



January 14, 2021

Mr. Gregory A. Ochs
Director, Central Region
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
901 Locust Street, Suite 462
Kansas City, MO 64106

**Re: CPF No. 3-2020-5021
Notice of Probable Violation and Proposed Civil Penalty
Flint Hills Resources, LLC**

Dear Mr. Ochs:

On December 14, 2020, Flint Hills Resources, LLC (“FHR” or the “Company”) received a Notice of Probable Violation and Proposed Civil Penalty (“NOPV”) from PHMSA following its inspection of FHR’s procedures, records and pipeline facilities in Minnesota and Wisconsin. The inspection took place between March 6 and August 16, 2019. PHMSA alleges five violations of the liquid pipeline safety regulations and proposes a total civil penalty of \$38,300. FHR does not contest Items 1, 2, 4, and 5. However, FHR requests that PHMSA reduce the proposed civil penalty for Item 1 on the basis of a re-examination of certain penalty criteria. FHR contests the allegation in Item 3 and respectfully requests that PHMSA withdraw the allegation and associated civil penalty.

As noted in FHR’s December 20, 2019 response to PHMSA’s post-inspection written preliminary findings related to the above-referenced inspection, the Company took numerous steps to address PHMSA’s findings in advance of the NOPV. FHR appreciates PHMSA’s feedback during the inspection in this matter, and shares PHMSA’s commitment to pipeline safety and continuous program improvement.

Item 1:

§ 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;**

PHMSA Allegation:

Flint Hills Resources, LLC (FHR) failed to complete the required annual reviews of its emergency response training program in 2016 as required by 195.403(b)(1). During the inspection, FHR's Emergency Response Manager stated that reviews of the Emergency Plan had been completed on the following dates: 12/27/2014, 12/30/2015, 4/25/2017 and 12/4/2017, and acknowledged no review had been completed in 2016 (or within 15 months of the 12/30/2015 review).

FHR Response:

FHR respectfully requests that PHMSA reduce the proposed civil penalty for this Item on the basis of the culpability factor.¹ PHMSA's Civil Penalty Summary provides that the culpability factor addresses the degree to which the operator failed to comply with an applicable requirement, including making a deliberate decision not to comply or taking egregious action in evading compliance, or on other hand, taking documented action to address a non-compliance prior to PHMSA learning of the violation.² The Civil Penalty Summary provides that during proposed civil penalty development, PHMSA may adjust a proposed penalty upward based on the operator's culpability (i.e., deliberate decision or egregious action).³ Or, PHMSA may provide a culpability credit based on the actions of the operator to address the non-compliance prior to PHMSA finding the violation.⁴

FHR recognizes that it failed to conduct the annual review of our emergency response training program in 2016 or within 15 months of the December 30, 2015 review. However, in April of 2017, FHR discovered that the interval had been missed and FHR promptly conducted the required review.⁵ On the basis of FHR's efforts, the Company requests that PHMSA provide a culpability credit for finding and correcting the non-compliance prior to PHMSA learning of the violation. FHR notes that it changed its task plan after the PHMSA inspection to include the regulatory code reference and language from the regulation, and update the overall instructions.⁶ This action was not necessary to address the noncompliance, and FHR did so to further strengthen its PHMSA compliance program.

Recently, in a Final Order issued to *MIPC, LLC*, PHMSA applied the culpability credit when an operator missed the required deadline to complete a tank inspection but corrected the issue by conducting the tank inspection prior to the PHMSA inspection.⁷ Similarly, FHR identified the missing emergency response training program review and completed the review approximately

¹ 49 U.S.C. § 60122(b)(1)(B); 49 C.F.R. § 190.225(a)(2).

² PHMSA, Civil Penalty Summary at pg. 2 (Feb. 7, 2020), https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2020-03/civil-penalty-summary-2-7-2020_0.pdf.

³ *Id.*

⁴ *Id.*

⁵ Attachment 1.

⁶ 2019 PHMSA/MNOPS Integrated Inspection, Post-Inspection Written Preliminary Findings, FHR Response To Unsatisfactory Results at pg. 1.

