



ONEOK NGL PIPELINE, L.L.C.

A SUBSIDIARY OF ONEOK PARTNERS, L.P.

August 20, 2012

Mr. David Barrett
Director, Central Region
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
901 Locust Street, Suite 462
Kansas City, Missouri 64106-2641

Reference: CPF 3-2012-5012

Dear Mr. Barrett:

By letter dated June 15, 2012, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") issued to ONEOK NGL Pipeline, L.P. ("ONEOK") a Notice of Probable Violation, Proposed Compliance Order ("PCO"), and Proposed Civil Penalty ("PCP"; collectively, the "NOPV"); see Attachment A attached hereto. By letter dated July 10, 2012, PHMSA granted an extension of time to respond to the NOPV, until not later than August 20, 2012.

The NOPV was issued following inspections conducted on July 24-29, August 15-18, and August 22-25, 2011, which involved inspection of ONEOK records for the Medford area in Medford, Oklahoma, and the facilities in Kansas and Oklahoma, as well as inspection of North System facilities and records in Des Moines and Iowa City, Iowa. See NOPV at 1. Subsequent to the subject inspections, PHMSA issued to ONEOK a Request for Specific Information dated October 18, 2011 (see Attachment B attached hereto; the "RFI"), to which ONEOK responded by letter dated November 23, 2011 (see Attachment C attached hereto; the "Response to RFI").

This letter and supporting documents constitute ONEOK's response to the NOPV pursuant to 49 C.F.R. §§ 190.209(a)(2) and 190.209(b)(3). ONEOK does not wish to request a hearing in this matter; however, ONEOK requests a fair and impartial evaluation of the materials submitted herein and herewith in opposition to certain of the alleged violations and in mitigation of the PCP, as well as ONEOK's stated objections to the PCO. ONEOK first addresses the substantive violations alleged in the Items of the NOPV, then, in turn, addresses the PCP and the PCO.

In the paragraphs below, ONEOK restates each Item of the NOPV, then, following each restatement, ONEOK provides its response.

1. §195.49 Annual report

Each operator must annually complete and submit DOT Form PHMSA F 7000-1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year. An operator must submit the annual report by June 15 each year, except that for the 2010 reporting year the report must be submitted by August 15, 2011. A separate report is required for crude oil, HVL (including anhydrous ammonia), petroleum products, carbon dioxide pipelines, and fuel grade ethanol pipelines. For each state a pipeline traverses, an operator must separately complete those sections on the form requiring information to be reported for each state.

For the North System, ONEOK NGL Pipeline L.P. (ONEOK) did not submit separate annual reports for the refined products and diesel that are transported in addition to the HVL transported. All the mileage for these pipelines has been submitted under the HVL annual report.

Since 2007, ONEOK has not been correctly submitting the annual report for the North System. ONEOK's North System transports refined products and diesel on Lines 113, 114, 119, 112, 101, and 103. However, these lines are being reported in the HVL annual report. No separate reports for the refined products are being submitted. ONEOK resubmitted the annual reports for 2010 after this was brought to their attention during PHMSA's inspection.

Response to Item 1

ONEOK does not contest the alleged violation in Item 1. ONEOK wishes to inform PHMSA that it has corrected its process for the filing of the annual report and has completed and timely submitted its DOT Form PHMSA F 7000-1.1 report for 2011 which was due on or before June 15, 2012, in which report the relevant volumes were properly classified in the appropriate commodity classifications.

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

(d) Abnormal operation. 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) Responding to, investigating, and correcting the cause of;

(i) Unintended closure of valves or shutdowns;

(ii) Increase or decrease in pressure or flow rate outside

- normal operating limits;**
- (iii) Loss of communications;**
- (iv) Operation of any safety device;**
- (v) Any other malfunction of a component, deviation from normal operation, or personnel error which could cause a hazard to persons or property.**

ONEOK did not follow up and correct the cause of an abnormal operation that occurred in the Des Moines area in 2010.

