

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

ELECTRONIC MAIL – RETURN RECEIPT REQUESTED

April 20, 2021

Michele Harradence
Vice President, Gas Transmission & Midstream Operations
Texas Eastern Transmission, LP
5400 Westheimer Court
Houston, Texas 77056

CPF 4-2021-030-NOPV

Dear Ms. Harradence:

On February 28, 2003, pursuant to 49 United States Code (U.S.C.) § 60118(c) and 49 Code of Federal Regulations (CFR) § 190.341, Texas Eastern Transmission, LP (TETLP) filed a special permit request with the Pipeline & Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), for a waiver from certain provisions of 49 CFR § 192.611. PHMSA issues special permits to pipeline operators if the agency determines that a waiver of a particular regulation or standard is not inconsistent with pipeline safety. On August 27, 2004, PHMSA issued an order granting TETLP a special permit with certain conditions and limitations (Order). *See* PHMSA RSPA-2003-15122. On May 15, 2015, PHMSA amended the special permit by modifying the special permit segment definitions, including the special permit conditions and special permit limitations.

On multiple dates beginning December 3, 2020 through April 1, 2021, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 U.S.C., inspected TETLP's 2020 Special Permit Annual Report to confirm the company's compliance with the Order.

As a result of the inspection, it is alleged that TETLP has committed a probable violation of the Order. As stated in § 190.203(f), when information obtained from an inspection indicates that further OPS action is warranted, OPS may initiate one or more enforcement proceedings prescribed in §§ 190.207 through 190.235. The item inspected and the probable violation is:

1. Condition 20

(a) **General:** TETLP must account for ILI tool tolerance and corrosion growth rates in scheduled response times and repairs and document and justify the values used. TETLP must demonstrate ILI Tool tolerance accuracy for each ILI Tool run by usage of calibration excavations and unity plots that demonstrate ILI Tool accuracy to meet the tool accuracy specification provided by the vendor (typical for depth within +10% accuracy for 80% of the time). The unity plots must show: a) actual anomaly depth versus predicted depth and b) actual failure pressure/MAOP versus predicted failure pressure/MAOP. Discovery date must be within 90 days of an ILI Tool run for each type ILI Tool (HR-geometry, HR-deformation or high resolution HR-MFL).

(d) **Response Time for ILI Results:** The following section provides the required timing for excavation, investigation, and remediation of anomalies based on ILI data results in accordance with 49 CFR §§ 192.485 and 192.933, and must incorporate appropriate class location design factors in the anomaly repair criteria for *special permit segments* and *special permit inspection areas* including all HCAs. Reassessment by ILI will reset the timing for anomalies not already investigated and/or repaired. TETLP must evaluate ILI data by using either the ASME Standard B31G, "*Manual for Determining the Remaining Strength of Corroded Pipelines*" (ASME B31G), the modified B31G (0.85dL) or R-STRENG for calculating the predicted FPR to determine anomaly responses.

■ **Special permit inspection area:**

- **Immediate response:** Any anomaly within a *special permit inspection area* operating up to 80.77% SMYS that meets either: (1) an FPR equal to or less than 1.1; or (2) an anomaly depth equal to or greater than 80% wall thickness loss.

TETLP failed to follow the requirements in Condition 20 of the Order for discovery and response time following the performance of an ILI tool run in a special permit inspection area. Specifically, TETLP failed to discover two anomalous conditions within 90 days following the completion of an ILI tool run and also failed to take action as required in response to an *immediate response* condition located in a Class 1 location in accordance with 49 CFR §§ 192.485 and 192.933.

TETLP's 2020 Special Permit Annual Report included the identification of two anomalous conditions. An ILI tool run with Magnetic Flux Leakage – Circumferential Technology performed on November 21, 2019, identified the conditions. The final vendor report was delivered on March 18, 2020, and TETLP discovered two anomalous conditions on April 23, 2020, 154 days from the ILI run date.

Additionally, the anomalous conditions resulted in Failure Pressure Ratios (FPR) of 1.038 and 1.164. The anomaly located on Line 12 at Mile Post (MP) 97.19 had an FPR of 1.038 and is located within Special Permit Inspection Area A and operates at 77.7% of SMYS in a Class 1 location which required immediate action. After discovery, TETLP did not take *any* immediate action. It was not until PHMSA contacted TETLP on December 3, 2020, that TETLP reassessed the condition at MP 97.19 and updated the FPR to 1.146 on December 11, 2020. Their vendor confirmed this upgraded information on March 29, 2021.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not 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.

We have reviewed the circumstances and supporting documentation involved for the above probable violation and recommend that you be preliminarily assessed a civil penalty of \$49,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$49,000

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 4-2021-030-NOPV** and for each document you submit, please provide a copy in electronic format whenever possible.

Right to Modify, Suspend, or Revoke a Special Permit

Issuance of this enforcement action does not preclude PHMSA's authority to seek a modification, suspension, or revocation of the special permit issued under PHMSA RSPA-2003-15122 at any time, as provided in 49 CFR § 190.341(j)(1). If such action is taken, PHMSA will provide Texas Eastern Transmission, LP with the opportunity to show cause why the proposed action should not be taken.

Sincerely,

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

cc: Nathan Atanu, Manager, Operational Compliance, Enbridge,
Nathan.atanu@enbridge.com

Enclosure: *Response Options for Pipeline Operators in Enforcement Proceedings*