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April 29, 2022

Mr. Robert Burrough
Director, Eastern Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety
Administration
840 Bear Tavern Road, Suite 300
West Trenton, New Jersey 08628

Via Email: Robert.Burrough@DOT.gov

Re: Wolverine Pipe Line Company ("Respondent")
Request for Hearing
Statement of Issues
CPF No. 1-2022-023-NOPV

Dear Mr. Burrough:

This letter serves as a request by Respondent for a hearing in response to the Notice of Probable Violation and Proposed Compliance Order dated March 31, 2022 (the "NOPV"), which was received by Respondent via email on the same date. In the NOPV, PHMSA alleges four violations of the pipeline safety regulations, issuing warnings for three of the alleged violations (NOPV Items 1, 2, and 4) and proposing to issue a compliance order in connection with a fourth alleged violation (NOPV Item 3).

Pursuant to 49 C.F.R. §§ 190.208(b)(4) and 190.211, Respondent respectfully requests a hearing on NOPV Item 3 and the associated Proposed Compliance Order. As to the remaining NOPV Items 1, 2, and 4, Respondent has submitted a written response by separate writing.

Attached, please find Respondent's Statement of Issues which it submits pursuant to 49 C.F.R. §190.211(b). Respondent reserves the right to supplement and/or amend its Statement of Issues at or before the hearing.

Please be advised that Respondent intends to be represented by in-house counsel and outside counsel in connection with the requested hearing. Respondent also intends, pursuant to 49 C.F.R. §190.211(f), to have a court reporter prepare a transcript of the hearing. Respondent will bear all costs of same and will submit a copy of same to the case file.



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Respondent respectfully requests that the Presiding Official to whom this case is assigned forbear from setting the hearing for at least 30 days to allow the parties a reasonable opportunity to commence discussions toward settlement and/or simplification of the issues.¹ Respondent intends to contact PHMSA Eastern Region promptly, and Respondent will work with PHMSA to apprise the Presiding Official of progress in said discussions.

Thank you for your attention to this matter, and please do not hesitate to contact me with any questions you might have in this regard.

Sincerely,

A handwritten signature in blue ink that reads "Roina Baker".

Roina Baker

Counsel for Respondent

cc: Mr. Vince Murchison (Via Email: Vince.Murchison@Pipelinelegal.com)
Mr. Richard Mourglia (Via Email: Richard_Mourglia@wplco.com)
Mr. Kurt Barclay (Via Email: Kurt_Barclay@wplco.com)
Mr. Matthew Dunne (Via Email: Matthew_Dunne@wplco.com)
Mr. Thomas Slosson (Via Email: Thomas_Slosson@wplco.com)

¹ Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020; Sec. 108 (Dec. 27, 2020).



PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
WASHINGTON, DC 20590

In the matter of:	§	
	§	
	§	
Wolverine Pipe Line Company	§	CPF No. 1-2022-023-NOPV
	§	
Respondent	§	
	§	

**STATEMENT OF ISSUES
OF
WOLVERINE PIPE LINE COMPANY
TO
NOTICE OF PROBABLE VIOLATION
AND
PROPOSED COMPLIANCE ORDER**

Wolverine Pipe Line Company (“Respondent”) submits this Statement of Issues pursuant to 49 C.F.R. § 190.211(b) in connection with its request for a hearing pursuant to 49 C.F.R. § 190.208(b)(4).

BACKGROUND

By letter dated March 31, 2022, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) issued to Respondent a Notice of Probable Violation and Proposed Compliance Order (collectively, the “NOPV”), CPF No. 1-2022-023-NOPV, which was received by Respondent via email on the same date. The subject NOPV relates to a PHMSA inspection of Respondent’s Control Room in Portage, Michigan, which occurred from November 16, 2020 through November 20, 2020.

In the NOPV, PHMSA alleges four violations of the pipeline safety regulations promulgated at 49 C.F.R. Part 195, issuing warnings for three of the four alleged violations (NOPV Items 1, 2, and 4) and proposing to issue a compliance order in connection with the fourth alleged violation (NOPV Item 3), all pursuant to the procedural and enforcement regulations promulgated at 49 C.F.R. Part 190, Subparts A and B.

As to the NOPV Warning Items, Items 1, 2, and 4, Respondent has submitted a written response by separate writing of even date herewith.

As to the alleged violation of NOPV Item 3 and the associated proposed compliance order, Respondent herein states its issues. By letter of even date herewith, Respondent has requested a hearing in this matter, and this Statement of Issues is served therewith.

THE ALLEGED VIOLATION

Respondent states below its factual, legal and/or regulatory issues that relate to the alleged violation of NOPV Item 3. The paragraph below begins with a citation to the subject regulation and a summary of the agency's allegations.