ONEOK's procedures specify certain actions that must be taken when abnormal operations occur. On the North System, ONEOK personnel indicated that all abnormal operations are documented in the SHAVERs program. However, review of the records found that the recommended actions noted during the investigation were not addressed or followed up on. For example, SHAVER Report 2494 had a recommendation of investigating why a HI pressure switch remained on SCADA for more than an entire shift without being investigated. At the time of PHMSA's inspection, there was no documentation indicating that this was completed. ONEOK's response to the Letter for Request for Specific Information indicated that they did look into it, but no further action was taken to remedy the situation and to prevent this from happening again.

Response to Item 2

Notwithstanding that PHMSA has issued a warning for this Item, ONEOK wishes to establish a complete record regarding the allegation that ONEOK did not follow-up and correct the cause of an abnormal operation that occurred in the Des Moines area in 2010, specifically SHAVER Report 2494.

In the RFI, PHMSA requested that ONEOK provide "detailed reports on what was performed in response to the incident report (SHAVER #2494) and the incident report on 9/9/2010 (SHAVER #4498)." The Response to RFI (*see* Attachment 5) provided a copy of two reports describing the follow-up actions taken by ONEOK (one report for SHAVER Report 2494 Corrective Actions and one report for SHAVER Report 4498), including the closed action items as logged in the SHAVER tracking system.

ONEOK clearly demonstrated in the Response to RFI that it responded to, investigated, and corrected the cause of each of the situations involving SHAVER Report 2494 and SHAVER Report 4498. Moreover, this subject was further discussed with the PHMSA inspector in multiple telephone conversations between September 7 and 9, 2011, during which conversations ONEOK indicated that the long term corrective action was the upgrade of the SCADA system that is currently underway on the North System, and updated to PHMSA on a monthly basis, under Safety Order CPF No. 3-2011-5008S.

On the basis of the foregoing, ONEOK requests that Item 2 be withdrawn from the alleged violations, given the fact that ONEOK filed a response that indicated the completion of the

action items in its Response to RFI and further that ONEOK had communicated to the PHMSA inspector that the long term solution was the ongoing SCADA upgrades scheduled to take place over the next year.

3. §195.402 Procedural manual for operations, maintenance, and emergencies.

(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:

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

For the Medford area and the North System, ONEOK personnel did not periodically review the work done by personnel to determine the effectiveness of their procedures.

ONEOK was not able to demonstrate that they periodically reviewed work done by personnel to determine the effectiveness of the procedures. Furthermore, ONEOK's procedures indicated that the "ONP Business manager or designee shall be responsible for conducting a review of the work done by personnel, incident, and near miss reports to determine the effectiveness of operating procedures at intervals not exceeding 15 months, but at least once each calendar year." ONEOK did not have any records that indicated that this was being completed.

Response to Item 3

ONEOK contests the violation alleged in Item 3. PHMSA alleges in the NOPV that "ONEOK was not able to demonstrate that they periodically reviewed work done by personnel to determine the effectiveness of the procedures" because "ONEOK did not have any records that indicated that this was being completed." NOPV at 3. The PHMSA Pipeline Safety Violation Report in the record reaches the same conclusion, stating that "ONEOK did not conduct any reviews of their employees [sic] work to determine the effectiveness of their procedures," on the basis that "ONEOK personnel could not provide any example or records to show that any periodic review of any procedure was done." See Pipeline Safety Violation Report CPF 3-2012-5012 at 3 (the "Violation Report"), attached hereto as Attachment D.

ONEOK did in fact follow its procedure, PRC1410.100, the relevant portions of which are stated below:

"The Business Manager or designee shall be responsible for conducting a review of the work done by personnel, incident and near miss reports to determine the effectiveness of operating procedures at intervals not exceeding 15 months, but at least once each calendar year.

Suggested changes or improvement to the procedures discussed during the review shall be forwarded to NGL Business Manager or his/her designee to be considered for incorporation into the procedures."

