U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

OCT 12 2016

Mr. Terry K. Spencer
President and CEO
ONEOK NGL Pipeline, L.P.
100 W. Fifth Street
Tulsa, Oklahoma 74103

**Re: CPF No. 3-2013-5014, CPF No. 3-2013-5015, CPF No. 3-2013-5020**

Dear Mr. Spencer:

Enclosed please find the three Final Orders issued in the above-referenced cases. The Final Order in CPF No. 3-2013-5014 makes findings of violation, assesses a reduced civil penalty of $550,400, and specifies actions that need to be taken by ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C., and ONEOK Underground Storage Company, L.L.C. (collectively, ONEOK) to comply with the pipeline safety regulations.

The Final Order issued in CPF No. 3-2013-5015 makes findings of violation, withdraws one alleged violation, assesses a civil penalty of $159,000, and specifies actions that need to be taken by ONEOK to comply with the pipeline safety regulations. Finally, the Final Order issued in CPF No. 3-2013-5020 makes one finding of violation, withdraws one alleged violation, and assesses a civil penalty of $22,500.

The penalty payment terms are set forth in each of the Final Orders. When the civil penalties have been paid and the terms of the compliance orders completed, as determined by the Director, Central Region, these enforcement actions will be closed. Service of the Final Orders is made pursuant to 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Enclosure

OCT 12 2016

cc: Mr. Allan Beshore, Director, Central Region, OPS
Mr. Vince Murchison, Murchison Law Firm, PLLC
325 North St. Paul Street, Suite 2700, Dallas, Texas 75201

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION**
**PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**
**OFFICE OF PIPELINE SAFETY**
**WASHINGTON, D.C. 20590**

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| **In the Matter of** | ) | |
| **ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C., and ONEOK Underground Storage Company, L.L.C., collectively,** | ) | **CPF No. 3-2013-5014** |
| **Respondent.** | ) | |

## FINAL ORDER

Between May 2008 and April 2011, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an investigation of a fire that occurred at a facility of ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C., and ONEOK Underground Storage Company, L.L.C. (collectively, ONEOK or Respondent) in Bushton, Kansas.[1] ONEOK operates 11,500 miles of pipeline transporting hazardous liquids, including approximately 11,000 miles transporting highly volatile liquids in Texas, Oklahoma, Kansas and several other states.[2]

As a result of the investigation, the Director, Central Region, OPS (Director), issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order to Respondent on May 13, 2013 (Notice).[3] In accordance with 49 C.F.R. § 190.207, the Notice alleged that Respondent committed nine violations of the pipeline safety regulations in 49 C.F.R. Part 195 and proposed a civil penalty of $559,100 for the alleged violations. The Notice also proposed that corrective action be completed with respect to one of the alleged violations.

After receiving an extension of time, ONEOK responded to the Notice on July 12, 2013. ONEOK contested the jurisdiction of PHMSA, contested the merits of the alleged violations and requested a hearing. Additional written materials were submitted by Respondent on January 6

[1] The three entities own and operate different portions of the Bushton facility. ONEOK Post-hearing Jurisdictional Brief at 5 (Mar. 14, 2014).

[2] This information is reported by Respondent for calendar year 2015 pursuant to 49 C.F.R. § 195.49.

[3] Two additional notices of probable violation were issued by the Director to Respondent. They were dated May 13, 2013 (CPF No. 3-2013-5015) and July 3, 2013 (CPF No. 3-2013-5020). Separate Final Orders are being issued in those cases.

and 10, 2014. In accordance with 49 C.F.R. § 190.211, a hearing was held in Kansas City, Missouri on January 15, 2014, before a Presiding Official from the Office of Chief Counsel, PHMSA.[4] After the hearing, Respondent submitted additional written materials dated April 1, 2014, and May 6, 2016. Pursuant to § 190.209(b)(7), the Director submitted a written evaluation of Respondent's response material on April 1, 2016.

## BACKGROUND

The facility at issue in this proceeding is located in a rural area near Bushton, Kansas. The Bushton facility has inbound and outbound pipelines that transport natural gas liquids (NGLs).[5] In addition to the inbound and outbound pipelines, the facility has underground storage caverns, fractionation equipment, and in-plant piping, including pipes, valves, pumps, meters and other equipment used to move NGLs. Central to the in-plant piping are manifolds that allow NGLs to be directed between and among any of the inbound and outbound pipelines, storage caverns, and fractionation equipment.[6]

On the morning of May 17, 2008, four releases of NGLs occurred in succession at the Bushton facility. The releases involved a mixture of NGL hydrocarbons and water being forced through and over the top of a flare stack connected to a flare/drain system. During at least three of the release events, liquid hydrocarbons were ignited by the flare tip burners and fell to the ground where fires ensued. The first event occurred at 7:41 a.m. The fourth and final event occurred at approximately 9:53 a.m.

An investigation by Respondent concluded that excessive amounts of hydrocarbon liquids and water had accumulated in the flare/drain system. The flare/drain system is used to collect and dispose of liquid hydrocarbons, contaminated water, and vapor products from various sources at the facility, such as relief valves, pressure vessels, and piping drains. The flare/drain system consists of approximately 1050 feet of pipe, a 10,500-gallon accumulator tank and a 40-foot tall flare stack.

The four releases occurred when hydrocarbon products were discharged into the flare/drain system, which already contained an excessive amount of hydrocarbons and water. The accumulator tank had not been drained and an alarm that was designed to notify Respondent of high tank levels did not function. Approximately 250 personnel at the facility were evacuated. Nearby residences were also evacuated. No injuries or fatalities were reported in connection with the release and fires. After Respondent shut down the facility and emptied the flare/drain system, the Company resumed normal operations around 6:30 p.m. the same day.

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[4] The hearing also concerned the notice of probable violation issued in CPF No. 3-2013-5020. A separate hearing concerning the notice of probable violation in CPF No. 3-2013-5015 was held November 14-15, 2013. That hearing also discussed the jurisdictional issues relevant to all the proceedings.

[5] NGLs are highly volatile liquids, which are hazardous liquids that form a vapor cloud when released to the atmosphere and have a vapor pressure exceeding 276 kPa (40 psia) at 37.8 °C (100 °F). § 195.2.

[6] ONEOK Post-hearing Jurisdictional Brief at 6.

Following an OPS investigation, the Director, Central Region issued the present enforcement action alleging that Respondent committed nine safety violations in connection with the event. Respondent argued initially that PHMSA lacks authority under the Pipeline Safety Act to enforce safety regulations at the Bushton facility. Specifically, ONEOK argued the facility is not subject to the Pipeline Safety Act because it is a "refining" facility used in the fractionation of NGLs. At the hearing, OPS countered that the Act applies because the facility engages in the transportation of hazardous liquids by pipeline and NGL fractionation does not constitute refining. I consider these jurisdictional arguments first before addressing the alleged violations.

## JURISDICTION

The Pipeline Safety Act, 49 U.S.C. chapter 601, charges PHMSA with prescribing and enforcing minimum safety standards for pipeline transportation and pipeline facilities.[7] "Pipeline transportation" is defined in the Act to include "the movement of hazardous liquid by pipeline" and "storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline," but not the movement of hazardous liquids through "refining" facilities.[8] PHMSA may enter the premises of an owner or operator to perform an inspection and may issue administrative orders and assess civil penalties to enforce its safety standards.[9]

PHMSA has adopted minimum safety standards for hazardous liquid pipelines in 49 C.F.R. Part 195. The safety regulations apply to all parts of a pipeline facility through which hazardous liquids move in transportation, including but not limited to pipe, equipment, facilities and breakout tanks.[10] The regulations do not apply to refining facilities or storage or in-plant piping systems associated with refining facilities.[11]

Respondent argued the Bushton facility meets the exception in the Act for refining because it "employs a refining process called fractionation" that is "the same refining process that occurs at a crude oil refinery."[12] Respondent explained that fractionation, also known as distillation, separates raw NGL mixture into purity products, such as propane and butane, by applying different temperatures and pressures. No chemical change takes place to the product, but according to Respondent the separation constitutes a physical change. In this respect Respondent argued the Bushton facility is no different than a crude oil refinery.

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[7] 49 U.S.C. § 60102(a).

[8] § 60101(a)(22). A pipeline facility includes any pipeline, right-of-way, facility, building, or equipment used or intended to be used in pipeline transportation. § 60101(a)(5).

[9] §§ 60117(c), 60118(b) and 60122.

[10] 49 C.F.R. §§ 195.1(a) and 195.2.

[11] § 195.1(b)(8).

[12] ONEOK Post-hearing Jurisdictional Brief at 9.

Respondent noted the term "refining" is not defined in the Act, but the Company suggested the term "has a plain and unambiguous meaning."[13] An expert for Respondent cited dictionary definitions and other sources to support his opinion that a refinery is any facility where unwanted substances are removed to produce a higher grade or purified product.[14] Respondent cited the website of the U.S. Energy Information Administration (U.S. EIA), which defines a refinery as an "installation that manufactures finished petroleum products from crude oil, unfinished oils, *natural gas liquids*, other hydrocarbons, and oxygenates."[15] Respondent also cited an industry publication that defines a refiner as someone involved in a process "by which the physical or chemical characteristics of petroleum or petroleum products are changed . . . ."[16] Using all of these definitions, Respondent insisted the term refining in the Act includes NGL fractionation performed at the Bushton facility.

