

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

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

May 3, 2018

Mr. Ray Ingle, President and Chief Executive Officer  
Hawthorn Oil Transportation (North Dakota), Inc.,  
1111 Bagby Sky Lobby 2,  
Houston, TX 77002

**CPF 3-2018-6002**

Dear Mr. Ingle:

On April 4-6, 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 Stanley to Railyard pipeline in Stanley, North Dakota.

As a result of the inspection, it is alleged that Hawthorn Oil Transportation (Hawthorn) has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

**1. §194.7 (b) An operator must operate its onshore pipeline facilities in accordance with the applicable response plan.**

**§194.107 General response plan requirements**

(a) .....

(c) Each response plan must include:

(1) A core plan consisting of-

(i) .....

**(ix) Drill program-an operator will satisfy the requirement for a drill program by following the National Preparedness for Response Exercise Program (PREP) guidelines. An operator choosing not to follow PREP guidelines must have a drill program that is equivalent to PREP. The operator must describe the drill program in the response plan and OPS will determine if the program is equivalent to PREP.**

Hawthorn did not operate its onshore pipeline in accordance with its response plan. Hawthorn’s response plan states the “The Company will conduct announced and unannounced drills to maintain compliance, and each plan-holder must conduct at least one exercise annually. The Senior Emergency Response Specialist will be responsible for the planning, carrying out and monitoring of the drill exercises” and references the PREP Guidelines for full details. Records showed that none of the 22 required PREP drills for the period from 2010 to 2013 were documented. Hawthorn failed to provide records indicating that all required PREP drills were conducted within the 3-year period as required by the PREP guidelines. The table below shows the gaps in the PREP drills.

	Required in 3 Yrs	Mar 31 2010 Startup	2011	2012	2013	2014	2015	2016	2017
QI	12						2	4	1
Tabletop	3							12/1/2016, 2-25-16	
Unannounced	3					8/12/2014	10/28/2015, verify if 7-18-15 was unannounced. Per email of 4-27-17 yes it was.		
Equipment	3						7-18-2015, 10/28/2015		
Triennial	1						10/28/2015		

**2. §195.61 National Pipeline Mapping System.**

(a) ....

**(b) This information must be submitted each year, on or before June 15, representing assets as of December 31 of the previous year. If no changes have occurred since the previous year's submission, the operator must refer to the information provided in the NPMS Operator Standards manual available at [www.npms.phmsa.dot.gov](http://www.npms.phmsa.dot.gov) or contact the PHMSA Geographic Information Systems Manager at (202) 366-4595.**

Hawthorn failed to submit geospatial data of their hazardous liquid pipeline facilities to PHMSA each year, on or before June 15, representing assets as of December 31 of the previous year. Hawthorn was unable to provide documentation demonstrating that annual submittals to the National Pipeline Mapping System had occurred. Hawthorn had no records that the required pipeline mapping information was submitted for 2013 or 2015. PHMSA's records concurred with these findings.

**3. §195.262 Pumping equipment.**

(a) ....

**(d) Except for offshore pipelines, pumping equipment must be installed on property that is under the control of the operator and at least 15.2 m (50 ft) from the boundary of the pump station.**

Hawthorne failed to have pumping equipment installed on property under its control and at least 50 feet from the boundary of the pump station. Specifically, Hawthorn had two pump station locations with equipment not meeting the 50 feet requirement. At HPS-1 pump station the LACT was approximately 20 feet from property line and the REDA pump was approximately 10 feet from property line. At HPS-2 pump station the LACT was 30 feet from property line and the REDA pump was 36 feet from property line. Hawthorne corrected both locations by relocating fences and submitted a diagram and photos on August 7, 2017, showing both pumps at both locations being 50 feet from the boundary.

**4. §195.403 Emergency Response Training.**

(a) ....

**(b) At the intervals not exceeding 15 months, but at least once each calendar year, each operator shall:**

**(1) Review with personnel their performance in meeting the objectives of the emergency response training program set forth in paragraph (a) of this section; and**

Hawthorn failed to review with personnel their performance in meeting the objectives of the emergency response training program at intervals not exceeding 15 months, but at least once each calendar year. Hawthorn could not provide evidence demonstrating the required emergency response training for the years of 2014, 2015 and 2016.

**5. §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.**

**API RP 1162 8.3 MEASURING PROGRAM IMPLEMENTATION**

**The operator should complete an annual audit or review of whether the program has been developed and implemented according to the guidelines in this RP. The purpose of the audit is to answer the following two questions:**

- Has the Public Awareness Program been developed and written to address the objectives, elements and baseline schedule as described Section 2 and the remainder of this RP?**
- Has the Public Awareness Program been implemented and documented according to the written program?**

Hawthorn failed to follow the general program recommendations and supplemental requirements of API RP 1162 8.3. Hawthorn could not provide documentation that annual audits or reviews had occurred to demonstrate whether the public awareness program has been developed and implemented according to the guidelines of API RP 1162. For the years of 2013 and 2014 Hawthorn had no records that the required annual audit or review of their public awareness program was conducted.

**6. §195.507 Recordkeeping.**

**Each operator shall maintain records that demonstrate compliance with this subpart.**

**(a) Qualification records shall include:**

- (1) Identification of qualified individual(s);**
- (2) Identification of the covered tasks the individual is qualified to perform;**
- (3) Date(s) of current qualification; and**
- (4) Qualification method(s).**

**(b) Records supporting an individual's current qualification shall be maintained while the individual is performing the covered task. Records of prior qualification and records of individuals no longer performing covered tasks shall be retained for a period of five years.**

Hawthorn's qualification records failed to include documentation supporting the qualification methods. Hawthorn's operator qualification records for 2014 and 2015 did not include the qualification methods. This was corrected in 2016 records.

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 \$74,100 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$23,000
2	\$18,900
4	\$19,100
5	\$13,100

### Warning Items

With respect to items 3 and 6, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Failure to do so may result in additional enforcement action.

### 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 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).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. 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. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from the receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 3-2018-6002** 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 Enforcement Proceedings*