

September 12, 2019

Mr. Jason Rebrook
Chief Executive Officer
Harvest Midstream Company
1111 Travis Street
Houston, Texas 77002

Re: CPF No. 4-2018-5016

Dear Mr. Rebrook:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$88,300 and specifies actions that need to be taken by Harvest Midstream 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, Southwest Region, this enforcement action will be closed. Service of the Final Order by certified mail is effective upon the date of mailing, 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: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Troy Brown, Sr., Regulatory Compliance Specialist, Harvest Midstream Company,
1111 Travis Street, Houston, Texas 77002
Mr. Craig Murski, Integrity Manager, Harvest Midstream Company, 1111 Travis Street,
Houston, Texas 77002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)

Harvest Midstream Company,)

Respondent.)

CPF No. 4-2018-5016

FINAL ORDER

From November 3, 2016 through January 27, 2017, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Harvest Midstream Company (Harvest or Respondent). Specifically, PHMSA inspected the Eugene Island Facility in New Iberia, Louisiana, the Southwest Pass 24 Oil Terminal Facility in Venice, Louisiana, and records of the company in Houston, Texas. Harvest transports and processes oil, natural gas and natural gas liquids across the United States, with assets in Alaska, Louisiana, New Mexico, Ohio, Pennsylvania and Texas.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated August 31, 2018, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Harvest had committed seven violations of 49 C.F.R. Parts 194 and 195, and proposed assessing a civil penalty of \$88,300 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning item required no further action, but warned the operator to correct the probable violation or face possible future enforcement action.

After requesting and receiving an extension of time to respond, Harvest responded to the Notice by letter dated December 18, 2018 (Response). The company did not contest the allegations of violation but provided information concerning the corrective actions it had taken and would take in the future. Respondent did not request a hearing and therefore has waived its right to one.

¹ Harvest website, available at <http://www.harvestmidstream.com/> (last accessed June 24, 2019).

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Parts 194 and 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 194.107(c)(1)(ix), which states:

§ 194.107 General response plan requirements.

- (a)
- (c) Each response plan must include:
 - (1) A core plan consisting of -
 - (i)
 - (ix) Drill program - an operator will satisfy the requirement for a drill program by following the National Preparedness for Response Exercise Program (PREP) guidelines. An operator choosing not to follow PREP guidelines must have a drill program that is equivalent to PREP. The operator must describe the drill program in the response plan and OPS will determine if the program is equivalent to PREP.

The Notice alleged that Respondent violated 49 C.F.R. § 194.107(c)(1)(ix) by failing to follow the PREP guidelines in its response plan. Specifically, the Notice alleged that Harvest did not follow PREP guidelines when conducting drills, nor did the company consistently document core components exercised, lessons learned, or signatures of authorized representatives.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 194.107(c)(1)(ix) by failing to follow PREP guidelines in its response plan.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 194.121(a), which states:

§ 194.121 Response plan review and update procedures.

- (a) Each operator shall update its response plan to address new or different operating conditions or information. In addition, each operator shall review its response plan in full at least every 5 years from the date of the last submission or the last approval as follows:
 - (1) For substantial harm plans, an operator shall resubmit its response plan to OPS every 5 years from the last submission date.
 - (2) For significant and substantial harm plans, an operator shall resubmit every 5 years from the last approval date.

The Notice alleged that Respondent violated 49 C.F.R. § 194.121(a) by failing to timely resubmit its response plan to OPS. Specifically, the Notice alleged that Harvest failed to resubmit its response plan to OPS 5 years after the last plan was submitted and approved in 2010. Instead, of submitting it in 2015, Harvest's response plan was submitted in September 2016.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 194.121(a) by failing to timely

resubmit its response plan to OPS.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(5) which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a)

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1)

(5) Analyzing pipeline accidents to determine their causes.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(5) by failing to prepare and follow procedures for analyzing pipeline accidents to determine their causes. Specifically, the Notice alleged that Harvest's Liquid Operations and Maintenance (O&M) Manual had insufficient procedures regarding accident investigations. Further, the Notice alleged that Harvest failed to perform a root cause analysis and document its findings on two reported accidents (PHMSA Form 7000.1 ID 20160310 and 20150070).