Respondent argued further that legislative history and past practice of PHMSA demonstrate the refining exception was intended to cover NGL fractionation. Respondent asserted that during the legislative process leading to enactment of the refining exception, statements by members of Congress and the Department of Transportation demonstrated they understood the difference between transportation and refining and they intended the Act to exclude facilities like Bushton. Respondent noted that PHMSA has never adopted regulations for NGL fractionation. ONEOK reasoned that Congress must be content with the absence of regulations because Congress has never amended the refining exception.[17] Respondent also suggested that by not regulating fractionation, the Agency too must believe the Act does not apply.

At the hearing and in its written submission, OPS disagreed with these assertions. OPS argued that since 2006, the Agency has communicated to Respondent that the Bushton facility is covered by the Act. As a technical matter, OPS argued that refining involves more than just separating an NGL mixture—it involves the conversion of a crude product into another substance, such as when crude oil is converted to gasoline. NGL fractionation, OPS argued, merely involves the separation of a mixture and does not involve conversion of a product nor does it change the physical or chemical characteristics of the NGL. OPS noted the Department of Energy does not recognize the Bushton facility as a refinery.[18] Finally, OPS argued that prior litigation by the previous owner of the Bushton facility resulted in a federal court finding the Bushton facility was not engaged in refining.

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[13] ONEOK Post-hearing Jurisdictional Brief at 11.

[14] ONEOK Post-hearing Jurisdictional Brief at 11.

[15] U.S. EIA Definitions, Sources and Explanatory Notes, *available at:* http://www.eia.gov/dnav/pet/TblDefs/pet_pnp_capshell_tbldef2.asp (last accessed Aug. 10, 2016) (emphasis added).

[16] ONEOK Post-hearing Jurisdictional Brief at 12, quoting *Manual of Oil and Gas Terms* by Howard Williams and Charles Meyers.

[17] ONEOK Post-hearing Jurisdictional Brief at 16.

[18] Central Region Recommendation at 5 (Apr. 1, 2016).

To these points, Respondent responded that prior written interpretations by PHMSA demonstrate "shifting theories" of jurisdiction,[19] the definition of refining offered by OPS is too narrow, and OPS improperly treats NGL fractionation facilities different than crude oil refineries.

*A. Preliminary Analysis*

When deciding issues of legal interpretation, such as the scope of the Pipeline Safety Act, I first look to the plain language of the law.[20] As noted above, the Act applies by its terms to facilities used in the "movement of hazardous liquid by pipeline" and "storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline."[21]

The record shows the Bushton facility has both inbound and outbound pipelines that transport NGLs, which are a hazardous liquid. The NGLs arrive as "Y-grade" (a raw mixture of NGLs) or as "purity products" (NGLs previously separated from a raw mixture). Purity products arrive by inbound pipeline and are then either transported through the facility to outbound pipelines for continued transportation or to storage caverns for later transportation by pipeline. Incoming Y-grade NGLs are either sent to fractionation equipment for separation and stored or transported, sent to storage wells for fractionation or transportation at a later time, or transported directly to outbound pipelines. In summary, the Bushton facility receives hazardous liquids in transportation by pipeline, stores hazardous liquids incidental to their movement by pipeline, and transports hazardous liquids from the facility by pipeline. The facility is therefore engaged in pipeline transportation subject to the Act unless an exception applies.

Both the Act and Part 195 except the movement of hazardous liquids through refining facilities and the storage or in-plant piping systems associated with refining facilities. The term "refining" is not defined in the Act or regulations, but as discussed in more detail below PHMSA has previously interpreted the refining exception as it relates to NGL fractionation.

*B. Prior Interpretations*

As a general matter, when deciding interpretive issues in an enforcement proceeding, I give prior decisions by the Agency on that issue effect unless there is a compelling reason to change or depart from the position previously adopted.[22]

In 2005, a representative of the Central Region, OPS attempted to perform a pipeline safety inspection of the Bushton facility. ONEOK personnel communicated their belief that the facility

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[19] ONEOK Post-hearing Jurisdictional Brief at 6.

[20] Plains Pipeline, L.P., CPF No. 4-2013-5007, Item 5, 2015 WL 4397455 (May 22, 2015).

[21] 49 U.S.C. § 60101(a)(22).

[22] *See, e.g.*, Sunoco Pipeline, LP, CPF No. 1-2014-5005, Item 1, 2016 WL 770393, at *3 (Jan. 13, 2016) (finding a violation based on prior interpretations of a safety standard).

was not subject to PHMSA jurisdiction. In a follow-up letter from the Central Region Director, ONEOK was asked to provide the reasons why it believed the facility was not jurisdictional.[23]

Respondent replied in March 2006 and explained the Bushton facility consists of underground storage wells and associated facility piping. Product is brought into the facility by pipeline and stored until customers request delivery by pipeline or truck. Respondent contended at that time that the facility was not subject to Agency regulations because movement of product inside the facility involved in-plant piping systems associated with storage and because non-pipeline modes of transportation were used in some instances.[24]

The Director replied by letter dated June 27, 2006 (2006 Interpretation). The Director stated that after reviewing the response, he disagreed with the Company's assessment, finding the facility was being used for the transportation of hazardous liquids. Specifically, he noted "the storage fields are utilized for storage of product delivered to the fields by pipeline, and product is re-injected into the pipeline for delivery to another destination by pipeline."[25] He advised ONEOK that the Agency would be performing another scheduled inspection of the facility.

Respondent replied on November 13, 2006, stating the Company would "implement a transition plan to convert certain of its storage assets . . . to a PHMSA/Part 195 driven hazard control system for facilities where PHMSA has jurisdiction."[26] Respondent requested clarification that "all pipes, valves, and other appurtenances connecting the cavern wellhead to the regulated pipelines must comply with the PHMSA/Part 195 regulations for pipeline systems . . . but no Part 195 regulations specific to 'caverns' [underground storage] currently exist."[27] Respondent indicated it also planned to request a waiver to allow continued use of certain programs and requested that PHMSA confirm or clarify the Company's plan.

Additional discussions between Respondent and the Central Region demonstrated the Company intended to follow Part 195 regulations for the Bushton facility but wanted additional guidance on issues such as where jurisdiction started and ended.[28] In early 2007, Respondent confirmed Part 195 requirements were being integrated into its manual of written procedures for the Bushton facility.[29] By mid-2007, OPS had documented telephone and in-person conversations with Respondent confirming the progress. Demarcation points for PHMSA-jurisdictional facilities were completed.[30] Respondent performed operator qualification (OQ) and maximum

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[23] OPS letter (Feb. 15, 2006), OPS Violation Report, Exhibit A: Draft OPS Failure Investigation Report (FIR) (Apr. 29, 2013), Appendix C at 1.

[24] ONEOK letter (Mar. 27, 2006), FIR Appendix C at 5.

[25] OPS letter (Jun. 27, 2006), FIR Appendix C at 7.

[26] ONEOK letter (Nov. 13, 2006), FIR Appendix C at 9.

[27] ONEOK letter (Nov. 13, 2006), FIR Appendix C at 10.

[28] OPS memo (Dec. 20, 2006), FIR Appendix C at 15.

[29] ONEOK email (Jan. 15, 2007), FIR Appendix C at 16.

[30] OPS memo (Apr. 16, 2007), FIR Appendix C at 20.

operating pressure (MOP) determination activities.[31] In early 2008, Respondent called to confirm that conversion to Part 195 regulations was complete with the exception of pressure testing. In April 2011, Respondent confirmed that pressure testing had been completed.[32]

Following a meeting between Respondent and OPS on August 4, 2011, the Company submitted a request for written interpretation concerning the jurisdictional status of the Bushton facility. Respondent asserted in its request that Bushton was "a processing (refining) facility" and asked whether the facility and in-plant piping and storage associated with refining were exempt under the refining exception in the Act.[33]

The Director of Standards and Rulemakings of PHMSA issued an interpretation on February 28, 2012 (First 2012 Interpretation).[34] The interpretation noted that the refining exception applies to facilities used for production, refining, or manufacturing of NGLs. The Director then found that NGLs undergo a chemical transformation during fractionation at Respondent's facility. The interpretation accepted Respondent's classification of fractionation as refining, but concluded the refining exception did not apply to in-plant piping or storage at the facility if it was also being used for pipeline transportation.

Objecting to this conclusion, Respondent submitted a second interpretation request, this one to the Chief Counsel.[35] Respondent provided additional information, including noting that NGL fractionation does not involve a chemical change to the NGLs but involves separating compounds of a mixture. After reviewing this information and considering the earlier interpretation, the Chief Counsel issued a letter to Respondent on August 8, 2012 (Second 2012 Interpretation).[36] The letter confirmed the earlier decision that the presence of fractionation equipment did not render the entire Bushton facility subject to the refining exception. The Chief Counsel also concluded that separating an NGL mixture, where no chemical change takes place, is not refining but merely a processing function.[37] She found that fractionation equipment, piping, and storage used exclusively for fractionation did not meet the refining exception, but she noted such equipment is not currently regulated by existing Federal safety standards.[38] Other

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[31] OPS memo (Jul. 25, 2007), FIR Appendix C at 17.