3. 49 C.F.R. § 195.446(e)(5) – Control room management; Alarm management

PHMSA alleges that Respondent “failed to include in its written alarm management plan provisions to monitor the content and volume of general activity being directed to and required of each controller at least once each calendar year, but at intervals not exceeding 15 months, to assure controllers have sufficient time to analyze and react to incoming alarms.” PHMSA further alleges that, during the inspection, PHMSA requested Wolverine’s procedures for monitoring the content and volume of general activity being directed at the controllers to assure that the controllers have sufficient time to analyze and react to incoming alarms. PHMSA alleges that Respondent provided *WPLCO OCC Control Room Management Plan*, Section 8.26 (CRM Section 8.26), which PHMSA alleges contained a one-sentence recitation of the regulation. Though Respondent submitted workload studies for 2017, 2018 and 2019 to explain how CRM Section 8.26 is implemented, PHMSA alleges that the records “did not clarify the process or provide evidence of a clear understanding of the regulatory requirements.” PHMSA finally concludes that Respondent “failed to include in its written alarm management plan provisions to monitor the content and volume of general activity being directed to and required of each controller to assure controllers have sufficient time to analyze and react to incoming alarms.”

Respondent disputes and objects to the allegations stated in Item 3 of the NOPV, on the following grounds:

- a. PHMSA has failed to meet its burden of proof that a violation occurred.
- b. The alleged violation is not supported by the evidence in the case file.
- c. The alleged violation is not supported by the relevant facts.
- d. The NOPV fails to adequately make factual findings or to explain, discuss, or analyze the conclusion that Respondent is in violation of the subject regulation in the manner alleged.
- e. The NOPV fails to explain its conclusions in a manner that is sufficient to allow Respondent a reasonable opportunity to prepare an adequate defense.
- f. Given the manner in which the cited regulation is being applied in this alleged violation, PHMSA has failed to provide Respondent, or the regulated community as a whole, fair notice of the agency’s interpretation of the subject regulation.
- g. PHMSA has failed to provide, or indeed suggest, a rational connection between the facts found and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.

- h. The content of the PHMSA case file provided to Respondent fails to fulfill the requirements of Section 108 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020; as a result, Respondent is precluded from access to all relevant facts in the agency's possession and thus is denied a full and fair opportunity to respond to the agency's allegations.

THE PROPOSED COMPLIANCE ORDER

PHMSA proposes to order Respondent to perform the following actions, as to each of which Respondent states the following issues:

1. Regarding the directive associated with alleged violation Item 3 of the NOPV, that Respondent is to revise the *WPLCO OCC Control Room Management Plan* to include a detailed procedure for conducting workload studies pursuant to § 195.446(e)(5), same within 30 days of the Final Order:
 - a. To the extent that PHMSA is unable ultimately to prove a violation, this proposed compliance order cannot be imposed and, therefore, must be withdrawn.
 - b. PHMSA has neither proffered any evidence, made any factual finding, nor provided any explanation, discussion or analysis of the manner in which the alleged violation or the public interest warrant the issuance of the proposed compliance order; *see* 49 C.F.R. § 195.217. On those grounds, this proposed compliance order must be withdrawn in its entirety.
2. Regarding the directive associated with alleged violation Item 3 of the NOPV, that Respondent is to conduct a quantitative analysis of controller tasks and determine whether controllers have adequate time to respond to alarms, same within 180 days of the Final Order:
 - a. To the extent that PHMSA is unable ultimately to prove a violation, this proposed compliance order cannot be imposed and, therefore, must be withdrawn.
 - b. PHMSA has neither proffered any evidence, made any factual finding, nor provided any explanation, discussion or analysis of the manner in which the alleged violation or the public interest warrant the issuance of the proposed compliance order, *see* 49 C.F.R. § 195.217. On those grounds, this proposed compliance order must be withdrawn in its entirety.

CONCLUSION

At the hearing in this matter, Respondent intends to bring forth evidence in the form of documents and/or witness testimony, as well as to examine the evidence, documents and any witness testimony presented or introduced by PHMSA. Respondent also will present its arguments in support of the issues stated heretofore. Respondent reserves the right to amend and supplement this Statement of Issues at or before the hearing.

COUNSEL FOR RESPONDENT WOLVERINE PIPE LINE COMPANY

April 29, 2022



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Matthew P. Dunne, Vice President & Manager

April 29, 2022

Mr. Robert Burrough
Director, Eastern Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
840 Bear Tavern Road, Suite 300
West Trenton, New Jersey 08628

Re: Wolverine Pipe Line Company ("Wolverine" or "Respondent")
Written Response
CPF No. 1-2022-023-NOPV

Dear Mr. Burrough,

Respondent submits this written response to Items 1, 2, and 4 in the above-captioned Notice of Probable Violation and Proposed Compliance Order dated March 31, 2022 ("NOPV"). By separate writing of even date herewith, Respondent has requested a hearing and submitted its Statement of Issues for NOPV Item 3.

At the outset, Respondent wishes to assure PHMSA that Wolverine is committed to maintaining thorough, comprehensive, and safe operations, which includes Wolverine's Control Room Management.

Pursuant to the provisions of 49 C.F.R. 190, Subpart B, Respondent submits the following response and additional information for your consideration. Respondent addresses NOPV Items 1, 2, and 4 by providing the subject regulation, a summary of PHMSA's allegation, and Respondent's response to same.

