

September 11, 2020

VIA ELECTRONIC MAIL TO: bgrantham@targaresources.com

Mr. Bill Grantham
Vice President - Operations
Targa NGL Pipeline Company, LLC
811 Louisiana, Suite 2100
Houston, Texas 77002

Re: CPF No. 4-2018-5023

Dear Mr. Grantham:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$146,100, and specifies actions that need to be taken by Targa NGL Pipeline Company, LLC, 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 electronic mail is effective upon the date of transmission 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 L. McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Matthew J. Meloy, Chief Executive Officer, Targa Resources Operating, LLC,
mmeloy@targaresources.com
Mr. Gregg Johnson, Director of Pipeline Compliance, Targa Resources Corporation,
gjohnson@targaresources.com
Ms. Julie Pabon, Senior Counsel, Targa Resources Corporation, jpabon@targaresources.com

CONFIRMATION OF RECEIPT REQUESTED

Houston, Texas, and as a result of these discussions, Targa withdrew its request for a hearing and submitted a written response dated April 30, 2019.⁴ Accordingly, pursuant to 49 C.F.R. § 190.208, the submission of a written response authorizes the Associate Administrator to issue this Final Order without further proceedings.

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(c)(4), 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) . . .

(4) Test any backup SCADA systems at least once each calendar year, but at intervals not to exceed 15 months; and . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.446(c)(4) by failing to test its backup Supervisory Control and Data Acquisition (SCADA) system in 2013, 2014, or 2015. Specifically, the Notice alleged that Targa had not performed the required test on its backup SCADA system since the regulation first came into effect on August 1, 2012 (74 FR 63329). During their inspection, OPS inspectors requested copies of any documentation demonstrating that the tests had been performed on the backup SCADA system. Targa was unable to provide any documentation indicating that it had performed such testing.

In its Response, Targa contested the alleged violation and requested that it be withdrawn. Targa argued that it does not have a “backup SCADA system” and claimed that the at-issue server is actually a “replacement server” located in the Hackberry Control Center, and does not meet the Part 195 definition of a SCADA system.⁵ Targa explained that the at-issue server “is only one part of the ‘computer-based system’ that Targa uses to perform [Control Room Management (CRM)]-related functions, and Targa has tested all aspects of its primary SCADA system, including the server, on an annual basis.”⁶ The company also claimed “that the replacement server does not serve as a substitute for the primary SCADA system under any ordinary understanding of the term ‘backup,’” but “simply provides Targa with the ability to continue

⁴ The Response also addressed a separate Notice of Amendment, CPF 4-2018-5024M, which was closed April 30, 2020.

⁵ See 49 C.F.R. § 195.2.

⁶ Response, at 3.

operating the primary SCADA system if the primary server becomes unavailable.” It is for these reasons that Targa contended that its CRM procedures “state that the Company does not have a backup SCADA system.”⁷

Targa further argued that its replacement server is not part of an “independent or redundant syste[m] that provide[s] similar functionality to the primary SCADA system,” as described in PHMSA’s CRM Frequently Asked Questions (FAQs) guidance.⁸ Specifically, Targa argued that “[t]he replacement server does not operate independently from the primary SCADA system – it only operates as part of and in conjunction with the primary system” and is “no different than any other spare part or component that Targa keeps in stock for future use.”⁹

I disagree. First, I find that within Targa’s own argument against the “replacement server” being a “back-up SCADA system,” the company has in fact described a SCADA system that serves the purpose of a backup server. Part 195 defines the term “SCADA system” as a “computer-based system or systems used by a controller in a control room that collects and displays information about a pipeline facility and may have the ability to send commands back to the pipeline facility,” but does not define the term “backup SCADA system.” See 49 C.F.R. § 195.2. However, the Merriam-Webster Dictionary defines “backup” as something “that serves as a substitute or support.”¹⁰ In its Response, the company describes its “replacement server” as allowing the primary SCADA system to continue to operate when the primary SCADA server becomes unavailable.¹¹ This description supports the plain language definitional meaning of “backup.”