Two categories of information substantiate that ONEOK followed its procedure and thus complied with the relevant regulation. First, ONEOK convenes a weekly meeting of supervisors from across the operating organization to evaluate incidents and near miss events that might have occurred over the course of the prior week. The meeting is attended by company vice presidents, operations managers, control center managers, and regulatory compliance coordinators. The meetings are conducted to discuss and evaluate the events to identify any necessary changes to operations, procedures, system configuration, and similar elements of operations and so that responsibility for implementing such changes may be assigned. To the extent a procedural deficiency or an enhancement to a procedure is identified, the matter is entered into the SHAVR near-miss database and tracked through to completion. See the email at Attachment E attached hereto for a more detailed description of the weekly meeting. As such, as the relevant procedure directs, a review of near misses and/or incidents, and in turn evaluation of procedures with personnel, was conducted more frequently than at intervals of 15 months.

Second, ONEOK refers PHMSA to its Enforcement Guidance Manual at 49 C.F.R. § 195.402(c), Guidance Information item 26, where 49 C.F.R. § 195.402(c) is described as being directed not to employee evaluation but to refinement of procedures. The Guidance Manual indicates that documentation of the analysis to determine the adequacy of a procedure may come in many forms, including accident and near-miss data, submissions from employees, meetings to discuss procedures, and the like. At Attachment F attached hereto, ONEOK submits as examples several items of information that further substantiate that procedural reviews are undertaken. Those items of information include SHAVR Closed DOT Action Items, an Incident Action Item Tracking log, and a Weekly Event Review Report.

As described above, ONEOK prepared a procedure as required by 49 C.F.R. § 402(a), and it followed that procedure. The weekly managers' meeting includes by necessity evaluation of the effectiveness of procedures, and that meeting takes place each and every week. Further, the additional documents described above further demonstrate that the effectiveness of procedures is reviewed in other contexts as well. ONEOK acknowledges that execution of the procedure was not well-documented; however, the procedure does not require documentation, and neither does 49 C.F.R. Part 195. As such, failure to maintain documentation does not equate to failure to follow the procedure. ONEOK further acknowledges that the maintenance of documentation that a procedure was executed would avoid a similar situation in the future. As part of the annual review of its procedural manual

in 2012, the relevant procedure will be revised to provide a process for documentation of the reviews that are conducted to evaluate the effectiveness of the procedural manual.

On the basis of the foregoing, ONEOK requests withdrawal of the alleged violation in Item 3 since ONEOK did in fact follow its procedure, and ONEOK undertook additional measures to evaluate its operating procedures.

4. §195.422 Pipeline Repairs.

- (a) Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.**

In the Medford area, ONEOK is not making repairs in a safe manner that will prevent damage to persons or property.

ONEOK utilized composite sleeves to repair crack-like indications. Review of inline inspection dig repair reports found one report where a composite sleeve was used as a temporary repair on some crack-like features in the pipe seam in 2008. Consistent with industry standards such as ASME B31.4, the composite sleeve manufacturer's technical guidance specifically states that the composite sleeve is not to be used to repair cracks without grinding out the crack defect. The use of a repair method on a defect for which its use is not permitted by the manufacturer and referenced industry standards is insufficient to safely prevent damage to persons or property.

Response to Item 4

ONEOK does not contest the alleged violation in Item 4. ONEOK has reviewed and refined its procedures to ensure that the circumstance identified in the NOPV does not occur in the future.

5. §195.406 Maximum operating pressure.

- (b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.**

ONEOK did not provide adequate controls and protective equipment at Winterset Station on the North System to ensure that the pressure in the pipeline would not exceed the maximum operating pressure (MOP).

On May 23, 2008, a management-of-change (MOC) memorandum was issued to reduce the pressure on the Massena to Des Moines section of Line 102 because MOP-reducing anomalies were present. This line section included the Winterset pump station and required

that the over-pressure protection be reset to 1930 psig for protection a lower MOP of 1950

psig from the original 2160 psig. On June 6, 2008, a second MOC was issued on Line 102 after a failure occurred on May 31, 2008. The June 6th MOC affected the line segment from Massena to Tabor (downstream of the Massena to Des Moines section) and lowered the MOP to 1704 psig. On June 13, 2008, a third MOC was issued to reduce the maximum operating pressure for the entire Line 102 from Des Moines, Iowa, to Bushton, Kansas. The June 13th MOC was in addition to the June 6th MOC, and superseded the May 23, 2008, MOC.