ITEM 1 – 49 C.F.R. § 195.446(a) Control room management; General.

- (a) **General.** This section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this section. ...

PHMSA alleges that Respondent "failed to follow its *WPLCO OCC Control Room Management Plan*, Section 8.27 Alarm Management Review which required a review of its alarm management plan at least once each calendar year, at intervals not to exceed 15 months for the 2018 calendar year, in accordance with § 195.446(e)(4)." PHMSA further alleges that, during the inspection, records of annual reviews were requested for the years of 2018, 2019 and 2020. PHMSA alleges that, while Respondent presented records demonstrating that its plan was reviewed in 2017, 2019 and 2020, Respondent did not present records of a 2018 review. PHMSA finally concludes that Wolverine "failed to [follow] its *WPLCO OCC Control Room Management Plan*, Section 8.27 Alarm Management Review which required that it perform an annual review of its alarm management plan in 2018, as required by § 195.446(e)(4)."

Wolverine's response:

Respondent respectfully requests that this warning item be withdrawn on the following basis:

Respondent completed the required annual review of the Alarm Management Plan on 8/7/2018. Evidence of this compliance was displayed on Respondent's computer screen via video share with the lead inspector during the inspection. Reference Appendix A attached hereto. PHMSA did not subsequently request an electronic or hard copy of Appendix A and Respondent should not be penalized for PHMSA's failure to collect a copy of the evidence provided.

ITEM 2 – 49 C.F.R. § 195.446(c)(3) Control room management; Provide adequate information.

(a) ...

(c) Provide adequate information. Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following:

(1) ...

(3) Test and verify an internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months;

PHMSA alleges that Respondent "failed to test and verify an internal communication plan for providing adequate means for manual operation of its pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months." PHMSA further alleges that, during the inspection, records demonstrating that Wolverine tested and verified its internal communication plan for manual operation of the pipeline were requested for the years of 2018, 2019 and 2020. PHMSA alleges that Wolverine provided records only of the creation of a plan in 2020. PHMSA finally concludes that Respondent "failed to test and verify an internal communication plan for manual operation of its pipeline safely in 2018 and 2019."

Wolverine's response:

Respondent does not contest the allegations contained in NOPV Item 2.

ITEM 4 – 49 C.F.R. § 195.446(h)(5) Control room management; Training.

(a) ...

(h) Training. Each operator must establish a controller training program and review the training program content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months. An operator's program must provide for training each controller to carry out the roles and responsibilities defined by the operator. In addition, the training program must include the following elements:

(1) ...

(5) For pipeline operating setups that are periodically, but infrequently used, providing an opportunity for controllers to review relevant procedures in advance of their application;

PHMSA alleges that Respondent "failed to establish a controller training program that included an opportunity for controllers to review relevant procedures in advance of their application for pipeline operating setups that are periodically, but infrequently, used." During the inspection, PHMSA alleges it requested training procedures and documentation relevant to operating setups that are periodically, but infrequently, used. PHMSA further alleges that Respondent referred to *WPLCO OCC Control Room Management Plan*, Section 11.1 *Controller Training for Roles and Responsibilities*, which states that "[t]he full guidance, philosophy, and annual review documentation are in the Operations Control Center training program document." PHMSA alleges that Section 11 "failed to include training details or a list of infrequently used operating setups and procedures."

PHMSA further alleges that the "Infrequent Operation" section of the Wolverine OCC training program document states, "a list of infrequent operations is available for review... [t]his guide will provide a general overview of the operation, point to specific document as applicable." PHMSA alleges that upon requesting this guide, Respondent was unable to provide it or any related documentation. PHMSA finally concludes that Respondent "failed to establish a controller training program that included an opportunity for controllers to review relevant procedures in advance of their application for pipeline operating setups that are periodically, but infrequently, used."

Wolverine's response:

Respondent respectfully requests that this warning item be withdrawn for the following reasons:

Evidence of Respondent's compliance, the Wolverine *Infrequent Operations Guide*, was displayed on Respondent's computer screen via video share with the lead inspector during the inspection. The guide is attached hereto as Appendix B. Additionally, on February 25, 2021, Respondent offered to provide a copy of the guide to PHMSA, if needed. PHMSA did not subsequently request an electronic or hard copy of Appendix B and Respondent should not be penalized for PHMSA's failure to collect a copy of the provided evidence.

Please note that Appendix A and Appendix B contain proprietary confidential information that Wolverine keeps private, and same are submitted to PHMSA in expectation of protection from disclosure pursuant to 5 U.S.C. § 552(b)(4) and/or the Critical Infrastructure Information Act of 2002. If any or all documents, including the attached Appendices, become subject to a FOIA request in the future, Wolverine requests that PHMSA notify Wolverine and follow the agency's procedures pursuant to 49 C.F.R. § 7.23.

In conclusion, Wolverine and PHMSA share a common goal of safe and flawless operations in full compliance with all the laws, rules and regulations applicable to our operations. Thank you for your consideration of this written response and the additional information provided.

Respectfully,



Matthew P. Dunne