Second, I also find Targa’s assertion that its replacement server is not part of an “independent or redundant syste[m] that provide[s] similar functionality to the primary SCADA system,” as described in PHMSA’s CRM FAQs, to be misplaced.¹² By its own admission, Targa has described its replacement server as a redundant server. Targa specifically stated that the replacement server “only operates as part of and in conjunction with the primary system,” and “[i]n other words, . . . is no different than any other spare part or component that Targa keeps in stock for potential future use.”¹³ Through this explanation, Targa has described the “replacement server” as providing “similar functionality to the primary SCADA system” as described in PHMSA’s CRM FAQs.¹⁴

⁷ *Id.*

⁸ PHMSA CRM FAQ C.08, available at <https://www.phmsa.dot.gov/pipeline/control-room-management/control-room-management-faqs> (last accessed on September 2, 2020).

⁹ Response, at 3.

¹⁰ <https://www.merriam-webster.com/dictionary/backup> (last accessed on September 2, 2020).

¹¹ *Id.*

¹² PHMSA CRM FAQ C.08; and Response, at 3.

¹³ Response, at 3.

¹⁴ PHMSA CRM FAQ C.08.

Third, Targa's own Lake Charles Area Hurricane Preparedness Plan states that its IT group must “remove *the back-up SCADA I/O server* from the Hackberry and relocate it to the offsite control room, at the Frac Plan, on standby” (emphasis added).¹⁵ Therefore, contrary to Targa’s arguments, its own procedures refer to its “replacement server” as a backup SCADA server.

Notably, Targa does not contest the allegation that it failed to test its backup SCADA system, but simply contests that it has a backup SCADA system. Given that I find Targa’s “replacement server” to be a “backup SCADA system” for the foregoing reasons, I further find, after considering all of the evidence, including the lack of documentation, that Respondent violated 49 C.F.R. § 195.446(c)(4) by failing to test its backup SCADA system in 2013, 2014, and 2015.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(g), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(g) *What is an information analysis?* In periodically evaluating the integrity of each pipeline segment (paragraph (j) of this section), an operator must analyze all available information about the integrity of the entire pipeline and the consequences of a failure. This information includes:

- (1) Information critical to determining the potential for, and preventing, damage due to excavation, including current and planned damage prevention activities, and development or planned development along the pipeline segment;
- (2) Data gathered through the integrity assessment required under this section;
- (3) Data gathered in conjunction with other inspections, tests, surveillance and patrols required by this Part, including, corrosion control monitoring and cathodic protection surveys; and
- (4) Information about how a failure would affect the high consequence area, such as location of the water intake.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(g) by failing to analyze all available information about the integrity of Targa’s entire pipeline and the consequences of a potential failure. Specifically, the Notice alleged that Targa was unable to provide any records demonstrating that it had actually performed this type of information analysis to identify risks relating to the integrity of its pipeline. Instead, Targa provided a single three-page document from 2008 that was hand-labeled “2008 Risk Analysis” and that contained a list of variables and codes that appear to have been part of some risk analysis process conducted that year. Based on this information, the Notice alleged that Targa had failed to conduct an information analysis about the integrity of the pipeline since 2008 that (1) integrated all relevant threats in Targa’s risk model and risk ranking, including the results of integrity assessments, (2) compared how threats had been eliminated and/or reduced from higher to lower risks during that period, and (3)

¹⁵ Violation Report, Exhibit A.

showed a progression of the risk models over the last three years to ensure that new information had been properly integrated into the risk models.

In its Response, Targa contested the allegation of violation, presenting several arguments why it believed that it had complied with § 195.452(g). First, it contended that paragraph (g) “identifies four broad categories of information and data that an operator must consider” in meeting its obligation to conduct an information analysis and argued that the Notice did not allege a failure to analyze any of those four categories.¹⁶ Instead, Targa contended that the allegations all related to the sufficiency of Targa’s process for conducting periodic evaluations and assessments of pipeline integrity, and that the obligation to conduct evaluations and assessments actually fell under a different integrity management (IM) regulation, § 195.452(j). Second, Targa argued that none of the evidence in the record shows that Targa failed to comply with § 195.452(g). The 2011 events cited in the Violation Report¹⁷ were purportedly outside the five-year statute of limitations and, therefore, could not be relied upon as evidence to substantiate the alleged violation. According to Targa, the only event cited in the Violation Report that occurred within the five-year statute of limitations was a 2015 pipeline modification project for the removal of an above-ground casing, which did not constitute a repair, but, rather, was aimed at reducing the likelihood of atmospheric corrosion or third-party damage and was therefore unrelated to the requirements of § 195.452(g).¹⁸