⁷ *In the matter of MIPC, LLC*, CPF No. 1-2018-5012, Final Order at 4-5 (Aug. 8, 2019).

two years prior to the PHMSA inspection. FHR has since conducted the emergency response training program reviews each calendar year and within the required 15-month interval.⁸

While this violation began on January 1, 2017, the Violation Report incorrectly provides that it was not remedied before the end of the inspection and was still ongoing after May 16, 2019.⁹ As explained above, the review was completed on April 25, 2017. And annual reviews have been performed each year since then. PHMSA should consider that the duration of the violation was four months, not the nearly two and a half years cited in the Violation Report, when assessing a civil penalty for this alleged violation.

PHMSA's Pipeline Safety Enforcement Procedures and the Department of Transportation's (DOT) Part 5 Enforcement Procedures also support a penalty reduction in this case. PHMSA's *Pipeline Safety Enforcement Procedures* provide criteria for determining whether a civil penalty is appropriate, including where the violation was: a casual factor or significantly increased the likelihood of an accident, willful, a repeat violation, significantly and adversely impacted the operator's pipeline safety program, or involved an absence of corrective action by the operator over an extended period of time.¹⁰ None of these factors are present in this case. As PHMSA recognized in the Violation Report, FHR did not have an accident and the emergency plan was not activated during the brief period of time after the 2016 review interval had passed.¹¹ As such, pipeline safety was minimally affected and FHR took corrective action promptly after finding the noncompliance. FHR respectfully requests that PHMSA consider these factors by reducing the civil penalty in this case.

Similarly, the DOT's Enforcement Procedures in Subpart D of 49 C.F.R. Part 5 support a penalty reduction. Those procedures provide that "[w]here applicable statutes vest the agency with discretion with regard to the amount or type of penalty sought or imposed, the penalty should reflect due regard for fairness, the scale of the violation, the violator's knowledge and intent, and any mitigating factors."¹² As recognized by PHMSA in the Civil Penalty Worksheet, pipeline safety was minimally affected and FHR did not deliberately fail to comply with the requirement. Further, as explained above, FHR's prompt corrective action is a mitigating factor that PHMSA should consider under Part 5 in assessing a civil penalty for this alleged violation.

FHR respectfully requests that PHMSA reduce the civil penalty in this case to be consistent with statutory penalty assessment criteria by applying the 15-point culpability credit and considering that the duration of the violation was less than alleged in the violation report. FHR also requests that PHMSA make penalty reductions to reflect the considerations set out in the Agency's Enforcement Procedures and DOT's Part 5 procedures. Together, these reductions should eliminate the proposed civil penalty for this alleged violation.

Item 3:

⁸ PHMSA has not alleged any violations other than for calendar year 2016. FHR conducted subsequent annual reviews on the following dates: 12/21/2018, 12/19/2019, 12/15/2020.

⁹ Violation Report at pg. 7.

¹⁰ PHMSA, Pipeline Safety Enforcement Procedures at § 3.1.1.4 (Sept. 15, 2020).

¹¹ Violation Report at pg. 8.

¹² 49 C.F.R. § 5.97.

§ 195.412 Inspection of rights-of-way and crossings under navigable waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

PHMSA Allegation:

FHR failed to conduct acceptable inspections of the right-of-way as required by § 195.412 (a). The Operator did not maintain the pipeline right-of-way conditions at a level that is appropriate for aerial patrolling of the right-of-way and did not select an alternate patrol method that would allow effective patrols based on the condition of the right-of-way. PHMSA's inspection of the right-of-way discovered excessive vegetation cover over the right-of-way at the locations listed below which made it impossible to complete effective aerial patrols of the right-of-way. The aerial patrol records for January 1, 2019 through August 14, 2019 did not identify that the right-of-way was overgrown at the following locations.

- East of County Road Z in Pepin County, WI
- At MP 182, near Stevens Point, WI between the Wisconsin River and West River Drive

FHR Response:

FHR respectfully contests this allegation and requests that PHMSA withdraw the alleged violation and associated civil penalty. PHMSA has not met its burden of proof to establish a violation of 49 C.F.R. § 195.412(a). The photographic evidence submitted with Violation Report fails to prove there was excessive vegetation obscuring the surface conditions of the right-of-way during aerial patrols. Under PHMSA's own guidance, satellite imagery is not a suitable means of proving right-of-way conditions, unless it is of adequate resolution, and the stand-alone ground-level photograph attached to the Violation Report demonstrates that the right-of-way was visible to the pilot. As attested to in the attached affidavit, the pilot performed careful inspections of these right-of-way segments and did not identify excessive vegetation that prevented effective aerial patrols from January to August 14, 2019.