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(5) by failing to have procedures for analyzing pipeline accidents to determine their causes.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a)

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1)

(13) Periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13) by failing to prepare and follow procedures regarding periodically reviewing work done by operator personnel to determine the effectiveness of the procedures and taking corrective action when deficiencies are found. Specifically, the Notice alleged that Harvest failed to provide any records evidencing that this review had been completed.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(13) by failing to prepare and follow procedures on periodically reviewing work done by operator personnel to determine

the effectiveness of the procedures used in normal operation and maintenance and taking corrective action when deficiencies are found.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(d)(5) which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a)

(d) *Abnormal operation.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

(1)

(5) Periodically reviewing the response by operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(d)(5) by failing to prepare and follow procedures regarding periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found. Specifically, the Notice alleged that Harvest failed to provide any records evidencing that this review had been completed, despite the requirement in its O&M Manual, Table 3: Necessary Compliance Records requiring this documentation be kept for three years.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(d)(5) by failing to prepare and follow procedures regarding periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.403(b) which states:

§ 195.403 Emergency response training.

(a)

(b) At 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; and

(2) Make appropriate changes to the emergency response training program as necessary to ensure that it is effective.

The Notice alleged that Respondent violated 49 C.F.R. § 195.403(b) by failing to document and retain records of reviewing with personnel their performance in meeting the objectives of the emergency response training program and making appropriate changes as necessary to ensure that it is effective. Specifically, the Notice alleged that Harvest failed to provide any records

evidencing that this review had been completed, despite the requirement in its O&M Manual, P-195.403: Training requiring this review at intervals not exceeding 15 months but at least once each calendar year.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.403(b) by failing to establish and conduct a training program that required review with personnel of their performance in meeting the objectives of the emergency response training program and making appropriate changes as necessary to ensure that it is effective.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.403(c), which states:

§ 195.403 Emergency response training.

(a)

(c) Each operator shall require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under 195.402 for which they are responsible to ensure compliance.

The Notice alleged that Respondent violated 49 C.F.R. § 195.403(c) by failing to require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance. Specifically, the Notice alleged that Harvest failed to provide any records evidencing verification of supervisor knowledge for emergency response procedures they are responsible for ensuring compliance, despite the requirement in its O&M P-195.403: Training that requires verification of supervisor knowledge be documented on form F195.403c. During the inspection, Harvest only provided one form, dated 12/1/2016, which was not completely filled out.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.403(c) by failing to require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance.

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.² 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; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. 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 \$88,300 for the violations cited above.

Item 3: The Notice proposed a civil penalty of \$19,300 for Respondent's violation of 49 C.F.R. § 195.402(c)(5) for failing to prepare and follow procedures for analyzing pipeline accidents to determine their causes. In its Response, Harvest stated that it was performing accident investigations as evidenced by completed F7000.1 forms, but recognized that it could improve the detail, methods, and documentation it uses in this process. Since the Notice, Harvest has made changes to its Accident and Incident Investigation procedure. Harvest neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty. As a result, Harvest failed to comply with a requirement that was clearly applicable. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$19,300 for violation of 49 C.F.R. § 195.402(c)(5).

Item 4: The Notice proposed a civil penalty of \$19,000 for Respondent's violation of 49 C.F.R. § 195.402(c)(13) for failing to prepare and follow procedures regarding periodically reviewing work done by operator personnel to determine the effectiveness of the procedures and taking corrective action when deficiencies are found. Harvest neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty. As a result, Harvest failed to comply with a regulation that was clearly applicable. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$19,000 for violation of 49 C.F.R. § 195.402(c)(13).