Third, Targa contended that it had provided OPS with evidence indicating that it had analyzed “integrity-related information” by producing certain reports for the company’s Risk Management and Insurance Department. Targa stated that it had also “analyzed integrity-related information in completing a risk analysis in accordance with § 195.452(e) to establish an integrity assessment schedule, address integrity issues, and identify additional [preventive and mitigative (P&M)] measures.”¹⁹

I find Targa’s arguments to be unpersuasive. First, it appears that Targa is misinterpreting the alleged violation and, consequently, conflating the obligations of §§ 195.452(g) and 195.452(j). Section 195.452(g) requires an operator to conduct a discrete analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure, while § 195.452(j) requires an operator to continue to assess and periodically evaluate its line pipe segments to maintain their integrity. Specifically, under § 195.452(g), the term “information analysis” constitutes a defined process that serves as the fundamental mechanism for assembling and analyzing the broadest possible range of available information about the integrity of a pipeline and using that information to evaluate *periodically* the condition or integrity of each pipeline segment under paragraph (j). An adequate information analysis is not just a collection of data but an actual *analysis* of that data in a coherent and integrated manner. Paragraph (g) lists

¹⁶ Response, at 6.

¹⁷ Violation Report, at 12.

¹⁸ Response, at 6.

¹⁹ *Id.*, at 6-7.

examples of the types of information that must be included in this data-gathering process and includes such things as damage prevention data, in-line inspection (ILI) data, patrolling data, cathodic protection surveys, and information related to the potential consequences of a pipeline failure within a High Consequence Area (HCA). Here, the alleged violation relates to Targa's failure to conduct an analysis of all available information, such as third-party damage incidents, hydrotest ruptures, and the discovery of hook cracks on longitudinal seam welds in 2011,²⁰ as required by § 195.452(g).

Second, regarding the contention that there is no evidence in the record to support an alleged violation of § 195.452(g), that is exactly the basis for the allegation. Targa was unable to provide any documentation or other evidence to demonstrate how it had complied with § 195.452(g), given the events and new information that had arisen since 2008. Therefore, the very lack of evidence demonstrating that it had performed an information analysis since 2008 supports a finding of violation. Third, Targa claims that it had provided OPS with reports that it had submitted to its Risk Management and Insurance Department, yet it is unclear what reports Targa is referring to nor is there any evidence of any such reports in the record. Finally, I find that Targa's statute of limitation argument lacks merit. Section 195.452(g) creates an on-going obligation for operators to analyze all available information about the integrity of the entire pipeline and the consequences of a failure. The failure of Targa to perform any information analysis since 2008, especially in light of the events that occurred in 2011 and 2015 and should have triggered an information analysis, provides further indication that Respondent did not comply with § 195.452(g).

Accordingly, after considering all of the evidence, including the lack of documentation demonstrating compliance, I find that Respondent violated 49 C.F.R. § 195.452(g) by failing to analyze all available information about the integrity of the entire pipeline and the consequences of a failure.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(j)(2), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(j) *What is a continual process of evaluation and assessment to maintain a pipeline's integrity? –*

(1) . . .

(2) *Evaluation.* An operator must conduct a periodic evaluation as frequently as needed to assure pipeline integrity. An operator must base the frequency of evaluation on risk factors specific to its pipeline, including the factors specified in paragraph (e) of this section. The evaluation must consider the results of the baseline and periodic integrity assessments, information analysis (paragraph (g) of this section), and decisions about remediation, and preventive and mitigative actions (paragraphs (h) and (i) of this section).

²⁰ Violation Report at 12.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(j)(2) by failing to conduct periodic evaluations and failing to set a frequency for periodic evaluations to be performed on a consistent basis to ensure pipeline integrity. Specifically, the Notice alleged that Targa was unable to provide PHMSA inspectors with copies of any periodic evaluations that had been performed. The Notice further alleged that Targa's Manager of Regulatory Compliance stated to the PHMSA inspectors that he did not believe that several of the risk factors identified on its pipeline were significant enough to warrant a periodic evaluation. Finally, the Notice also identified the following four instances of integrity issues for which there was no documentation of an evaluation having been performed or being included in any evaluation: (1) a safety-related condition report about third-party damage that occurred in 2011 and resulted in the replacement of over 820 feet of pipe; (2) multiple ruptures as a result of a 2011 hydro-test; (3) the 2011 discovery of hook cracks on longitudinal seam welds; and (4) several other pipeline modifications/repairs in each of 2011 and 2015.

