



July 22, 2019



Allan C. Beshore  
Director, Central Region  
Pipeline and Hazardous Materials Safety  
Administration  
Office of Pipeline Safety  
901 Locust Street, Suite 462  
Kansas City, Missouri 61406-2641

Via Email: [Allan.Beshore@DOT.gov](mailto:Allan.Beshore@DOT.gov)

Re: Wolverine Pipe Line Company (“Respondent”)  
**Request for Hearing and Case File**  
**Statement of Issues**  
CPF No. 3-2019-5016

Dear Mr. Beshore:

This letter serves as a request by Respondent for a hearing in response to the Notice of Probable Violation and Proposed Civil Penalty dated April 11, 2019 (the “NOPV”). Respondent received the NOPV on April 24, 2019, via USPS Certified Mail. Respondent acknowledged receipt of the NOPV on May 5, 2019, and simultaneously requested an extension of time to respond until June 22, 2019. Respondent subsequently requested a further extension of time until July 22, 2019. Both requests for extension were approved by your office. As such, this response is timely.

Pursuant to 49 C.F.R. §§ 190.208(a)(4) and 190.211, Respondent hereby requests a hearing in the referenced case. Enclosed herewith please find Respondent’s Statement of Issues which it submits pursuant to 49 C.F.R. § 190.211(b).

Additionally, following-on to my email to you of July 16, 2019, and pursuant to 49 C.F.R. § 190.208(c) and 190.209(a), Respondent hereby requests all materials in the case file, including but not limited to:

1. The Pipeline Safety Violation Report; and
2. A detailed proposed civil penalty calculation, same pursuant to that certain General Policy Statement published at 81 Fed. Reg. 71566 (Oct. 17, 2016); please provide this item in native format, whether that be Microsoft Excel or another software format.



Know what's below.  
Call before you dig.



Respondent reserves the right to supplement its Statement of Issues based on the contents of the case file.

Respondent requests that said hearing be held at the Central Region office in Kansas City, Missouri.

Please be advised that Respondent intends to be represented by in-house counsel and outside counsel in connection with the requested hearing. Respondent intends, pursuant to 49 C.F.R. § 190.211(f), to have a court reporter prepare a transcript of the hearing. Respondent will bear all costs of same and will submit a copy of same to the case file.

Thank you for your attention to this matter.

Sincerely,

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

Vince Murchison  
Counsel for Respondent

cc: Thomas Morneau (Via Email: [Tom\\_Morneau@wplco.com](mailto:Tom_Morneau@wplco.com))  
Roina Baker



PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
WASHINGTON, DC 20590

---

In the matter of:	§	
	§	
Wolverine Pipe Line Company	§	CPF 3-2019-5016
	§	
Respondent	§	
	§	

---

**STATEMENT OF ISSUES  
OF  
WOLVERINE PIPE LINE COMPANY  
TO  
NOTICE OF PROBABLE VIOLATION  
AND  
PROPOSED CIVIL PENALTIES**

Wolverine Pipe Line Company (“Respondent”) submits this Statement of Issues pursuant to 49 C.F.R. § 190.211(b) in connection with its request for a hearing pursuant to 49 C.F.R. § 190.208(a)(4).

By letter dated April 11, 2019, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) issued to Respondent a Notice of Probable Violation and Proposed Civil Penalty (collectively, the “NOPV”), CPF No. 3-2019-5016, which was received by Respondent via certified mail on April 24, 2019. By letter dated June 20, 2019, the Director, PHMSA Central Region, granted an extension of time to respond to the NOPV until June 22, 2019. By a second letter dated June 20, 2019, the Director, PHMSA Central Region, granted a further extension of time to respond to the NOPV until July 22, 2019. By letter of even date herewith, Respondent has requested a hearing in this matter, and this Statement of Issues is served therewith. Also by said letter, Respondent requested a copy of the PHMSA case file.

**BACKGROUND**

The subject NOPV relates to a comprehensive inspection from May 22-26, June 12-16, June 26-30, and July 17-21, 2017, by representatives of PHMSA Central Region, of Respondent’s operations and maintenance procedures and records at Respondent’s headquarters office in Portage, Michigan, as well as Respondent’s pipeline facilities at various field sites in Illinois, Indiana, and Michigan.