Item 5: The Notice proposed a civil penalty of \$15,500 for Respondent's violation of 49 C.F.R. § 195.402(d)(5) for failing to prepare and follow procedures regarding periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found. In its Response, Harvest stated that it transitioned to operational control of the Louisiana assets at issue on June 28, 2016 and was currently evaluating how it can update its procedures. Recent acquisition of assets, however, does not absolve an operator of its regulatory duties. Harvest failed to comply with a regulation that was clearly applicable. Based upon the foregoing, I assess Respondent a civil penalty of \$15,500 for violation of 49 C.F.R. § 195.402(d)(5).

Item 6: The Notice proposed a civil penalty of \$19,000 for Respondent's violation of 49 C.F.R. § 195.403(b) for failing to document and retain records of reviewing with personnel their performance in meeting the objectives of the emergency response training program and making

² These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223; Revisions to Civil Penalty Amounts, 83 Fed. Reg. 60732, 60744 (Nov. 27, 2018).

appropriate changes as necessary to ensure that it is effective. Harvest neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty. As a result, Harvest failed to comply with a regulation that was clearly applicable. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$19,000 for violation of 49 C.F.R. § 195.403(b).

Item 7: The Notice proposed a civil penalty of \$15,500 for Respondent's violation of 49 C.F.R. § 195.403(c) for failing to require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance. Harvest neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty. As a result, Harvest failed to comply with a regulation that was clearly applicable. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$15,500 for violation of 49 C.F.R. § 195.403(c).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$88,300**.

Payment of the civil penalty must be made within 20 days of service. 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 \$88,300 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 3, 4, 5, and 6 in the Notice for violations of 49 C.F.R. §§ 194.107(c)(1)(ix), 195.402(c)(5), 195.402(c)(13), 195.402(d)(5) and 195.403(b), 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. 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 § 194.107(c)(1)(ix) (**Item 1**), Respondent must, upon completion of their emergency response drills, perform an objective evaluation of personnel, procedures, drill scenarios, and other factors, where lessons learned are used in response plan revisions in accordance with Harvest's Facility Response Plan Guidelines – Section 7.3.2 Certification, to include a signature of an authorized representative. This must be completed within 30 days of any drills that are scheduled, in the normal course, on or after the receipt of the Final Order.
2. With respect to the violation of § 195.402(c)(5) (**Item 3**), Respondent must amend the procedures contained in its Liquid O&M Manual, Section B: Conduct the Investigation to identify analyses, techniques, or methods to analyze pipeline accidents to determine their causes. These procedures should also include detailed information on how to conduct an accident investigation with updated diagrams. This must be completed within 30 days of receipt of the Final Order.
3. With respect to the violation of § 195.402(c)(13) (**Item 4**), Respondent must conduct reviews of operations personnel and document those reviews on form F-195.402(c)(13),³ entitled Review of Work Done by Operator in accordance with Harvest's Liquid O&M Manual P-195.402c13: Review of Work Done by Operator. This must be completed within 30 days of receipt of the Final Order.
4. With respect to the violation of § 195.402(d)(5) (**Item 5**), Respondent must begin documenting its reviews of responses of control center personnel to abnormal operating conditions in accordance with Harvest's Liquid O&M Manual P-195.402d5: Abnormal Operations.⁴ This must be completed within 30 days of receipt of the Final Order.
5. With respect to the violation of § 195.403(b) (**Item 6**), Respondent must conduct reviews of emergency personnel performance and document these reviews at the required interval, in accordance with Harvest's Liquid O&M Manual P-195.403: Training. This must be completed within 30 days of any drills that are scheduled, in the normal course, on or after the 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.

It is requested (not mandated) that Respondent maintain documentation of the safety

³ Harvest may continue to use form F195.402(c)(13), but is encouraged to analyze the form to ensure that it sufficiently captures all necessary information.

⁴ Harvest may continue to use its current procedures, but is encouraged to analyze those procedures to ensure that they provide sufficient information on how to periodically review the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and how to take corrective action where deficiencies are found.

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 (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.

WARNING ITEM

With respect to Item 2, the Notice alleged a probable violation of Part 194 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 194.121(a) **(Item 2)** — Respondent's alleged failure to timely resubmit its response plan to OPS.

If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

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, no later than 20 days after receipt of service of this 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.

September 12, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued