

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

OVERNIGHT EXPRESS DELIVERY

August 18, 2022

Mr. André Cangucu
President and Chief Executive Officer
Neptune LNG, LLC
1360 Post Oak Boulevard #400
Houston, Texas 77056

CPF 1-2022-049-NOPV

Dear Mr. Cangucu:

From June 7 through June 11, 2021, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected Neptune LNG, LLC's (Neptune) pipeline system located on the outer continental shelf adjacent to the Massachusetts Bay.

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 (C.F.R.). The items inspected and the probable violations are:

1. § 192.453 General.

The corrosion control procedures required by § 192.605(b)(2), including those for the design, installation, operation, and maintenance of cathodic protection systems, must be carried out by, or under the direction of, a person qualified in pipeline corrosion control methods.

Neptune failed to demonstrate that its corrosion control procedures required by § 192.605(b)(2),¹ including those for the design, installation, operation, and maintenance of cathodic protection

¹ § 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) ...

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

(1) ...

(2) Controlling corrosion in accordance with the operations and maintenance requirements of Subpart I of this part.

systems, were carried out by, or under the direction of, a person qualified in pipeline corrosion control methods in accordance with § 192.453.

During the inspection Neptune failed to provide sufficient operator qualification records demonstrating that the individuals overseeing and performing OQ covered tasks related to corrosion control were qualified to do so. The provided records indicated that the training and qualification of individuals performing or overseeing cathodic protection readings was limited to a single one-hour presentation, *Operator Qualification, dated May 2021*, for cathodic protection readings. The one-hour presentation for OQ training, delivered in 2018 and then again in 2021, reviewed several covered tasks, including “OQ#5 Cathodic Protections,” a task which did not align with any tasks described in Neptune’s NE Gas Association OQ program. Additionally, Neptune provided a sign-in sheet, *OQ Training for Semper Marine and Diving*, dated June 18, 2018, but it only included a description and a list of names. Neptune failed to provide records indicating that the participants of the June 2018 training were evaluated to ensure they did acquire or maintain the knowledge needed to perform the OQ covered tasks presented during the training, including but not limited to, “OQ#5 Cathodic Protections.” Finally, Neptune failed to provide industry-sponsored training records, such as National Association of Corrosion Engineers training or other recognized corrosion control association, that indicated that the individuals overseeing and performing OQ covered tasks related to corrosion control were qualified to do so.

Therefore, Neptune failed to demonstrate that its corrosion control procedures required by § 192.605(b)(2), including those for the design, installation, operation, and maintenance of cathodic protection systems, were carried out by, or under the direction of, a person qualified in pipeline corrosion control methods in accordance with § 192.453.

2. § 192.603 General provisions.

(a) ...

(b) Each operator shall keep records necessary to administer the procedures established under § 192.605.

Neptune failed to keep records necessary to administer the procedures established under § 192.605 in accordance with § 192.603(b). Specifically, Neptune failed to keep records that indicate its manual of written procedures for conducting operations and maintenance activities and for emergency response was reviewed and updated at intervals not exceeding 15 months, but at least once each calendar year as required by § 192.605(a).²

During the inspection PHMSA requested records demonstrating that Neptune had reviewed and updated its procedural manuals at intervals not exceeding 15 months, but at least once each calendar year. Neptune provided its manual, *Neptune LNG Deepwater Port: Operations*,

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

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

Maintenance, and Emergency Response Procedure Manual: Appendix “J” To The Neptune Deepwater Port Operations Manual, dated May 2020 (O&M). Item 2 in the *Normal Operating and Maintenance Procedures* in the O&M included a requirement to perform an annual review of the manual. Neptune indicated that it included a table of revisions on page 3 of the O&M. The table included each review and revision of the O&M. This table failed to document the day the annual review was completed from 2013 to 2020, the specific procedures that were reviewed, and if the entire manual was reviewed, as required under § 192.605(a).

Therefore, Neptune failed to keep records necessary to administer the procedures established under § 192.605 in accordance with § 192.603(b).

3. § 192.603 General provisions.

(a) ...

(b) Each operator shall keep records necessary to administer the procedures established under § 192.605.

Neptune failed to keep records necessary to administer its procedures established under § 192.605. Specifically, Neptune failed to keep records that sufficiently document that liaison has been established and maintained with appropriate fire, police, public officials, and utility owners as required by § 192.615(c).³

During the inspection Neptune provided a spreadsheet, *Visitor/Meeting/Effectiveness Log*, as record of establishing liaison with appropriate fire, police, public officials, and utility owners. This record failed to indicate that Neptune:

- Maintained the contact information for the appropriate fire, police, and other public officials.
- Notified the appropriate officials for each pipeline emergency that requires identification and communication.
- Provided the operator emergency response plans to the affected emergency response officials.
- Identified and documented the emergency response responsibilities, capabilities, and resources of each jurisdiction, and determined if those capabilities are considered in its emergency response plans.
- Coordinated mutual response and assistance in the event of a pipeline emergency with each affected jurisdiction.
- Conducted training sessions for affected emergency responders and identified how to communicate that information to emergency responders that did not attend the training.

³ § 192.615 Emergency plans.

(a) ...

(c) Each operator shall establish and maintain liaison with appropriate fire, police, and other public officials to:

- (1) Learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency;
- (2) Acquaint the officials with the operator’s ability in responding to a gas pipeline emergency;
- (3) Identify the types of gas pipeline emergencies of which the operator notifies the officials; and,
- (4) Plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.

Therefore, Neptune failed to keep records necessary to administer its procedures established under § 195.605.

