



October 16, 2015

**VIA ELECTRONIC DELIVERY**

Rodrick Seeley  
Pipeline & Hazardous Materials Safety  
Administration  
Director, PHMSA Southwest Region  
8701 South Gessner, Suite 1110  
Houston, TX 77074

**RE: CPF 4-2015-5018**

Dear Mr. Seeley:

Through its undersigned counsel, Chaparral Energy, LLC (“Chaparral”) hereby responds to and contests in the entirety the Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order in CPF No. 4-2015-5018 (collectively, the “NOPV”).

**Request for Telephonic Hearing**

Pursuant to 49 CFR 190.211(b) and (c), Chaparral requests a telephonic hearing for this contested proceeding. Chaparral intends to be represented by the undersigned counsel and in-house counsel during the hearing and will arrange transcription of the proceeding at its own expense. The statement of the issues Chaparral intends to raise during the hearing is as follows.

**Statement of Issues for Telephonic Hearing**

1. The NOPV has no valid basis and is not justified under the terms of the Corrective Action Order issued to Chaparral in CPF No. 5-2014-5017H (the “CAO”), nor is the NOPV justified under any PHMSA regulation or authorizing statute.
2. In NOPV Item 1, PHMSA alleges that Chaparral violated “Corrective Action 3” in the CAO.
  - a. Corrective Action 3 requires as follows: “**Return to Service.** After the Director approves the Restart Plan, Chaparral may return the Affected Segment to service but the **operating pressure** must not exceed eighty percent (80%) of the actual operating pressure in effect immediately prior to the Failure.” (second emphasis added).
3. PHMSA claims in Item 1 that: “On August 28, 2015, PHMSA issued a CAO (CPF No. 4-2015-5017H) to Chaparral to establish an 80% pressure restriction (from the pressure at the time of the release) on your pipeline. The CAO 80% pressure restriction would limit the pressure to 896 psig; however, the current pressure on the pipeline is 1107 psig.”

4. Contrary to PHMSA’s claim in Item 1 of the NOPV, the plain language of Corrective Action 3 and the other “Required Corrective Actions” in the CAO do not support PHMSA’s allegation that Chaparral violated Corrective Action 3.
5. The plain language of the CAO required the “**shutdown**” of the Coffeyville pipeline system and provided for the eventual “return to service” of the pipeline following PHMSA’s approval of a “Restart Plan.” Upon the “**return to service**” provided for in Corrective Action 3, the CAO explicitly required an **operating** pressure restriction of 80% of the operating pressure at the time of the Failure.
  - a. The first action required of Chaparral under the CAO in Corrective Action 1 was the immediate shutdown of the pipeline, as follows: “**Shutdown of Pipeline.** Chaparral must not operate the *Affected Segment* until authorized to do so by the Director.”
    - i. Chaparral immediately complied with Corrective Action 1 by shutting down the Coffeyville pipeline system upon receipt of the CAO on August 28, 2015.
    - ii. Corrective Action 1 did not require a shutdown of the pipeline below any particular pressure. Instead, Corrective Action 1 required a shutdown of the pipeline without any further operation. In fact, Corrective Action 1 specifically stated that Chaparral “must not operate” the pipeline until authorized to do so. Any operation of the pipeline (other than shutting down the pipeline) would have violated the explicit terms of the CAO. Continuing to operate the pipeline, so as to reduce the pressure on the line, would have been continued operations of the pipeline – something that was expressly prohibited by Corrective Action 1.
  - b. Corrective Action 2 required Chaparral to develop and submit a “Restart Plan” to the Southwest Region Director “[p]rior to resuming operations.”
    - i. Chaparral complied with Corrective Action 2 by submitting a proposed Restart Plan to the Director on September 8, 2015. Chaparral did not resume operations on the Coffeyville Pipeline at any time between the shutdown required by Corrective Action 1 and PHMSA’s approval of the Restart Plan.
  - c. Corrective Action 3 and the **operating** pressure restriction required thereunder explicitly applied to operations upon the **return to service** of Chaparral’s Coffeyville pipeline, and only **after** the approval of the Restart Plan by the Director.
    - i. The Restart Plan provided for the “return to service” of the Coffeyville pipeline at a temporary maximum **operating** pressure of 896 psig, as required for the return to service of the Affected Segment under Corrective Action 3.
    - ii. On September 18, 2015, the Southwest Region Director approved Chaparral’s Restart Plan without any changes compared to what Chaparral originally proposed in the Restart Plan. The Restart Plan expressly provided for a temporary maximum operating pressure of 896 psig, once the Coffeyville pipeline was returned to service after approval of the Restart Plan.
    - iii. In accordance with the approved Restart Plan, Chaparral returned the Coffeyville pipeline to service, with the temporary maximum operating pressure of 896 psig in effect.
6. At no time between Chaparral’s receipt of the CAO and PHMSA’s approval of the Restart Plan did Chaparral return the Coffeyville pipeline to service in excess of 80% of the operating pressure in effect immediately prior to the Failure, i.e., 896 psig. The pipeline was

shut down until the Director approved the Restart Plan, at which time the pipeline was returned to service in full compliance with Corrective Action 3. Although the pressure on the shut down pipeline may have been in excess of 896 psig prior to the time Chaparral resumed operations, it was not **operated** at that pressure. The operating pressure of the Coffeyville pipeline was reduced to below 896 psig prior to the Coffeyville pipeline being returned to service.