[32] ONEOK email (Apr. 6, 2011), FIR Appendix C at 23.

[33] ONEOK letter (Aug. 18, 2011), FIR Appendix D at 5.

[34] OPS letter (Feb. 28, 2012), FIR Appendix D at 1.

[35] ONEOK letter (May 25, 2012), ONEOK Post-hearing Jurisdictional Brief, Exhibit 2.

[36] Chief Counsel letter (Aug. 8, 2012), FIR Appendix D at 10.

[37] The interpretation referenced the definition of "refiner" in *Manual of Oil and Gas Terms*, Williams and Meyers, Third Edition, but the interpretation did not quote the definition. Respondent argued the interpretation should have accurately quoted the definition, but there is no indication the Agency relied solely on the definition to reach its conclusion.

[38] The interpretation addressed applicability of another exception for facilities used to transfer hazardous liquids between non-pipeline modes of transportation, but Respondent does not assert applicability of that exception here.

portions of the facility used in the transportation of hazardous liquids by pipeline were found subject to existing regulations.

Respondent submitted a third request,[39] and the Chief Counsel issued another letter on November 28, 2012 (Third 2012 Interpretation).[40] Her letter clarified certain points but otherwise affirmed in all respects the findings in the Second 2012 Interpretation. She noted that a facility receiving hazardous liquids by pipeline and reinjecting them for continued transportation by pipeline is subject to the Act, and the presence of fractionation or separation equipment "does not mean that virtually the entire facility is exempt from regulation," noting such a theory could create a gap in the regulatory framework under the Act.

In summary, PHMSA has issued four written interpretations between 2006 and 2012 regarding the Bushton facility. In those interpretations, PHMSA determined the facility is subject to the Act because the pipeline facility is "used in transporting hazardous liquid," including "movement of hazardous liquid by pipeline" and "storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline."[41] PHMSA has determined that fractionation of NGLs is not "refining" and therefore the presence of fractionation equipment does not exempt the entire facility from the Act.[42] PHMSA has also determined that current regulations do not presently cover certain equipment, piping, and storage used exclusively for fractionation, but the regulations do apply to all pipes, valves and other components at the facility that are used in the movement of hazardous liquids by pipeline.

*C. Subsequent Draft Frequently Asked Questions (FAQs)*

Respondent noted that in 2014, the Agency created a working group with representatives from PHMSA, the Occupational Safety and Health Administration (OSHA), and both PHMSA technical advisory committees.[43] The working group had a goal of clarifying regulatory oversight of certain midstream processing facilities. The group developed draft FAQs and presented them at an August 26, 2015, meeting of the technical advisory committees.[44]

The FAQs contained, among other things, definitions of "refining" and "processing," terms that are not otherwise defined in the Act or regulations. The definitions are relevant to the current

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[39] ONEOK letter (Nov. 13, 2012), ONEOK Post-hearing Jurisdictional Brief, Exhibit 3.

[40] Chief Counsel letter (Nov. 28, 2012), FIR Appendix D at 17.

[41] 49 U.S.C. § 60101(a)(5), (a)(22)(A).

[42] § 60101(a)(22)(B).

[43] *See, e.g.*, ONEOK Response to Region Recommendations at 13 (May 6, 2016) (discussing guidance document titled "Delineation and Regulatory Oversight of 'Processing' – Oil and Gas Midstream Facilities"). The technical advisory committees were formed under 49 U.S.C. § 60115 to carry out peer review functions under the Act.

[44] *See* Notice of advisory committee meeting, 80 Fed. Reg. 47032 (Aug. 6, 2015) (announcing public meeting of advisory committees and proving link to agenda, including agenda item "BRIEFING: Midstream Working Group").

proceeding, because as noted above, PHMSA previously determined NGL fractionation is not "refining" under the Act, but merely processing. Processing involved in transportation that is not otherwise "production, refining or manufacturing," is not exempt from the Act under 49 U.S.C. § 60101(a)(22)(B). The FAQs sought to improve clarity by delineating regulatory responsibility between PHMSA and OSHA where there is overlapping jurisdiction.

The definition of processing in the FAQs includes the distillation or the heating of products to separate or purify. This definition matches the description of NGL fractionation, which uses heat and pressure to separate the NGL mixture. The definition of refining in the FAQs is the "chemical conversion of crude oil into refined petroleum products."[45] NGL fractionation does not fit within the definition of refining because fractionation does not involve chemical conversion. Accordingly, under the FAQs, NGL fractionation is not refining. This is consistent with the Agency's conclusion in the Second and Third 2012 Interpretations.

*D. Respondent's Arguments*

Respondent argued that for a variety of reasons PHMSA should vacate the prior written interpretations and interpret the refining exception to exempt NGL fractionation facilities and associated piping and equipment.

1. Definitions of Refinery, Refiner, and Refining

First, Respondent cited to dictionaries and other sources that define refinery broadly to include any place where unwanted substances are removed.[46] The dictionary definitions discuss the general concept of refining materials such as ore, sugar, and oil. Respondent contended that NGL fractionation "fits neatly within the general concept of refining."[47]

PHMSA rejects the assertion that the statutory exception to the Pipeline Safety Act should be read to its furthest possible limits in order to accommodate "general concepts" of refining. Were the Act interpreted to exempt any facility used in removing unwanted substances, it would result in significant and unintended gaps in safety oversight. For example, every natural gas pipeline facility that removes unwanted moisture from its gas stream to aid in pipeline transportation could potentially fall under such concepts of refining and be excluded from the Act. PHMSA does not assume Congress intended to enact an exception so expansive that it would defeat much of the purpose of the legislation.

Respondent cited to a definition of "refining" from the website of the U.S. EIA. PHMSA does not find the definition controlling because it was not adopted under the Pipeline Safety Act.

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[45] Delineation and Regulatory Oversight of "Processing" – Oil and Gas Midstream Facilities, dated August 2015, at slide 7, *available at:* http://www.phmsa.dot.gov/pipeline/regs/technical-advisory-comm/meeting/august-25-and-26-2015-joint-meeting-gas-and-liquid (follow link to Day 2 Agenda Item 2 Presentations) (last visited Jun. 23, 2016).

[46] ONEOK Post-hearing Jurisdictional Brief at 13.

[47] ONEOK Post-hearing Jurisdictional Brief at 14.

Moreover, the U.S. EIA does not actually include the Bushton facility on its registry of petroleum refineries in the United States.[48] While Respondent argued the crude oil refining process often uses fractionation, it does not necessarily follow that NGL fractionation on its own constitutes refining under the Pipeline Safety Act.

Respondent also cited to a definition of "refiner" from the industry reference *Manual of Oil and Gas Terms*. The definition states that a refiner is someone who produces refined products by "changing the chemical or physical characteristics of petroleum."[49] PHMSA does not subscribe to such a broad definition of refining under the Pipeline Safety Act, and Respondent has not presented a reason this particular definition should be controlling given the potential gaps in safety oversight PHMSA has previously found could result. Respondent is correct that PHMSA referenced the same definition in the Second 2012 Interpretation and Respondent objected to the Agency's imprecise restatement of the definition.[50] The Second 2012 Interpretation cited this source as informational, not as controlling authority.

PHMSA is further guided by testimony presented by OPS that refining is a term commonly used in the industry to refer to the conversion of crude petroleum into new products, not the separation of a mixture. OPS also stated that common usage in the industry would never refer to an NGL fractionation facility as a refinery. Respondent attempted to dispute the relevancy of common usage, but its own arguments were tangentially based on theories of common usage.[51] Given the history of PHMSA's interpretation of this statutory language, I find Respondent's evidence of other sources of definitions does not warrant vacating and revising those interpretations.

2. Legislative History

Nothing Respondent cited to in the legislative history demonstrates Congress and the Department of Transportation intended "refining" to mean something other than PHMSA's current interpretation. Respondent theorized that Congress's failure to amend the refining exception meant that Congress approved of the absence of NGL fractionation regulations. This conjecture is unsupported in the record. Moreover, the logic of this assumption would suggest the opposite: Congress has amended the Act at least three times since 2006 and has never reversed PHMSA's interpretation that Bushton must comply with the Act. Respondent is likewise erroneous in its assumption that PHMSA has not regulated fractionation equipment because the Agency believes

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[48] EIA Refinery Capacity Report, Tables 3, 4, 5 (Jun. 19, 2015) available at: http://www.eia.gov/petroleum/refinerycapacity (last accessed Aug. 10, 2016).

[49] ONEOK Post-hearing Jurisdictional Brief at 7.

[50] The Second 2012 Interpretation found that a refinery changes the "chemical *and* physical" characteristics of the product and cited to the *Manual*. The *Manual* definition states that a refinery changes the "chemical *or* physical" characteristics.

[51] ONEOK Post-hearing Jurisdictional Brief at 16.

the equipment is exempted. This assumption is not accurate and otherwise not supported by the record.[52]

3. Interpretations from 2006 and 2012

Respondent argued the Agency's Bushton interpretations are inconsistent and demonstrate "shifting theories" of jurisdiction.[53] I do not find support in the record for this argument. The 2006 Interpretation explained the Bushton facility is required to comply with the pipeline safety regulations because it transports hazardous liquids by pipeline. The First 2012 Interpretation likewise informed ONEOK that the Act applies to the facility and the refining exception does not exempt the entire facility. This was echoed throughout the Second and Third 2012 Interpretations. As can be expected, the interpretations were further developed in response to each subsequent request submitted by Respondent that provided additional information. For example, Respondent did not claim NGL fractionation constituted refining in 2006, but asserted that for the first time in 2011.