In its Response, Targa contested the alleged violation and requested that it be withdrawn. Targa argued that the evidence shows that it met the requirements of § 195.452(j)(2) and "that any shortcomings that may exist relate solely to maintaining appropriate documentation."²¹ Specifically, Targa claimed that its Integrity Management Plan (IMP) included a process for performing periodic pipeline integrity evaluations, and that the frequency of such evaluations was dependent on changes in specific risk factors.²² The company further argued that OPS' interpretation of § 195.452(j) in the Notice was "flawed" and "overbroad and unduly burdensome."²³

In particular, Targa contended that there is nothing in the IM regulations that would require Targa to perform a periodic evaluation when the above-cited events occurred, including ones that fall outside the five-year statute of limitations. Targa claimed that it followed its IMP and satisfied the requirements of § 195.452(j)(2) when it conducted "periodic evaluations in connection with reports submitted to its Risk Management and Insurance Department, including results of integrity assessments, information analyses, remediation measures, and [preventive and mitigative (P&M)] measures."²⁴ Finally, Targa reiterated its statute of limitations argument for a majority of the evidence used to support the alleged violation, and further claimed that the 2015 pipeline modification project mentioned in the Notice, which falls within the five-year statute of limitations, would not have warranted a periodic pipeline integrity evaluation.

I am unpersuaded by Targa's arguments. Section 195.452(j)(2) requires operators to conduct periodic evaluations "as frequently as needed" to ensure pipeline integrity. While the Notice identified four specific instances when such evaluations should have been completed, there is no evidence that Targa conducted *any* periodic assessments and evaluations in order to maintain the integrity of its pipeline. Therefore, Targa cannot substantiate its claim that it completed periodic

²¹ Response, at 9.

²² *Id.*

²³ Response, at 10.

²⁴ *Id.*

evaluations and made appropriate changes to the assessment method and schedule based on changes in identified risk factors.

As for the argument that Targa satisfied the requirements of § 195.452(j)(2) by conducting periodic evaluations in connection with reports submitted to its Risk Management and Insurance Department, again it is unclear what reports Targa is referring to, plus there is no evidence of these reports anywhere in the record. Furthermore, Targa's claim that this alleged violation is barred due to the statute of limitations is unfounded. As discussed for Item 2 above, the obligation for operators to conduct periodic evaluations is on-going and covers risk factors that are not tied to a single fixed date but are continuing in nature.

Accordingly, after considering all of the evidence, including the lack of documentation demonstrating compliance, I find that Respondent violated 49 C.F.R. § 195.452(j)(2) by failing to conduct periodic evaluations and failing to set a frequency for periodic evaluations to be performed on a consistent basis to ensure pipeline integrity.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(k), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(k) *What methods to measure program effectiveness must be used?* An operator's program must include methods to measure whether the program is effective in assessing and evaluating the integrity of each pipeline segment and in protecting the high consequence areas. See Appendix C of this part for guidance on methods that can be used to evaluate a program's effectiveness.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(k) by failing to measure the effectiveness of its IMP in order to protect HCAs. Specifically, the Notice provided the following examples to support its allegation that Targa failed to measure the effectiveness of its IMP: (1) the metrics in Targa's IMP did not consider measures that reflect the effectiveness of existing P&M measures; (2) the failure to identify deficiencies that were indicative of programmatic breakdowns in Targa's IMP; and (3) the failure to provide evidence of feedback on corrective action programs, P&M measure decisions, and the threat and risk analysis process.²⁵

In its Response, Targa contested this alleged violation and requested that it be withdrawn. Targa argued that § 195.452(k) is a performance-based regulation that provides operators with the ability "to determine how best to comply with the requirements given their unique pipeline

²⁵ See Appendix C of Part 195, Section V, *Methods to measure performance*, and API 1160, *Managing System Integrity for Hazardous Liquid Pipelines*, for examples of metrics that operators can utilize to measure performance under § 195.452(k). For examples of published final orders applying paragraph (k), see https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/Hazardous_Liquid_IM_Enforcement_Guidance_12_7_2015.pdf, at 145-147.

systems.”²⁶ Targa argued that there are no prescriptive requirements in § 195.452(k), but, rather, minimum methods of measuring IMP program effectiveness. In this case, Targa claimed that the evidence shows that it satisfied that requirement and “that any shortcomings in the program relate solely to maintain adequate documentation.”²⁷ To support its claim, Targa explained that its “IMP provides the metrics used to evaluate the company’s IMP at section 8,” and that it “updates its performance metrics on an annual basis.”²⁸ Targa further stated that it “applies these performance metrics in completing a report submitted to Targa’s Risk Management and Insurance Department.”²⁹ The company explained that this report is then used by management to assess the performance of its IMP and improve it as necessary. Finally, Targa claimed its performance metrics demonstrated that its IMP is effective because the metrics allow for tracking of integrity issues.

