

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

September 18, 2019

Mr. John Niemi
Compliance Manager
OP Reno, LLC
1331 Christine Avenue, Suite 100
Saint Louis, MO 63131

CPF 5-2019-6002

Dear Mr. Niemi:

On November 13 through 15, 2018, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected your breakout tank facility in Sparks, Nevada.

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.**
 - (a)...
 - (b) *What program and practices must operators use to manage pipeline integrity? Each operator of a pipeline covered by this section must:*
 - (1) ...
 - (5) **Implement and follow the program.**

OP Reno failed to develop, implement and follow a written integrity management program despite operating for more than 10 years.¹ OPReno could not produce the required written integrity management program during the November 2018 inspection.

2. § 195.440 Public awareness

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

OP Reno failed to develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162, as required by §195.440(a).² During the November 2018 inspection, OPReno could not produce the required program.

3. § 195.505 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 accident as defined in Part 195;**
 - (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; and**
 - (i) After December 16, 2004, notify the Administrator or a state agency participating under 49 U.S.C. Chapter 601 if the operator significantly modifies the program after the administrator or state agency has verified that it complies with this section.**
- Notifications to PHMSA may be submitted by electronic mail to *InformationResourcesManager@dot.gov*, or by mail to ATTN: Information Resources Manager DOT/PHMSA/OPS, East Building, 2nd Floor, E22-321, New Jersey Avenue SE., Washington, DC 20590.**

¹ See 49 C.F.R. § 195.452(a) (noting that this section applies to hazardous liquid pipelines that could affect a high consequence area); *see also* 49 C.F.R. § 195.2 (defining pipeline to include all parts of a pipeline facility, including breakout tanks).

² See 49 C.F.R. § 195.2 (defining operator as “a person who owns or operates pipeline facilities”).

During the inspection, OP Reno could not present a written qualification program as required by §195.505.

4. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) . . .

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

(1) ...

(12) Establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication.

OP Reno does not have a procedure for establishing and maintaining liaison with fire, police and other appropriate public officials as required by §195.402(c)(12). Neither the OPReno Sparks Terminal OM&E Procedure Manual or Facility Response Plan/Emergency Response Plan contain a procedure to address the requirements of §195.402(c)(12).

5. §195.402 Procedural manual for operations, maintenance, and emergencies.

(a) . . .

(e) *Emergencies.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety when an emergency condition occurs:

(1) Receiving, identifying, and classifying notices of events which need immediate response by the operator or notice to fire, police, or other appropriate public officials and communicating this information to appropriate operator personnel for corrective action.

OP Reno does not have a procedure for receiving, identifying, and classifying notices of events which need immediate response by the operator or notice to fire, police, or other appropriate public officials and communicating this information to appropriate operator personnel for corrective action. Neither the OPReno Sparks Terminal OM&E Procedure Manual or Facility Response Plan/Emergency Response Plan contain a procedure to address the requirements of §195.402(e)(1).

6. § 195.403 Emergency response training.

(a) Each operator shall establish and conduct a continuing training program to instruct emergency response personnel to:

(1) Carry out the emergency procedures established under 195.402 that relate to their assignments;

(2) Know the characteristics and hazards of the hazardous liquids or carbon dioxide transported, including, in case of flammable HVL, flammability of mixtures with air, odorless vapors, and water reactions;

- (3) Recognize conditions that are likely to cause emergencies, predict the consequences of facility malfunctions or failures and hazardous liquids or carbon dioxide spills, and take appropriate corrective action;**
- (4) Take steps necessary to control any accidental release of hazardous liquid or carbon dioxide and to minimize the potential for fire, explosion, toxicity, or environmental damage; and**
- (5) Learn the potential causes, types, sizes, and consequences of fire and the appropriate use of portable fire extinguishers and other on-site fire control equipment, involving, where feasible, a simulated pipeline emergency condition.**

During the inspection, OP Reno was not able to present the continuing training program it uses to instruct emergency response personnel pursuant to §195.403(a)(1)-(5).

7. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) . . .

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

(1) ...

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

OP Reno's OM&E manual does not contain certain procedures for operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of Subpart F and Subpart H. Specifically, OP Reno does not have a procedure for the posting and maintaining of signs visible to the public around the breakout tank area of the Sparks Terminal pursuant to §195.434, contained in Subpart F.

8. § 195.434 Signs.

Each operator must maintain signs visible to the public around each pumping station and breakout tank area. Each sign must contain the name of the operator and a telephone number (including area code) where the operator can be reached at all times.

The OP Reno Sparks Terminal does not have appropriate signage around the Sparks Terminal to meet the requirements of §195.434. Specifically the Sparks Terminal has a single sign located at the east entrance to the terminal. This sign has the name and address of the business, but does not list a telephone number(s) where the operator can be reached at all times.

9. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) . . .

(f) *Safety-related condition reports.* The manual required by paragraph (a) of this section must include instructions enabling personnel who perform operation and maintenance activities to recognize conditions that potentially may be safety-related conditions that are subject to the reporting requirements of §195.55.

The OPReno OM&E Procedure Manual does not contain instructions that would enable personnel performing operation and maintenance activities to recognize conditions that potentially may be safety-related conditions that are subject to the reporting requirements of §195.55. The SRC reporting section of the OPReno OM&E Procedure Manual describes issues related to the operation of pipelines. However, OP Reno does not operate any pipelines; it operates only breakout tanks and associated station piping.

10. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) . . .

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

(1) ...

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part. ...

OP Reno's OM&E Procedure Manual does not contain certain procedures for operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of Subpart F and Subpart H. Specifically, it does not contain procedures for the protection of pipelines against atmospheric corrosion pursuant to §195.581, located in Subpart H. §195.581 requires operators to clean and coat pipelines with coating materials suitable for the prevention of atmospheric corrosion.

11. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) . . .

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

(1) ...

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

OP Reno's OM&E manual does not contain certain procedures for operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of Subpart F and Subpart H. Specifically, it does not contain procedures for the monitoring of pipelines against atmospheric corrosion pursuant to §195.583, located in Subpart H. §195.583 requires operators to inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion and to provide protection against the corrosion as required by §195.581. However, OPReno's OM&E manual does not address any of these regulatory requirements.

12. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) . . .

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

(1) ...

(3) *Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.*

OP Reno's OM&E manual does not contain certain procedures for operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of Subpart F and Subpart H. Specifically, it does not contain procedures for monitoring and taking corrective action to correct any identified deficiency in corrosion control as required by §195.573(e), located in Subpart H.

Proposed Compliance Order

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.

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

With respect to items one through twelve pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to OP Reno LLC. 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. Be advised that all material you submit in response to this enforcement action is subject to being 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 5-2019-6002** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Dustin Hubbard
Director, Western Region
Pipeline and Hazardous Materials Safety Administration

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

cc: PHP-60 Compliance Registry
PHP-500 J. Dunphy (#162143)

PROPOSED COMPLIANCE ORDER

Pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to OP Reno, LLC a Compliance Order incorporating the following remedial requirements to ensure the compliance of OP Reno, LLC with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to OP Reno, LLC failing to develop a written integrity management program, OP Reno, LLC must develop, implement and follow a written integrity management program pursuant to §195.452 appropriate to the operations at the Sparks, NV Terminal.
2. In regard to Item Number 2 of the Notice pertaining to OP Reno, LLC failing to develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162, OP Reno, LLC must develop and implement a written continuing public education program that follows the guidance of API RP1162.
3. In regard to Item Number 3 of the Notice pertaining to OP Reno, LLC not having a written qualification program as required by §195.505, OP Reno, LLC must develop and implement a written qualification program that meets the requirements of §195.505.
4. In regard to Item Number 4 of the Notice pertaining to OP Reno, LLC not having a procedure for establishing and maintaining liaison with fire, police and other appropriate public officials as required by §195.402(c)(12), OP Reno, LLC must write and implement a procedure to establish and maintain liaison with fire, police and other appropriate public officials.
5. In regard to Item Number 5 of the Notice pertaining to OP Reno, LLC not having a procedure for receiving, identifying, and classifying notices of events which need immediate response by the operator or notice to fire, police, or other appropriate public officials and communicating this information to appropriate operator personnel for corrective action, OP Reno, LLC must write and implement a procedure for receiving, identifying, and classifying notices of events which need immediate response by the operator or notice to fire, police, or other appropriate public officials and communicating this information to appropriate operator personnel for corrective action.
6. In regard to Item Number 6 of the Notice pertaining to OP Reno LLC's inability to present the continuing training program for the instruction of emergency response personnel, OP Reno, LLC must write and implement a continuing training program for the instruction of emergency response personnel pursuant to §195.403(a)(1)-(5).
7. In regard to Item Number 7 of the Notice pertaining to OP Reno, LLC not having a procedure for the posting and maintaining of signs visible to the public around the breakout tank area of the Sparks Terminal, OP Reno, LLC must write and implement a procedure directing the posting and maintenance of signs around the Sparks Terminal.

8. In regard to Item Number 8 of the Notice pertaining to the lack of appropriate signage around the Sparks Terminal that meets the requirements of §195.434, OP Reno, LLC must install signs around the exterior enclosure of the Sparks Terminal. The number of signs installed must be sufficient in number such that a member of the public looking at the any exterior side of the Terminal enclosure will be able to identify the name and contact information of the operator.
9. In regard to Item Number 9 of the Notice pertaining to the lack of instruction in the OPReno OM&E Procedure Manual that would enable personnel performing operation and maintenance activities to recognize conditions that potentially may be safety-related conditions, OP Reno, LLC must update the SRC section of the OPReno OM&E Procedure Manual to include instructions enabling employees to recognize conditions specific to Break-out Tanks and associated facilities that potentially may be safety-related conditions.
10. In regard to Item Number 10 of the Notice pertaining to the lack of procedures for the protection of pipelines against atmospheric corrosion in the OPReno's OM&E Procedure, OP Reno, LLC must write and implement procedures for the protection of pipelines against atmospheric corrosion.
11. In regard to Item Number 11 of the Notice pertaining to the lack of procedures for the monitoring of pipelines against atmospheric corrosion, OP Reno, LLC must write and implement procedures for the monitoring of pipelines against atmospheric corrosion.
12. In regard to Item Number 12 of the Notice pertaining to the lack of procedures for taking corrective action to correct any identified deficiency in corrosion control, OP Reno, LLC must write and implement procedures for taking corrective action to correct any identified deficiency in corrosion control.
13. OP Reno, LLC shall correct items one through twelve above within 120-days of receiving the Final Order.
14. It is requested (not mandated) that OP Reno, LLC maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Dustin Hubbard, Director, Western 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.