

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

January 27, 2020

Michael S. Smith
Chairman & CEO
Freeport LNG Development, L.P.
333 Clay Street, Suite 5050
Houston, Texas 77002

CPF 4-2020-1002

Dear Mr. Smith:

From June 25 through September 26, 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 Freeport LNG Development, L.P.'s (FLNG) pipeline system procedures, records, and facilities located in Freeport, 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. § 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for

emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

FLNG failed to follow, for each pipeline, a manual of written procedures for conducting operations and maintenance activities, and for emergency response. FLNG failed to provide documentation showing that annual reviews of its gas transmission pipeline system as required by FLNG-GOM-100, Gas Pipeline Operations and Maintenance Manual were performed.

FLNG-GOM-100, Gas Pipeline Operations and Maintenance Manual, requires annual reviews. According to FLNG, it conducted its reviews annually for the past three years; however, no documentation was provided during the inspection to document the annual review.

FLNG failed to use the log referred to in the procedure to document that there were no changes to the manual when the annual review was conducted. The last review date listed on the manual was 12/10/2018 is shown on each page.

2. §192.605 Procedural manual for operations, maintenance, and emergencies.

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

(8) Periodically reviewing the work done by operator personnel to determine the effectiveness, and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found.

FLNG failed to establish written procedures for the periodic review of the work done by operator personnel to determine the effectiveness, and adequacy of the procedures used in normal operation and maintenance in accordance with § 192.605(b)(8).

PHMSA reviewed FLNG's FLNG-GOM-100, Gas Pipeline Operations and Maintenance Manual, and noted that the manual did not include procedures for the periodic review of the work performed by operator personnel. Because it did not conduct the periodic reviews, FLNG could not use those reviews to evaluate the effectiveness and adequacy of its procedures.

3. § 192.614 Damage prevention program.

(c) The damage prevention program required by paragraph (a) of this section must, at a minimum:

(1) Include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located.

FLNG's damage prevention program did not include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which its pipeline is located as required by §192.614(c)(1). Specifically, FLNG does not incorporate the names of associated contractors or excavators from its Third-Party Activity reports into its damage prevention program so that the names are included in the mail-outs and communications with excavators along the system.

During the PHMSA inspection, it was noted that several excavators had called into locate tickets, but were not put on the next mailing list to receive communication from the operator. One example is the excavator, Primoris Pipeline Services (Ticket No. 1884060433). The date of ticket was December 8, 2018, and this excavator was not found on the 2019 mailing list.

4. §192.805 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (a) Identify covered tasks;**
- (b) Ensure through evaluation that individuals performing covered tasks are qualified;**
- (c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified;**
- (d) Evaluate an individual if the operator has reason to believe that the individual's performance of a covered task contributed to an incident as defined in Part 191;**
- (e) Evaluate an individual if the operator has reason to believe that the individual is no longer qualified to perform a covered task;**
- (f) Communicate changes that affect covered tasks to individuals performing those covered tasks;**
- (g) Identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed;**
- (h) After December 16, 2004, provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities...**

FLNG failed to ensure through evaluation that employees were qualified to perform valve

inspections on eight separate occasions in 2018 and 2019.

During the inspection, FLNG operator qualification records of employees performing valve inspections were reviewed. Valve Inspection records showed that two FLNG employees with expired qualifications performed valve inspections on regulated valves (BV-116, V20A08, and XV4345) on its 42-inch pipeline on eight separate occasions in 2018 and 2019. At the time of the inspection, FLNG failed to provide documentation indicating these two individuals were qualified while performing the covered tasks.

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 in the above probable violation and has recommended that you be preliminarily assessed a civil penalty of \$22,800 as follows:

<u>Item number</u>	<u>PENALTY</u>
4	\$ 22,800

Warning Items

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 items 2 and 3 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Freeport LNG Development, L. P. (FLNG). 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 Compliance 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 4-2020-1002** 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: Mark Mallett, Vice President of Operations & Engineering, Freeport LNG Development, L.P.,
333 Clay Street, Suite 5050, Houston, Texas 77002

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

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Freeport LNG Development, L.P., (FLNG) a Compliance Order incorporating the following remedial requirements to ensure the compliance of FLNG with the pipeline safety regulations:

1. In regard to Item Number 2 of the Notice pertaining to establishing written procedures for the periodic review of the work done by operator personnel to determine the effectiveness, and adequacy of the processes used in normal operations and maintenance and modifying the processes when deficiencies are found, FLNG must develop written procedures and complete the periodic review and submit documentation to PHMSA's Southwest Region Director within 60 days of issuance of the Final Order.
2. In regard to Item Number 3 of the Notice pertaining to failing to ensure that the identity of persons who normally engage in excavation are identified as required FLNG must develop a written procedure and submit that procedure to PHMSA's Southwest Region Director within 60 days of issuance of the Final Order.

It is requested (not mandated) that Freeport LNG Development, L. P. maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the 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.