A. Standard of Proof

PHMSA has the burden of proof in a pipeline safety enforcement proceeding to demonstrate that a violation has occurred.¹³ Congress recently included this burden in the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020.¹⁴ PHMSA must

¹³ *Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 276 (1994); *Steadman v. SEC*, 450 U.S. 91, 102 (1981). *In the Matter of Inland Corp.*, CPF No. 1-2017-5003 (Mar. 7, 2018).

¹⁴ Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 at Sec. 108.

satisfy its obligation for all elements of the proposed violation.¹⁵ This responsibility includes the “burden of persuasion,” i.e., which party loses if the evidence is closely balanced, and the ‘burden of production,’ i.e., which party bears the obligation to come forward with the evidence at different points in the proceeding.”¹⁶ To satisfy the burden of production, PHMSA must present sufficient evidence to sustain an allegation of violation.¹⁷ For the burden of persuasion, PHMSA must demonstrate that “the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent.”¹⁸

B. Analysis

PHMSA has not met its burden to support a violation § 195.412(a) that FHR failed to maintain the pipeline right-of-way conditions at a level that is appropriate for aerial patrolling.

1. East of County Road Z in Pepin County, WI

PHMSA alleges that the right-of-way at this location was overgrown “ma[king] it impossible to complete effective aerial patrols of the right-of-way.”¹⁹ PHMSA’s allegation is focused on the period of January through August 2019. The only evidence in PHMSA’s case file to support this alleged violation is a Google Earth image captured on May 14, 2018, and FHR’s aerial patrol records from 2019.²⁰

i. Google Earth Image

First, the Google Earth image is from May 2018 and is therefore not probative of a violation at the time of the 2019 inspection, or in the January to August 2019 time period at issue in the NOPV. A Google Earth image that predates the inspection by many months does not demonstrate the condition of the right-of-way during the inspection.

More importantly, the Google Earth satellite imagery²¹ does not provide the same vantage point nor the level of detail necessary to accurately reflect the right-of-way condition, as would be available for an aerial patrol pilot. The satellites used for this imagery are approximately 370 miles

¹⁵ *In the Matter of ANR Pipeline Co.*, CPF No. 3-2011-1011 (Dec. 31, 2012). *See also In the Matter of CITGO Pipeline Co.*, CPF No. 4-2007-5010 (Dec. 29, 2011) (OPS bears the burden of proof in an enforcement action and must prove, by a preponderance of the evidence, that all of the elements necessary to sustain a violation are present in a particular case.”).

¹⁶ *Shaffer v. Weast*, 546 U.S. 49, 56 (2005) (citing *Dir., Office of Worker’s Comp. Programs, Dep of Labor v. Greenwich Collieries*, 512 U.S. 267, 272 (1994)). *See also In the Matter of Bridger Pipeline Co.*, CPF No. 5-2007-5003 (Apr. 2, 2009) (“... PHMSA carries the burden of proving the allegations set forth in the NOPV. This includes both the burden of production and the burden of persuasion.”).

¹⁷ *In the Matter of EQT Corp.*, CPF No. 1-2006-1006 (May 13, 2010) (finding that “OPS failed to present sufficient evidence as to what” was missing from the operator’s procedures).

¹⁸ *In the Matter of Golden Pass Pipeline*, CPF No. 4-2008-1017 (Mar. 22, 2011) (finding that “OPS did not provide any evidence at the hearing beyond the facts and statements in the Notice and Violation Report and did not meet its burden of proof.”).

¹⁹ NOPV at 2. *See also* Violation Report at 14.

²⁰ 320205021_NOPV Items_10142020 (“Exhibits”) at pg. 6-7.

