent metal adjacent to the welds. FHR has not examined the tank for these types of defects.

2) §195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.

(b) After October 2, 2000, compliance with paragraph (a) of this section requires the following for the aboveground breakout tanks specified:

(1) For tanks built to API Spec 12F, API Std 620, and others (such as API Std 650 (or its predecessor Standard 12C)), the installation of impoundment must be in accordance with the following sections of NFPA- 30 (incorporated by reference, see §195.3);

(i) Impoundment around a breakout tank must be installed in accordance with section 22.11.2; and

(ii) Impoundment by drainage to a remote impounding area must be installed in accordance with section 22.11.1.

For tank number 541, constructed in 2013, FHR did not install impoundment in accordance with NFPA 30 (incorporated by reference). Specifically, the drainage route was not located so that if the liquid in the drainage system were ignited, tanks and piping would not be exposed to the fire. In addition, the drainage route does not slope away at a 1% grade from tanks for at least 50 feet.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$205,638 per violation per day the violation persists up to a maximum of \$2,056,380 for a related series of violations. For violations occurring between January 4, 2012 to August 1, 2016, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed \$100,000 per violation per day, with a maximum penalty not to exceed \$1,000,000 for related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$13,800 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$13,800

Proposed Compliance Order

With respect to items 1 and 2 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to FHR. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 3-2016-5011** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Allan C. Beshore
Director, Central Region, OPS
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Duke Energy a Compliance Order incorporating the following remedial requirements to ensure the compliance of Duke Energy with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to construction deficiencies, FHR shall inspect the tank to confirm the assumptions for safe operation that were used in the TDV SUD study.
 - a) For the peaking and banding areas shown in TDV SUD report “3.1 Weld Deviations Analysis Map”, FHR shall inspect these areas to assure there are no crack-like flaws in the welds or parent metal adjacent to the welds within the deformed areas; and no locally thin areas, blisters, grooves, or cracks; and no supplemental loadings.
 - b) For the areas of interest shown in TDV SUD report “3.2 Measured Areas of Interest”, FHR shall inspect these areas to assure there are no crack-like flaws in the welds or parent metal adjacent to the welds within the deformed areas; and no locally thin areas, blisters, grooves or cracks; and no supplemental loadings.

Within 30 days of issuance of the final order, FHR shall submit a plan and schedule to have the inspection completed within one year of issuance of the final order. FHR shall submit inspection documentation within 30 days of completion of the inspection.

2. In regard to Item Number 2 of the Notice pertaining to impoundment. FHR shall grade the impoundment area so that the slope is at least 1% away from tanks for at least 50 feet or up to the dike base per NFPA 30. Remote impounding routes shall transport the product in a manner that will avoid tanks and piping at a distance that meets the above criteria. Grading and other measures shall be complete within one year of the issuance of the final order. Within 30 days of completion of the work, FHR shall submit documentation showing the completed work meets impoundment requirements.
3. It is requested that FHR maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Allan C. Beshore, Director, OPS 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.