



August 29, 2018

Via Email and Federal Express

Mary McDaniel, P.E.
Director, Southwest Region
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
8701 S. Gessner, Suite 630
Houston, Texas 77074

**RE: CPF No. 4-2018-5005: Request for an Informal Meeting
Alternative Request for a Hearing**

Dear Ms. McDaniel:

Thank you for your July 11, 2018 email granting Holly Energy Partners Operating, L.P (HEP) additional time to respond to the above-referenced Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) on June 20, 2018. HEP believes that the Notice resulted from mutual misunderstanding during the inspection, and requests an informal meeting to provide additional documentation and discuss the Notice. HEP hopes that further discussion and review of documents at this meeting will alleviate PHMSA's concerns.

In order to preserve its rights, HEP also requests a hearing pursuant to 49 C.F.R. § 190.211. HEP hopes that a hearing will be unnecessary, and that the parties can resolve this matter informally.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Cunningham', written over a white background.

Mark Cunningham, P.E.
Senior Vice President
Operations and Engineering
Holly Energy Partners Operating, L.P
2828 N. Harwood, Suite 1300
Dallas, Texas 75201
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cc: Lori Coupland, Director, Compliance & EHS, Holly Energy Partners Operating, L.P

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY**

_____)
In the Matter of)

Holly Energy Partners Operating, L.P,)

Respondent.)
_____)

CPF No. 4-2018-5005

**REQUEST FOR HEARING AND PRELIMINARY STATEMENT OF ISSUES
IN RESPONSE TO NOTICE OF PROBABLE VIOLATION, PROPOSED CIVIL
PENALTY, AND PROPOSED COMPLIANCE ORDER**

I. Request for Hearing

Pursuant to 49 C.F.R. §§ 190.208(a)(4) and 190.211(b), Holly Energy Partners Operating, L.P (HEP) respectfully requests an in-person hearing to discuss the alleged violations, the proposed civil penalties, and the proposed compliance order contained in the Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) on June 20, 2018. HEP will be represented by counsel at the hearing.

II. Preliminary Statement of Issues

HEP respectfully contests the allegations of violation, Proposed Civil Penalties, and Proposed Compliance Order contained in the Notice.

A. Notice Item 1 – 49 C.F.R. § 195.403(b)(1)–(2)

1. Whether HEP violated 49 C.F.R. § 195.403(b)(1)–(2) as alleged in the Notice.
 - a. Whether PHMSA can meet its burden of proof that a violation has occurred.
 - b. Whether HEP has records which demonstrate compliance with the regulation.
 - c. Whether PHMSA's interpretation of 49 C.F.R. § 195.403(b)(1)–(2) is arbitrary and capricious or not otherwise consistent with law.

2. Proposed Civil Penalty of \$67,000

- a. Whether the record supports the proposed penalty in this case.
- b. Whether PHMSA's proposed civil penalty should be withdrawn or reduced.
- c. Whether PHMSA's proposed civil penalty is consistent with applicable laws and regulations.

B. Notice Item 2 – 49 C.F.R. § 195.446(h)(1)

1. Whether HEP violated 49 C.F.R. § 195.446(h)(1) as alleged in the Notice.

- a. Whether PHMSA can meet its burden of proof that a violation has occurred.
- b. Whether HEP has records which demonstrate compliance with the regulation.
- c. Whether PHMSA's interpretation of 49 C.F.R. § 195.446(h)(1) is arbitrary and capricious or not otherwise consistent with law.

2. Proposed Civil Penalty of \$67,000

- a. Whether the record supports the proposed penalty in this case.
- b. Whether PHMSA's proposed civil penalty should be withdrawn or reduced.
- c. Whether PHMSA's proposed civil penalty is consistent with applicable laws and regulations.

C. Notice Item 3 – 49 C.F.R. § 195.452(j)(1)–(2)

1. Whether HEP should receive a warning item for committing a probable violation of 49 C.F.R. § 195.452(j)(1)–(2) as alleged in the Notice.

- a. Whether PHMSA can demonstrate that HEP's actions were not in compliance with the regulation.
- b. Whether HEP has records which demonstrate compliance with the regulation.
- c. Whether PHMSA's interpretation of 49 C.F.R. § 195.452(j)(1)–(2) is arbitrary and capricious or not otherwise consistent with law.

D. Notice Item 4 – 49 C.F.R. § 195.573(a)(2)

2. Whether HEP violated 49 C.F.R. § 195.573(a)(2) as alleged in the Notice.

- a. Whether PHMSA can meet its burden of proof that a violation has occurred.
- b. Whether HEP has records which demonstrate compliance with the regulation.
- c. Whether PHMSA's interpretation of 49 C.F.R. § 195.573(a)(2) is arbitrary and

capricious or not otherwise consistent with law.

- d. Whether the alleged violation is barred by the five-year statute of limitations under 28 U.S.C. § 2642.

3. Proposed Civil Penalty of \$55,200

- a. Whether the record supports the proposed penalty in this case.
- b. Whether PHMSA's proposed civil penalty should be withdrawn or reduced.
- c. Whether PHMSA's proposed civil penalty is consistent with applicable laws and regulations.

E. Notice Item 5 – 49 C.F.R. § 195.573(d)

4. Whether HEP should receive a warning item for committing a probable violation of 49 C.F.R. § 195.573(d) as alleged in the Notice.

- a. Whether PHMSA can demonstrate that HEP's actions were not in compliance with the regulation.
- b. Whether HEP has records which demonstrate compliance with the regulation.
- c. Whether PHMSA's interpretation of 49 C.F.R. § 195.573(d) is arbitrary and capricious or not otherwise consistent with law.

F. Notice Item 6 – 49 C.F.R. § 195.577(a)

1. Whether HEP violated 49 C.F.R. § 195.577(a) as alleged in the Notice.

- a. Whether PHMSA can meet its burden of proof that a violation has occurred.
- b. Whether HEP has records which demonstrate compliance with the regulation.
- c. Whether PHMSA's interpretation of 49 C.F.R. § 195.577(a) is arbitrary and capricious or not otherwise consistent with law.

2. Proposed Civil Penalty of \$38,000

- a. Whether the record supports the proposed penalty in this case.
- b. Whether PHMSA's proposed civil penalty should be withdrawn or reduced.
- c. Whether PHMSA's proposed civil penalty is consistent with applicable laws and regulations.

G. Notice Item 7 – 49 C.F.R. § 195.583(b)–(c)

1. Whether HEP violated 49 C.F.R. 195.583(b)–(c) as alleged in the Notice.
 - a. Whether PHMSA can meet its burden of proof that a violation has occurred.
 - b. Whether HEP has records which demonstrate compliance with the regulation.
 - c. Whether PHMSA’s interpretation of 49 C.F.R. § 195.583(b)–(c) is arbitrary and capricious or not otherwise consistent with law.
 - d. Whether the proposed compliance order is necessary.

HEP reserves the right to revise and supplement this Preliminary Statement of Issues as needed based on any new information or argument provided by PHMSA in this matter.

III. Request for Documents

Pursuant to 49 C.F.R. § 190.212(c)(2), (c)(3), and (c)(7), and the affirmative disclosure requirements of 5 U.S.C. § 552(a)(2)(C), HEP requests copies of the following materials related to the civil penalty proposed in the Notice:

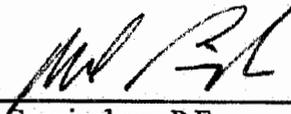
1. In addition to the documents provided on July 11, 2018, any other materials that the PHMSA Compliance Officer relied upon in calculating the penalty proposed in this case.
2. In addition to the documents provided on July 11, 2018, any other administrative staff manuals or instructions to staff, including guidance, manuals, directions, procedures, or any other documents that PHMSA enforcement staff rely on to develop a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225.
3. In addition to the documents provided on July 11, 2018, any other administrative staff manuals or instructions to staff, including guidance, manuals, directions, procedures or any other documents that the Presiding Official or Associate Administrator relies on to determine a final civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225.

HEP respectfully requests that PHMSA release these materials prior to scheduling the hearing in order to give HEP adequate time to review the information and supplement its Preliminary Statement of the Issues accordingly. It is critical that the agency release these materials prior to a hearing so that HEP will have a full “opportunity to offer facts, statements, explanations, documents, testimony or other evidence that is relevant and material to the issues under consideration[,]” and to fully and fairly “examine the evidence and witnesses presented by the other party” at the hearing, in accordance with 49 C.F.R. § 190.211(e).

To the extent that an action by the Presiding Official is necessary in order to obtain these materials, HEP hereby requests that the Presiding Official take such action. Such action is

proper under 49 C.F.R. § 190.212(c)(2), (c)(3) and (c)(7), which set forth the Presiding Official's authority to "receive evidence and inquire into relevant and material facts, require the submission of documents and other information," and, generally, "exercise the authority necessary to carry out [his responsibilities]."

Respectfully submitted this 29th day of
August 2018.



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