



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety Administration**

901 Locust Street, Suite 480
Kansas City, MO 64106

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

VIA ELECTRONIC MAIL TO: Chuck.Magro@nutrien.com and
Matthew.Haskin@nutrien.com

October 15, 2020

Chuck Magro
President and Chief Executive Officer
Nutrien
13131 Lake Fraser Drive SE
Calgary Alberta
Canada T2J 7E8
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CPF 3-2020-6001

Dear Mr. Magro:

On November 14, 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 (U.S.C.) discovered the jurisdictional applicability of Agrium's¹ Early NH₃ Storage System in Early, IA during an inspection of a connecting regulated facility belonging to another operator. Following this discovery, OPS initiated communications and a review of records on January 8, 2019, regarding Agrium's Early NH₃ Storage System. These inspection efforts continued to September 26, 2019, when the inspectors were onsite to confirm that the Early NH₃ Storage System had been disconnect from the regulated facility.

¹ In January 2018, Agrium's name changed to Nutrien, but the legal entity remained as Agrium, US Inc.

As a result of these communications and review of records, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. §195.49 Annual Report.

Each operator must annually complete and submit DOT Form PHMSA F 7000-1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year. An operator must submit the annual report by June 15 each year, except that for the 2010 reporting year the report must be submitted by August 15, 2011. A separate report is required for crude oil, HVL (including anhydrous ammonia), petroleum products, carbon dioxide pipelines, and fuel grade ethanol pipelines. For each state a pipeline traverses, an operator must separately complete those sections on the form requiring information to be reported for each state.

Agrium did not annually complete and submit DOT Form PHMSA F 7000-1.1 for its anhydrous ammonia pipeline facility. On June 1, 2018, PHMSA received Agrium's first annual report, although it had been operating continuously for over 5 years. No annual reports were submitted for those facilities that operated at the end of the previous year for 2015, 2016, and 2017.

2. §195.64 National Registry of Pipeline and LNG Operators.

(a) OPID Request. Effective January 1, 2012, each operator of a hazardous liquid or carbon dioxide pipeline or pipeline facility must obtain from PHMSA an Operator Identification Number (OPID). An OPID is assigned to an operator for the pipeline or pipeline system for which the operator has primary responsibility. To obtain an OPID or a change to an OPID, an Operator must complete an OPID Assignment Request DOT Form PHMSA F 1000.1 through the National Registry of Pipeline and LNG Operators in accordance with §195.58.

Agrium did not obtain an Operator Identification Number (OPID) from PHMSA as required. Agrium had been operating the pipeline system for over 5 years, which includes breakout tanks 1 and 2 and bullet tank 3 that were constructed in 1968 and bullet tank 4 that was constructed in 1998. However, Agrium did not obtain an OPID until May 18, 2018 as shown on its OPID Assignment Request.

3. §195.402 Procedural Manual For Operations, Maintenance, and Emergencies.

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

Agrium failed to prepare written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies for its system to meet the requirements of 49 CFR Part 195 before initial operations.

Per phone conversations with the operator on January 16, 2019, Agrium informed PHMSA staff that procedural manuals for operations, maintenance, and emergencies were not complete; therefore, no manuals were available for inspection.

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. We have reviewed the circumstances and supporting documentation involved for the above probable violation(s) and recommend that you be preliminarily assessed a civil penalty of \$19,000 as follow:

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

Warning Items

With respect to items 1 and 3, 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. Should these assets be reconnected at any time to a jurisdictional asset or become regulated in the future through modifications or revisions to

operations or connections, we advise you to promptly correct these item(s). 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 Enforcement 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 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 3-2020-6001** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Gregory A. Ochs
Director, Central Region, OPS
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Enforcement Proceedings*

cc: Matt Haskin, Director – Terminals, 5296 Harvest Lake Drive, Suite 400, Loveland, CO, 80538 Matthew.Haskin@nutrien.com