

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

VIA ELECTRONIC MAIL TO: jeff.ramsey@fhr.com , and kim.gerold@fhr.com

April 26, 2021

Mr. Jeff Ramsey
President and CEO
Flint Hills Resources, LLC
4111 E. 37th Street North
Wichita, KS 67220

CPF 3-2021-032-NOPV

Dear Mr. Ramsey:

From November 28, 2017, through September 7, 2018, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), Central Region, and the Minnesota Office of Pipeline Safety (MNOPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected your Koch_MN_Southern_Crude system of Koch Pipeline Company LP, now Flint Hills Resources, LLC (referred together as “FHR”), in Minnesota, Iowa, Missouri, and Illinois.

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

1. **§ 195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.**
 - (a)....
 - (b) After October 2, 2000, compliance with paragraph (a) of this section requires the following for the aboveground breakout tanks specified:
 - (1) For tanks built to API Spec 12F, API Std 620, and others (such as API Std 650 (or its predecessor Standard 12C)), the installation of impoundment must be in accordance with the following sections of NFPA-30 (incorporated by reference, see §195.3);
 - (i) Impoundment around a breakout tank must be installed in accordance with section 22.11.2; and
 - (ii) Impoundment by drainage to a remote impounding area must be installed in accordance with section 22.11.1.

FHR failed to install the Clearbrook tank impoundment drain valve in compliance with NFPA-30, Section 22.11.2 as required by § 195.264(b)(1). During the inspection, PHMSA/MNOPS observed that, within the impoundment area, there were stairs and a platform to enable drain valve operation from a few feet above the ground level, and that the impoundment wall height was significantly above the level of the drain valve platform. Through these observations, PHMSA confirmed the drain valve was only operable from inside the diked area associated with Tanks 12, 13, 14, and 15 (constructed in 2016). NFPA-30, Section 22.11.2 requires a drain valve to be operable from outside the diked area. FHR therefore failed to comply with the regulatory requirements.

2. **§ 195.430 Firefighting equipment.**

Each operator shall maintain adequate firefighting equipment at each pump station and breakout tank area. The equipment must be—

 - (a)....
 - (c) **Located so that it is easily accessible during a fire.**

FHR failed to locate firefighting equipment at each pump station so that it is easily accessible during a fire, and therefore failed to comply with the requirements of § 195.430(c). PHMSA/MNOPS observed at the Cottage Grove Terminal and pump station that the nearest accessible fire extinguisher was approximately 200 feet from the pumps.

3. **§ 195.452 Pipeline integrity management in high consequence areas.**
 - (a)....
 - (f) *What are the elements of an integrity management program? An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn*

from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program:

(3) An analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure (see paragraph (g) of this section)...

FHR failed to continually change the integrity management program to reflect operating experience and did not include an analysis that integrated all available information about the integrity of the entire pipeline and the consequences of a failure. Therefore, FHR failed to comply with the requirements of § 195.452(f)(3).

From 2014 to 2017, portions of Hartford Terminal remained flooded, but was not flowing (dead leg). In 2014, at Itasca, the MN Southern Crude system experienced a reportable leak on a dead leg. After this pipeline failure at Itasca, the operator established a program to identify dead legs. On December 18, 2015, the operator updated Section 6.5.1 of the Integrity Management Program to reflect updated station and facility data integration and risk factors as required by the regulation. On October 30, 2017, FHR reported another dead leg leak at Hartford Terminal, which was caused by a pinhole leak on elbow piping next to station valve 88.

At the time of the inspection, Section 6.5.1 of the Integrity Management Program (Version 7.0, dated November 2, 2017) (IMP) included the following data and risk factors be reviewed during risk analysis associated with Operating and Maintenance (O&M) history:

- Normal station operating pressure
- Fluid velocity through the station
- Dead Legs – no flow or low flow conditions
- Vibration or vibration design
- Freeze Damage – line movement or frost heave
- Manned or unmanned
- Business impact

Even though FHR's IMP was modified to incorporate dead legs on December 18, 2015, and there was a subsequent release on a dead leg at Hartford Terminal on October 30, 2017, FHR still failed to establish a dead leg management plan as part of their IMP for Hartford Terminal until 2018. FHR failed to incorporate a dead legs analysis into the IMP despite requiring the risk analysis as part of FHR's own procedures.

