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November 16, 2016

Mr. Alan Mayberry
Acting Associate Administrator
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
East Building, 2nd Floor
1200 New Jersey Ave, SE
Washington, D.C. 20590

**Re: ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C., and ONEOK
Underground Storage Company, L.L.C.
CPF No. 3-2013-5015
Respondents' Petition for Reconsideration**

Dear Mr. Mayberry;

Pursuant to Section 190.243 of the regulations of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Respondents submit a Petition for Reconsideration of the final Order (corrected) issued on October 13, 2016 in CPF No. 3-2013-5015. As provided in PHMSA's letter of October 31, 2016, as clarified on November 9 and November 10, 2016, the deadline for submitting this Petition was extended to November 16, 2016. Respondents are submitting this Petition for Reconsideration in hard copy and electronic format and request that it be included in the case file for CPF No. 3-2013-5015.

Please contact me with any questions you may have regarding this filing.,

Sincerely,

A handwritten signature in blue ink, appearing to read 'V. Murchison'.

Vince Murchison
Counsel for Respondents

Cc: Alicia Covert, Esq., Attorney Advisor, PHMSA
Kristin Baldwin, Esq., Presiding Official
Allan Beshore, Director, Office of Pipeline Safety, Central Region, PHMSA

Attachments: Certificate of Service
Enclosure



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CERTIFICATE OF SERVICE

I hereby certify that I have this day filed copies of the foregoing materials with the following participants in these proceedings by hand delivery or overnight courier:

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Dated at Washington, D.C., this 16th day of November, 2016.



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The Pipeline & Energy Authority

**PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
WASHINGTON, DC 20590**

In the matter of:

**ONEOK NGL Pipeline, L.P.,
ONEOK NGL Pipeline, L.L.C.,
and
ONEOK Underground Storage
Company, L.L.C.**

Respondents

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CPF No. 3-2013-5015

PETITION FOR RECONSIDERATION

INTRODUCTION

The Pipeline and Hazardous Materials Safety Administration (“PHMSA”) Office of Pipeline Safety (“OPS”) issued a Final Order finding that ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C.¹ (“ONEOK NGL Pipeline”), and ONEOK Underground Storage Company, L.L.C. (“ONEOK Underground Storage”) (collectively, “Respondents”) violated the federal pipeline safety regulations, 49 C.F.R. Part 195 (“Part 195”).² Part 195 was promulgated pursuant to authority granted to the Secretary of the U.S. Department of Transportation (“DOT”) by the Pipeline Safety Act³ (the “PSA”).⁴ The alleged violations involve a facility located near Bushton, Kansas, known as the “Bushton Plant.”⁵ OPS also assessed \$159,200 in civil penalties

¹ ONEOK NGL Pipeline, L.L.C. is the successor entity to ONEOK NGL Pipeline, L.P.

² ONEOK NGL Pipeline, L.P., CPF No. 3-2013-5015, (Oct. 13, 2016) (corrected) (the “5015 Final Order”).

³ 49 U.S.C. §§ 60101-60503 (2012 and Supp. II 2014), *amended by* Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016, Pub. L. 114-183, 130 Stat. 514.

⁴ The Secretary of DOT has delegated to PHMSA the authority vested in the Secretary under 49 U.S.C. chapter 601. 49 C.F.R. § 1.97(a)(1) (2015).

⁵ The Bushton Plant is described in the Jurisdictional Brief of ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C., and ONEOK Underground Storage Company, L.L.C. on Applicability of the Pipeline Safety Act and the

and issued a Compliance Order requiring Respondents, collectively, to implement certain actions which would purport to bring certain components of the Bushton Plant into compliance with Part 195.⁶ Respondents are seeking reconsideration of the 5015 Final Order issued on October 13, 2016.

This case is one of three cases brought simultaneously by OPS in 2013, the other two being CPF No. 3-2013-5014 and 3-2013-5020. In their briefings and at the hearings for all three cases, Respondents vigorously objected to the agency's attempted exercise of jurisdiction over the Bushton Plant beyond certain inbound and outbound pipelines as to which Respondents conceded jurisdiction.⁷

This Petition for Reconsideration seeks clarity regarding the scope and intent of the Compliance Order. Respondents do not address in this Petition their jurisdictional issues and arguments or their issues and arguments on the merits; however, Respondents do not waive any of such issues and arguments, nor do Respondents waive any right to file a petition for review at the U.S. Court of Appeals.⁸ Respondents reserve all rights to appeal this case and the companion cases.⁹ Furthermore, Respondents' discussion herein of PHMSA's guidance document entitled *Delineation and Regulatory Oversight of "Processing" – Oil and Gas Midstream Facilities*, dated August 2015 (the "Midstream FAQs") shall in no way constitute any admission of liability or of applicability of the PSA or Part 195 to the Bushton Plant.¹⁰

Pipeline Safety Regulations in Response to Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order at 5-8, CPF No. 3-2013-5015 (Nov. 4, 2013) ("Pre-Hearing Jurisdictional Brief").

⁶ 5015 Final Order at 8-11 (civil penalty assessment) and 11-17 (compliance order).

⁷ See "Respondents' Briefs," *infra*.

⁸ 49 U.S.C. § 60119(a).

⁹ *Id.*

¹⁰ *Delineation and Regulatory Oversight of "Processing" – Oil and Gas Midstream Facilities*, <http://primis.phmsa.dot.gov/meetings/FilGet.mtg?fil=675> (Aug. 2015) ("Midstream FAQs").

PROCEDURAL BACKGROUND

OPS initiated this enforcement proceeding on May 13, 2013, by issuing a notice of probable violation (“NOPV”) alleging numerous violations of Part 195 of PHMSA’s regulations at the Bushton Plant.¹¹ Also on that date, OPS issued a second NOPV, then a third NOPV was issued on July 3, 2013 (amended August 15, 2013), each subsequent NOPV alleging additional violations of Part 195 at the Bushton Plant.¹² Respondents contended that the facilities that are the object of the NOPVs are not within the scope of PHMSA’s jurisdiction under either the PSA or the Part 195 regulations because the Bushton Plant fractionation facility is a refining facility and the facilities that are the subject of the NOPVs are all or portions of said facilities, including the storage and in-plant piping associated with those refining facilities. At hearings held on November 14-15, 2013, and January 15, 2014, Respondents presented testimony and other evidence demonstrating that the Bushton Plant is a refining facility, as well as responding substantively to OPS’s alleged violations. Respondents timely submitted pre-hearing and post-hearing evidence and briefs which countered both the jurisdictional issues and the issues relating to the alleged violations raised in the three cases (collectively, “Respondents’ Briefs”).¹³ The last of Respondents’ Briefs was submitted on April 1, 2014.

¹¹ ONEOK NGL Pipeline, L.P., Notice of Probable Violation, CPF No. 3-2013-5015 (May 13, 2013).

¹² ONEOK NGL Pipeline, L.P., Notice of Probable Violation, CPF No. 3-2013-5014 (May 13, 2013); ONEOK NGL Pipeline, L.P., Notice of Probable Violation, CPF No. 3-2013-5020 (Aug. 15, 2015).

¹³ Pre-Hearing Jurisdictional Brief;

Post-Hearing Jurisdictional Brief of ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C., and ONEOK Underground Storage Company, L.L.C in Response to Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order, CPF No. 3-2013-5015 (Mar. 14, 2014) (“Post-Hearing Jurisdictional Brief”) (the Post-Hearing Jurisdictional Brief was incorporated by reference into the records for CPF Nos. 3-2014-5014 and -5020, respectively, in Respondents’ post-hearing submissions for those two cases).

Briefs on the Merits of ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C., and ONEOK Underground Storage Company, L.L.C. in Response to Notice of Probable Violation, Proposed Civil Penalty and Proposed

On or about April 1, 2016, OPS submitted for inclusion in the case file its Region Recommendation for each of the three NOPV cases.¹⁴ The Presiding Official allowed Respondents the opportunity to submit responses to the Region Recommendations. Respondents filed their Response to the Region Recommendations on May 6, 2016, for all three cases.¹⁵

The Final Orders in cases Nos. 3-2013-5014 and 3-2013-5020 were issued on October 12, 2016, and a corrected Final Order in this case, CPF No. 3-2013-5015, was issued October 13, 2016 (the “5015 Final Order,” Exhibit 1). By letter dated October 31, 2016, and clarified on November 9 and November 10, 2016, PHMSA granted Respondents an extension of time to file Petitions for Reconsideration in each proceeding until November 16, 2016; that letter also stayed the assessed civil penalties and compliance orders until November 16, 2016 or the issuance of a decision on the petition for reconsideration. Based upon the foregoing, this Petition is timely filed.

