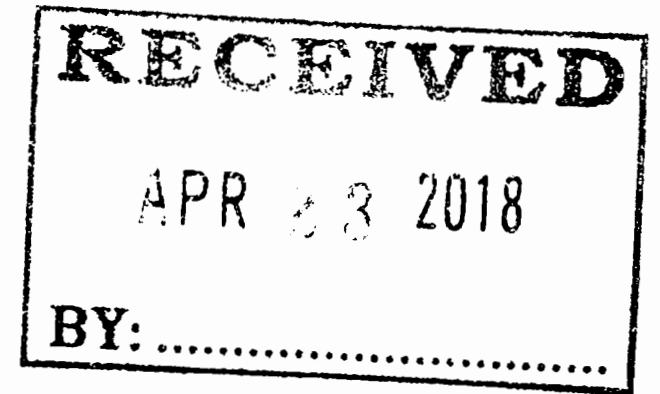




**PACIFIC OPERATORS OFFSHORE, LLC**



April 20, 2018

**VIA EMAIL  
VIA CERTIFIED MAIL**

Mr. Huy Nguyen  
Acting Director, Western Region  
Pipeline & Hazardous Materials Safety Administration  
123W. Dakota Ave., Suite 110  
Lakewood CO 80228

Re: Notice of Probable Violation  
Response To Proposed Civil Penalty & Compliance Order – **CPF 5-2017-7004**

Dear Mr. Nguyen,

Please find attached Pacific Operators Offshore LLC (PACOPS) “Responses To Allegations” as pertains the subject Proposed Civil Penalty & Compliance Order. Addition; please find also attached response supporting Exhibits labeled “A” through “C”.

Please feel to contact me should you have any questions or concerns regarding this submission.

Sincerely Yours,

Clement M. Alberts, Environmental Coordinator

## **PACOPS RESPONSES TO ALLEGATIONS - CPF 5-2017-7004**

To preface the following PACOPS responses; It should be noted that PAOPCS rigorously contends that PHMSA has erred in all its CPF 5-2017-7004 finding as based upon unreasonable, unrealistic and arbitrary interpretations of the several cited relevant CFR regulations as they relate to each of the alleged commissions of probable violation. Specifically:

### **Allegation No. 1**

CFR 49 §195.9

Operators of transportation pipelines on the Outer Continental Shelf must identify on all their respective pipelines the specific points at which operating responsibility transfers to a producing operator. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have until September 15, 1998 to identify the transfer points. If it is not practicable to durably mark a transfer point and the transfer point is located above water, the operator must depict the transfer point on a schematic maintained near the transfer point. If a transfer point is located subsea, the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to PHMSA upon request. For those cases in which adjoining operators have not agreed on a transfer point by September 15, 1998 the Regional Director and the MMS Regional Supervisor will make a joint determination of the transfer point.

*PACOPS, an operator of transportation pipelines on the Outer Continental Shelf violated 49 C.F.R. § 195.9 by failing to identify on all its respective pipelines the specific points at which operating responsibility transfers to a producing operator. At the time of the field inspection, PHMSA observed no visible markings on the pipe of Platform Hogan identifying the transfer point to depict the transfer point.*

### **PACOPS Response to Allegation No. 1**

Pacific Operators Offshore LLC (POOLLC) is the operator of the transportation pipeline and is also the producing operator. Specifically; production and transportation are contiguous and under the responsibility of a single common operating entity. In this context, it is not possible for a single responsible operating entity to establish what amounts to an arbitrary, non sequitur transfer point determination as required by CFR 49 §195.9. Even if we were assume separate functional states of “adjoining operators”, the responsibility for making any transfer point determination between contiguous common ownership operators must properly fall jointly upon the Regional Director and MMS (BSEE) Regional Director. In light of the above, BSEE Regional Director has determined that no necessity exists for the determination of a transfer point (See Exhibit A attached). PACOPS contends that no reasonable justification exists for the alleged violation and furthermore that PHMSA knew that no justification the allegation existed in that PHMSA was and is aware that production and transportation are under PACOPS common ownership and control.

### **Allegation No. 2**

CFR 49 §195.440 Public Awareness.

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(a) Each pipeline operator must develop and implement its written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see §195.3).

PACOPS violated 49 C.F.R. 195.440(a) by failing to implement its written continuing public education program that follows the guidance provided in API 1162. Section 7 of API 1162 discusses program documentation and recordkeeping, recommending that each operator establish policies and procedures necessary to properly document its Public Awareness Program and retain those key records for purposes of program evaluation. PACOPS has incorporated much of Section 7 into its own program. Specifically, PACOPS's Public Awareness Plan, Section 12 – Documentation states, in pertinent part:

The Company shall collect and retain documentation of the public awareness program. These records demonstrate that the Company's program is in conformance with these procedures....”

PACOPS's Public Awareness Program, Section 12.2 – Other Documentation Records, lists examples of documentation records, including: “communication materials provided to each stakeholder audience (e.g. brochures, mailings, letters, etc.); lists, records, or other documentation of stakeholders audiences with whom the Company has communicated; (e.g. contact mailing rosters); implementation dates, postage receipts; response cards; audience contact documentation (e.g. sign-in sheets, invitation lists, etc.); program evaluations, including current results, follow-up actions and expected results; [and] program enhancement(s).

Finally, PACOPS's Public Awareness Plan, Section 12.3 – Record Retention requires retention of records for a minimum of five (5) years, or as defined in the Company's public awareness program section #12.5, whichever is longer. Record retention shall include; lists, records, or other documentation of stakeholder audiences with whom the Company has communicated; copies of all materials provided to each stakeholder audience; [and] all program evaluations, including current results and follow-up actions.”

*At the time of the inspection, PACOPS could not provide records to demonstrate compliance with its public awareness program. By failing to collect and retain documentation of its public awareness program pursuant to its own written procedures, as outlined above, PACOPS failed to implement its written continuing public education program in violation of 49 C.F.R. § 195.440(a).*

### **PACOPS Response to Allegation No. 2**

In PACOPS case, there is no stakeholder audience (Refer to Exhibit B Aerial photo of plant and immediate area) as envisioned by or assumed to exist by either API 1162 or CFR 49 §195.440. At the time of the inspection PACOPS asked PHMSA who precisely would be the stakeholder audience in the case the PACOPS La Conchita facility; a remote facility bounded by three sides with empty land and on the fourth with a freeway and an ocean beyond. PHMSA replied that there was no stakeholder audience. Nevertheless and despite any appreciable degree of applicability the inspector felt compelled to once again apply an obvious non sequitur letter of the law interpretation of CFR 49 §195.440. This as opposed exercising the of the spirit of API 1162's good intent as embodied within CFR 49 §195.440, i.e. to reasonably expect compliance with API 1162's *guidance* and CFR 49 §195.440's original promulgated

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intent as based on API's suggested guidance. Given the forgoing, PACOPS contends that PHMSA's allegation is egregious, capricious and wholly without merit.

### **Allegation No. 3**

CFR 49 §195.452 Pipeline Integrity management in high consequence areas.

(b) What program and practices must operators use to manage pipeline integrity? Each operator of a pipeline covered by this section must:

(5) Implement and follow the program.

PACOPS did not implement and follow its Integrity Management Program in violation of 49 C.F.R. § 195.452(b)(5). PACOPS's Integrity Management Plan (IMP), Section 1.2 – Identification of HCA Segments and Documentation states, in part:

All reviews to indentify HCA's will be fully documented. This means methods and assumptions will be included where applicable, especially for exceptions. Justification for exceptions will also include HVL properties, topographical considerations, type of HCA, and significant of consequences (sic). See section [1.4] 1.3 for a full list of factors to consider in determining if a segment could affect an HCA.

The Company intends to utilize a Graphic Information System (GIS) as well as calculations of dispersion modeling distances to identify pipeline segments that could affect HCAs. These methods are discussed below. In the IMP records binder/ files is a listing of the HCAs as a result of this review.

*At the time of the inspection, PACOPS provided a copy of its 2016 Annual Pipeline Assessment Review, which stated that "[s]ince the onshore portion of the oil pipeline lies within 220 yards of the mean high tide line, PACOPS elects to conservatively define that both segments of its pipeline reside within HCA." Although PACOPS concluded that that its onshore pipe resides in an HCA, PACOPS could not provide records to show the methods, assumptions, or calculations of dispersion modeling distances used in determining that its pipeline segments could affect HCAs as required by Section 1.2 of its IMP.*

### **PACOPS Response to Allegation No. 3**

PACOPS has historically and will continue to regard the onshore portion of its pipeline to be HCA. i.e. PACOPS considers it pipeline as being *prima facia* HCA. PACOPS contends that intent of 49 C.F.R. § 195.452(b)(5) is not to determine whether a segment is HCA, but to demand strict methodology, justification and documentation for any *non HCA determination*. PACOPS contends that it is well within

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the bounds of common sense prerogative to make a most stringent HCA applicability determination as based solely upon a reasonable common sense assessment that does not require a detailed and exhaustive analysis of the patently obvious. To underscore this simple reasoning and PACOPS longstanding conclusion, we need only refer again to Exhibit 2 to illustrate the proximity of the PACOPS facility to an HCA. In other words; given the proximity of PACOPS pipelines to an HCA in this case, no other determination but HCA is conceivably possible regardless of whether an IMP Plan determination were to have made in that an IMP determination is not reasonably or logically required. Again; PHMSA again evidences in this finding a propensity to follow the letter of 49 C.F.R. § 195.452(b)(5) as opposed to following its good intent and common sense spirit. In summary; PACOPS has and will continue to conservatively regard its pipeline segments in the most obvious and stringent of terms, i.e. as HCA due to close proximity to an environmentally sensitive, high consequence area and contend that PHMSA allegation is without merit.

### **Allegation No. 4**

CFR 49 §195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion as follows:

<b>If the pipeline is located:</b>	<b>Then the frequency of inspection is:</b>
Onshore	At least once every 3 calendar years, but with intervals not to exceed 39 months
Offshore	At least once each calendar year, but with intervals not exceeding 15 months

PACOPS did not inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion in violation of CFR 49 §195.583(a). Specifically, PACOPS onshore pipe is to be inspected at least once every 3 calendar years, but with intervals not to exceed 39 months. At the time of the inspection, PACOPS provided inspection records to PHMSA showing that the onshore DOT pipe at La Conchita Facility had been inspected for atmospheric corrosion in 2008 and 2010. However, PACOPS could not provide records or other substantiating evidence to demonstrate that atmospheric corrosion inspections were conducted in 2013 and 2016.

### **PACOPS Response to Allegation No. 4**

PACOPS does not perform onshore corrosion inspections internally. It instead retains the services of an outside vendor to perform third party fugitive emission related quarterly inspections at PACOPS onshore and offshore facilities to include physically walk and visually inspect the entire visible length of the onshore portion of PACOPS pipeline. In a historical context, it should be noted that PACOPS had been previously advised by PHMSA; specifically Mr. Hossein Monfarad – Inspector - RSPA/Office of Pipeline Safety (Retired 10/04/17) concerning onshore pipeline inspection. Mr. Monfarad and PACOPS Environmental Coordinator Clement Alberts personally collaborated to ensure that the entire onshore portion of the pipeline was marked and inspected, i.e. within the plant property boundary as well as the portion of the subject pipeline as located on the south side of the adjacent freeway under which the pipeline transverses from the onshore plant property. In summary; PACOPS own elected quarterly

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inspection frequency far exceeds the triennial CFR 49 §195.583 frequency of inspection requirement (Please refer to Exhibit C – 4Q12 through 4Q16 inclusive Survey Summaries as attached). At the time of the subject PHMSA 2017 inspection in question, this was unknown to the relatively new PACOPS employee interfacing with the PHMSA inspector. Moreover, PACOPS believes that its more stringent onshore inspection frequency had been made known to PHMSA within the course of previous PHMSA inspections. In light of the forgoing, PACOPS contends that Allegation is without merit.