In the NOPV, PHMSA alleges nine violations of the pipeline safety regulations promulgated at 49 C.F.R. Part 195 and proposes to assess civil penalties in connection with three of the said alleged violations, all pursuant to the procedural and enforcement regulations promulgated at 49

C.F.R. Part 190, Subparts A and B, as to each and all of which alleged violations and proposed civil penalties Respondent states its issues.

## **THE ALLEGED VIOLATIONS**

Respondent states below its factual, legal and regulatory issues that relate to the alleged violations of the NOPV. The numbered paragraphs below correspond with the numbered Items of the NOPV. Each numbered paragraph begins with a citation to the subject regulation and a summary of the agency's allegations.

Initially, as to all nine alleged violations, PHMSA did not fulfill the threshold requirements, provided at 49 C.F.R. § 190.207, for issuing a notice of probable violation, and, as a result of this procedural deficiency, all nine alleged violations in the NOPV must be withdrawn, along with the proposed civil penalties.

Further as to all nine alleged violations, the almost two-year delay in issuing this NOPV has prejudiced Respondent's ability to defend against these charges. On grounds of fundamental fairness, all nine alleged violations should be withdrawn, along with the proposed civil penalties.

### **1. 49 C.F.R. § 195.420(a) – Valve maintenance**

PHMSA alleges that Respondent failed to maintain valves that were necessary for "the safe operation of the pipeline system in good working order." PHMSA alleged that five of Respondent's valves either lacked valve position indicators, the valve position indicators were inoperable, or the valve position indicator was located in a painted cover. The valves identified by PHMSA were the following:

- 1) Valve V18 in the Albion Pump Station,
- 2) Valve V14 in the Marathon Bay City Terminal,
- 3) valves in Lockport Station,
- 4) valve at Olive Road, and
- 5) valve at Wilder Road.

Respondent disputes and objects to the allegations stated in the NOPV, on the following grounds:

- 1.1. The alleged violation is not supported by the facts.
- 1.2. PHMSA has failed to carry its burden of proof.
- 1.3. PHMSA has failed to provide, or indeed to suggest, a rational connection between the facts found and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
- 1.4. PHMSA has unfairly prejudiced Respondent's ability to defend this alleged violation by taking no action for two years following the inspection.
- 1.5. PHMSA failed to fulfill the threshold requirements for issuing a notice of probable violation provided at 49 C.F.R. § 190.207.

- 1.6. The NOPV fails to describe its factual bases or to explain its conclusions in a manner that is sufficient to allow Respondent a reasonable opportunity to prepare an adequate defense.
- 1.7. The allegations of the NOPV are so vague and ambiguous as to be incomprehensible and therefore indefensible.
- 1.8. Given the manner in which the cited regulation is being applied in this alleged violation, PHMSA has failed to provide Respondent, or the regulated community as a whole, fair notice of the agency's interpretation of the subject regulation.

## **2. 49 C.F.R. § 195.424(a) – Pipe movement**

PHMSA alleges that Respondent failed to reduce pressure to not more than 50% of the MOP in line pipe that was moved. PHMSA further alleges that Respondent could not provide records of the pressure reduction for the lowering of the Niles to Vicksburg pipeline segment near Sheldon Creek on November 25, 2014.

Respondent disputes and objects to the allegations stated in the NOPV, on the following grounds:

- 2.1. The alleged violation is not supported by the facts.
- 2.2. PHMSA has failed to carry its burden of proof.
- 2.3. PHMSA has failed to provide, or indeed to suggest, a rational connection between the facts found and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
- 2.4. PHMSA has unfairly prejudiced Respondent's ability to defend this alleged violation by taking no action for two years following the inspection.
- 2.5. PHMSA failed to fulfill the threshold requirements for issuing a notice of probable violation provided at 49 C.F.R. § 190.207.

## **3. 49 C.F.R. § 195.446(c)(1)-(2) – Control room management; provide adequate information; implement API RP 1165; conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added**

PHMSA alleges that Respondent failed to provide its controllers with the information necessary to conduct an adequate point-to-point verification between SCADA displays and related field equipment when field equipment was added to the new Detroit Metro Access pipeline segment. PHMSA specifically alleges that Respondent failed to record the point description and the SCADA ID fields on the Point Change Request Form for the Woodhaven Station on the Detroit Metro Access pipeline segment. PHMSA further alleges that Respondent (1) failed to conduct a point-to-point verification process of the setpoint and alarm values; (2) conducted a point-to-point verification process between field equipment and the Programmable Logic Controller (PLC), waited three weeks, then conducted a point-to-point verification between the PLC and the

SCADA displays; and (3) only conducted spot checks of points from the field to the SCADA system rather than checking all of the added points on the new pipeline segment.