Compliance Order, CPF No. 3-2013-5014 (Apr. 1, 2014); CPF No. 3-2013-5015 (Mar. 14, 2014) (erroneously dated 2013); and CPF No. 3-2013-5020 (Mar. 31, 2014) (“Brief on the Merits”).

Statements of Incorporation by Reference of Jurisdictional Materials of ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C., and ONEOK Underground Storage Company, L.L.C. in Response to Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order, CPF No. 3-2013-5014 (Mar. 28, 2014); and CPF No. 3-2013-5020 (Mar. 28, 2014).

Motion to Dismiss of ONEOK NGL Pipeline, L.P. and ONEOK NGL Pipeline, L.L.C., CPF No. 3-2013-2014 (Mar. 31, 2014) (erroneously dated 2013); Motion to Dismiss of ONEOK NGL Pipeline, L.P. and ONEOK NGL Pipeline, L.L.C., CPF No. 3-2013-5015 (Mar. 10, 2014) (erroneously dated 2013); and Partial Motion to Dismiss of ONEOK NGL Pipeline, L.P. and ONEOK NGL Pipeline, L.L.C., CPF No. 3-2013-5020 (Mar. 28, 2014) (erroneously dated 2013).

Rebuttal of ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C., and ONEOK Underground Storage Company, L.L.C. in Response to Certain Pre-Hearing Submissions of PHMSA, CPF No. 3-2013-5015 (Mar. 10, 2014).

¹⁴ 49 C.F.R. § 190.209(b)(7) (providing for the inclusion of “Regional Director’s written evaluation of response material submitted by the respondent and recommendation for final action” in the case file).

¹⁵ Response of ONEOK NGL Pipeline, L.P., ONEOK NGL Pipeline, L.L.C., and ONEOK Underground Storage Company, L.L.C. to Region Recommendations, CPF No. 3-2013-5014, CPF No. 3-2013-5015, and CPF 3-2013-5020 (May 6, 2016) (“Response to Region Recommendations”).

EXECUTIVE SUMMARY

Respondents here seek reconsideration of the Compliance Order that was issued in the 5015 Final Order.

The fundamental issues with the Compliance Order are that (a) PHMSA shifts to Respondents the task of identifying which facilities at the Bushton Plant are subject to Part 195, which the Respondents are certainly capable of doing provided that OPS provides a clear and consistent basis for doing so; (b) the Compliance Order only vaguely describes certain of the actions that would be required of Respondents; and (c) certain of the compliance actions in the Compliance Order are attended with internally inconsistent timing requirements.

For the reasons stated in the discussion and analysis below, Respondents seek reconsideration and clarification of the Compliance Order. Respondents also offer that the determination of which facilities at the Bushton Plant are subject to Part 195 be determined by applying the Midstream FAQs that were cited favorably in PHMSA's final order issued in companion case CFP No. 3-2013-5014 on October 12, 2016.¹⁶

DISCUSSION AND ANALYSIS

I. Overview of the Compliance Order.

The Compliance Order contains two directives, each of which, independently, is of appreciable magnitude. To address PHMSA's finding that Respondents violated 49 C.F.R. § 195.402(a) for "failing to have written procedures for conducting normal operations and maintenance activities and for handling abnormal operations and emergencies," the Compliance Order directs Respondents to perform two actions.¹⁷ The first action is to prepare a "Part 195

¹⁶ ONEOK NGL Pipeline, L.P., Notice of Probable Violation at 8-9, CPF No. 3-2013-2014 (Oct. 12, 2016) ("5014 Final Order").

¹⁷ 5015 Final Order at 4 (relating to Item 1 of the NOPV).