Respondent took issue with the manner in which the Second 2012 Interpretation retracted the Agency's statement in the First 2012 Interpretation that fractionation was refining. The record demonstrates, however, that the earlier conclusion was based, at least in part, on an incorrect assumption that fractionation involved chemically changing NGLs. This erroneous assumption was pointed out by Respondent in its letter of May 25, 2012. As a result, the Agency's Second 2012 Interpretation noted that fractionation does not involve a chemical change to the product and fractionation does not constitute refining. This did not change the ultimate conclusion of either interpretation. All three 2012 interpretations concluded the refining exception did not exempt the entire Bushton facility.

4. Other Agency Interpretations from 1998 and 1991

Respondent cited to three Agency interpretations issued in 1998 and 1991 to other pipeline operators and argued those interpretations demonstrate historical inconsistencies. After reviewing the interpretations, I find they do not support Respondent's position because they all predate the 2006 Bushton Interpretation and address different facts than are at issue in the present matter.

The 1998 interpretation addressed applicability of the Pipeline Safety Act with respect to an NGL "processing plant" used to remove liquid hydrocarbons accumulated during the transmission of natural gas.[54] The Agency found that removing liquids from natural gas was covered by the Act because the process supported the transmission of gas by pipeline. As an ancillary issue, the Agency stated other facilities "related more to processing" were considered

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[52] *See, e.g.*, Pipeline Safety: Safety of Gas Transmission Pipelines, 76 Fed. Reg. 53086, 53098 (proposed Aug. 25, 2011) (stating in an advanced notice of proposed rulemaking that PHMSA was considering establishing new requirements for previously unregulated underground gas storage).

[53] ONEOK Post-hearing Jurisdictional Brief at 6.

[54] ONEOK Prehearing Jurisdictional Brief (Nov. 4, 2013), Exhibit 12.

refining or manufacturing facilities. It was not explained in the interpretation what those other facilities or "processing" functions were. The interpretation did not address NGL fractionation.

Another interpretation from 1991 considered whether drug and alcohol testing requirements applied to a natural "gas processing plant."[55] The Agency concluded the plant was not subject to safety requirements because it was engaged in rural gas gathering outside the scope of the gas pipeline safety regulations in Part 192.[56] The interpretation found the refining exception in Part 195 covered "facilities used in the collection of NGLs inside a gas processing plant." The interpretation concerned equipment "located on the grounds of a production facility." Production facilities are excepted from the Act under the same exception for refining facilities. By contrast, the Bushton facility is not a production facility and is not engaged in production. Production occurs prior to the commencement of transportation, whereas the Bushton facility receives hazardous liquids already in transportation and continues to move the hazardous liquids by pipeline. Therefore this interpretation is not applicable to the Bushton facility.

Another interpretation from 1991 considered how the pipeline safety regulations applied to a transportation pipeline that leaves the property of the refinery.[57] The Agency determined that the regulated section of the pipeline begins at the inlet of each pressure control device on refinery grounds that protects the pipeline outside the property. The facility at issue in the interpretation was referred to as a refinery by both the operator and the Agency, but there is no additional information about the facility. The interpretation did not addresses NGL fractionation or pipeline facilities with NGL fractionation equipment.

Since the interpretations from 1998 and 1991 were all issued prior to 2006 and do not address the same facts at issue at the Bushton facility, I find they do not support Respondent's argument.

5. Alleged Uncertainty and Confusion

Finally, throughout this proceeding Respondent has argued that the Notice, proposed civil penalties, and proposed compliance order must all be withdrawn due to the perception of jurisdictional uncertainty and confusion surrounding application of the pipeline safety regulations at Bushton. Respondent's claims of "uncertainty" are questionable given the history of dialogue between ONEOK and PHMSA on this issue.

As explained in more detail above, the Agency's 2006 Interpretation informed Respondent that the Bushton facility must comply with the pipeline safety regulations and provided the legal basis for that decision. This determination was later confirmed in three subsequent interpretations issued in 2012, which also explained the basis for jurisdiction under the Act. While each subsequent interpretation differed to the extent necessary to address new information

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[55] ONEOK Prehearing Jurisdictional Brief, Exhibit 11.

[56] Safety regulations for natural gas pipelines in 49 C.F.R. Part 192 are separate from safety regulations for hazardous liquid pipelines in Part 195.

[57] ONEOK Prehearing Jurisdictional Brief, Exhibit 10.

and arguments presented by Respondent,[58] the interpretations were consistent in their conclusion. Respondent has been given more than enough notice since at least 2006 that its facility must comply with the pipeline safety regulations. Therefore it is not evident how or when Respondent became "confused" about application of the safety regulations. ONEOK's own conduct demonstrated it understood its obligations. After receiving the 2006 Interpretation, ONEOK committed to bring its facility into compliance and took actions in furtherance of that commitment. For these reasons I dismiss Respondent's arguments about jurisdictional uncertainty.

*E. OPS Legal Citation*

In its post-hearing submission, OPS argued that a judicial challenge by the previous owner of the Bushton facility, Enron Gas Processing Company, resulted in a federal court finding NGL fractionation was not refining.[59] Enron had brought an action against the Internal Revenue Service after the agency attempted to tax the company's gas processing facilities as a refinery. Enron argued NGL fractionation did not render the facility a refinery under the tax law. The court agreed that the gas processing facility was not a refinery. While the *Enron* case interpreted the Petroleum Excise Tax and not the Pipeline Safety Act, the case is relevant insofar as the Bushton facility has previously been adjudged to be a facility that is not a refinery.[60]

*F. Conclusion*

PHMSA has determined in previous interpretations that the Bushton facility must comply with the Act because the facility engages in pipeline transportation of hazardous liquids. PHMSA has previously determined the refining exception does not exempt the facility because NGL fractionation is not refining. Respondent has not demonstrated this interpretation is inconsistent with the Act. Absent clear direction by Congress to the contrary, I conclude the prior interpretations are reasonable and consistent with the Act's purpose to protect against risks posed by pipeline transportation.

## FINDINGS OF VIOLATION

Having confirmed the Bushton facility is required to be in compliance with the pipeline safety regulations, I consider the allegations in the Notice that Respondent failed to comply with the pipeline safety regulations. The Notice alleged that Respondent committed nine violations of 49 C.F.R. Part 195, as follows:

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[58] For example, Respondent never claimed its facility was engaged in "refining" until 2011. ONEOK letter (Mar. 27, 2006), FIR Appendix C at 3-6 (claiming an exception because the in-plant piping systems are "associated with storage").

[59] Enron Gas Processing Co. v. United States, No. CIV. A. H-94-1390, 1996 WL 753961 (S.D. Tex. April 9, 1996).

[60] The court found the gas processing facilities were not refineries under the Petroleum Excise Tax because they receive gas feedstock rather than crude oil or natural gasoline feedstock.

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.52(a)(2), which states:

> **§ 195.52 Immediate notice of certain accidents.**
> (a) Notice requirements. At the earliest practicable moment following discovery of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in § 195.50, the operator of the system must give notice, in accordance with paragraph (b) of this section, of any failure that . . .
> (2) Resulted in either a fire or explosion not intentionally set by the operator . . . .
> (b) Information required. Each notice required by paragraph (a) of this section must be made to the National Response Center either by telephone to 800-424-8802 (in Washington, DC, 202-267-2675) or electronically at http://www.nrc.uscg.mil . . . .

The Notice alleged that Respondent violated § 195.52(a)(2) by failing to notify the National Response Center (NRC) at the earliest practicable moment following discovery of a release of hazardous liquid resulting in a fire. Specifically, the Notice alleged that on May 17, 2008, a release of hazardous liquid and unintentional fire occurred at the Bushton facility at 7:41 a.m. Central Time (CT). The Notice alleged that Respondent failed to telephonically report the accident until 12:08 p.m. CT, approximately 4.5 hours later.

Respondent argued that it acted at the earliest practicable moment by attempting to call the NRC at 10:15 a.m., about 2.5 hours after the accident. An employee testified at the hearing that he called the NRC at 10:15 a.m., but no one answered. When no one answered, he resumed his other duties until he called the NRC again at 12:08 p.m. Respondent argued the regulation does not mandate any specific timeframe for reporting accidents, and therefore the Company complied with the regulation by reporting the accident at the earliest practicable moment. Respondent also argued the flare/drain system that experienced the accident is not a "pipeline or pipeline system" subject to the reporting requirement.

*Analysis*

Section 195.52 requires pipeline operators to immediately report certain accidents to PHMSA by giving notice to the NRC. The notice must be given "at the earliest practicable moment following discovery" of any accident that involves certain consequences, including any release of hazardous liquid resulting in a fire or explosion not intentionally set by the operator.

