U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

901 Locust Street, Suite 462
Kansas City, MO 64106-2641

NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

May 15, 2018

Mr. Barry McFarland
Vice President, Environmental, Health, Safety, and Operational Risk
Par Pacific Holdings (dba Ellsjet Terminal)
800 Gessner Road, 8th Floor
Houston, TX 77024

CPF 3-2018-6004

Dear Mr. McFarland:

On November 9-10, 2015, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code inspected your Ellsjet Terminal facilities and records in Rapid City, South Dakota and Newcastle, Wyoming.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. **§195.49 Annual report.**

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

Ellsjet Terminal (ET) did not annually complete and submit DOT Form PHMSA F 7000-1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year. On July 1, 2016, PHMSA received ET's first annual report, although it had been operating continuously for over 40 years. A review of operator records determined that they did not complete and submit reports for 2013, 2014 and 2015.

2. **§195.64 National Registry of Pipeline and LNG Operators.**

(a) OPID Request. Effective January 1, 2012, each operator of a hazardous liquid or carbon dioxide pipeline or pipeline facility must obtain from PHMSA an Operator Identification Number (OPID). An OPID is assigned to an operator for the pipeline or pipeline system for which the operator has primary responsibility. To obtain an OPID or a change to an OPID, an operator must complete an OPID Assignment Request DOT Form PHMSA F 1000.1 through the National Registry of Pipeline and LNG Operators in accordance with §195.58.

ET did not obtain an Operator Identification Number (OPID) from PHMSA as required by January 1, 2012. ET had been operating their pipeline for over 40 years but did not obtain an OPID until November 2015 as shown on its OPID Assignment Request. ET's 2016 Annual Report lists the decade installed as 1950-1959.

3. **§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.

ET failed to prepare all written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies for its system to meet the requirements of 49 C.F.R. Part 195 before initial operations of the pipeline system commenced. During the inspection on November 9-10, 2015, ET informed PHMSA staff that procedural manuals for operations, maintenance and emergencies were not complete; therefore, no manuals were available for inspection. ET has been continuously operating the pipeline for over 40 years and did not have a procedural manual. ET had not identified itself as an operator until PHMSA became aware of its operations in late 2015 and requested that it report itself as an operator. ET's failure to have procedural manuals is a violation of §192.402(a).

4. **§195.404 Maps and Records.**

(a)...

(b) Each operator shall maintain for at least 3 years daily operating records that indicate-

(1) The discharge pressure at each pump station;

ET did not maintain daily discharge pressure records at its pump station for at least 3 years. ET stated during PHMSA's inspection that these records began being kept in October 2015. Therefore, ET had no historical operating pressure records prior to October 1, 2015.

5. **§195.404 Maps and Records.**

(a)...

(c) Each operator shall maintain the following records for the periods specified;

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

§195.420 Valve maintenance.

(b) Each operator shall, at intervals not exceeding 7 1/2 months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

ET had no valve inspection records prior to October 2015 to demonstrate that inspections had occurred twice each calendar year at intervals not exceeding 7 ½ months for the years 2013, 2014, and up to the inspection in 2015. The pipeline system contains three mainline safety valves which had no inspection records prior to October 2015.

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

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7½ 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.

ET did not inspect and test the overpressure safety device on its non-HVL pipeline at intervals not to exceed 15 months, but at least once each calendar year. ET informed PHMSA that inspecting and testing of its overpressure safety device began October 2015 but no record was kept. ET did not inspect its overpressure protection devices to ensure that they were operational in 2013 or 2014. Therefore, no inspection was performed on the safety devices for over 3 years prior to October 2015.

7. **§195.452 Pipeline integrity management in high consequence areas.**

(a)...

(b) What program and practices must operators use to manage pipeline integrity? Each operator of a pipeline covered by this section must:

(1) Develop a written integrity management program that addresses the risks on each segment of pipeline in the first column of the following table not later than the date in the second column:

Pipeline	Date
Category 1	March 31, 2002
Category 2	February 18, 2003.
Category 3	1 year after the date the pipeline begins operation.

ET did not have an integrity management (IM) program in high consequence areas, even though it had been operating the pipeline continuously since February 18, 2003. ET informed PHMSA that its pipeline meets the classification Category 2 on April 30, 2016; therefore, it was required to have an IM program by February 18, 2003.

8. **§195.509 General.**

(a) Operators must have a written qualification program by April 27, 2001. The program must be available for review by the Administrator or by a state agency participating under 49 U.S.C. Chapter 601 if the program is under the authority of that state agency.

ET did not have a written operator qualification (OQ) program by April 27, 2001, although it operated the pipeline continuously since that date. Its OQ program was created after PHMSA's inspection on November 9-10, 2015.

9. **§195.509 General.**

(a)...

(b) Operators must complete the qualification of individuals performing covered tasks by October 28, 2002.

ET did not complete the qualification of individuals performing covered tasks by October 28, 2002. ET had operated the pipeline continuously since that date, but had not completed the qualifications of its individuals as of the November 9-10, 2015, inspection.