4. § 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

Neptune failed to follow its written procedures. Specifically, Neptune failed to demonstrate it had taken prompt remedial action prior to the next required inspection to correct any deficiencies indicated by cathodic protection (CP) monitoring as required by its O&M and in accordance with § 192.465(d).⁴

Item 3 in the *Corrosion Control Procedures* in the O&M stated in part that “[p]rompt remedial action, prior to the next required inspection, shall be taken to correct any deficiencies indicated by the monitoring.”

During the inspection Neptune provided records that showed a low CP reading, -.660 mV, recorded on 08/16/2018 at the Transition Manifold. The reading taken on 08/16/2018 was “under protected” and thus below the CP criteria listed in section 3.1 *Data Interpretation* in Appendix D in the O&M. Additionally, this reading did not meet the criteria of Appendix D to Part 192 as referenced by § 192.463(a).⁵ Neptune failed to take prompt remedial action to correct the low CP reading. Instead, Neptune took its next CP reading at this site on 08/16/2019 during its subsequent annual inspection. Neptune recorded a new reading of -1050mV, indicating that the system is “well protected.” However, Neptune provided no evidence that it investigated and took prompt action to remediate the low CP reading on 08/16/2018 prior to the next inspection in accordance with its O&M and § 192.465(d).

Therefore, Neptune failed to follow its written procedures in accordance with § 192.605(a).

⁴ § 192.465 External corrosion control: Monitoring.

(a) ...

(d) Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring.

⁵ § 192.463 External corrosion control: Cathodic protection.

(a) Each cathodic protection system required by this subpart must provide a level of cathodic protection that complies with one or more of the applicable criteria contained in Appendix D of this part. If none of these criteria is applicable, the cathodic protection system must provide a level of cathodic protection at least equal to that provided by compliance with one or more of these criteria.

5. **§ 192.605 Procedural manual for operations, maintenance, and emergencies.**

(a) ...

(c) *Abnormal operation.* For transmission lines, the manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

(1) ...

(4) Periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.

Neptune failed to periodically review the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and take corrective action where deficiencies were found in accordance with § 192.605(c)(4).

During the inspection PHMSA requested records demonstrating compliance with the requirement of § 192.605(c)(4). Neptune failed to produce records indicating that it periodically reviewed the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and that it took corrective action where deficiencies were found. Item 8 in the *Abnormal Operating Procedures* in the O&M stated that Neptune would conduct a review after each Abnormal Operating Condition (AOC) and Neptune stated that there were no emergencies or AOCs. However, § 192.605(c)(4) requires a periodic review. Neptune must, at a regular interval, review the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and take corrective action where deficiencies are found. Even if no AOCs occur, Neptune may determine the effectiveness of its abnormal operation procedures in other ways, such as mock tabletop drills, live drills, discussions at safety meetings, or other suitable methods.

Therefore, Neptune failed to periodically review the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and take corrective action where deficiencies were found in accordance with § 192.605(c)(4).

6. **§ 192.615 Emergency plans.**

(a) ...

(b) Each operator shall:

(1) ...

(2) Train the appropriate operating personnel to assure that they are knowledgeable of the emergency procedures and verify that the training is effective.

Neptune failed to demonstrate that appropriate operating personnel were trained to assure that they are knowledgeable of the emergency procedures and failed to verify that the training was effective in accordance with § 192.615(b)(2).

During the inspection Neptune provided a presentation, *Operator Qualification, dated May 2021*, and a sign-in sheet, *OQ Training for Semper Marine and Diving*, dated June 18, 2018. Neptune failed to provide written test scores for individuals that attended the 2018 OQ training and failed to provide records demonstrating that their knowledge of the emergency procedures was verified. Further, Neptune stated that tabletop emergency response drills have not been conducted since 2014 because the facility is under MARAD suspension. However, MARAD suspension does not alleviate the operator from the requirements in Part 192.

Therefore, Neptune failed to demonstrate that appropriate operating personnel were trained to assure that they are knowledgeable of the emergency procedures and failed to verify that the training was effective in accordance with § 192.615(b)(2).

7. § 192.807 Recordkeeping.

Each operator shall maintain records that demonstrate compliance with this subpart.

(a) Qualification records shall include:

(1) ...

(4) Qualification method(s).

Neptune failed to maintain operator qualification records that identify the qualification methods used in accordance with § 192.807(a)(4). Specifically, Neptune's 2018 operator qualification records failed to document the qualification method(s) utilized as required by § 192.807(a)(4).

During the inspection Neptune was unable to produce sufficient 2018 documentation to demonstrate it had measured the competency of OQ-trained personnel. Specifically, Neptune's documentation failed to identify the qualification method to assess the competency of the attendees of the OQ training presentation, *OQ Training for Semper Marine and Diving*, dated June 18, 2018. Neptune failed to provide documentation on the qualification methods, such as the results from written tests, the test questions that were administered, or other means of measuring competency of personnel who performed covered tasks in 2018.

Therefore, Neptune failed to maintain operator qualification records that identify the qualification methods used in accordance with § 192.807(a)(4).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 C.F.R. § 190.223, you are subject to a civil penalty not to exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not 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 documentation involved for the above probable violation and recommend that you be preliminarily assessed a civil penalty of \$15,500 as follows:

<u>Item number</u>	<u>PENALTY</u>
7	\$15,500

Warning Items

With respect to Items 1, 2, 3, 4, 5, and 6, 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. 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 C.F.R. § 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 the 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 1-2022-049-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

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

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