PHMSA has interpreted the term "earliest practicable moment" to mean "within 1-2 hours after discovery" in most cases.[61] This interpretation is not codified in the regulation, but has been communicated to the regulated community for over 40 years, including though multiple advisory

[61] Pipeline Safety Alert Notice ALN-91-01 (Apr. 15, 1991), available at http://www.phmsa.dot.gov/pipeline/regs/advisory-bulletin (last accessed Aug. 10, 2016).

bulletins and enforcement actions.[62] The interpretation allows for the possibility that an operator could be justified in taking longer than 2 hours to report an accident. For example, an accident might be detected by an employee in a remote area without telephone service. In most cases, however, the regulation requires telephonic reporting within 1-2 hours.

The accident and fire in this case occurred at a facility that was fully staffed. Respondent discovered the accident as soon as it occurred. The regulation required Respondent to telephonically report the accident as soon as practicable, and Respondent has presented no evidence to justify needing more than 1-2 hours to report the accident.

Respondent indicated it attempted to contact the NRC about 2.5 hours after the accident and no one answered the phone. I find it implausible that that no one answered at the NRC, which raises the question of whether Respondent dialed the correct number or allowed the phone to ring long enough. Notwithstanding, Respondent's attempt to notify the NRC was more than 2 hours after discovery.[63] Furthermore, Respondent did not attempt to call back immediately. Instead Respondent waited almost two more hours until attempting to file the report. I find no justification for this delay.

Respondent's argument that the flare/drain system is not a "pipeline or pipeline system" is rejected. Section 195.2 defines a pipeline to include not just line pipe, but all appurtenances connected to pipe and any other equipment or facilities used in the transportation of hazardous liquids. Respondent's flare/drain system consists of pipe and other equipment and is used in the transportation of hazardous liquids by collecting NGLs that are released through relief valves, pressure vessels, and piping drains.

Accordingly, having reviewed the record, I find Respondent violated § 195.52 by failing to give notice at the earliest practicable moment of an accident involving a fire not intentionally set by the operator until more than four hours after the accident.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.54(a), which states:

> **§ 195.54 Accident reports.**
> (a) Each operator that experiences an accident that is required to be reported under § 195.50 must, as soon as practicable, but not later than 30 days after discovery of the accident, file an accident report on DOT Form 7000-1.

The Notice alleged that Respondent violated § 195.54(a) by failing to file a written accident report within 30 days of an accident. Specifically, the Notice alleged that Respondent never filed

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[62] Buckeye Partners, LP, Decision on Petition for Reconsideration, CPF No. 3-2010-5006, 2013 WL 5305820 (Aug. 1, 2013) (noting that since 1971, PHMSA has consistently found through interpretations, advisory bulletins, and numerous enforcement cases that "earliest practicable moment" means within 1-2 hours).

[63] *See, e.g.*, Enbridge Energy, Limited Partnership, CPF No. 3-2012-5018, Item 1, 2013 WL 5883399 (Aug. 22, 2013) (finding a violation of § 195.52 for giving notice to NRC 2.5 hours after discovery).

a written accident report on DOT Form 7000-1 in connection with the accident that occurred on May 17, 2008.

In its written response and at the hearing, Respondent argued the flare/drain system is not a pipeline subject to the reporting requirement. This argument is rejected for the reasons stated in Item 1. Accordingly, having reviewed the record, I find Respondent violated § 195.54(a) by failing to file a written accident report in connection with the accident on May 17, 2008.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 195.401(b)(1), which states:

> **§ 195.401 General requirements.**
> (b) An operator must make repairs on its pipeline system according to the following requirements:
> (1) *Non Integrity management repairs.* Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.

The Notice alleged that Respondent violated § 195.401(b)(1) by failing to correct a hazardous condition that adversely affected safe operation of the pipeline system. Specifically, the Notice alleged that on May 17, 2008, four separate releases occurred in which a mixture of water and liquid hydrocarbons was forced through an accumulator tank when pressure relief valves opened. The instances occurred at 7:41 a.m., 8:05 a.m., 8:49 a.m. and 9:53 a.m. On each occasion, the liquid mixture flowed to the tip of the flare stack where it was ignited at the burner tips. Evacuated personnel were allegedly allowed to reenter the area and resume operations even though Respondent had not identified the primary cause of the releases and had not corrected the condition, which presented an immediate hazard to persons and property.

Respondent contested the alleged violation by arguing that no unsafe condition existed that presented an immediate hazard. Respondent also argued that only three fires occurred not four and that personnel were not allowed to reenter the area. In addition, Respondent contended that no pipeline operations were resumed prior to correcting the alleged condition.

*Analysis*

Section 195.401(b)(1) requires pipeline operators to correct within a reasonable time any condition that could adversely affect the safe operation of a pipeline system. In addition, if a condition presents an immediate hazard to persons or property, the pipeline operator may not operate the affected part of the system until it has corrected the unsafe condition.

On May 17, 2008, Respondent's pipeline facility experienced an unintentional and uncontrolled release of hazardous liquids. Four consecutive releases of hazardous liquids occurred. At least three of those releases ignited causing a fire. These facts are sufficient to prove a condition that adversely affected safe operation. The condition also presented an immediate hazard to persons

and property. Even if workers were not physically located next to the flare, as Respondent contended, the uncontrolled release of hazardous liquids and fire were an immediate hazard to the property in addition to any operating personnel that responded to the emergency.

Since the condition adversely affected safe operation and presented an immediate hazard, § 195.401(b)(1) required Respondent to correct the condition within a reasonable time and prohibited Respondent from operating the system until the immediate hazard had been corrected.

The first flare event began at approximately 7:41 a.m. when the field flare started smoking. Several minutes later, liquids were emitted from the flare stack, ignited, and caused several fires on the ground near the flair stack. In response to the release and fire, an employee closed the relief valve on the 108 pipeline preventing one source of product from entering the flare/drain system. Closure of the valve did not correct the condition because other sources of product could still enter the flare/drain system. A second flare event occurred at 8:05 a.m.

The employee then operated the incoming valve on the #1 dehydration unit, which eliminated another source of product from the flare/drain system. This too did not stop the hazardous condition. At 8:38 a.m., personnel requested all pipelines into and out of the Bushton facility be shut down. A third flare event occurred at 8:49 a.m. An employee operated the valve on the #2 dehydration unit and Respondent requested the 800 pipeline delivering product to Bushton be shut down. At 9:53 a.m., a fourth event occurred. At 10:05 a.m., Respondent discovered the liquid level control valve on the incoming Buckeye Pipeline water knock out drum was blocked in the open position, allowing water and possibly Y-grade material to flow into the flare/drain system. This valve was closed and no additional relief events occurred.

Respondent described all of these events as "a single, continuous effort to identify and correct potential causes of the flare overflows."[64] While Respondent contended that all pipelines were shut down at 8:38 a.m.,[65] the record reflects the system was not shut down by 8:38 a.m. Additional flare events continued to occur at 8:49 a.m. and 9:53 a.m. It was not until Respondent closed the valve on the incoming Buckeye Pipeline that additional product was prevented from entering the flare/drain system causing additional flare events. It took Respondent over two hours to stop the flare events, primarily due to Respondent's decision to eliminate "potential causes . . . one by one . . . over time . . . until a complete, plant-wide shutdown was effected."[66] Respondent did not initiate an immediate shutdown following the first event to prevent additional product from feeding into the flare/drain system. For this reason, I find that Respondent did not correct the flare condition within a reasonable time.

By not initiating a timely shutdown, Respondent also failed to comply with the prohibition against operating the system until a hazard had been corrected. Respondent argued that it never "operated" the system during the sequential shutdown, but I find Respondent did permit the continued operation of the system as more product was allowed to enter the flare/drain system

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[64] ONEOK Post-hearing Merits Brief at 64 (Apr. 1, 2014).

[65] ONEOK Post-hearing Merits Brief at 68.

[66] ONEOK Post-hearing Merits Brief at 67.

from various sources. This resulted in additional flare events and fires occurring. The flare/drain system was serving in an operation and maintenance function for Respondent's pipeline facility and continued to be in operation until Respondent completed a shutdown stopping the flow of product into the system.

Accordingly, having reviewed the record, I find Respondent violated § 195.401(b)(1) by failing to correct within a reasonable time a condition that adversely affected safe operation. Respondent also violated § 195.401(b)(1) by failing to cease operations until the immediate hazard had been corrected.

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

> **§ 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.

The Notice alleged that Respondent violated § 195.402(a) by failing to follow its manual of written procedures for conducting operations and maintenance activities. Specifically, the Notice alleged that Respondent did not follow the procedure for limiting the amount of product in the flare system accumulator tank. The Notice alleged Respondent's procedures prohibited the amount of liquid in the accumulator tank from being 85 percent or more of the total volume of the tank, but according to Respondent's Root Cause Analysis (RCA) the amount of liquid in the tank was almost 97 percent at the time of the accident.[67] The RCA also found the accident was compounded by Respondent's failure to recognize the flare system was full and its failure to immediately identify sources relieving into the systems.

Respondent did not contest the factual allegations, but only contested the violation on jurisdictional grounds. Those arguments have already been rejected. Accordingly, having reviewed the record, I find Respondent violated § 195.402(a) by failing to follow its manual of written procedures for limiting the volume of product in the flare system accumulator tank.