²¹ Exhibits at pg. 6

above the surface of the Earth,²² while aerial patrol pilots typically fly approximately 300 to 500 feet above ground level. PHMSA's indication of "excessive vegetation" from a satellite image does not provide information comparable, or superior to, a pilot's perspective. And, FHR's pilots are trained to fly the right-of-way specifically in order to inspect the surface conditions of the right-of-way.²³ As noted in the attached Affidavit from the pilot who performed the patrols during the time period in question, he and other pilots are trained to observe and report certain conditions, including excessive vegetation.²⁴

Finally, the 2018 Google Earth image is not a suitable means of proving right-of-way conditions under PHMSA's own interpretive guidance on the use of satellite imagery under § 195.412. PHMSA has expressed concern regarding the resolution of satellite imagery to meet the patrolling requirement in § 195.412. In a 2019 Letter of Interpretation, PHMSA addressed whether satellite imagery can be used to satisfy the patrolling requirements in §§ 195.705 and 195.412.²⁵ PHMSA explained that § 195.412 "allow[s] right-of-way inspection [by] walking, driving, flying or other appropriate means."²⁶ The Agency concluded that "[o]ther appropriate means may include satellite imagery if this method compares to the other specified methods. However, the satellite imagery in your examples did not provide sufficient resolution to provide the necessary details of the surface conditions on or adjacent to each pipeline right-of-way. Therefore, the satellite imagery as you submitted, cannot be used as an appropriate means."²⁷

PHMSA has also found in enforcement cases that operator-submitted satellite imagery of the right-of-way did not support the operator's position that the right-of-way was clear and acceptable for aerial patrol.²⁸ In one case, PHMSA specifically stated that "an aerial photo taken from Google Maps . . . is not indicative of the conditions of the ROW at the time of the inspection."²⁹

The satellite image included in the Exhibits appears to be of a similar resolution to the satellite images at issue in the 2019 Letter of Interpretation.³⁰ And PHMSA's enforcement cases have not accepted operator use of satellite imagery. Accordingly, under PHMSA's own guidance and cases, the Google Earth image is not a suitable means of determining surface conditions of the right-of-way as it is not of sufficient resolution to be comparable to the methods specified in § 195.412. As demonstrated in the first image in Attachment 6, the resolution of a photograph taken by the aerial patrol pilot has significantly more detail than the Google Earth image. As PHMSA has found that operators are not allowed to use satellite imagery to meet the requirements of §

²² See *Google Earth has given us a new way of looking at our cities and neighbourhoods – from space*. Richard Hollingham visits the satellite factory building to see what's coming next, BBC <https://www.bbc.com/future/article/20140211-inside-the-google-earth-sat-lab> (Feb. 10, 2014).

²³ Attachment 2; Attachment 4.

²⁴ Attachment 4.

²⁵ PHMSA Letter of Interpretation to Mr. David Van der Vieren, New Terrain Technologies, PI-19-0005 (July 29, 2019).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *In the matter of Sunoco Pipeline, LP*, CPF No. 3-2008-5002, Final Order (Dec. 16, 2010).

²⁹ *In the matter of Plains Pipeline, LP*, CPF No. 4-2016-5015, Final Order (Mar. 7, 2018).

³⁰ *Id.* See also Exhibits at pg. 6.

195.412, it is only reasonable to ascertain that PHMSA is similarly not able to use the same imagery to support a violation of that section.

ii. FHR Personnel Observations

As described in the attached affidavit from FHR's Senior Compliance Specialist, who was present at the field inspection, the PHMSA inspector did not personally observe the surface conditions of the right-of-way from the ground or the air.³¹ As FHR's Senior Compliance Specialist explains, she and the PHMSA inspector drove to and parked at a location in the vicinity of the right-of-way. This location was approximately a third of a mile from the right-of-way through a field of mature corn. They did not walk over to the right-of-way. At this distance, FHR's Senior Compliance Specialist attests that she was unable to make a conclusion regarding aerial patrol visibility at this right-of-way location. As such, it is reasonable to conclude that the PHMSA inspector could not have from there either. PHMSA has previously withdrawn an alleged violation where the operator asserted that the inspector did not actually observe the condition underlying the alleged violation.³²

iii. Aerial Patrol Records

The FHR aerial patrol records attached to the Violation Report are the only additional evidence that PHMSA puts forth in support of this allegation.³³ These records do not substantiate a violation of § 195.412. If anything, they demonstrate that the right-of-way was sufficiently clear to undertake aerial patrol. FHR's ROW Patrol Technical Guidance requires that pilots document locations of overgrown vegetation and FHR trains pilots accordingly.³⁴ The pilots have reported vegetation concerns previously, which demonstrates that the training is effective. In this case, the pilot made no record that the right-of-way was obstructed by vegetation.³⁵