Analysis” that would identify “all pipeline and storage facilities and all other operations at the Bushton facility required to be covered by a manual of written procedures under § 195.402.”¹⁸ The Part 195 Analysis is to be submitted to the Director – for approval – not later than 60 days following the date of the Compliance Order.¹⁹ In addition, Respondents must “submit to the Director for prior approval a manual of written Procedures that complies with § 195.402 and a Plan and Schedule for taking all actions necessary to ensure the pipelines, storage facilities, and operations at the Bushton facility are governed by the Procedures.”²⁰ This second action is to be completed not later than 90 days from issuance of the Compliance Order.²¹

The second compliance directive relates to PHMSA’s finding in the 5015 Final Order that Respondents violated 49 C.F.R. § 195.404(a)(1) for five instances of “P&IDs [being] inaccurate and noncompliant.”²² Respondents are required to “submit maps and records of [their] pipeline systems that include, at a minimum, the location and identification of the following pipeline facilities: scraper and sphere facilities; pipeline valves; facilities to which § 195.402(c)(9) applies [facilities identified under § 195.402(c)(4) that are not equipped to fail safe]; and safety devices to which § 195.428 applies [overpressure safety devices and overfill protection systems].”²³ The Compliance Order further requires (a) that “[a]ll pipe, valves, fittings, and components must be identified and accompanied by supporting documentation to demonstrate accuracy,” and (b) that Respondents submit “procedures for documenting changes made to the system and for reflecting those changes in the records, drawings, maps, and other

¹⁸ *Id.* at 13.

¹⁹ *Id.*

²⁰ *Id.* at 13-14.

²¹ *Id.*

²² *Id.* at 5 (relating to Item 3 of the NOPV).

²³ *Id.* at 17.

records of the Bushton facility.”²⁴ These submissions must be made not later than 30 days after issuance of the Compliance Order.²⁵

II. Identification of Facilities Subject to Part 195

The Compliance Order directs Respondents to perform a “Part 195 Analysis” that would “identif[y] all pipeline and storage facilities and all other operations at the Bushton facility required to be covered by a manual of written procedures under § 195.402” and to submit the Part 195 Analysis to the Director for approval.²⁶ The 5015 Final Order does not, however, explain how to make the determination of which facilities are subject to PHMSA’s Part 195 jurisdiction. Rather, PHMSA asserts that, “as the operator of the pipeline system, ONEOK is in the best position to ... identif[y] all pipeline and storage facilities and all other operations at the Bushton facility that are required to be covered by a manual of written procedures under § 195.402.”²⁷ Respondents request reconsideration of this requirement. Respondents also request that PHMSA clarify that the Midstream FAQs, cited with approval by PHMSA in the final order issued in CPF No. 3-2013-2014, reflect the appropriate approach to determining which facilities at the Bushton Plant are subject to Part 195.²⁸

The lack of clarity in the demarcation point between facilities subject to Part 195 and facilities not subject to Part 195 is at the heart of the dispute in this proceeding and spans from ONEOK NGL Pipeline’s November 13, 2006 letter to the Director, to the three 2012 interpretations relating to the Bushton Plant, and to the NOPV and Proposed Compliance Order. In that November 13, 2006 letter, ONEOK NGL Pipeline asked PHMSA to identify the locations

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 13-14.

²⁷ *Id.* at 12.

²⁸ *See* 5014 Final Order at 8-9.

where Part 195 jurisdiction started and ended.²⁹ At no time has OPS identified with any precision which facilities at the Bushton Plant are subject to Part 195 regulation and which are not.³⁰ In fact, PHMSA has offered multiple approaches for determining which facilities at the Bushton Plant are subject to Part 195 regulation.

Respondents agree with OPS that, as the operator, Respondents are in the best position to perform the analysis to determine which facilities at the Bushton Plant are covered under Part 195 and would therefore be required to be covered by a manual of written procedures. However, there are several approaches for conducting such analysis, including the definitions set forth in the Part 195 regulations, PHMSA's interpretations, and the Midstream FAQs. Respondents submit that the appropriate theory to apply is the Midstream FAQs.

Respondents first consider the regulations that resulted from notice and comment rulemaking. The application of 49 C.F.R. §§ 195.1(b)(8), 195.3 (definition of in-plant piping), and 195.406(b) would result in Part 195 regulation ending at the pressure control devices for the inbound and outbound jurisdictional (trunkline or transmission) pipelines. PHMSA has rejected that approach.

An alternative approach is reflected in the second interpretation issued in 2012, applying Part 195 to all of the Bushton Plant that is not used *exclusively* for fractionation.³¹ This approach is fraught with issues, and the line of demarcation, in the absence of guiding criteria, could be designated at any one of several locations on the piping leading to and from the fractionation facilities.

²⁹ *Id.* at 6.

³⁰ Brief on the Merits at 60-61, CPF No. 3-2013-5015 (Mar. 14, 2014).

³¹ Letter from Vanessa Sutherland, Chief Counsel, PHMSA, to Vince Murchison of SNR Denton, US LLP at 5 (Aug. 8, 2012), Exhibit 3.

The only approach with practical merit would be to apply PHMSA's Midstream FAQs which are cited with approval by PHMSA in the Final Order for CPF No. 3-2013-5014.³² The outcome of the demarcation between facilities that were and were not under PHMSA regulatory oversight under the Midstream FAQs was summarized in Respondents' Response to the Region Recommendations.³³ The Final Order in CPF 3-2013-5014, which rejected Respondents' jurisdictional arguments, accorded no consideration whatsoever to Respondents' assertions relating to the Midstream FAQs, and those findings were adopted in this case.³⁴ Here, Respondents request that PHMSA find that the appropriate approach is to apply the Midstream FAQs.

Below, Respondents describe in greater detail the application of the Midstream FAQs to the Bushton Plant and identify the facilities that would be subject to PHMSA regulatory oversight under this approach. Respondents submit in connection with discussion of the Midstream FAQs additional information on two levels. First, the information upon which the analysis summarized in the Response to the Region Recommendations was based has been updated to encompass storage and piping usage for a more recent time period (Aug. 2013 – July 2016).³⁵ Respondents could not have analyzed data from the second quarter of 2016 in a response submitted May 6, 2016. Respondents also submit that the more recent time period reflects a more current operating profile at the Bushton Plant. Second, analytical detail is provided in the analysis presented in this Petition, including a discussion of Respondents' methodology and conclusions, source documents, calculations, specific information regarding

³² See 5014 Final Order at 8-9.

³³ See Response to the Region Recommendations at 18-19 and Exhibit 1, Exhibit 4.

³⁴ 5015 Final Order at 2.

³⁵ The prior time period analyzed was Nov. 2012 – Oct. 2015.

pressure control devices, and more detailed drawings. Respondents submit that providing additional detail will aid reconsideration of the Compliance Order by more precisely conveying the analysis performed and the determinations reached in applying the Midstream FAQs. On the basis of the foregoing, Respondents submit that the incremental information presented in this Petition should be received into the record.

Respondent witness Alan Raupe performed the task of analyzing the Bushton Plant by applying the criteria provided by the Midstream FAQs.³⁶ Mr. Raupe explains in detail the application of each relevant Midstream FAQ criterion, the analysis of relevant data in light of each such criterion, and the determinations he reached regarding which facility components at Bushton are subject to Part 195 regulation.

For ease of reference when reviewing the results, Bushton Plant facility piping – plant-side of the pipeline pressure control devices – may be considered to fall into three categories:

1. Piping extending from the inbound pipeline pressure control devices to manifolds which lead to storage or to the fractionators;
2. Piping extending from the inbound pipeline manifolds to the underground storage caverns, known as storage field piping; and
3. Piping leading from manifolds that direct product from the storage field piping outbound to the outbound pipeline pressure control devices.

Pipelines moving product into and out of the Bushton Plant were not considered when applying the Midstream FAQs since those pipelines are by definition subject to Part 195 regulation.

Mr. Raupe's analysis of each relevant Midstream FAQ identifies very specifically the portions of the Bushton Plant subject to PHMSA regulatory oversight. Under the Midstream FAQs, the following facilities at the Bushton Plant are subject to Part 195 regulation:

³⁶ See the Declaration of Alan Raupe, Exhibit 5 ("Application of the PHMSA Midstream FAQs to the ONEOK Bushton Plant").

1. From the Line 110 pipeline inbound pressure control device to the manifold, then inbound through storage field piping to the RGB storage caverns because refinery grade butane (“RGB”) is not processed at the Bushton Plant.
2. Line 108 piping from the Y-grade valve on the outbound pipeline manifold to the outbound Line 108 pipeline pressure control device because the Line 108 predominant use is to move volumes of Y-grade product that bypass processing and subsequently are moved out of the Bushton Plant by pipeline –.
3. Line 100 and Line 101 because product movements inbound on the Line 100 pipeline “bypass a pressure control device” and products moving on those pipelines “bypass processing”; *i.e.*, the movements merely cross the Bushton Plant grounds and are unrelated to activities at the Bushton Plant.
4. PHMSA cedes oversight of underground storage caverns to the states, in this case, the Kansas Department of Health and Environment.