7. Chaparral fully complied with Corrective Action 3. The NOPV should be withdrawn and the Proposed Civil Penalty should be eliminated.
8. The Proposed Civil Penalty should be eliminated. Because the NOPV should be withdrawn and the Proposed Compliance Order should also be withdrawn, there is no basis for the Proposed Civil Penalty. In the alternative, the Proposed Civil Penalty is excessive and should be substantially reduced, based on various factors including the following:
  - a. The nature and circumstances of the violation include:
    - i. The NOPV includes the following statement by PHMSA: “At the time the CAO was issued, it was not known that Chaparral returned the Coffeyville line to service.” Chaparral returned the line to service after completing necessary cut-out and replacement of the pinhole leak within 36 hours of Chaparral’s discovery of the leak. Chaparral was not legally prohibited from operating the pipeline in accordance with Part 195 until it received the CAO on August 28, 2015, at which time Chaparral immediately complied with the CAO.
    - ii. PHMSA’s communications with Chaparral (regarding the August 25, 2015 leak) ceased around mid-afternoon on August 26, 2015. Chaparral returned the pipeline to service during the early evening of August 26, 2015. PHMSA never asked Chaparral if the pipeline was returned to service. Rather, PHMSA made an assumption that the pipeline was not returned to service, as evidenced by the statement (however inaccurate) in the CAO that the pipeline remained out of service.
  - b. The gravity of the violation is minimal. The Failure did not meet the immediate reporting requirements under 49 CFR 195.52 due to its lack of impact on life, property and the environment. The pinhole leak at the site of the Failure was fully repaired, allowing for a legal return to operations under Part 195. The pipeline was shut down immediately upon Chaparral’s receipt of the CAO and was not operated again until Chaparral was authorized to do so through the PHMSA-approved Restart Plan. As demonstrated above, there was no violation of Corrective Action 3 of the CAO. Chaparral fully complied with Corrective Action 3 of the CAO.
  - c. The adverse impact on the environment was none. In fact, requiring Chaparral to partially blowdown the pipeline to a maximum of 896 psig and vent the CO<sub>2</sub> to the atmosphere may have had a greater adverse impact on the environment.
  - d. The degree of culpability is none. Chaparral had no intent to violate the CAO, and was following the CAO to the letter of the order. Importantly, from the black letter of the CAO, Chaparral had no way of knowing that PHMSA would subsequently interpret the language of Corrective Action 3 to require a reduction of the **operating pressure** *before* the line was shut down and taken out of service – especially given that PHMSA’s current interpretation of Corrective Action 3 appears to be in direct

conflict with the language in Corrective Action 1. It is clear from Chaparral's good faith actions to comply with the CAO that, had Chaparral been adequately and fairly put on notice about PHMSA's unstated intention, Chaparral would have complied with PHMSA's directive. It would be fundamentally unfair, arbitrary, capricious and an abuse of discretion to find Chaparral culpable for failing to comply with a requirement that no reasonable person could discern from the explicit language of the CAO as written and issued by PHMSA.

- e. Chaparral demonstrated the utmost good faith in attempting to achieve compliance with the CAO. If Chaparral had done anything in response to the CAO other than shutting down the line (i.e., operating the line in order to reduce pressure on the line), Chaparral would have been operating the pipeline in violation of the express terms of Corrective Action 1 of the CAO.
  - f. Chaparral's business of consistently delivering CO<sub>2</sub> to its customer at the west end of the Coffeyville pipeline has been completely shut down as a result of the CAO. Chaparral's actions of shutting down the pipeline at a pressure in excess of 896 psig did not benefit Chaparral's business or allow Chaparral's business to continue. There was no additional economic benefit to Chaparral to shut down the pipeline at a pressure in excess of 896 psig, or at a pressure below 896 psig. As noted above, Chaparral was purely attempting to comply with the CAO as written by PHMSA.
9. The Proposed Compliance Order associated with the NOPV should be withdrawn.
- a. The first action required of Chaparral under the Proposed Compliance Order is the requirement to reduce the pressure on the pipeline to 896 psig, as follows: "In regard to Item Number 1 of the Notice [NOPV] pertaining to the failure to reduce the pressure on the Coffeyville 8" carbon dioxide pipeline, Chaparral must reduce the pressure on the pipeline to the 80% restricted pressure of 896 psig."
  - b. As written, the Proposed Compliance Order requires Chaparral to reduce the pressure on the pipeline, to 896 psig. It is physically impossible for an operator to maintain 896 psig throughout an entire 68.5 mile CO<sub>2</sub> pipeline system. The Proposed Compliance Order should be withdrawn since it is impossible to comply with, as written.
  - c. If the Proposed Compliance Order was intended to direct Chaparral to reduce the pressure on the pipeline to a *maximum* operating pressure of 896 psig, then the Proposed Compliance Order is unnecessary because:
    - i. All segments of the pipeline are at pressures that are currently below 896 psig; and
    - ii. The Proposed Compliance Order is duplicative of the approved Restart Plan. The Proposed Compliance Order was issued the afternoon of September 18, 2015. However, PHMSA had already approved Chaparral's Restart Plan by 9:30am on September 18, 2015. The Restart Plan already required Chaparral to reduce the pressure on the pipeline to a maximum operating pressure of 896 psig, and that Restart Plan was already approved by PHMSA prior to issuance of the NOPV, Proposed Civil Penalty, and Proposed Compliance Order.

**Request for Case File**

Pursuant to 49 CFR § 190.209(a), Chaparral requests all case file materials available for this matter under 49 CFR § 190.209(b) (the “Case File”). Chaparral acknowledges receipt of the Pipeline Safety Violation Report for CPF No. 4-2015-5018 and hereby seeks any and all additional materials available in the Case File.

**Reservation of Rights**

Chaparral reserves its right to supplement this response as necessary prior to the hearing, to add, remove or more fully describe issues based upon its review of the Case File and other responsive evidence.

Respectfully submitted,

/s/

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