FHR also provides an affidavit from the pilot who performed aerial patrols for the pipeline segment in question during 2019.³⁶ The pilot attests to the fact that he was trained to document any visibility concerns during aerial patrols and would have done so had he been unable to observe the surface conditions of the right-of-way at this location. Given the pilot's training and past identification of right-of-way issues, the lack of such a notation in the 2019 aerial patrol records tends to show that the right-of-way was clear, rather than support a violation of § 195.412.

iv. Post-inspection Activities

After the inspection, FHR conducted vegetation maintenance activities at this right-of-way location as part of its normal schedule of maintenance activities. FHR would like to clarify that the fact that it conducted these activities does not concede or demonstrate that the right-of-way conditions prevented effective aerial patrols.

³¹ Attachment 3.

³² *In the matter of Sabal Trail Trans.*, CPF No. 2-2019-1001, Final Order (Apr. 10, 2020).

³³ Exhibits at pg. 7.

³⁴ Attachment 2.

³⁵ Exhibits at pg. 7

³⁶ Attachment 4.

v. PHMSA has not met its burden of proof to demonstrate a violation of § 195.412

Because neither the satellite imagery nor aerial patrol records substantiate a violation of § 195.412, PHMSA has not met its burden of proof with respect to this portion of the alleged violation. PHMSA has not presented sufficient evidence to sustain an allegation of violation. Nothing in the record demonstrates that excessive vegetation cover at this right-of-way location “made it impossible to complete effective aerial patrols of the right-of-way.”

PHMSA’s case appears to be based on the fact that FHR’s records did not identify excessive vegetation at a location PHMSA believes to have vegetation cover. However, PHMSA did not collect sufficient evidence of the vegetation conditions at this location. The inspector did not personally observe this location and the satellite imagery, which is from the year before the inspection, does not provide the necessary details of the surface conditions on or adjacent to the pipeline right-of-way to determine whether vegetation cover affected aerial visibility. To the contrary, FHR pilots are trained in observing the surface conditions of the right-of-way and documenting locations where visibility due to vegetation is impaired. The pilot has attested that he was trained accordingly and would have documented this location had there been visibility concerns. Accordingly, PHMSA must withdraw this allegation and the associated proposed civil penalty.

2. MP 182, near Stevens Point, WI between the Wisconsin River and West River Drive

PHMSA must also withdraw the alleged violation with respect to the second location identified in the NOPV. PHMSA alleges that the right-of-way at this location was overgrown “ma[king] it impossible to complete effective aerial patrols of the right-of-way.”³⁷ The only evidence in the record to support this alleged violation is a single photo of a line marker and FHR’s aerial patrol records from 2019.³⁸

i. Photograph of Line Marker

There is no indication, from the single photo, that the right-of-way had excessive vegetation preventing effective aerial patrols. The photo shows a visible line marker and ample sky, suggesting that the right-of-way could be seen by a pilot performing an aerial patrol at this location.³⁹ FHR would like to clarify the pipeline’s location in the picture submitted by PHMSA. The image in Attachment 7 indicates the estimated angle at which the PHMSA inspector photographed the pipeline right-of-way as a yellow arrow. The yellow circle highlights the point at which the pipeline and right-of-way angle south. From the Attachment, you can see that the trees in the inspector’s picture are not on the right-of-way; therefore, the photo demonstrates that there is sufficient visibility of the right-of-way to perform aerial patrols

³⁷ NOPV at 2. See also Violation Report at 14.

³⁸ Exhibits at pg. 5.