4. § 195.452 Pipeline integrity management in high consequence areas.

(a)....

(i) *What preventive and mitigative measures must an operator take to protect the high consequence area?*

(1) General requirements. An operator must take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. These measures include conducting a risk analysis of the pipeline segment to identify additional actions to enhance public safety or environmental protection. Such actions may include, but are not limited to, implementing damage prevention best practices, better monitoring of cathodic protection where corrosion is a concern, establishing shorter inspection intervals, installing EFRDs on the pipeline segment, modifying the systems that monitor pressure and detect leaks, providing additional training to personnel on response procedures, conducting drills with local emergency responders and adopting other management controls.

FHR failed to take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. In 2014, at Itasca, FHR's Minnesota Pipeline system experienced a reportable leak on a dead leg. After this pipeline failure at Itasca, the operator established a program to identify dead legs. Despite having this program in place, on October 30, 2017, the operator reported another dead leg leak at Hartford Terminal caused by a pinhole leak on elbow piping next to station valve 88. Instead of inspecting the dead leg at Hartford Terminal, FHR had prioritized active stations for dead leg management plans and had kept the inspection for the Hartford Terminal on hold. Despite identifying the dead leg, a listed risk factor under FHR's own IMP, the operator took no mitigative or remedial action.

5. § 195.589 What corrosion control information do I have to maintain?

(a)....

(c) You must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. You must retain these records for at least 5 years, except that records related to §195.569, 195.573(a) and (b), and 195.579(b)(3) and (c) must be retained for as long as the pipeline remains in service.

FHR's record-keeping associated with atmospheric corrosion for the Marathon Segment Index #5033 failed to document each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test, and therefore failed to comply with § 195.589(c). The documentation reviewed indicated that FHR had failed to sufficiently demonstrate the adequacy of corrosion control measures. FHR only provided the following records: an alignment sheet (5901-5033-asmap-b-1.pdf), a form titled KPL0006 for 2014 and 2017 inspections, Koch's Work Order #PL391272 relevant to 2014 atmospheric inspection, the follow-up Work Order #PL399235, and the pictures associated with the 2014 and 2017 atmospheric inspections. The

2014 form, KPL0006, associated with Segment Index #5033 failed to even indicate the type of facility that was inspected (e.g. Breakout Tank, Aboveground Pipe Section, etc.).

The alignment sheet relevant to Segment Index #5033 indicated multiple soil-to-air interface areas, and the regulations require documentation for each soil-to-air interface area. Form KPL0006 and associated Work Orders (PL391272 and PL399235) did not document each analysis of these areas in 2014. Similarly, a single form was used for the 2017 inspection and Work Order PL568248. While the 2017 inspection did clarify that the inspection was performed on Aboveground Pipe Section, it did not identify each analysis relevant to the soil-to-air interfaces and aboveground pipe sections.

While the soil-to-air interface was indicated as “good” on Form KPL0006 for 2014 and 2017, the KPL0006 records failed to state which corresponding soil-to-air interface areas were reviewed. In addition, the records failed to indicate whether that indication was referring to all soil-to-air interface areas, as nothing on the form identifies which areas were checked.

FHR failed to keep all required documents under the regulation, and the documents that were retained failed to identify required information.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022. We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

Warning Items

With respect to Items 2, 3, 4, and 5, 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 items. Failure to do so may result in additional enforcement action.

Proposed Compliance Order

With respect to Item 1, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Flint Hills Resources, LLC.

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 Enforcement 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).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. 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. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 3-2021-032-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Gregory A. Ochs
Director, Central Region, OPS
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Response Options for Pipeline Operators in Enforcement Proceedings*

CC: Kimberly A. Gerold, Manager, Pipeline Safety, kim.gerold@fhr.com

PROPOSED COMPLIANCE ORDER

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

1. Regarding Item Number 1 of the Notice pertaining to the Clearbrook Terminal tank impoundment drain valve, FHR must install an operable drain valve from outside of the impoundment area associated with Tanks 12, 13, 14, and 15, within 12 months from the issuance of the final order. FHR must provide a complete schedule for such installation to the Director, Central Region within 30 days of the final order. FHR must provide documentation of this installation to the Director, Central Region within 30 days of completion.
2. It is requested (not mandated) that FHR maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Gregory A. Ochs, Director, Central Region, OPS, 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.