Respondent disputes and objects to the allegations stated in the NOPV, on the following grounds:

- 3.1. The alleged violation is not supported by the facts.
  - 3.2. PHMSA has failed to carry its burden of proof.
  - 3.3. PHMSA has failed to provide, or indeed to suggest, a rational connection between the facts found and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
  - 3.4. PHMSA has unfairly prejudiced Respondent's ability to defend this alleged violation by taking no action for two years following the inspection.
  - 3.5. PHMSA failed to fulfill the threshold requirements for issuing a notice of probable violation provided at 49 C.F.R. § 190.207.
  - 3.6. The NOPV fails to describe its factual bases or to explain its conclusions in a manner that is sufficient to allow Respondent a reasonable opportunity to prepare an adequate defense.
  - 3.7. The allegations of the NOPV are so vague and ambiguous as to be incomprehensible and therefore indefensible.
  - 3.8. Given the manner in which the cited regulation is being applied in this alleged violation, PHMSA has failed to provide Respondent, or the regulated community as a whole, fair notice of the agency's interpretation of the subject regulation.
- 4. 49 C.F.R. § 195.446(c)(1)-(2) – Control room management; provide adequate information; implement API RP 1165; conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added**

PHMSA alleges that Respondent failed to conduct point-to-point verifications between added field equipment and SCADA displays of the valve and the pressure transmitters in the South Metro Parkway valve site “prior to starting the pipeline segment.” PHMSA further alleges that the South Metro Parkway valve site was constructed as part of the Detroit Metro Access Project that was completed prior to July of 2017, and that the pressure transmitter and valves were added as SCADA points in November of 2017. PHMSA also alleges that, during the inspection, “it was observed by PHMSA that the valve at the South Metro Site was open and the pipeline contained product.” PHMSA finally alleges that Respondent was unable to provide evidence that point-to-point verifications were conducted for the valve and the pressure transmitters “prior to operating this new pipeline segment in March of 2017.”

Respondent disputes and objects to the allegations stated in the NOPV, on the following grounds:

- 4.1. The alleged violation is not supported by the facts.

- 4.2. PHMSA has failed to carry its burden of proof.
- 4.3. PHMSA has failed to provide, or indeed to suggest, a rational connection between the facts found and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
- 4.4. PHMSA has unfairly prejudiced Respondent's ability to defend this alleged violation by taking no action for two years following the inspection.
- 4.5. PHMSA failed to fulfill the threshold requirements for issuing a notice of probable violation provided at 49 C.F.R. § 190.207.
- 4.6. The NOPV fails to describe its factual bases or to explain its conclusions in a manner that is sufficient to allow Respondent a reasonable opportunity to prepare an adequate defense.
- 4.7. The allegations of the NOPV are so vague and ambiguous as to be incomprehensible and therefore indefensible.
- 4.8. Given the manner in which the cited regulation is being applied in this alleged violation, PHMSA has failed to provide Respondent, or the regulated community as a whole, fair notice of the agency's interpretation of the subject regulation.

**5. 49 C.F.R. § 195.452(h)(4)(i)(C) – Pipeline integrity management in high consequence areas; scheduling remediation; immediate repair conditions**

PHMSA alleges that Respondent failed to temporarily reduce operating pressure when it discovered a dent located on the top of the pipeline that had an indication of metal loss, cracking or a stress riser; that Respondent received a final ILI report on June 10, 2015, which identified a dent with metal loss on the topside on the Niles to Ferrysburg pipeline segment; and that Respondent claimed a discovery date of June 26, 2015 and completed repairs on the pipeline segment on June 30, 2015. PHMSA further alleges that Respondent “could not provide a record that a temporary pressure reduction was taken for an integrity ‘immediate repair condition’ on the pipeline segment.”

Respondent disputes and objects to the allegations stated in the NOPV, on the following grounds:

- 5.1. The alleged violation is not supported by the facts.
- 5.2. PHMSA has failed to carry its burden of proof.
- 5.3. PHMSA has failed to provide, or indeed to suggest, a rational connection between the facts found and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
- 5.4. PHMSA has unfairly prejudiced Respondent's ability to defend this alleged violation by taking no action for two years following the inspection.
- 5.5. PHMSA failed to fulfill the threshold requirements for issuing a notice of probable violation provided at 49 C.F.R. § 190.207.