³⁹ Exhibits at pg. 5.

ii. Aerial Patrol Records

As explained above, the aerial patrol records, by themselves, do not support a violation of § 195.412. If anything, the 2019 records tend to show that the right-of-way was clear because the pilot did not report any locations of excessive vegetation cover. Also, as discussed above, the attached affidavit from the pilot attests to the fact that he was properly trained and would have documented any visibility concerns with this right-of-way location during patrols performed in 2019.⁴⁰

Additionally, FHR is attaching documentation demonstrating that the pilot was attentive to vegetation cover and would have documented issues at the location cited in the NOPV if he had concerns.⁴¹

On July 29, 2019, and August 13, 2019, before the PHMSA field inspection, the pilot patrolling the pipeline in question identified an area roughly 0.2 miles from the location cited in the NOPV where there were fallen trees on the right-of-way due to a storm. The pilot was clearly focused on the area.⁴²

The pilot submitted reports of the fallen trees after the July and August 2019 patrols.⁴³ The pilot also took a picture of this location.⁴⁴ The reports and picture demonstrate that not only was the aerial patrol pilot looking for and reporting vegetation conditions, but also the right-of-way just 0.2 miles south of the location at issue did not have excess vegetation preventing observation of the surface conditions of the right-of-way. Further, the few fallen trees did not obscure the surface conditions of the right-of-way and have since been removed.

iii. Post-inspection Activities

After the inspection, FHR conducted vegetation maintenance activities at this right-of-way location in conjunction with the clearing of the downed trees associated with the storm. That fact that FHR conducted these activities does not demonstrate that the right-of-way prevented effective aerial patrols.

v. PHMSA has not met its burden of proof to demonstrate a violation of § 195.412

Because neither the single ground-level photo nor the aerial patrol records substantiate a violation of § 195.412, PHMSA has not met its burden of proof with respect to this portion of the alleged violation. PHMSA has not presented sufficient evidence to sustain a violation.

To the contrary, the photo submitted by PHMSA demonstrates that a line marker could be visible from an aerial patrol. And, FHR pilots are trained in observing the surface conditions of

⁴⁰ Attachment 4.

⁴¹ Attachments 4-6.

⁴² Attachment 6.

⁴³ Attachment 5.

⁴⁴ Attachment 6.

the right-of-way and documenting locations where visibility due to vegetation is impaired. The pilot has attested that he was trained accordingly and would have documented this location had there been visibility concerns. Further, the pilot's attention to detail in the vicinity of the location cited by the NOPV suggests that he would have noted excessive vegetation had there been an issue during the patrol as he did with the fallen trees nearby. Accordingly, PHMSA must withdraw this portion of the violation and the associated civil penalty.

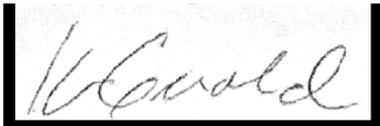
C. Civil Penalty

As PHMSA has not demonstrated that a violation occurred here, the civil penalty must be withdrawn. However, to preserve the issue in the event of further proceedings in this matter, FHR separately requests that PHMSA eliminate the proposed civil penalty consistent with statutory factors. PHMSA's Pipeline Safety Enforcement Procedures and the DOT Part 5 Enforcement Procedures also support a penalty reduction. PHMSA's *Pipeline Safety Enforcement Procedures* provide criteria for determining whether a civil penalty is appropriate, including where the violation was: a casual factor or significantly increased the likelihood of an accident, willful, a repeat violation, significantly and adversely impacted the operator's pipeline safety program, or involved an absence of corrective action by the operator over an extended period of time.⁴⁵ None of these factors are present in this case. There was no accident and the likelihood of one was not increased as a result of PHMSA's alleged violation. To the contrary, FHR's aerial patrol records demonstrate that pilots pay close attention to the vegetation conditions of the right-of-way and report issues when present.

The DOT's Enforcement Procedures in Subpart D of 49 C.F.R. Part 5 support a penalty reduction. Those procedures provide that "[w]here applicable statutes vest the agency with discretion with regard to the amount or type of penalty sought or imposed, the penalty should reflect due regard for fairness, the scale of the violation, the violator's knowledge and intent, and any mitigating factors."⁴⁶ As PHMSA recognized in the Civil Penalty Worksheet, pipeline safety was minimally affected. Further, as demonstrated in the reports and affidavit from the pilot, he was attentive to vegetation at the locations cited in the NOPV and would have documented any concerns.

Please let me know if you have any questions or would like to discuss this matter further.

Sincerely,



Kimberly Gerold
Flint Hills Resources, LLC
Kim.Gerold@fhr.com

⁴⁵ PHMSA, Pipeline Safety Enforcement Procedures at § 3.1.1.4 (2020).

⁴⁶ 49 C.F.R. § 5.97.