

October 17, 2022

VIA ELECTRONIC MAIL TO: jmcclure@nnogc.com

Mr. James McClure
Chief Executive Officer
Navajo Nation Oil and Gas Company
PO Box 4439
Window Rock, Arizona 86515

Re: CPF No. 3-2022-037-NOPV

Dear Mr. McClure:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes other findings of violation, assesses a civil penalty of \$22,800, and specifies actions that need to be taken by Navajo Nation Oil and Gas Company to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Central Region, this enforcement action will be closed. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Joseph P. Robertson, P.E., Vice-President, NNOGC, jrobertson@nnogc.com
Ms. Susan A. Olenchuk, Counsel for NNOGC, Van Ness Feldman, LLP, sam@vnf.com

CONFIRMATION OF RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

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In the Matter of)	
)	
Navajo Nation Oil and Gas Company,)	CPF No. 3-2022-037-NOPV
)	
Respondent.)	
)	

FINAL ORDER

From May 24 to 28, 2021, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected the control room management procedures and records of Navajo Nation Oil and Gas Company (NNOGC or Respondent) in Montezuma Creek, Utah. NNOGC operates the Running Horse Pipeline, an 88-mile, 16-inch diameter interstate pipeline transporting crude oil through Colorado, New Mexico, and Utah.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated March 1, 2022, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that NNOGC had committed four violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$22,800 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

NNOGC responded to the Notice by letter dated May 24, 2022 (Response). Respondent contested one of the allegations and offered additional information in response to the Notice. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.446(a), which states in relevant part:

§ 195.446 Control room management.

(a) *General.* This section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all

or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this section. The procedures required by this section must be integrated, as appropriate, with the operator's written procedures required by § 195.402

The Notice alleged that Respondent violated 49 C.F.R. § 195.446(a) by failing to have and follow written control room management procedures that implement the requirements of this section. Specifically, the Notice alleged, Respondent failed and have and follow a procedure to verify correct safety-related set point values during the calibration of overfill protection systems in accordance with §§ 195.446(e)(3) and 195.428(d).¹ The Notice alleged that NNOGC failed to complete field inspections of the overfill protection system to compare with SCADA values for breakout tanks LT-1430, LT-1431, and LT-1432 for 2019 and 2020.

In its Response, NNOGC asserted that Item 1 should be withdrawn because the storage tanks at Montezuma Creek are not breakout tanks. Citing to the definition of breakout tank in § 195.2, Respondent explained that the tanks cannot receive surges from a regulated pipeline and that they receive oil from gravity-fed pipelines that are not subject to the pipeline safety regulations in Part 195, other than reporting. NNOGC submitted supporting documentation.²

In a recommendation for final action submitted pursuant to § 190.209(b)(7), the Director recommended withdrawing the alleged violation of § 195.446(a). Accordingly, after considering the evidence and arguments presented, I hereby order that Item 1 be withdrawn.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.446(c)(3), which states:

§ 195.446 Control room management.

(a)

(c) *Provide adequate information.* Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following:

(1)

(3) Test and verify an internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months;

The Notice alleged that Respondent violated 49 C.F.R. § 195.446(c)(3) by failing to test and verify its internal communication plan for manual operation of the pipeline safely at least once each calendar year, but at intervals not exceeding 15 months for the years 2019 and 2020.

¹ Section 195.446(e)(3) requires each operator using a SCADA system to have a written alarm management plan that includes provisions to verify the correct safety-related alarm set-point values. Section 195.428(d) requires each operator to inspect and test overfill protection systems.

² Respondent cited as support for its position a 2000 interagency agreement between OPS and EPA (known as the "Felder-Luftig Memo"). Respondent is advised that the Felder-Luftig Memo was terminated in 2013.

Respondent did not contest this allegation of violation. Accordingly, based on a review of the evidence, I find that Respondent violated 49 C.F.R. § 195.446(c)(3) by failing to test and verify its internal communication plan for manual operation of the pipeline safely at least once each calendar year, but at intervals not exceeding 15 months.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.446(e)(1), which states:

§ 195.446(e)(1) Control room management.

(a)

(e) *Alarm management.* Each operator using a SCADA system must have a written alarm management plan to provide for effective controller response to alarms. An operator's plan must include provisions to:

(1) Review SCADA safety-related alarm operations using a process that ensures alarm are accurate and support safe pipeline operations;

The Notice alleged that Respondent violated 49 C.F.R. § 195.446(e)(1) by failing to ensure SCADA safety-related alarms are accurate and support safety pipeline operations. Specifically, the Notice alleged Respondent's set points in its procedure did not match those in SCADA and safety-related alarms were not properly identified.

Respondent did not contest this allegation of violation. Accordingly, based on a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.446(e)(1) by failing to ensure SCADA safety-related alarms are accurate and support safety pipeline operations.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.446(h), which states:

§ 196.446 Control room management.

(a)

(h) *Training.* Each operator must establish a controller training program and review the training program content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months. An operator's program must provide for training each controller to carry out the roles and responsibilities defined by the operator. In addition, the training program must include the following elements:

The Notice alleged that Respondent violated 49 C.F.R. § 195.446(h) by failing to establish a controller training program and review the content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months. Specifically, the Notice alleged that Respondent's procedures described a structured on-the-job training (OJT) program, however the existing training was not structured, and the operator had not developed a formal training program with defined plans, milestones, assessments and training content. In addition, Respondent failed to review the training content during the years 2018, 2019, and 2020.

Respondent did not contest this allegation of violation. Accordingly, based on a review of the evidence, I find that Respondent violated 49 C.F.R. § 195.446(h) by failing to establish a

controller training program and review the content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.³

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$22,800 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$22,800 for Respondent's violation of 49 C.F.R. § 195.446(c)(3) for failing to test and verify its internal communication plan for manual operation of the pipeline safely at least once each calendar year, but at intervals not exceeding 15 months for the years 2019 and 2020. NNOGC neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$22,800 for violation of 49 C.F.R. § 195.446(c)(3).

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$22,800 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

³ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223 for adjusted amounts.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 3, and 4 in the Notice for violations of 49 C.F.R. §§ 195.446(a), 195.446(e)(1), and 195.446(h), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. As discussed above, Item 1 has been withdrawn. Therefore, the compliance terms proposed in the Notice for that Item are not included in this Order.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.446(e)(1) (**Item 3**), Respondent must identify all safety related points and alarms, rationalize all alarms to establish the appropriate set points and verify the alarm descriptions are correct. Part of the process must be to apply, in the database, the appropriate alarm priority level as defined by procedure, along with verification of the color presentation and any audible alerts and animation (flashing) for alarms. Additionally, safety related points and alarms must be defined in the SCADA master database (if capabilities for this exist) and, at a minimum, distinguish in the alarm description if the alarm is safety related. This must be completed within 90 days of receipt of the Final Order.

2. With respect to the violation of § 195.446(h) (**Item 4**), Respondent must implement a structured on the job training plan that includes, at a minimum: identification specific training content, web based or instructor led training, assessments for training courses and periodic progress. This must be provided for all positions, defined in the control room, who will maintain operator qualification to operate a console for either assigned shift rotation or to fill a temporary vacancy. The training plan should be developed so that the individual trainee, mentor, and supervisor understand the requirements and can track progress. This must be completed within 180 days of receipt of the Final Order.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

October 17, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued