

**NOTICE OF PROBABLE VIOLATION  
PROPOSED CIVIL PENALTY  
and  
PROPOSED COMPLIANCE ORDER**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

December 30, 2019

Fred Boutin  
Chief Executive Officer  
TransMontaigne Operating Company  
200 Mansell Ct East, Suite 600  
Roswell, Georgia 30076

**CPF 4-2019-5024**

Dear Mr. Boutin:

From January 7 to June 21, 2019, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected your Diamondback Pipeline in Brownsville, Texas.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. **§ 195.452 Pipeline integrity management in high consequence areas.**
  - (h) **What actions must an operator take to address integrity issues?**
    - (4) **Special Requirements for scheduling remediation**

**(iii) 180-day conditions. Except for conditions listed in paragraph (h)(4)(i) or (ii) of this section, an operator must schedule evaluation and remediation of the following within 180 days of discovery of the condition:**

**(E) An area of general corrosion with a predicted metal loss greater than 50% of nominal wall.**

TransMontaigne failed to schedule evaluation and remediation within 180 days of discovery of an area of general corrosion with a predicted metal loss greater than 50% of nominal wall. In April 2016, TransMontaigne conducted an assessment on its 8” Diamondback pipeline. TransMontaigne is required to review and evaluate these interpretations, categorize the anomalies per § 195.452(h)(4), and prepare a repair and mitigation strategy no later than 180 days after the assessment. TransMontaigne failed to review and evaluate the interpretations of the 2016 in-line inspection run, and did not prepare a repair and mitigation strategy no later than 180 days after the assessment as required by its Pipeline Integrity Assessment and Management Manual.

**2. § 195.452 Pipeline integrity management in high consequence areas.**

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

**(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).**

TransMontaigne failed to conduct its Emergency Flow Restriction Device (EFRD) studies in accordance with its Pipeline Integrity Assessment and Management Manual, Section 6.06: EFRD Need Evaluation Factors as needed to ensure pipeline integrity of each covered segment. This section states that the Integrity Manager will re-evaluate the need for additional EFRDs on each pipeline segment at least every five years beginning in 2011. TransMontaigne provided no records to indicate they performed the required EFRD evaluations in 2011 and 2016 as required.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a

maximum penalty not to exceed \$2,090,022. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved for the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$46,600 as follows:

<u>Item number</u>	<u>PENALTY</u>
2	\$46,600

#### Warning Item

With respect to item 1, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct this item. Failure to do so may result in additional enforcement action.

#### Proposed Compliance Order

With respect to item 2 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to TransMontaigne Operating Company, L.P. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

#### Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 4-2019-5024** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Mary L. McDaniel, P.E.  
Director, Southwest Region  
Pipeline and Hazardous Materials Safety Administration

cc: Edward J. Luebke, Vice President of Pipeline Operations, TransMontaigne Operating Company, 200 Mansell Ct East, Suite 600, Roswell, Georgia 30076

Enclosures: *Proposed Compliance Order*  
*Response Options for Pipeline Operators in Enforcement Proceedings*

## **PROPOSED COMPLIANCE ORDER**

Pursuant to 49 United States Code §60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to TransMontaigne Operating Company, a Compliance Order incorporating the following remedial requirements to ensure the compliance of TransMontaigne with the pipeline safety regulations:

1. In regard to Item Number 2 of the Notice pertaining to TransMontaigne's failure to conduct emergency flow restriction device (EFRD) studies as required by the Operator's Pipeline Integrity Assessment and Management Manual. TransMontaigne must re-evaluate the need for additional EFRDs by conducting a study on each pipeline segment to ensure pipeline integrity of each covered segment.
2. Within 60 days following receipt of a Final Order, TransMontaigne must provide PHMSA Southwest Region with documentation that verifies completion of Item 1 of this compliance order.
3. It is requested (not mandated) that TransMontaigne Operating Company, L.P. maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Mary L. McDaniel, Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration. 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.