The MOC issued on June 13, 2008, did not address resetting the pipeline overpressure protection at Winterset pump station. As a result, from the time of the June 13, 2008, MOC to the time of the PHMSA inspection, the set points of the over pressure protection at Winterset remained at 1930 psig, which exceeded the maximum operating pressure. Review of the discharge records during this time period found that the line did not operate at pressures above 1704 psig, but did spike above the 1704 psig MOP for short periods of time during pump start up and shut downs. The line pressures never exceeded the 1704 psig plus 10% (1874psi).

Response to Item 5

PHMSA alleges that ONEOK did not provide adequate controls and protective equipment at Winterset Station on the North System to ensure that the pressure in the pipeline would not exceed the maximum operating pressure (MOP).

ONEOK contests this violation on the grounds that the action required by the relevant regulation was executed, and documentation was provided to PHMSA.

The primary performance obligation of the relevant regulation, 49 C.F.R. § 195.406(b), is that pipeline pressure may not exceed 110% of maximum operating pressure ("MOP") during surges and other variations from normal operations. 49 C.F.R. § 195.406(b). That did not occur, as PHMSA admits in the NOPV which states at Item 5:

Review of the discharge records during this time period found that the line did not operate at pressures above 1704 psig, but did spike above the 1704 psig MOP for short periods of time during pump start up and shut downs. The line pressures never exceeded the 1704 psig plus 10% (1874psi).

By email dated March 19, 2012, ONEOK provided to the inspector records of the pipeline control center discharge pressures over the relevant time period, which records support the conclusion that pipeline operating pressure in the subject system did not exceed the MOP (except as allowed for surges, such as during start ups and shut downs) and at no time did it exceed 110% of MOP. Based upon these records, PHMSA has concluded that the relevant regulation was not violated.

The relevant regulation provides secondarily that an operator must provide adequate controls and protective equipment to control the pressure within the 110% of MOP limit. ONEOK at all relevant times has maintained adequate controls and protective equipment in place and ONEOK endeavored to demonstrate that to the inspector. ONEOK describes and explains its controls and protective equipment in the following paragraphs.

Overpressure protection (*i.e.*, preventing pressure above 110% MOP) is provided on ONEOK Line 102 through various physical overprotection devices providing layers of protection (control valves, pressure relief devices, collectively "OPDs") that can have local settings, as well as through SCADA-controlled pressure set points (transmitters, parameter alarms, and SCADA limits to parameter alarms). In concert, those OPDs and the SCADA system provide overpressure protection to Line 102. In the case of a June 13, 2008 management of change ("MOC") directive, the MOP of Line 102 was set at 1704 psig which necessitated re-setting SCADA operating parameters. ONEOK does not argue that the Winterset pump station OPD was not reset as part of the MOC process; however, that OPD is not the only control in place to prevent an overpressure event, and was not the primary overpressure control device. The MOC process provided that the pipeline control center would, as it did, adjust programmable logic control points in the SCADA system to provide the primary pressure control at Winterset pump station.

Such administrative controls clearly are acceptable to PHMSA. Reference to the PHMSA Enforcement Guidance Manual, at the provisions relating to 49 C.F.R. § 195.406, identifies the following: "Administrative change control procedures are considered a part of the pressure control system." Enforcement Guidance Manual at 49 C.F.R. § 195.406, Guidance Information. As such, the set points established in the pipeline control center are a part of the pressure control system and qualify to satisfy the dictates of 49 C.F.R. § 195.406(b).

Finally in this regard, PHMSA is reminded that the Pipeline Safety Regulations at 49 C.F.R. Part 195 are performance-based regulations. As stated by PHMSA's predecessor agency, the Federal Railroad Administration, the regulations are intended to be "'performance' type requirements rather than detailed 'specification' type requirements...". 33 Fed.Reg. 10213, 10214 (July 17, 1968). Such performance based regulations are designed such that "the goal is the safe transportation ... through pipelines; the regulation relates to the goal, not the means used to achieve the goal." *Id.* The relevant regulation, 49 C.F.R. § 195.406(b) is directed to preventing pipeline pressures from exceeding 110% of MOP, and that did not occur. In sum, ONEOK did not violate the regulation. ONEOK requests that the alleged violation alleged in Item 5 be withdrawn.