Specifically, personnel were performing the following covered tasks for ET without being qualified:

Covered tasks:

- Valve Maintenance
- Inspect Valves
- Repair Valves
- Inspect, Test and Calibrate Pressure Limiting Devices
- Shutdown of a Pipeline
- Monitor Pressures, Flows, Communications and Line Integrity, Maintain within Allowable Limits
- Manually or Remotely Open or Close Valves or Other Equipment
- Start-up of a Pipeline
- Visually Inspect Surface Conditions of Right of Way
- Routine Inspection of Breakout Tanks
- API 653 Inspection of In-Service Breakout Tanks
- Locate Line
- Install, Inspect, and Maintain Permanent Marker
- Install, Inspect, and Maintain Temporary Marker
- Check for Proper Operation of a Rectifier
- Obtain a Voltage and Current Output Reading from a Rectifier
- Adjustment of Rectifiers

10. §195.573 What must I do to monitor external corrosion control?

(a) Protected pipelines. You must do the following to determine whether cathodic protection required by this subpart complies with Sec. 195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. However, if tests at those intervals are impractical for separately protected short sections of bare or ineffectively coated pipelines, testing may be done at least once every 3 calendar years, but with intervals not exceeding 39 months.

ET did not conduct cathodic protection pipe-to-soil potential tests on the pipeline at least once each calendar year, but with intervals not exceeding 15 months. Specifically, ET did not conduct tests in 2014 at 13 test stations. The last tests were taken in 2013 prior to the cathodic protection technician leaving.

11. §195.573 What must I do to monitor external corrosion control?

(a)...

(c) Rectifiers and other devices. You must electrically check for proper performance each device in the first column at the frequency stated in the second column.

Device	**Check frequency**
Rectifier.....	**At least six times each calendar year, but with intervals not exceeding 2 1/2 months.**

ET did not conduct electrical checks for proper performance on its one rectifiers at least six times each calendar year but with intervals not exceeding 2-1/2 months in 2014 and 2015.

12. §195.573 What must I do to monitor external corrosion control?

(a)...

(d) Breakout tanks. You must inspect each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank to ensure that operation and maintenance of the system are in accordance with API RP 651 (incorporated by reference, see § 195.3). However, this inspection is not required if you note in the corrosion control procedures established under §195.402(c)(3) why complying with all or certain operation and maintenance provisions of API RP 651 is not necessary for the safety of the tank.

API RP 651 reference:

11.3.1.2 Annual cathodic protection surveys are recommended to ensure the effectiveness of cathodic protection. The electrical measurements used in the survey may include one or more of the measurements listed in 11.3.1.1.

ET did not inspect its cathodic protection system on its three above ground breakout tanks to ensure that its operation and maintenance was in accordance with API RP 651. Annual cathodic protection surveys are required by PHMSA to ensure the effectiveness of cathodic protection. ET did not conduct the annual surveys on its breakout tank bottom as required.

13. §195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:	**Then the frequency of inspection is:**
Onshore	**At least once every 3 calendar years, but with intervals not exceeding 39 months**

ET did not inspect its pipeline that was exposed to the atmosphere for evidence of atmospheric corrosion at least every 3 calendar years, but with intervals not exceeding 39 months. ET informed PHMSA that no atmospheric corrosions inspections had been performed prior to May 2016.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed $209,002 per violation per day the violation persists, up to a maximum of $2,090,022 for a related series of violations. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed $200,000 per violation per day, with a maximum penalty not to exceed $2,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of $293,600 as follows:

Item number	PENALTY
1	$ 19,100
2	$ 18,700
3	$ 36,000
4	$ 17,200
5	$ 13,900
6	$ 37,000
7	$ 36,000
8	$ 36,000
10	$ 21,300
11	$ 20,600
12	$ 19,100
13	$ 18,700

Warning Items

With respect to item 9 we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these item(s). Failure to do so may result in additional enforcement action.

Proposed Compliance Order

With respect to items 3, 7 and 12 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Ellsjet Terminal. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 3-2018-6004** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Allan C. Beshore
Director, Central Region, OPS
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Ellsjet Terminal (ET) a Compliance Order incorporating the following remedial requirements to ensure the compliance of ET with the pipeline safety regulations:

1. In regard to Item Number 3 of the Notice pertaining to written procedural manuals, ET must prepare a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies as required by 49 CFR Part 195. A schedule for completion of this manual is to be submitted to the Director, Central Region within 30 days of the final order. Completion of this manual shall not exceed 6 months from the issuance of the final order.

2. In regard to Item Number 7 of the Notice pertaining to an integrity management program, ET must develop a written integrity in accordance with 49 CFR Part 195.452. management. A schedule for completion of this manual is to be submitted to the Director, Central Region within 30 days of the final order. Completion of this manual shall not exceed 6 months from the issuance of the final order.

3. In regard to Item Number 12 of the Notice pertaining to monitoring external corrosion control at its breakout tank, ET must monitor external corrosion control at its breakout tank and remediate any deficiencies. Monitoring of its breakout tanks must begin within 30 days of the final order. Records of the initial monitor readings and any remediation must be submitted to the Director, Central Region within 30 days of completion.

4. It is requested (not mandated) that ET maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Allan Beshore, Director, Central Region, Pipeline and Hazardous Materials Safety Administration. 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.