Applying the criteria of the Midstream FAQs renders the remainder of the facilities at the Bushton Plant not subject to PHMSA regulatory oversight; those facilities are the actual fractionation facilities, the non-RGB storage facilities, the non-RGB in-plant piping (except Line 108 outbound due to Y-grade movements), and appurtenant systems such as treatment units (coalescers, amine contactors, filters, and dehydration units), bullet tanks, spherical tanks, and the flare system.

Respondents encourage PHMSA to give weighty consideration to this alternative given the clarity it brings to the determination of which facilities fall under PHMSA regulatory oversight and which do not. The Midstream FAQs provide the practical advantage of easily discernable starting and ending points for PHMSA regulatory oversight, which Respondents understand to have been the goal when the Midstream FAQs were developed as a guide to the pipeline industry.

Further, Mr. Raupe’s analysis provides for physical marking of facilities, a periodic review of facility usage, reviews in advance of facility modifications, and documentation of all

actions evaluating and affecting the scope of PHMSA regulatory oversight under the Midstream FAQs.

In sum, if PHMSA is going to require the Bushton Plant to be subject to the PSA and Part 195, the agency must accept and fulfill the responsibility of providing Respondents with the criteria by which to determine which portions of the Bushton Plant are under Part 195 and which are not. Respondents submit that PHMSA has provided applicable criteria in the Midstream FAQs.

Last in this regard, Respondents submit that the Associate Administrator should consider requesting additional information, data, and comment regarding application of the Midstream FAQs to the Bushton Plant prior to issuing a decision on reconsideration, as provided by 49 C.F.R. § 190.243(d), and in the event of such request, that Respondents be given the opportunity to present the above findings in person, as they believe it would be informative to a decision on reconsideration.

III. The Compliance Order is Overly Broad; and Vague and Ambiguous

The second component of the first compliance directive in the Compliance Order directs that Respondents “submit to the Director for prior approval a manual of written Procedures that complies with § 195.402 and a Plan and Schedule for taking all actions necessary to ensure the pipelines, storage facilities, and operations at the Bushton facility are governed by the Procedures.”³⁷ The scope of this directive appears to reach *all facilities and operations* at the Bushton Plant. As the Final Order in case CPF No. 3-2013-5014 concludes, however, PHMSA has statutory jurisdiction over the entirety of the Bushton Plant, but has regulations only for certain of the facilities at the plant. The Compliance Order nonetheless could be interpreted as

³⁷ 5015 Final Order at 13-14.

directing the preparation of written procedures for the entire Bushton Plant, which Respondents do not believe is the intent of OPS.³⁸ As such, Respondents request that PHMSA clarify that Respondents are required to prepare written procedures only for the facilities found to be subject to Part 195 regulation under the Part 195 Analysis, as performed in accordance with the Midstream FAQs.

Similarly, the directive to prepare a “Plan and Schedule for taking all actions necessary to ensure the pipeline, storage facilities, and operations at the Bushton facility are governed by the Procedures” is vague and ambiguous, in that it provides no indication of the expected content of the Plan. Respondents note that this compliance directive contains further subsections, (c) – (f), which restate substantially verbatim, the corresponding subsections of 49 C.F.R. § 195.402. Respondents submit that more specific guidance regarding the content of the ordered “Plan and Schedule” is necessary to ensure compliance with OPS’ expectations.

Respondents suggest that actions in the Plan might include identification of facilities that are subject to specific procedures, assignment of personnel to certain tasks, training of personnel, physically marking certain facilities, or any number of other actions; however, without guidance identifying the content and an explanation of the agency’s expectations, Respondents are left to guess at the intent of the order. Further clarity is warranted, and, indeed, rather necessary.

The Compliance Order further requires Respondents to submit all “maps and records of its pipeline systems that include . . . scraper and sphere facilities; pipeline valves; facilities to which § 195.402(c)(9) applies; and safety devices to which § 195.428 applies.”³⁹ Respondents are unable, without further clarity, to identify the “pipeline systems” for which to submit such maps and records. If “pipeline systems” is intended to encompass the Bushton Plant facility

³⁸ 5014 Final Order at 7, 13.