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[67] The Notice alleged that the capacity of the accumulator was 10,500 gallons and that 242 barrels or 10,164 gallons of hydrocarbon mixture were later removed from the tank.

**Item 5:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

> **§ 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.

The Notice alleged that Respondent violated § 195.402(a) by failing to follow its manual of written procedures for handling emergencies. Specifically, the Notice alleged that Respondent did not follow its written procedure when shutting down the flare/drain system. The procedures allegedly prohibited bypassing safety equipment, but on the day of the accident, Respondent closed and bypassed a thermal relief isolation valve subjecting the 108 pipeline to possible overpressure.

At the hearing, Respondent acknowledged the thermal relief valve had been isolated, but argued there were other safety devices in place so the pipeline was never exposed to a possibility of overpressure. Respondent also argued the relief valve in question was designed to relieve thermal pressure if the pipeline is blocked in; it is not designed to relieve surges when the pipeline is in operation. The pipeline was in operation on the day of the accident. Respondent therefore reasoned that isolation of the thermal relief valve did not expose the pipeline to any increased risk of overpressure.

Finally, Respondent argued the written procedures cited in the Notice did not actually apply to the thermal relief valve in question. Respondent contended that a different manual of written procedures applied to this portion of the Bushton facility. The procedure that did apply, Respondent argued, did not prohibit isolating the thermal relief valve on the 108 pipeline.

At the hearing, OPS argued that regardless of the design of the valve and presence of other relief valves, the relief valve at issue was a safety device and had been isolated contrary to the express provision of the cited procedures. OPS also argued that even if Respondent had some other procedures, the emergency procedures cited in the Notice prohibited the operator from bypassing the safety equipment at issue.

*Analysis*

Section 195.402(a) requires operators to follow their procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. The written procedures referenced in the Notice were titled "SF Flare/Drain" and dated October 2003. The procedures stated they applied to the flare/drain system, "comprised of PSV's, drains,

piping, an accumulator tank and a flare stack." Procedures for normal operations, normal shutdown and emergency shutdown of the flare/drain system were included in the written procedures. With respect to emergency shutdown, the procedures stated: "When [an] emergency condition exists and it becomes necessary to remove part of or all of the flare/drain system from service . . . (4) Isolate [the] affected equipment. (Do not by-pass safety equipment)."[68]

At the hearing, Respondent confirmed the thermal relief valve at issue was a safety device that connected directly to the flare/drain system. On the day of the accident, Respondent isolated the thermal relief valve in an attempt to stop the source of product from being introduced to the flare/drain system. The Violation Report noted that during the investigation by OPS, ONEOK personnel stated that the Company procedure was to close isolation valves immediately upstream of relief valves feeding the flare/drain system. This is consistent with the written SF Flare/Drain procedures cited in the Notice.[69]

I find that the procedures cited in the Notice were specifically tailored to the piece of pipeline equipment at issue in this Item. By comparison, the other procedures referenced by Respondent have only general emergency response provisions and do not include any specific procedures for shutting down the Flare/Drain system. The record supports finding Respondent's personnel were using the procedures cited in the Notice on the day of the accident. Respondent failed to comply with those procedures when it isolated the thermal relief valve. Whether or not this impacted safety in light of the other safety devices present on the pipeline is more appropriately considered below with respect to the civil penalty assessment.

Accordingly, having reviewed the record, I find Respondent violated § 195.402(a) by failing to follow its written procedures for handling emergencies when it bypassed a piece of safety equipment.

**Item 6:** The Notice alleged that Respondent violated 49 C.F.R. § 195.408(a), which states:

> **§ 195.408 Communications.**
> (a) Each operator must have a communication system to provide for the transmission of information needed for the safe operation of its pipeline system.

The Notice alleged that Respondent violated § 195.408(a) by failing to have a communication system to provide for the transmission of information needed for safe operation of the pipeline system. Specifically, the Notice alleged that an alarm used to monitor the amount of fluid in the accumulator tank was not operational because it was connected to an old control room that was no longer in use.

Respondent argued § 195.408(a) did not require a communication system for the accumulator tank because the tank is not used to "control receipt and delivery" of hazardous liquids.

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[68] OPS Violation Report, Exhibit E at 9.

[69] OPS Violation Report at 30.

Respondent bases this argument on paragraph (b) of § 195.408, which was not cited in the Notice. This paragraph requires that the communication system monitor operational data as required pursuant to § 195.402(c)(9).[70] That regulation, in turn, requires monitoring of data for facilities that "control receipt and delivery of the hazardous liquid." Respondent argued the accumulator tank only collects liquid and vapors and does not control receipt and delivery; therefore no communication system is required.

*Analysis*

Section 195.408(a) requires operators to have a communication system to provide for the transmission of information needed for the safe operation of the pipeline system. In this case, Respondent had a communication system designed to transmit information about the level of hazardous liquids in the accumulator tank to the control room of the Bushton facility. Information about the level of product inside the tank is necessary for safe operation and maintenance of the facility. Without such information, controllers do not know when the amount of hazardous liquids has reached levels that present a risk of an emergency.

Section 195.408(b) states that the communication system must include certain capabilities "as a minimum." Respondent's argument that the accumulator tank did not require a functioning alarm because that is not explicitly listed in paragraph (b) cannot be sustained. The capabilities listed in § 195.408(b) are only a minimum subset of what is required under paragraph (a). The communication system required under paragraph (a) requires the transmission of any "information needed for the safe operation" of the pipeline. As noted above, the level of hazardous liquids in the accumulator tank is information necessary for safe operation.

Respondent's communication system did not transmit information to Respondent's control room as it was designed because the tank level alarm was still connected to an old control room that was no longer in use. For this reason, I find Respondent violated § 195.408(a) by failing to have a communication system that transmitted tank level information needed for safe operation of the pipeline system.

**Item 7:** The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a)(2), which states:

> **§ 195.406 Maximum operating pressure.**
> (a) Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following . . .
> (2) The design pressure of any other component of the pipeline.

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[70] § 195.408(b) states: "The communication system required by paragraph (a) of this section must, as a minimum, include means for . . . [m]onitoring operational data as required by § 195.402(c)(9)." Section 195.402(c)(9) requires procedures for: "In the case of facilities . . . that control receipt and delivery of the hazardous liquid or carbon dioxide, detecting abnormal operating conditions by monitoring pressure, temperature, flow or other appropriate operational data and transmitting this data to an attended location."

The Notice alleged that Respondent violated § 195.406(a)(2) by operating the dehydrator vessel #1 at a pressure higher than its design pressure. The Notice alleged the dehydrator vessel had a design pressure of 328 psig. On the day of the accident, the dehydrator vessel was allegedly operated as high as 350 psig when an isolation valve did not fully prevent product from entering the vessel. The set point of the relief valve on the dehydrator vessel was 350 psig. Line 800, which flowed product to the dehydration isolation valve, had been operating at pressures ranging from 395 psig to 460 psig in the 24-hour period preceding the accident on May 17, 2008.

In its written submission, Respondent did not contest the factual allegations, but contested the violation on jurisdictional grounds. I have already rejected those arguments. Accordingly, having reviewed the record, I find Respondent violated § 195.406(a)(2) by operating the dehydrator vessel at a pressure that exceeded its design pressure.

**Item 8:** The Notice alleged that Respondent violated 49 C.F.R. § 195.420(a), which states:

> **§ 195.420 Valve maintenance.**
> (a) Each operator shall maintain each valve that is necessary for the safe operation of its pipeline systems in good working order at all times.

The Notice alleged that Respondent violated § 195.420(a) by failing to maintain each valve that is necessary for safe operation of its pipeline system in good working order. Specifically, the Notice alleged that Respondent failed to maintain valves 182 and 152, which were the isolation valves for propane dehydrator systems #1 and #2.

The Notice alleged the valves were in the closed position and malfunctioned in a manner allowing high pressure product to flow into the dehydration systems, which overpressured the dehydration vessels. When the dehydration vessels were overpressured, relief valves on the vessels opened and product was sent to the accumulator tank and flare stack. The Notice also alleged that Respondent failed to maintain the Y-grade system water dump level control valve, which was found blocked in the open position allowing liquid to feed the flare system without necessary controls.

In its written submission, Respondent did not contest the factual allegations, but contested the violation on jurisdictional grounds. I have rejected those arguments. Accordingly, having reviewed the record, I find Respondent violated § 195.420(a) by failing to maintain each valve in good working order at all times.

**Item 9:** The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

> **§ 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 1/2 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.

The Notice alleged that Respondent violated § 195.428(a) by failing to inspect and test each pressure relief valve to ensure it is adequate from the standpoint of capacity and reliability. Specifically, the Notice alleged Respondent failed to ensure that three relief valves on its propane dehydration units #1 and #2 were adequate from the standpoint of capacity to provide overpressure protection for the vessels. The three valves were 167, 168, and 142. Evidence produced by OPS included a third-party study conducted on behalf of Respondent that found the valves were unable to provide protection from blocked flow or failure of inlet pressure control.

Respondent argued OPS did not meet its burden of proof because the third-party study was "not based on the requirements of PHMSA's regulations."[71] Respondent stated the scope of work for the study discussed calculation of relief rates "in accordance with OSHA 1910 and API STD 521."[72] Since the study referenced standards other than the pipeline safety regulations, Respondent argued the study cannot be used as evidence of a violation.

