

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

May 29, 2018

Mr. David Sauer
Sr. Vice President & COO
Dakota Gasification Company
1717 East Interstate Avenue
Bismarck ND 58503-0564

CPF 3-2018-5002

Dear Mr. Sauer:

From January 30– May 12, 2017, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code, inspected your Dakota Gasification Company's (DGC) carbon dioxide pipeline records and assets near Beulah, North Dakota.

As a result of the inspection, it is alleged 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. §195.577 What must I do to alleviate interference currents?

(a) For pipelines exposed to stray currents, you must have a program to identify, test for, and minimize the detrimental effects of such currents.

DGC failed to protect its pipeline which was exposed to stray currents and minimize the detrimental effects of such currents. PHMSA's inspector observed the following two locations with alternating current (AC) voltage over 4 volts: TP 206 reading 5499 mv AC, TP 225 reading 4207 mv AC.^a Based on these readings, it was reasonable to foresee interference currents at those locations and DGC did not take protective measures to electrically isolate its pipeline from other detrimental current sources. Subsequent to PHMSA's inspection, DGC provided AC current density calculations which indicate densities in ranges where it is possible for AC corrosion to occur.

2. **§195.440 Public awareness**

(a)

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

DGC failed to follow the general program recommendations, including baseline and supplemental requirements of API Recommended Practice (RP) 1162, and did not provide justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety. Public Awareness Programs for Pipeline Operators, API RP 1162, FIRST EDITION, DECEMBER 2003, Section 8.4 states:

8.4 MEASURING PROGRAM EFFECTIVENESS

Operators should assess progress on the following measures to assess whether the actions undertaken in implementation of this RP are achieving the intended goals and objectives:

- **If the recipient audiences are understanding the messages delivered**
- **Whether the recipients are motivated to respond appropriately in alignment with the information provided**

DGC did not perform a written effectiveness evaluation in 2016 for the recipient audience as required by the public awareness plan. The records presented contained only survey responses with no assessment as to whether the actions undertaken in implementation of API RP 1162 are achieving the intended goals and objectives.

^a DGC has elected to conduct digs at these locations before deciding on mitigative action.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$209,002 per violation per day the violation persists, up to a maximum of \$2,090,022 for a related series of violations. For violations occurring prior to November 2, 2015, 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. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$38,300 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$19,300
2	\$19,000

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. All material you submit in response to this enforcement action may be 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 3-2018-5002** 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: *Response Options for Pipeline Operators in Compliance Proceedings*