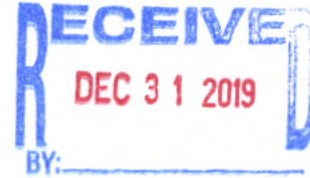


Jere C. Overdyke, III
Phone 307.734.4505
JCOverdyke@hollandhart.com

December 31, 2019

VIA FACSIMILE AND UPS OVERNIGHT MAIL

Allan C. Beshore
Director, Central Region, OPS
Pipeline & Hazardous Materials Safety Administration
901 Locust Street, Suite 462
Kansas City, Missouri 64106-2641
Facsimile: (816) 329-3831



Re: CPF 3-2019-6006 & CPF 3-2019-6007M
Response of Crestwood Equity Partners, LP & Request for a Hearing

Dear Mr. Beshore:

Crestwood Equity Partners, LP ("Crestwood") received the above-referenced Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order, CPF 3-2019-6006, ("NOPV") and Notice of Amendment, CPF 3-2019-6007M, ("NOA") on December 3, 2019. Crestwood hereby responds to the NOPV and NOA.

Pursuant to 49 C.F.R. Parts 190.208 and 190.211, Crestwood respectfully requests a hearing regarding Notice of Probable Violation Item 1, including the allegations and Proposed Civil Penalty associated therewith. In the event this matter is not resolved before the hearing, Crestwood will be represented at the hearing by the undersigned counsel. Crestwood does not contest Notice of Probable Violation Item 2, the Proposed Compliance Order, or the NOA.

Pursuant to 49 C.F.R. Part 190.211(b), a Preliminary Statement of Issues is attached to this response letter. Crestwood, through its undersigned counsel, contacted the Central Region via telephone and voicemail in mid-December to request a copy of the case file and proposed civil penalty worksheet, but was unable to reach Central Region personnel. Crestwood hereby makes its request for the case file and proposed civil penalty worksheet in writing. Crestwood reserves its right to supplement or otherwise amend its Preliminary Statement of Issues based on information contained therein.

Crestwood is hopeful the parties can resolve the contested issues in advance of a hearing in this matter. Accordingly, Crestwood respectfully requests an opportunity to meet with the Central Region to discuss settlement.

Sincerely,

Trey Overdyke

T 307.739.9741 F 307.739.9744
25 South Willow Street, Suite 200, Jackson, WY 83001
Mail to: P.O. Box 68, Jackson, WY 83001-0068
www.hollandhart.com

Alaska
Colorado
Idaho

Montana
Nevada
New Mexico

Utah
Washington, D.C.
Wyoming

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION OFFICE
OF PIPELINE SAFETY**

In the Matter of

Crestwood Equity Partners, LP,

Respondent.

CPF 3-2019-6006

PRELIMINARY STATEMENT OF ISSUES

I. Introduction

Crestwood Equity Partners, LP ("Crestwood") intends to raise the following issues during a hearing, if one is necessary, in regards to contested Notice of Probable Violation ("NOPV") Item 1 and the associated Proposed Civil Penalty issued on November 22, 2019 by the Pipeline and Hazardous Materials Safety Administration ("PHMSA") in the above-captioned matter. Crestwood submits this Preliminary Statement of Issues ("Statement") as required by 49 C.F.R. § 190.211(b) in the event a hearing is necessary. Crestwood reserves the right to supplement this Statement as necessary.

II. Preliminary Statement of Issues

A. Whether the allegations in NOPV Item 1 are consistent with the facts:

NOPV Item 1 contains various factual allegations relating to numerous thermal relief valves. Crestwood is investigating the allegations and reserves its right to raise discrepancies and inaccuracies at a hearing.

B. Whether the thermal relief valves at issue are outside the scope of 49 C.F.R. Part 195.428:

The thermal relief valves at issue are not within the scope of 49 C.F.R. Part 195.428 because they are not an integral part of the pipeline's overpressure protection system. *See In re Butte Pipeline Co.*, Final Order, CPF No. 5-2007-5008 (Aug. 17, 2009).

C. Whether PHMSA failed to meet its burden of proof:

PHMSA bears the burden of proof to establish all elements of a proposed violation in an enforcement proceeding. *In re ANR Pipeline Co.*, Final Order, CPF No. 3-2011-1011 (Dec. 31, 2012). Specifically, "a violation may only be found if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense." *In re Eutte Pipeline Co.*, Final Order, CPF No. 5-2007-5008 (Aug. 17, 2009). Here, PHMSA failed to meet its burden of proof in establishing a violation of 49 C.F.R. Part 195.428.

D. Whether the Proposed Civil Penalty should be significantly reduced because it is inconsistent with PHMSA's policy and due process; and

For alleged violations that PHMSA believes warrant a civil penalty, PHMSA shall consider statutory assessment factors in calculating the proposed civil penalty, including: (1) nature, (2) circumstances, (3) gravity, (4) culpability, (5) history of prior offenses, (6) good faith, (7) effect on the respondent's ability to continue in business, (8) economic benefit gained from the violation; and/or (9) other matters as justice may require. See 49 U.S.C. § 60122; 49 C.F.R. § 190.225; PHMSA Civil Penalty Summary. These factors were not properly assessed in calculating the Proposed Civil Penalty for NOPV Item 1.

PHMSA should withdraw or significantly reduce the Proposed Civil Penalty for Item 1 to properly account for the civil penalty factors. Crestwood provides the following non-exhaustive examples of facts that were not properly considered in calculating the proposed civil penalty: Crestwood identified the alleged missing thermal relief valve inspections during a voluntary, self-audit and initiated action to perform the inspections prior to PHMSA's inspection. In addition, all inspections referenced in NOPV Item 1 were completed prior the conclusion of PHMSA's inspection. Moreover, due to the nature and function of the thermal relief valves at issue, the potential effect on pipeline safety, if any, was *de minimis*.

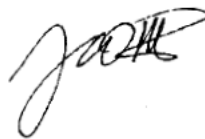
E. Whether the Proposed Civil Penalty is arbitrary, capricious, and an abuse of discretion.

An agency decision shall be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). PHMSA's proposed civil penalty for Item 1, \$236,100, is arbitrarily excessive and incongruent with PHMSA's practice of assessing proposed civil penalties in similar cases. See *Parsons v. U.S. Dep't of Air Force*, 707 F.2d 1406, 1410 (D.C. Cir. 1983) ("[A]n agency's selection of a particular penalty must still be demonstrably based on a responsible balancing of the relevant factors in the individual case."). PHMSA's proposed civil penalty in this matter is arbitrary, capricious, and represents an abuse of discretion.

III. Conclusion

In light of the issues identified herein, and additional issues as may be identified during further investigation and review of the case file and proposed civil penalty worksheet, Crestwood requests a hearing on NOPV Item 1 and the associated Proposed Civil Penalty issued by PHMSA on November 22, 2019.

DATED: December 31, 2019.



Jere C. Overdyke, III
Robert D. Ayers, Jr.
Holland & Hart, LLP
PO Box 68
Jackson, WY 83001
Telephone: 307-739-9744
jcoverdyke@hollandhart.com
rdayers@hollandhart.com

ATTORNEYS FOR CRESTWOOD
EQUITY PARTNERS, LP