*Analysis*

Section 195.428(a) requires pipeline operators to periodically test and inspect relief valves to ensure they are adequate from the standpoint of capacity. The third-party study of relief valves at Bushton indicated valves 167 and 168 had a supply pressure capacity of 415 psig, and valve 142 had a supply pressure capacity of 395 psig. The study indicated the potential pressure that could be produced by the storage caverns was between 450 psig to 550 psig, higher than the capacity of the relief valves. This information demonstrates the relief valves were not adequate from the standpoint of capacity, regardless of the standard used by the study to calculate individual relief rates.

Having reviewed the record, I find Respondent violated § 195.428(a) by failing to ensure the relief valves were adequate from the standpoint of capacity.

The findings of violation in this Final Order will be considered prior offenses in any subsequent enforcement action taken against Respondent.

## ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed $100,000 per violation for each day of the violation, up to a maximum of $1,000,000 for any

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[71] ONEOK Post-hearing Merits Brief at 94.

[72] OPS Violation Report, Exhibit F, EnGlobal Propane Dehydration PSV Study at 2 (July 2009).

related series of violations.[73] The Notice proposed a total civil penalty of $559,100 for the violations cited above in Items 1 through 9.

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on Respondent's ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require.

As a general matter, Respondent argued there should be no civil penalty because PHMSA has departed from its policy of not inspecting or penalizing NGL fractionation facilities. Respondent referenced a 1991 interpretation as evidence of this policy and claimed PHMSA's 2012 Interpretations fail to explain the departure. Moreover, Respondent argued, the penalties in this case are for conduct that took place prior to issuance of the 2012 Interpretations.

Contrary to Respondent's assertions, PHMSA has not departed from any policy, nor has PHMSA ever adopted a policy of nonenforcement against NGL facilities like Bushton. OPS produced several examples of previous enforcement actions taken against NGL facilities.[74] The 1991 interpretation cited by Respondent provides no support for its position, as the "refinery" at issue in that interpretation was not stated to be an NGL facility.[75] Respondent has been on notice since at least 2006 that its facility must comply with the pipeline safety regulations. The Company expressly committed to comply with the regulations and took specific actions to come into compliance. [76] ONEOK understood its compliance obligations prior to the conduct at issue.

Respondent also argued the penalties should be withdrawn because PHMSA failed to publish in the Federal Register or post on the Agency's website a civil penalty summary document. Respondent received the document titled "Civil Penalty Summary" prior to the hearing. The document contains ranges of penalty amounts and credits the Agency considers under the assessment criteria in 49 U.S.C. § 60122 and 49 C.F.R. § 190.225. Respondent argued the

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[73] The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a), 125 Stat. 1905 (Jan. 3, 2012) increased the maximum civil penalty for a violation of the pipeline safety standards to $200,000 per violation for each day, up to a maximum of $2,000,000 for a related series of violations. These amounts are periodically adjusted for inflation. Inflation Adjustment of Maximum Civil Penalties, 81 Fed. Reg. 42564 (Jun. 30, 2016).

[74] OPS Prehearing Submission, Exhibit 14. Moreover, the absence of prior enforcement does not equate to an affirmative statement of administration policy. *See* ANR Pipeline Co., CPF No. 3-2007-1006, 2010 WL 6564317 (Dec. 30, 2010) (citing MetWest Inc. v. Secretary of Labor, 560 F.3d 506, 510 (D.C. Cir. 2009)).

[75] ONEOK Prehearing Jurisdictional Brief, Exhibit 10.

[76] FIR Appendix C at 9, 16-23.

Agency failed to notify the public of this document as required by the Administrative Procedure Act (APA).

Contrary to Respondent's assertion, PHMSA has made this document available to the public. In a final rule published in 2013, PHMSA explained to pipeline operators that the document outlines how civil penalties are calculated generally and notified operators the document is available upon request.[77] PHMSA was also providing the document upon request prior to that publication.[78] PHMSA provided a copy of the document to Respondent in this case.[79]

Respondent also argued the proposed penalties should be withdrawn because PHMSA failed to make public other documents, such as staff manuals and penalty worksheets. Respondent contended the Agency used nonpublic staff manuals to "guide agency officials in their application of the statutory penalty considerations."[80] Again, the record does not support Respondent's claim. PHMSA makes available to the public on its website all Agency staff manuals.[81] The Electronic Reading Room contains not only staff manuals and instructions, but final orders and opinions, policy statements, and frequently requested records.

With respect to the penalty worksheet, PHMSA has previously denied requests for the penalty calculation,[82] finding an operator has "sufficient information about the penalty to allow a meaningful and targeted response."[83] The penalty assessment factors are listed in § 190.225 and Respondent received the Violation Report, Civil Penalty Summary document, and an OPS employee was present at the hearing to answer questions about the penalty. The Violation Report explained each of the statutory assessment factors and described the facts that were considered under each factor to support the penalty. Respondent had an opportunity to provide any information relevant to the assessment factors, and if appropriate, to disprove any of the factual assertions made by OPS that influenced the penalty amount.

The Civil Penalty Summary document that was provided to Respondent discusses each assessment factor, explains the range of penalties that may be assessed under each factor, and

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[77] Administrative Procedures; Updates and Technical Corrections, 78 Fed. Reg. 58897, 58901 (Sept. 25, 2013).

[78] *See, e.g.*, BP Pipelines (North America), Inc., CPF No. 3-2010-5007, n.13, 2012 WL 6946973 (Dec. 27, 2012) (providing a copy of Civil Penalty Summary document).

[79] ONEOK Post-hearing Merits Brief at 34.

[80] ONEOK Post-hearing Merits Brief at 35-36

[81] PHMSA Electronic Reading Room is available at http://www.phmsa.dot.gov/foia/e-reading-room (*last visited* Aug. 1, 2016.)

[82] *See, e.g.*, BP Pipelines (North America), Inc., CPF No. 3-2010-5007, n.13, 2012 WL 6946973 (Dec. 27, 2012) (denying request for penalty worksheet, but providing copy of Civil Penalty Summary document).

[83] Enterprise Products Operating LLC, CPF No. 4-2013-5011, 2016 WL 1104436, at *7–8 (Feb. 4, 2016); ExxonMobil Pipeline Co., Decision on Reconsideration, CPF No. 4-2013-5027, 2016 WL 2753318, at *11 (Apr. 1, 2016).

explains the type of evidence or facts that will result in higher or lower penalties under each assessment factor. This information corresponds directly to the particular facts of each violation that were noted in the Violation Report. Respondent can discern how the alleged facts of its case fit into the range of conduct and how that influenced the proposed penalty. Given all of this information provided to Respondent, PHMSA finds the Company had access to all of the information needed to respond to the proposed penalty.

In addition, I reject Respondent's assertion that the worksheet represents an *ex parte* communication to the Presiding Official, since the document is not otherwise provided to either Respondent or the Director, his staff, or regional counsel.[84] Respondent's contention that more information must be provided by the Agency so the Company can "learn whether OPS is following its own procedures" is also rejected. Respondent has failed to provide any supported claim that Agency procedures were not followed.[85] Respondent's assertion that PHMSA improperly allows the same employee to develop a proposed penalty and assist the Presiding Official is also rejected as factually incorrect.[86]

Having dismissed Respondent's general arguments, I now evaluate the assessment criteria as they relate to the proposed civil penalties for the nine violations. The Violation Report noted Respondent had two prior offenses in the five-year period prior to issuance of the Notice.

**Item 1:** The Notice proposed a civil penalty of $13,700 for Respondent's violation of 49 C.F.R. § 195.52(a)(2). Respondent failed to report at the earliest practicable moment the release and fire that occurred at the Bushton facility on May 17, 2008.

The proposed penalty was based on assertions in the Notice and Violation Report relevant to the penalty assessment criteria in § 190.225. With regard to the *nature*, *circumstances*, and *gravity* of the violation, OPS noted in the Violation Report this violation concerned a failure to file an accident report, the violation was discovered by PHMSA, and safety was minimally affected. Respondent's only response to these factors was that no violation occurred.

With regard to the degree of Respondent's *culpability*, the Violation Report did not suggest any credit under this factor. Although Respondent eventually reported the accident, the Company did not do so until over four hours after it occurred. Likewise, with regard to Respondent's *good faith* in attempting to comply, the Violation Report did not suggest any credit because ONEOK was aware of the requirement and did not report the accident at the earliest practicable moment.[87]

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[84] *See* § 190.210(b) (prohibiting *ex parte* communications in an enforcement proceeding).

[85] ONEOK Post-hearing Merits Brief at 41.

[86] *See* § 190.210(a) (implementing a separation of functions in enforcement proceedings). Respondent appears to rely on testimony at the hearing, but to the extent anyone at the hearing suggested an employee may participate in both functions, that is not accurate.

[87] At the hearing OPS indicated the wrong box was checked on the Violation Report with regard to good faith.

Respondent argued the penalty should be reduced because the Company attempted to report the accident, but no one answered the phone. This argument is rejected because even the purported unsuccessful attempt to contact the NRC was made more than 1-2 hours after the accident. Respondent then unjustifiably waited an additional 2 hours before providing notice to the NRC.