6. §195.428 Overpressure safety devices and overfill protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7 ½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief

valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

For the Winterset pump station on the North System, ONEOK did not adequately check the overpressure protection device for reliability of operation at 1930 psig for the service in which it is used from October 2008 to the time of PHMSA's inspection.

In May of 2008, a Management of Change (MOC) was issued on the Des Moines to Massena section of Line 102 to change the over-pressure protection set points to 1930 psig. This set-point remained in effect until the PHMSA inspection in 2011. The semi-annual inspection of the transmitter utilized as the over-pressure protection of the new maximum operating pressure (MOP) simply documented that the transmitters were calibrated and spanned, but there was no indication that the device activated at the set point (1930 psig) at which the transmitters send the signals to shut down the pumps.

After PHMSA's onsite inspection, in September of 2011, ONEOK personnel reset the physical shut down switch to protect at a MOP of 1704 psig.

Response to Item 6

ONEOK contests Item 6. PHMSA alleges that, at the Winterset Pump Station on the North System, ONEOK did not "adequately check" the overpressure protection device for reliability of operation at 1930 psig on the basis that "inspection of the transmitter utilized as the over-pressure protection of the new maximum operating pressure (MOP) simply documented that the transmitters were calibrated and spanned, but there was no indication that the device activated at the set point" to send the signal to shut down the pump. NOPV at 5.

As an initial matter, ONEOK asserts the alleged violation is not supported by the proffered evidence. The NOPV states a conclusion but does not provide a statement of the evidence as directed by 49 C.F.R. § 190.207(b)(1). The alleged violation fails on that point alone.

Nonetheless, in the Response to RFI, ONEOK described the logic sequence that causes the subject pressure transmitters to serve as the OPD and effect shutdown at the necessary pressure threshold. *See* Response to RFI at Attachment 3. Following submission of the Response to RFI, the inspector inquired numerous times regarding the system configuration, the pressure transmitter, and related subjects, but never was the question asked whether or not the transmitter effected a pump shutdown at the threshold pressure. *See* emails from PHMSA inspector to ONEOK dated November 30, 2011; December 7, 2011; December 20, 2011 (two inquiries); March 12, 2012; March 13, 2012; March 14, 2012; and March 19, 2012, Attachment G. The testing of the transmitter, which occurred within the time periods prescribed by regulation without lapse throughout the period in question (*see* Response to RFI at Attachments 2 and 3), did in fact "send the signal to shut down the pump." The manner in which the signal is generated is described in the following paragraph.

At the time a technician performs the necessary inspection and test, the technician attaches a test set (an electronic instrument) to the local programmable logic controller ("PLC") and causes the transmitter electronically to detect a pressure that exceeds the maximum set point limits (HI and HIHI) during the process of checking the transmitter span. The result of that test takes two forms depending upon whether or not the pumping unit is in operation at the time of the test. (For reasons of safety, ONEOK does not effect an actual shutdown if the pump is in operation at the time of the test.) In the case of a pump that is not in operation, the test causes the PLC to issue a "HI fault" alarm and a "HI HI fault" alarm, both of which are recorded in the PLC alarm log and are uploaded to the SCADA system central alarm log. In the case of a pump that is not in operation, the technician first pushes a "bypass" button in the PLC which has the effect of diverting the shut-down signal so that the operating pump does not actually shut down. The result in this case is that the "HI fault" alarm, the "HI HI fault" alarm, and a "Bypass" indicator are recorded in the PLC alarm log and are uploaded to the SCADA system central alarm log. Attachment H attached hereto presents an email from Randy Dulaney, Lead I&E Technician, dated August 16, 2012, in which Mr. Delaney describes the testing process and the manner in which alarms are issued and logged. In addition, Attachment H presents an example of the actual alarm logs from the October 15, 2008 inspection, showing that the above-described alarms were logged at the same points in time as the transmitter was calibrated and spanned.