Once again, I am unpersuaded by Targa’s arguments. While Respondent is correct that § 195.452(k) is a performance-based regulation, there is no evidence that Targa either complied with the requirements of § 195.452(k) or followed its own IMP, as described in its Response. Specifically, Targa has presented no evidence to support its argument that it actually *utilized* the metrics it had established to conduct reviews of its IMP effectiveness. The company claims that Section 8 of its IMP provides the metrics that it uses for program evaluation but presented no evidence that such evaluations were actually conducted or what were the results of those evaluations. It claimed that its performance metrics were updated on an annual basis, but did not submit any of them for the record. It claimed that these metrics were applied in reports submitted to its Risk Management and Insurance Department, but submitted no copies of those reports as part of this proceeding. It claimed that these reports were then used by its management to assess the performance of its IMP and improve the IMP as necessary, but submitted no such reports into evidence. Finally, the company argued that “any shortcomings in the program relate solely to maintaining adequate documentation.”³⁰ However, Targa failed to present any other proof, parole or otherwise, to show that these program evaluations actually took place. In short, it appears that Targa had a whole program *on paper* to measure program effectiveness but no evidence that it actually performed such evaluations.

Accordingly, after considering all of the evidence, I find that Targa violated § 195.452(k) by failing to measure whether its IMP was effective in assessing and evaluating the integrity of each pipeline segment and in protecting HCAs.

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

²⁶ Response, at 12.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

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.³¹ 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 \$146,100 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$38,100 for Respondent's violation of 49 C.F.R. § 195.446(c), for failing to test its backup SCADA system in 2013, 2014, and 2015. In its Response, Targa requested that the proposed civil penalty associated with Item 2 be reduced or withdrawn should PHMSA find that Respondent violated § 195.446(c). Targa contended that OPS had incorrectly assessed the gravity of the violation by selecting the criterion that stated "[p]ipeline safety or integrity was compromised in an HCA or an HCA 'could affect' segment." Targa argued that pipeline safety would only be minimally affected by a failure to conduct annual testing of a backup SCADA system, and that the control room regulations are not specifically linked to HCA segments. The company further argued that there is no evidence in the record that "Targa's failure to treat the replacement server as a backup SCADA system compromised the integrity of any HCA segments."³² Additionally, Targa argued that it was not afforded "a good faith credit for reasonably interpreting the regulation as not applying to a replacement server for SCADA system."³³ Further, Targa argued that OPS' interpretation was inconsistent with the "text, structure, and history of § 195.446(c), and the CRM FAQs do not provide Targa with fair notice of PHMSA's contrary position prior to the inspection."³⁴ For the reasons detailed below, I am not persuaded that either elimination or reduction of the proposed penalty is warranted.

First, OPS is correct in its assertion that more than half of Targa's pipeline system is located in HCAs.³⁵ A failure to test a backup SCADA system, whose purpose is to collect and display information about a pipeline facility located in an HCA and to send commands back to that

³¹ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

³² Response, at 4.

³³ *Id.*

³⁴ *Id.*

³⁵ Hazardous Liquid Annual Data – 2010 to Present, Targa NGL Pipe Line Company (OPID 30626), available at <https://www.phmsa.dot.gov/data-and-statistics/pipeline/gas-distribution-gas-gathering-gas-transmission-hazardous-liquids> (last accessed on August 27, 2020).

facility, inherently compromises the integrity of such facilities by increasing the likelihood of a release in an environmentally sensitive area. Since the company presented no evidence that it tested its backup SCADA system at the required annual interval, there is no indication whether the backup SCADA system would have properly worked if Targa's SCADA system had failed. Furthermore, the fact that § 195.446(c) is not specifically tied to an HCA requirement, unlike the IM regulations, is insufficient to support the argument that pipeline safety was only minimally impacted. Therefore, I find that the violation compromised pipeline safety in an HCA, and thus, the violation was properly assessed under the "Gravity" criterion.