I find the proposed penalty amount is appropriate under the assessment factors. Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty of $13,700 for the violation of 49 C.F.R. § 195.52(a)(2).

**Item 2:** The Notice proposed a civil penalty of $28,700 for Respondent's violation of 49 C.F.R. § 195.54(a). Respondent failed to file a written accident report within 30 days of the accident that occurred on May 17, 2008.

With regard to *nature* and *circumstances*, OPS noted in the Violation Report this violation concerned a failure to file an accident report and it was discovered by PHMSA. With regard to *gravity*, OPS noted that safe operation was minimally affected. With regard to *culpability* and *good faith*, the Violation Report suggested no credit under these factors.

In regard the proposed penalty for Item 2, Respondent only repeated arguments that I have already addressed above. I find the proposed penalty amount is appropriate under the assessment factors. Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty of $28,700 for the violation of 49 C.F.R. § 195.54(a).

**Item 3:** The Notice proposed a civil penalty of $92,500 for Respondent's violation of 49 C.F.R. § 195.401(b)(1). Respondent failed to correct within a reasonable time a condition causing the release of hazardous liquids. Respondent also failed to cease operations until the immediate hazard had been corrected.

With regard to *nature* and *circumstances*, OPS noted in the Violation Report that the violation concerned the operation of facilities and was discovered by PHMSA. Respondent argued the penalty should be withdrawn because no violation occurred and OPS did not identify "what Bushton facilities Respondent continued to operate" during the accident.[88] Since the finding of violation already explains how Respondent violated the regulation, this argument is rejected.

With regard to *gravity*, OPS noted the violation increased the severity of the consequences of an accident. Respondent argued the penalty should be reduced because although 250 employees were evacuated, they were only evacuated once. I find Respondent's argument does not warrant reducing the penalty.[89]

With regard to *culpability*, the Violation Report suggested a credit because Respondent took steps to address the issue by closing relief valves, even though those actions did not fully comply

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[88] ONEOK Post-hearing Merits Brief at 70 (internal quotations omitted).

[89] Respondent also argued against certain statements in the "Consequences" section of the Violation Report, but such statements do not factor into the penalty under the assessment criteria.

with the regulation. Respondent requested the penalty be further reduced because there is no evidence any facility was operated by the Company after the flare event. This argument is rejected for the same reasons discussed in the finding of violation. With regard to *good faith*, the Violation Report did not suggest any further credit. Respondent also repeated several other arguments that have already been rejected.

I find the proposed penalty amount is appropriate under the assessment factors. Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty of $92,500 for the violation of 49 C.F.R. § 195.401(b)(1).

**Item 4:** The Notice proposed a civil penalty of $100,000 for Respondent's violation of 49 C.F.R. § 195.402(a). Respondent failed to follow its written procedures for limiting the volume of product in the flare system accumulator tank.

With regard to *nature* and *circumstances*, OPS noted in the Violation Report that this violation concerned a failure to follow procedures and was discovered by PHMSA. With regard to *gravity*, OPS noted the violation contributed to the cause of an accident or increased the severity of the consequences of an accident. With regard to *culpability* and *good faith*, the Violation Report suggested no credit under these factors.

Respondent argued the penalty should be reduced because the duration of the violation was only one day. This fact is already reflected in the proposed penalty amount.[90] Respondent also repeated other arguments that have already been rejected.

I find the proposed penalty amount is appropriate under the assessment factors. Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty of $100,000 for the violation of 49 C.F.R. § 195.402(a).

**Item 5:** The Notice proposed a civil penalty of $43,700 for Respondent's violation of 49 C.F.R. § 195.402(a). Respondent failed to follow its written procedures for handling emergencies when the Company bypassed a piece of safety equipment.

With regard to *nature* and *circumstances*, OPS noted in the Violation Report that this violation concerned a failure to follow procedures and was discovered by PHMSA. With regard to *gravity*, OPS noted the violation significantly compromised safety at a plant, storage field, or similar area where a major construction projected involving over 250 people was in progress. The Violation Report suggested no credit under the *culpability* and *good faith* factors.

Respondent argued the penalty should be reduced because the conduct did not significantly compromise safe operation. At the hearing, Respondent explained that the valve in question is a thermal relief valve, which relieves pressure from thermal increases when the pipeline is blocked in. It is not designed or intended to relieve surge pressures when the pipeline is in operation like the day of the accident.

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[90] OPS Violation Report at 24 (noting under *gravity* that the number of instances of the violation is "1").

While improper closure of any relief valve impacts safety, Respondent has demonstrated that its failure to follow procedures by closing the thermal relief valve on the day in question did not have a "significant" impact because the valve was only designed to operate during block-in to relief thermal pressure increase, and the pipeline was not blocked in at the time. Thus a reduction to the penalty is appropriate.

Respondent also repeated other arguments that have already been rejected. Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a reduced civil penalty of $37,500 for the violation of 49 C.F.R. § 195.402(a).

**Item 6:** The Notice proposed a civil penalty of $100,000 for Respondent's violation of 49 C.F.R. § 195.408(a). Respondent failed to have a communication system that transmitted information about the volume of product in the flare system accumulator tank.

With regard to *nature* and *circumstances*, OPS noted in the Violation Report that this violation concerned faulty equipment and was discovered by PHMSA. With regard to *gravity*, OPS alleged the violation contributed to the cause of an accident or increased the severity of an accident. By not having an operational tank level alarm, Respondent was unaware that liquids in the tank exceeded safe levels, which resulted in hazardous liquids being pushed through the flare where they ignited causing a fire and evacuations. The Violation Report suggested no credit under the *culpability* and *good faith* factors. Respondent only repeated arguments that have already been rejected.

I find the proposed penalty amount is appropriate under the assessment factors. Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty of $100,000 for the violation of 49 C.F.R. § 195.408(a).

**Item 7:** The Notice proposed a civil penalty of $46,200 for Respondent's violation of 49 C.F.R. § 195.406(a)(2). Respondent operated a dehydrator vessel at pressures exceeding the design pressure of the vessel.

With regard to *nature*, OPS noted in the Violation Report that this violation concerned records, activities, and faulty equipment. I disagree with this assessment. The violation concerned Respondent's operation of a pipeline facility, which constitutes an activities violation. Under PHMSA's consideration of *nature*, an activities violation will result in a lower penalty than an equipment violation. Therefore a reduction to the proposed penalty is appropriate under this factor.

With regard to *circumstances* and *gravity*, OPS noted the violation was discovered by PHMSA and significantly compromised safety at a plant, storage field, or similar area where a major construction projected involving over 250 people was in progress. The Violation Report suggested no credit under the *culpability* and *good faith* factors.

Respondent only repeated arguments that have already been rejected. Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a reduced civil penalty of $43,700 for the violation of 49 C.F.R. § 195.406(a)(2).

**Item 8:** The Notice proposed a civil penalty of $100,000 for Respondent's violation of 49 C.F.R. § 195.420(a). Respondent failed to maintain two valves that malfunctioned, allowing high pressure product to overpressure the dehydration vessels.

With regard to *nature* and *circumstances*, OPS noted in the Violation Report that this violation concerned a failure to maintain valves in good working order and was discovered by PHMSA. With regard to *gravity*, OPS alleged the violation was a causal factor in the accident because the failure to maintain the isolation valves permitted unintended flow of product resulting in the overpressure events. The Violation Report suggested no credit under the *culpability* and *good faith* factors.

Respondent only repeated arguments that have already been rejected. Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty of $100,000 for the violation of 49 C.F.R. § 195.420(a).

**Item 9:** The Notice proposed a civil penalty of $34,300 for Respondent's violation of 49 C.F.R. § 195.428(a). Respondent failed to ensure that three relief valves were adequate from the standpoint of capacity.

With regard to *nature* and *circumstances*, OPS noted in the Violation Report that this violation concerned a failure of equipment and was discovered by PHMSA. With regard to *gravity*, OPS alleged the violation significantly compromised pipeline safety. The Violation Report suggested no credit under the *culpability* and *good faith* factors.

Respondent only repeated arguments that have already been rejected. Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty of $34,300 for the violation of 49 C.F.R. § 195.428(a).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **$550,400**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require the payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S Macarthur Blvd, Oklahoma City, OK 73169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the $550,400 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

## COMPLIANCE ORDER

The Notice proposed a compliance order with respect to the violation cited above in **Item 2**. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids by pipeline or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601.

With regard to the proposed compliance order, Respondent repeated arguments that have already been rejected.[91] Accordingly, pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.54(a) (Item 2), Respondent must file an accident report on DOT Form 7000-1 for the accident that occurred May 17, 2008, at the Bushton facility. The form must be filed within 30 days of issuance of the Final Order.

2. It is requested that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. 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.

The Director may grant an extension of time to comply with this Compliance Order upon a written request timely submitted by Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed the amounts set forth in 49 C.F.R. § 190.223 (currently $205,638 for each violation for each day the violation continues) or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent may submit a petition for reconsideration of this Final Order to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, D.C. 20590, no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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[91] ONEOK Post-hearing Merits Brief at 17 (arguing the proposed compliance order should be withdrawn due to a lack of fair notice of the basis and scope of PHMSA's jurisdiction).

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

OCT 12 2016

Date Issued