



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

901 Locust Street, Suite 462
Kansas City, Missouri 64106-2641

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

March 11, 2020

Mr. Paul Miller
Executive-Vice President/President, Liquids Pipelines
TC Oil Operations, Inc.
450 1st Street, S.W.
Calgary, Alberta, Canada
T2P 5H1

CPF 3-2020-5003

Dear Mr. Miller:

On November 17, 2006, pursuant to 49 United States Code (U.S.C.) § 60118(c) and 49 Code of Federal Regulations (CFR) § 190.341, Transcanada Keystone Pipeline, LP filed a special permit request with the Pipeline & Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), for a waiver from certain provisions of 49 CFR § 195. PHMSA issues special permits to pipeline operators if the agency determines that a waiver of a particular regulation or standard is not inconsistent with pipeline safety. On April 30, 2007, PHMSA issued an order granting Transcanada Keystone Pipeline, LP/TC Oil Operations Inc, Inc. a special permit with certain conditions and limitations (Order). See PHMSA 2006-26617.

From January 8, 2018 to April 27, 2018, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 U.S.C., inspected the pipeline facilities of TC Oil Operations, Inc. to confirm the company's compliance with the Order.

As a result of the inspection, it is alleged that TC Oil Operations, Inc. has committed a probable violation of the Order. As stated in 49 CFR § 190.203(f), when information obtained from an inspection indicates that further OPS action is warranted, OPS may initiate one or more enforcement proceedings prescribed in §§ 190.207 through 190.235.

The items inspected and the probable violation(s) are:

1. Condition 40

Pipeline Markers: Keystone must employ line-of-sight markings on the pipeline in the special permit area except in agricultural areas or large water crossings such as lakes where line of sight markers are impractical. The marking of pipelines is also subject to Federal Energy Regulatory Commission orders or environmental permits and local restrictions. Additional markers must be placed along the pipeline in areas where the pipeline is buried less than 42 inches.

TC Oil Operations, Inc. failed to comply with Condition 40 of the Special Permit order. Condition 40 required TC Oil Operations, Inc. to employ line of sight markers in the special permit area. Upon inspection there were 20 instances of missing line of sight markers in the special permit area.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022. 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 and has recommended that you be preliminarily assessed a civil penalty of \$170,300 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$170,300

Proposed Compliance Order

With respect to item 1 pursuant to 49 U.S.C. § 60118(b), the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to TC Oil Operations, Inc. 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. 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).

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 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 320205003** and for each document you submit, please provide a copy in electronic format whenever possible.

Right to Modify, Suspend, or Revoke a Special Permit

Issuance of this enforcement action does not preclude PHMSA's authority to seek modification, suspension or revocation of the special permit issued under PHMSA 2006-26617 at any time, as provided in 49 CFR § 190.341(h)(1).(v). If such action is taken, PHMSA will provide TC Oil Operations, Inc. with the opportunity to show cause why the proposed action should not be taken.

Sincerely,



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

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

PROPOSED COMPLIANCE ORDER

Pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to TC Oil Operations, Inc a Compliance Order incorporating the following remedial requirements to ensure compliance with the Special Permit Order issued on April 30, 2007

1. With respect to Item Number 1 of the Notice, TC Oil Operations, Inc. shall develop a written plan to install line-of-sight markers along its pipeline in the special permit area as required by item 40 of the Special Permit. This plan shall take into account a reasonable distance interval and contrasting color from surroundings so that it can be readily identified with the naked eye. TC Oil Operations, Inc. shall provide a record of the location of required signs and date of installation. within **180** days of receipt of the Final Order or PHMSA may issue a show cause letter modifying, revoking, or suspending the Special Permit issued under PHMSA 2006-26617.
2. Submit the results of the Proposed Compliance Order Items above to Allan Beshore, Director, Central Region within **180** days of receipt of the Final Order.