- 5.6. Given the manner in which the cited regulation is being applied in this alleged violation, PHMSA has failed to provide Respondent, or the regulated community as a whole, fair notice of the agency's interpretation of the subject regulation.

**6. 49 C.F.R. § 195.452(h)(4)(iii)(D) – Pipeline integrity management in high consequence areas; 180-day conditions**

PHMSA alleges that Respondent failed to schedule the evaluation and remediation of four 180-day conditions on the 18-inch Joliet to Kennedy Avenue pipeline segment within 180 days of discovery of said conditions. The four subject locations are known as Dig 7, Dig 31, Dig 31.5, and Dig 34.5.

Respondent disputes and objects to the allegations stated in the NOPV, on the following grounds:

- 6.1. The alleged violation is not supported by the facts.
- 6.2. PHMSA has failed to carry its burden of proof.
- 6.3. PHMSA has failed to provide, or indeed to suggest, a rational connection between the facts found and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
- 6.4. PHMSA has unfairly prejudiced Respondent's ability to defend this alleged violation by taking no action for two years following the inspection.
- 6.5. PHMSA failed to fulfill the threshold requirements for issuing a notice of probable violation provided at 49 C.F.R. § 190.207.

**7. 49 C.F.R. § 195.452(l)(1)(ii) – Pipeline integrity management in high consequence areas; documentation**

PHMSA alleges that Respondent failed to maintain records that supported certain decisions and analyses related to an integrity verification dig performed on the Joliet to Kennedy Avenue pipeline segment, same in that a documentation form (PL-0751) was "missing several data fields."

Respondent disputes and objects to the allegations stated in the NOPV, on the following grounds:

- 7.1. The alleged violation is not supported by the facts.
- 7.2. PHMSA has failed to carry its burden of proof.
- 7.3. PHMSA has failed to provide, or indeed to suggest, a rational connection between the facts found and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
- 7.4. PHMSA has unfairly prejudiced Respondent's ability to defend this alleged violation by taking no action for two years following the inspection.

- 7.5. PHMSA failed to fulfill the threshold requirements for issuing a notice of probable violation provided at 49 C.F.R. § 190.207.
- 7.6. PHMSA alleges a violation on the basis of the wrong regulation.
- 7.7. PHMSA, within the NOPV, has admitted that Respondent in fact complied with the cited regulation.
- 7.8. Given the manner in which the cited regulation is being applied in this alleged violation, PHMSA has failed to provide Respondent, or the regulated community as a whole, fair notice of the agency's interpretation of the subject regulation.

**8. 49 C.F.R. § 195.579(a) – What must I do to mitigate internal corrosion?**

PHMSA alleges that Respondent failed to investigate “the corrosive effect of the hazardous liquid ... on the pipeline and take adequate steps to mitigate internal corrosion,” in that Respondent “could not produce records of the investigations of the buried surge relief piping in Jackson Meter Station and ... in Stockbridge Station for corrosive effects.”

Respondent disputes and objects to the allegations stated in the NOPV, on the following grounds:

- 8.1. The alleged violation is not supported by the facts.
- 8.2. PHMSA has failed to carry its burden of proof.
- 8.3. PHMSA has failed to provide, or indeed to suggest, a rational connection between the facts found and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
- 8.4. PHMSA has unfairly prejudiced Respondent's ability to defend this alleged violation by taking no action for two years following the inspection.
- 8.5. PHMSA failed to fulfill the threshold requirements for issuing a notice of probable violation provided at 49 C.F.R. § 190.207.
- 8.6. PHMSA has failed to establish, factually, a condition precedent to the assertion of a violation.
- 8.7. Given the manner in which the cited regulation is being applied in this alleged violation, PHMSA has failed to provide Respondent, or the regulated community as a whole, fair notice of the agency's interpretation of the subject regulation.

**9. 49 C.F.R. § 195.581(a)-(b) – Which pipelines must I protect against atmospheric corrosion and what coating material may I use?**

PHMSA alleges that Respondent “failed to properly coat the pipeline system to prevent atmospheric corrosion,” further alleging that an agency inspector “observed piping at the following locations [which] needed to be cleaned and coated”:

- 1) Near flange girth welds at N 1150 W and the Michigan City Pump Station,

- 2) At the “soil-to-air interfaces at XY Ave, 25-1/2 Mile Road, Albion Pump Station, and Freedom Station,”
- 3) At the “soil-to-air interface ... at Freedom Station,”
- 4) At the “soil-to-air interface coating at Black Oak Meter/Valve Station and 8 1/2 Mile Road,”
- 5) At “several locations (LaPaugh Station, 8 1/2 Mile, Marshall Station, 23 Mile Road, 25 1/2 Mile Road, and Mt. Hope Road),”
- 6) At the “Black Oak Meter/Valve Station, Hwy 149, and Niles Meter Station,” and
- 7) At Kennedy Avenue Station.

Respondent disputes and objects to the allegations stated in the NOPV, on the following grounds:

- 9.1. The alleged violation is not supported by the facts.
- 9.2. PHMSA has failed to carry its burden of proof.
- 9.3. PHMSA has failed to provide, or indeed to suggest, a rational connection between the facts found and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
- 9.4. PHMSA has unfairly prejudiced Respondent’s ability to defend this alleged violation by taking no action for two years following the inspection.
- 9.5. PHMSA failed to fulfill the threshold requirements for issuing a notice of probable violation provided at 49 C.F.R. § 190.207.
- 9.6. The NOPV fails to describe its factual bases or to explain its conclusions in a manner that is sufficient to allow Respondent a reasonable opportunity to prepare an adequate defense.
- 9.7. The allegations of the NOPV are so vague and ambiguous as to be incomprehensible and therefore indefensible.
- 9.8. Given the manner in which the cited regulation is being applied in this alleged violation, PHMSA has failed to provide Respondent, or the regulated community as a whole, fair notice of the agency’s interpretation of the subject regulation.

## **THE PROPOSED CIVIL PENALTIES**

PHMSA proposes a total of \$121,800 in civil penalties in connection with alleged violation Items 4, 5, and 6, as to each and all of which Respondent states the following issues:

1. The NOPV fails to establish a sufficient evidentiary basis for, or adequate discussion, explanation or analysis of, the manner in which the penalty amounts were determined, and thus Respondent has no reasonable opportunity to prepare an adequate defense to contest the proposed civil penalties.

2. The NOPV fails to establish a sufficient evidentiary basis for, or adequate discussion, explanation or analysis of, the penalty assessment considerations of 49 C.F.R. § 190.225 in support of the proposed civil penalties, and thus Respondent has no reasonable opportunity to prepare an adequate defense to contest any of the proposed civil penalties.
3. Regarding the application of the penalty assessment considerations of 49 C.F.R. § 190.225, the NOPV fails to establish a sufficient evidentiary basis for, and provides no discussion, explanation or analysis of, the weight accorded each such consideration, nor the relative weighting among all such considerations, and thus Respondent has no reasonable opportunity to prepare an adequate defense to contest the proposed civil penalties.
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, a civil penalty may not be imposed upon such basis and must be withdrawn in its entirety.
5. Respondent objects to the magnitude of the proposed penalties as: unreasonable; disproportional to any of the penalty assessment considerations of 49 C.F.R. § 190.225; unsupported by the scant evidence recited in the NOPV, or any analysis that applies the penalty assessment considerations; arbitrary, capricious or otherwise not in accordance with law; and an abuse of discretion.
6. PHMSA may not impose a civil penalty with regard to any alleged violation as to which the agency has failed to provide to Respondent fair notice of the conduct prohibited or required by a given regulation.
7. PHMSA's allegation relating to Item 6 is not supported by the facts in that PHMSA overstates, to Respondent's prejudice, the duration of any such violation. As a result, the proposed civil penalties for Item 6 should be reduced if not withdrawn.

## CONCLUSION

At the hearing in this matter, Respondent intends to bring forth evidence in the form of documents and/or witness testimony, as well as to examine the evidence, documents and any witness testimony presented or introduced by PHMSA. Respondent will also present its arguments in support of the issues stated heretofore. Respondent reserves the right to amend and supplement this Statement of Issues (a) following receipt of the case file, as well as (b) at or before the hearing.

## COUNSEL FOR RESPONDENT WOLVERINE PIPE LINE COMPANY

July 22, 2019



William V. Murchison

Texas Bar No. 14682500  
325 N. Saint Paul Street, Suite 2700  
Dallas, Texas 75201  
(214) 716-1923 – Telephone  
(844) 930-0089 – Facsimile  
[Vince.Murchison@PipelineLegal.com](mailto:Vince.Murchison@PipelineLegal.com)