Moreover, again ONEOK asserts that PHMSA must compare that regulatory requirement to the action taken to fulfill that requirement. The relevant regulation, 49 C.F.R. § 195.428, provides that an operator must "inspect and test" each item of pressure control equipment (in sum, OPDs) to determine that it is "functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability" for the service in which it is applied. 49 C.F.R. § 195.428. That action was accomplished as demonstrated by the records provided at Attachment 3 to the Response to RFI and further illustrated through the example alarm logs provided in Attachment H. Finally in this regard, the generation of the pump shut-down alarms is not recorded on the manually-completed inspection records since the record of the shut-down signal is preserved in the SCADA system.

ONEOK requests that the alleged violation be withdrawn on the grounds that ONEOK performed the tests and inspections in accordance with its procedure, which tests and inspections fulfilled the regulatory obligation, and thus no violation occurred.

7. §195.569 Do I have to examine exposed portions of buried pipelines?

Whenever you have knowledge that any portion of a buried pipeline is exposed, you must examine the exposed portion for evidence of external corrosion if the

pipe is bare, or if the coating is deteriorated. If you find external corrosion requiring corrective action under Sec. 195.585, you must investigate circumferentially and longitudinally beyond the exposed portion (by visual examination, indirect method, or both) to determine whether additional corrosion requiring remedial action exists in the vicinity of the exposed portion.

ONEOK is not inspecting their pipelines when they utilize a vacuum excavation process to expose their lines for the purposes of confirming pipeline location.

During the review of locate records and Inspect and Investigate (INI) forms, it was noted that ONEOK utilizes an excavation process that vacuums out soil to locate pipelines. This is performed to confirm the location and depth of the pipelines when a foreign utility is intended to cross ONEOK's pipelines. The pipeline does become exposed during this process; however, the exposed pipe section where the condition of the pipe is supposed to be recorded on the INI form was left blank. Further discussion with ONEOK personnel indicated that they were not doing the inspections.

Response to Item 7

PHMSA alleges that ONEOK is not inspecting its pipelines when it utilizes a vacuum excavation process to expose their lines for the purposes of confirming pipeline location. PHMSA further states that the term "exposed" includes the use of "hydro-vac" pipe location methods.

The process of hydro-vac pipe location involves the jetting of water into the soil, and vacuuming the water and soil into a truck with a hose that is approximately four to eight inches in diameter. This produces a hole, akin to a bore hole, that does not allow access by personnel to examine the pipe or coating condition. While one may identify the pipe for locating purposes, the pipe nonetheless is not accessible for purposes of inspecting the pipe or the condition of the coating. ONEOK believes that the use of hydro-vac equipment improves the safety of third party excavation near and adjacent to operating pipelines, but it is not intended to "expose" the pipe in the manner that was contemplated when the regulations were promulgated. This method of excavation employs a relatively new technology that had not been developed at the time the relevant regulation was promulgated.

The PHMSA Enforcement Guidance manual provides that the purpose of the regulation is to prevent accidents due to the existence of harmful corrosion near the area of pipe exposure. This regulation was intentionally designed to permit varying approaches to compliance because of the different conditions that are encountered at excavation sites. A hydro-vac site is not a traditional excavation site, again, a type of excavation that could not have been within the contemplation of the regulation when it was originally promulgated. *See* 33 Fed.Reg. 10213, 10223 (July 17, 1968) (49 C.F.R. § 180.416(e)).

As a result, imposing the requirement that such an examination occur under circumstances where such an examination is physically impossible is neither consistent with nor in harmony with the intent of the regulation. To allege a violation for an impossible task would appear to penalize an operator in a circumstance for which there is no defense.

ONEOK would add that hydro-vac is almost always not considered "excavation" by state one-call laws and does not require a one-call. The intent of the rule was for excavation sites

where there was access available by personnel to examine the pipe and coating surface which is not possible in a hydro-vac hole.

On the basis of the foregoing, ONEOK requests that the alleged violation be withdrawn.

Proposed Civil Penalties

Under 49 United States Code, §60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$78,600 as follows:

<u>Item number</u>	<u>PENALTY</u>
3	\$32,100
6	\$46,500

Response to Proposed Civil Penalties

ONEOK addresses, in the sections below, each of the Items of the NOPV for which PHMSA has proposed a civil penalty.

Proposed Civil Penalty for Item 3

PHMSA's proposed civil penalty for NOPV Item 3 should be withdrawn on the grounds that no violation occurred, or it should be substantially reduced on the grounds that the penalty assessment considerations of 49 C.F.R. § 129.225 are not sufficiently substantiated.

First, ONEOK asserts that it has established in this response that it did in fact fulfill its regulatory obligations under 49 C.F.R. § 195.402(c)(13) and that, as such, no civil penalty is supported. *See* discussion above in *Response to Item 3* and 49 C.F.R. § 190.221.

Second, ONEOK asserts that the penalty assessment considerations of 49 C.F.R. § 190.225 are unsubstantiated in both the NOPV and the Violation Report. The NOPV contains no discussion of the penalty assessment considerations. As to the Violation Report, the penalty assessment considerations relating to NOPV Item 3 are unsubstantiated. The factor of gravity concludes that "pipeline integrity or safe operation was potentially comprised in others [sic] areas." Violation Report at 4. Yet, no facts are alleged regarding pipeline integrity, regarding safe operation, nor regarding the meaning of "other areas." Only a broad and general statement of the overall intent of the relevant regulation is provided, but that statement is factually and analytically unsubstantiated. The factor of culpability reflects a

conclusion that the “operator failed to take any action or made a minimal attempt to comply with a regulatory requirement that was clearly applicable.” Violation Report at 6. In an effort to substantiate that conclusion, the Violation Report indicates that ONEOK is “well aware” of its obligations, noting that ONEOK “specified” its obligations but failed to fulfill those obligations. Yet the Violation Report describes no facts in support of the culpability conclusion. With regard to good faith efforts to comply by ONEOK, the Violation Report essentially restates the conclusions of the culpability conclusion (*see* Violation Report at 6-7), yet again no facts are found and no analysis is presented. ONEOK asserts that PHMSA has failed to carry its burden of proof to substantiate the imposition of any penalty and thus requests that the penalty proposed for Item 3 be withdrawn.

On the grounds that ONEOK has demonstrated that no violation occurred, ONEOK requests that the proposed civil penalty be withdrawn as it is not supported by a violation as required by 49 C.F.R. § 190.221. To the extent that PHMSA disagrees and finds a violation under Item 3, ONEOK requests that the proposed civil penalty be substantially reduced on the grounds (1) that any violation was not of the alleged gravity, and (2) that ONEOK was not culpable as alleged and acted in good faith in that ONEOK has established that it took diligent efforts which were reasonably calculated to comply with the relevant regulation. No incident occurred, no harm was done, and public safety was at all times protected.

Proposed Civil Penalty for Item 6

PHMSA’s proposed civil penalty for NOPV Item 6 should be withdrawn on the grounds that no violation occurred, or it should be substantially reduced on the grounds that the penalty assessment considerations of 49 C.F.R. § 129.225 are not sufficiently substantiated.

First, ONEOK asserts that it has established in this response that it did in fact fulfill its regulatory obligations under 49 C.F.R. § 195.428 and that, as such, no civil penalty is supported. *See* discussion above in *Response to Item 6* and 49 C.F.R. § 190.221.

Second, ONEOK asserts that the penalty assessment considerations of 49 C.F.R. § 190.225 are unsubstantiated in both the NOPV and the Violation Report. The NOPV contains no discussion of the penalty assessment considerations. As to the Violation Report, the penalty assessment considerations relating to NOPV Item 6 are unsubstantiated. The factor of gravity concludes that “pipeline integrity or safe operation was potentially comprised in others [sic] areas.” Violation Report at 20. Yet, no facts are alleged regarding pipeline integrity, regarding safe operation, nor regarding the meaning of “other areas.” Only a broad and general statement of the overall intent of the relevant regulation is provided, along with discussion of public highways and HCAs and the conclusion that an overpressure could result in harm, but those conclusions are factually and analytically unsubstantiated. The factor of culpability reflects a conclusion that the “operator failed to take any action or made a minimal attempt to comply with a regulatory requirement that was clearly applicable.” Violation Report at 21. In an effort to substantiate that conclusion, the Violation Report