I also find Targa's request for a "good faith" credit to be unjustified. Targa's own Lake Charles Area Hurricane Preparedness Plan labeled the system in the Hackberry Control Center as a "backup server." Pursuant to its own procedures, Targa had an obligation to test the at-issue server at the required intervals, based on the plain language of § 195.446(c). Additionally, as discussed above in the "Findings of Violation" section, Targa's own interpretation of a "backup SCADA system" is inconsistent with the Part 195 definition of a "SCADA system," the plain language meaning of "backup," and PHMSA's published CRM FAQs. As such, a "good faith" credit should not be given on this basis, nor is there any merit in the company's fair notice argument as the company's own designation or description of its backup system is consistent with the plain-language reading of the regulation. I therefore find Targa's interpretation of the requirement of § 195.446(c) to be unreasonable and that the company failed to provide a credible justification for its lack of compliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$38,100 for violation of 49 C.F.R. § 195.446(c).

Item 2: The Notice proposed a civil penalty of \$36,000 for Respondent's violation of 49 C.F.R. § 195.452(g), for failing to analyze all available information about the integrity of the entire pipeline and the consequences of a failure. In its Response, Targa requested that the proposed civil penalty associated with Item 2 be reduced or eliminated should PHMSA decline to withdraw the alleged violation. Targa argued that, "[a]t best, the record shows that Targa failed to properly document the results of its information analysis," and, thus, OPS selected the wrong penalty criterion under the "Part E5 – Nature" section of the Violation Report.³⁶ Targa also argued that the alleged violation had a minimal impact on pipeline safety because the evidence that OPS relied upon was either "legally irrelevant, relates to events that occurred outside the five-year statute of limitations period, or [was] contradicted by other evidence submitted by Targa."³⁷ Finally, the company argued that it should be awarded a "good faith" credit for the company's reasonable interpretation of § 195.452(g). Targa specifically argued that there was no indication in the regulatory text that the company was required "to conduct risk comparison studies or analyze progressions of risk models to conduct information analysis." On the contrary, it argued that its understanding that such actions were not necessary reflected "a reasonable understanding of the regulation."³⁸ For the reasons detailed below, I am not persuaded that either elimination or reduction of the proposed penalty is warranted.

³⁶ Response, at 7.

³⁷ *Id.*

³⁸ *Id.*

As discussed above in the “Findings of Violation” section, Targa failed to provide PHMSA with any documentation showing that the company actually conducted an analysis of all available information about the integrity of its pipeline and the consequences of a failure, as required by § 195.452(g). The record also does not support Targa’s claim that this alleged violation is merely a records violation. On the contrary, the violation relates to Targa’s failure to perform a required activity, which, in this case, was an analysis of all available information. Therefore, I find that this violation is not simply a records violation, but, instead, an activities violation as correctly selected under the “Nature” criterion in the Violation Report.

I also do not accept Targa’s argument that pipeline safety was minimally impacted. Targa failed to conduct an analysis of information about the integrity of its entire pipeline system, and as such, the entirety of Targa’s pipeline system located in HCAs was compromised by Targa’s failure to evaluate the consequences of a failure, as required by § 195.452(g). The evidence in the record, including the lack of documentation showing that Targa performed the required analysis, supports OPS’ assertion that pipeline safety or integrity was compromised in an HCA. Therefore, I find that the violation was properly assessed under the “Gravity” criterion.

Finally, while Targa is correct that “risk comparison studies” and “progressions of risk models to conduct information analysis” are not specifically delineated in the text of § 195.452(g), its argument that it did not understand the aforementioned actions to be necessary for compliance is misplaced. The Notice provides these actions as simply examples of the types of measures that an operator must take to demonstrate compliance with this performance-based regulation. So even though Targa may not have performed a risk comparison study or analysis of risk model progression, it does not negate the above finding of violation, which is based on Targa’s lack of any discernible action to analyze and integrate all available information about the integrity of the pipeline and the consequence of a failure. I therefore find that Targa has provided no reasonable interpretation or credible justification for its failure to comply with § 195.452(g), and that elimination or reduction of the penalty under good faith is not warranted.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$36,000 for violation of 49 C.F.R. § 195.452(g).