³⁹ 5015 Final Order at 17.

components that are determined by the Part 195 Analysis, by one methodology or another, to be subject to Part 195 regulation, then this compliance directive likewise is affected by a lack of clear criteria for identifying which facilities are regulated by Part 195 and which are not. Respondents request that PHMSA clarify that they are required to submit maps and records only for the facilities found to be subject to Part 195 regulation under the Part 195 Analysis.

Respondents assert that this directive also must be refined to include greater specificity in its scope and content.

IV. The Compliance Order Imposes Inconsistent and Incongruent Timing Requirements

A difficulty is presented due to timing inconsistencies between the directives of the Compliance Order. At section 1(a), the Compliance Order requires Respondents to develop and submit for approval by the Director the “Part 195 Analysis” within 60 days from issuance of the Compliance Order. No timing requirement is placed on the Director’s approval of the Part 195 Analysis. Item 3, in turn, requires Respondents to submit all “maps and records of its pipeline systems” within 30 days of issuance of the Compliance Order.⁴⁰ If it is the case, as discussed in the preceding section, that PHMSA intends for the scope of this requirement to be limited to those Bushton Plant facility components that ultimately are identified as being subject to Part 195 regulation, then the compliance deadlines of the two requirements are incongruent because Respondents are being ordered to provide maps, records and supporting documentation for the “pipelines, storage and other operations” identified by the Part 195 Analysis prior to the time that the Part 195 Analysis is submitted. Further, until the Director approves, or directs amendment of, the determinations of the Part 195 Analysis, the Bushton Plant facility components for which

⁴⁰ *Id.* at 13, 17.

Respondents must provide maps, records and supporting documentation cannot be identified with reasonable certainty, or, indeed, with any degree of certainty.

Moreover, none of the deadlines stated in the Compliance Order have any connection with the Bushton Plant itself, in that the deadlines are set without reference to the scale of the Plant, the types and number of facilities to be covered by the procedures, the volume of the maps, records and supporting documentation to be submitted, and without reference to the complexity of the Bushton Plant.

Respondents request that the deadline associated with the second compliance directive must be refined to integrate and coordinate (a) the timing of the Part 195 Analysis, including time to allow for the Director's ultimate approval of the Part 195 Analysis, with (b) the deadline for submitting procedures, and (c) further to account for the types and number of facilities ultimately covered by the procedures and/or the maps, records and supporting documentation.

CONCLUSION

On the basis of the foregoing, Respondents request that PHMSA grant reconsideration of the 5015 Final Order as follows:

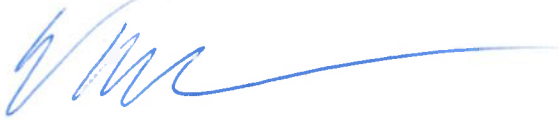
1. PHMSA should clarify the methodology for preparing the required Part 195 Analysis and approve Respondents' request to apply the approach reflected in the Midstream FAQs.
2. PHMSA should clarify that Respondents are required to prepare written procedures only for the facilities found to be subject to Part 195 regulation under the Part 195 Analysis, and PHMSA should clarify the directive to prepare a "Plan and Schedule for taking all actions necessary to ensure the pipeline, storage facilities, and operations at the Bushton facility are governed by the Procedures."
3. PHMSA should clarify that Respondents are required to submit maps and records only for those facilities found to be subject to Part 195 regulation under the Part 195 Analysis.
4. PHMSA should refine the compliance deadlines to integrate and coordinate the compliance actions so that Respondents are not required to submit written procedures, a plan and schedule for ensuring governance of facilities by the written procedures, and

maps and records until PHMSA makes a determination regarding the facilities that are subject to Part 195 regulation. PHMSA also should tailor the compliance deadlines to the scope of facilities subject to Part 195 regulation, the complexity of those facilities, and the volume of maps and records that would be required for those facilities.

Respondents do not waive any of their jurisdictional issues and arguments, do not waive any of their issues and arguments on the merits, and do not waive any right to file a petition for review at the U.S. Court of Appeals.⁴¹ Respondents reserve all rights to appeal this case and the companion cases.

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November 16, 2016



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⁴¹ 49 U.S.C. § 60119(a).