indicates that ONEOK "missed resetting the set point properly at this station." Violation Report at 21. If the relevant regulation was 49 C.F.R. § 406(b), relating to overpressure protection, that conclusion might carry some weight; however, the relevant regulation is 49 C.F.R. § 428, relating to inspection and testing of pressure control devices. As such, the conclusion stated is inapposite and misdirected. No evidence, no analysis, no conclusion is stated with respect to inspection of pressure control devices. This penalty assessment consideration fails in that it is wholly unsubstantiated. With regard to good faith efforts to comply by ONEOK, the Violation Report provides only the ambiguous statement that "the operator understood the requirement but failed to take the necessary steps to comply." Violation Report at 22. Consideration of the good faith factor lacks, however, any factual support, leaving the following questions unanswered: Which requirement? How did the operator fail? What are the "necessary steps" to comply? Yet again, no facts are found and no analysis is presented. ONEOK asserts that PHMSA has failed to carry its burden of proof to substantiate the imposition of any penalty and thus requests that the penalty proposed for NOPV Item 6 be withdrawn.

On the grounds that ONEOK has demonstrated that no violation occurred, ONEOK requests that the proposed civil penalty be withdrawn as it is not supported by a violation as required by 49 C.F.R. § 190.221. To the extent that PHMSA disagrees and finds a violation under NOPV Item 6, ONEOK requests that the proposed civil penalty be substantially reduced on the grounds (1) that any violation was not of the alleged gravity, and (2) that ONEOK was not culpable as alleged and acted in good faith in that ONEOK has established that it took diligent efforts which were reasonably calculated to comply with the relevant regulation. No incident occurred, no harm was done, and public safety was at all times protected.

Response to Proposed Compliance Order

PHMSA has proposed a compliance order with respect to NOPV Item 3 which alleges violation of 49 C.F.R. § 195.402(c)(13), relating to evaluating the effectiveness of its operating and maintenance procedures (PCO Item 1), and with respect to NOPV Item 5 which alleges violation of 49 C.F.R. § 195.406(b), relating to preventing pipeline pressure from exceeding 110% of MOP (PCO Item 3). ONEOK addresses each such item of the PCO below.

Inasmuch as ONEOK establishes herein that it did not violate, and in all respects complied with, 49 C.F.R. § 195.402(c)(13), PCO Items 1 and 2 are unsupported as required by 49 C.F.R. § 190.217 and must therefore be withdrawn.

Inasmuch as ONEOK establishes herein that it did not violate, and in all respects complied with, 49 C.F.R. § 195.406(b), PCO Item 3 is unsupported as required by 49 C.F.R. § 190.217 and must therefore be withdrawn.

Mr. David Barrett

August 20, 2012

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Conclusion

ONEOK has established in this response that it complied with 49 C.F.R. § 195.402(c)(13), and on those grounds requests that the violation alleged at Item 3 be withdrawn, that the assessed civil penalty be withdrawn, and that PCO Items 1 and 2 be withdrawn. ONEOK has established in this response that it complied with 49 C.F.R. § 195.406(b), and on those grounds requests that the violation alleged at Item 5 be withdrawn and that PCO Item 3 be withdrawn. ONEOK has established that it complied with 49 C.F.R. § 195.428, and on those grounds requests that the alleged violation at Item 6 be withdrawn and that the assessed civil penalty be withdrawn.

ONEOK stands ready to provide any further information that PHMSA might wish to receive and/or to discuss further the alleged violations, the assessed civil penalties, and the proposed compliance order.

Sincerely,

A handwritten signature in blue ink, appearing to read "Wesley J. Christensen", is written over the typed name.

Wesley Christensen

Senior Vice President

ONEOK NGL Pipeline, L.L.C.