Item 3: The Notice proposed a civil penalty of \$36,000 for Respondent’s violation of 49 C.F.R. § 195.452(j)(2), for failing to conduct periodic evaluations and to set a frequency for when periodic evaluations are to be performed on a consistent basis to ensure pipeline integrity. In its Response, Targa requested that the proposed civil penalty associated with Item 3 be reduced or eliminated should PHMSA decline to withdraw the alleged violation. Targa argued that “[a]t best, the nature of the probable violation [is] missing or incomplete records documenting the results of Targa’s periodic evaluations” after determining that one was not necessary.³⁹ The company also argued that the alleged violation had a minimal impact on pipeline safety because “the gravity of the alleged violation is limited to records only.”⁴⁰ Finally, Targa argued that a

³⁹ *Id.*, at 10.

⁴⁰ *Id.*, at 10.

“good faith” credit should be given for the company’s reasonable interpretation of § 195.452(j)(2). For the reasons previously discussed above in Item 2, I am not persuaded that either elimination or reduction of the proposed penalty is warranted.

Again, I disagree with Targa’s contention that this should be considered simply a records violation. The company failed to produce any evidence showing that Targa had actually conducted periodic evaluations since 2008, as required by § 195.452(j)(2). I also do not accept Targa’s claim that pipeline safety was only minimally impacted. Targa failed to conduct periodic evaluations to ensure the integrity of its pipelines located in HCAs. By not conducting such evaluations, Targa compromised the integrity of its pipeline and increased the likelihood of a failure in an HCA or a “could-affect” area. Finally, I find no justification in the record to warrant a reduction in penalty under the “good faith” criterion. Targa provided no credible justification for its failure to comply with § 195.452(j)(2).

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$36,000 for violation of 49 C.F.R. § 195.452(j)(2).

Item 4: The Notice proposed a civil penalty of \$36,000 for Respondent’s violation of 49 C.F.R. § 195.452(k), for failing to measure whether its IMP was effective in assessing and evaluating the integrity of each pipeline segment and in protecting HCAs. In its Response, Targa requested that the proposed civil penalty associated with Item 4 be reduced or eliminated should PHMSA decline to withdraw the alleged violation. Targa argued that the nature of the alleged violation is for missing or incomplete records. The company also argued that pipeline safety was only minimally impacted because “the evidence shows that Targa effectively measured their program effectiveness” and that the alleged violation “relates solely to maintaining adequate documentation of those efforts.”⁴¹ For the reasons previously discussed above, I am not persuaded that either elimination or reduction of the penalty is warranted.

Again, I disagree with Targa’s contention that this should be considered merely a records violation. The violation relates to a failure to perform a required activity. The company has provided no evidence supporting its claim that it actually measured the effectiveness of its IMP. Therefore, the record before me contains nothing more than a mere unsupported claim of compliance with § 195.452(k). I also do not accept Targa’s claim that pipeline safety was only minimally impacted. Through its failure to comply with § 195.452(k), Targa compromised the integrity of its pipeline by failing to ensure that integrity-related issues were properly addressed to protect HCAs.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$36,000 for violation of 49 C.F.R. § 195.452(k).

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 **\$146,100**.

⁴¹ *Id.*, at 12.

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 \$146,100 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, 2, 3, and 4 in the Notice for violations of 49 C.F.R. §§ 195.446(c), 195.452(g), 195.452(j), and 195.452(k), 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 § 195.446(c) (**Item 1**), Respondent must perform backup SCADA tests in order to ensure compliance with § 195.446(c).
2. With respect to the violation of § 195.452(g) (**Item 2**), Respondent must develop, perform, and implement an information analysis to ensure compliance with § 195.452(g).
3. With respect to the violation of § 195.452(j) (**Item 3**), Respondent must develop, perform, and implement a periodic evaluation to ensure compliance with § 195.452(j).
4. With respect to the violation of § 195.452(k) (**Item 4**), Respondent must develop, perform, and implement a method of measuring its Integrity Management program that measures whether the program is effective in assessing and evaluating the integrity of each pipeline segment and in protecting HCAs to ensure compliance with § 195.452(k).
5. Targa must submit to Director, Southwest Region, Office of Pipeline Safety, PHMSA, documentation that verifies completion of the corrective actions listed in Items 1 through 4 of this Compliance Order within 90 days following issuance of this

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 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.

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 11, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued