



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials
Safety Administration**

840 Bear Tavern Road, Suite 300
West Trenton, NJ 08628
609.771.7800

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

OVERNIGHT EXPRESS DELIVERY

December 10, 2021

Mr. Charlie Gates
Executive Vice President of Power Operations
Fore River Energy Center
9 Bridge Street
Weymouth, Massachusetts 02191

CPF 1-2021-065-NOPV

Dear Mr. Gates:

From February 22, 2021 through September 8, 2021, a representative 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 Fore River Energy Center's (FREC) procedures and records for the FREC pipeline in Weymouth, Massachusetts.

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

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a

pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

FREC failed to follow its manual of written procedures. Specifically, FREC failed to follow its *Section 208 – Training [195.403]* (Training Procedure) procedures regarding emergency response training program reviews required by § 195.403(b).¹

During the inspection, PHMSA requested records related to the training of operation and maintenance (O&M) personnel in emergency response for calendar year 2020. FREC provided its *Fore River Training Report, dated 2020* (2020 Emergency Response Training Record) for PHMSA to review. PHMSA also reviewed FREC's Training Procedure which stated, in relevant part:

208.1 Training

(a) ...

(d) At least once each calendar year but at no more than 15-month intervals [195.403] the Plant Manager will review with personnel their performance in meeting the objectives of the emergency response training program. The review will also include job performance of operation and maintenance personnel to see if the O&M procedures outlined in this manual are being followed. The results of the review will be documented.

The 2020 Emergency Response Training Record did not include information demonstrating that the Plant Manager reviewed the performance of O&M personnel in meeting the objectives of the emergency response training program or that they were following the O&M procedures outlined in FREC's manuals, as required by 208.1(d) of FREC's Training Procedure.

PHMSA requested the missing information and in an email communication subsequent to the inspection, FREC submitted its 2020 online training records.² However, these records also did not include verification that the Plant Manager confirmed employees are meeting the objectives of FREC's emergency response training program or following the O&M procedures, as the Training Procedure required.

Therefore, FREC failed to follow its manual of written procedures in accordance with § 195.402(a) by failing to review with O&M personnel their performance in meeting the objectives of the emergency response training program.

2. § 195.402 Procedural manual for operations, maintenance, and emergencies

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal

¹ 49 CFR 195.403(b) At the intervals not exceeding 15 months, but at least once each calendar year, each operator shall:

(1) Review with personnel their performance in meeting the objectives of the emergency response training program set forth in paragraph (a) of this section; and

(2) Make appropriate changes to the emergency response training program as necessary to ensure that it is effective.

² Violation Report, at Exhibit A (Fore River EHS Online Training, dated 01012020).

operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

FREC failed to follow its manual of written procedures. Specifically, FREC failed to follow its Training Procedure regarding training and knowledge verification of its supervisors in accordance with § 195.403(c).³

During the inspection, PHMSA reviewed FREC's Training Procedure and requested records verifying that supervisors maintain a thorough knowledge of the emergency response procedures they were responsible for ensuring compliance for calendar years 2019 and 2020. Section 208.1(g) of FREC's Training Procedure stated, "[T]he Plant Manager is also responsible for verifying that the Supervisors maintain a thorough knowledge of procedures outlined in this section through annual performance appraisals."⁴ FREC did not provide any records or performance appraisals verifying its supervisors maintain a thorough knowledge of emergency response procedures for these calendar years.

When PHMSA requested the missing records, FREC discussed how there were no records which specifically verified supervisors maintain a thorough knowledge of emergency response procedures. Additionally, FREC stated that its performance appraisals do not contain supervisor knowledge verification as specified in its procedures. Therefore, FREC declined to show PHMSA these documents.

FREC did provide documentation of the training it conducted in 2019 and 2020 on the Integrated Contingency Plan (FRP, SPCC and Pipeline). However, this training did not contain an annual knowledge or performance review of emergency response supervisors. Ultimately, FREC was unable to demonstrate that it had followed its Training Procedure regarding knowledge verification of its emergency response supervisors.

Therefore, FREC failed to follow its manual of written procedures for training and knowledge verification of its emergency response supervisors in accordance with § 195.403(c), as required by § 195.402(a).

³ § 195.403 Emergency response training.

(a) ...

(c) Each operator shall require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance.

⁴ Violation Report, at Exhibit A (Section 200 OM, dated 01222021, at 23). Included in the section referenced by 208.1(g) are emergency response procedures. *See* Violation Report, at Exhibit A (Section 200 OM, dated 01222021).

3. **§ 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) ...

(13) **Periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found**

FREC failed to periodically review the work done by its personnel to determine the effectiveness of its procedures used in normal operation and maintenance, and take corrective action where deficiencies were found.

During the inspection, PHMSA requested records related to effectiveness reviews required by § 195.402(c)(13) for calendar years 2019 and 2020. FREC stated that they do not have records related to effectiveness reviews and do not conduct effectiveness reviews for personnel.

Therefore, FREC failed to conduct periodic reviews of work done by its personnel during 2019 and 2020 to determine the effectiveness of its procedures used in normal operation and maintenance in accordance with § 195.402(c)(13).

4. **§ 195.577 What must I do to alleviate interference currents**

(a) **For pipelines exposed to stray currents, you must have a program to identify, test for, and minimize the detrimental effects of such currents.**

FREC failed to have a program in place to identify, test for, and minimize the detrimental effects of stray currents. Specifically, FREC failed to test for and minimize detrimental effects of stray interference currents on their pipeline system.

During the inspection, PHMSA requested records related to interference currents for calendar years 2019 and 2020. FREC provided its 2019 and 2020 *Cathodic Protection Data Form* (CP Record). However, the CP Records did not include any data or information related to interference currents. When PHMSA asked where this information was located, FREC stated that they do not have records related to checks for interference currents. FREC indicated that there are pipelines owned by other operators neighboring their pipeline but that the potentials were not high enough to interfere with their pipe. However, when PHMSA asked for additional records regarding stray current interference, FREC was unable to produce documentation to confirm the validity of that statement.

Therefore, FREC failed to have a program to identify, test for, and minimize detrimental effects of stray currents in accordance with § 195.577.

Proposed Compliance Order

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not 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 documents involved in this case and have decided not to propose a civil penalty assessment at this time.

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 Fore River Energy Center. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Warning Items

With respect to Items 1, 3, and 4, 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 these items. Failure to do so may result in additional enforcement action.

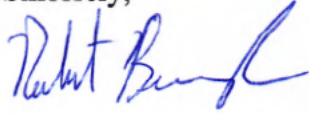
Response to this Notice

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. 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 1-2021-065-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert Burrough".

Robert Burrough
Director, Eastern Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

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

PROPOSED COMPLIANCE ORDER

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

- A. In regard to Item 2 of the Notice, pertaining to FREC's failure to follow its training procedure regarding emergency response supervisors, FREC must modify its emergency response training procedures to reference the applicable form(s) which are being used to verify that emergency response supervisors are knowledgeable of the emergency response procedures for which they are responsible for. FREC must also train its applicable emergency response supervisors on the updated procedures. FREC must complete these updates and trainings within 90 days of receipt of Final Order.
- B. It is requested (not mandated) that FREC maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Robert Burrough, Director, Eastern Region, PHMSA. 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.