

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

VIA ELECTRONIC MAIL TO: bill.moler@tallgrassenergyllp.com;
jennifer.eckels@tallgrassenergyllp.com; brad.armsbury@tallgrassenergyllp.com;
crystal.heter@tallgrassenergyllp.com

November 23, 2021

William Moler
Chief Executive Officer
Tallgrass Pony Express Pipeline, LLC
4200 W. 115th St. Suite 350
Leawood, KS 66211

CPF 3-2021-046-NOPV

Dear Mr. Moler:

From August 2, 2020, to October 23, 2020, 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 (U.S.C.) inspected Tallgrass Pony Express Pipeline, LLC's (Tallgrass) records and facilities in Lakewood, Colorado.

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. § 195.310 Records.

(a) A record must be made of each pressure test required by this subpart, and the record of the latest test must be retained as long as the facility tested is in use.

Tallgrass failed to provide a record documenting pressure tests of its breakout tank in accordance with API Std 650, Sections 7.3.5 and 7.3.6, as required under § 195.307, and therefore failed to comply with § 195.310(a). Specifically, tank 3400 at the Natoma, Kansas station did not have a record of the fill level or test duration to confirm the pressure of the hydrotest after construction. Tallgrass provided daily reports, NDE procedures, and tank volume calibration documents, but failed to present any records for the Natoma tank fill height measurements or pressures. Tallgrass therefore failed to retain records of the pressure test for as long as the facility is in use, and did not comply with § 195.310(a).

2. § 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.

Tallgrass failed to follow its procedure for the design and construction of the cathodic protection (CP) system for its Northeast Colorado Lateral (NECL) pipeline installed in 2015, and therefore failed to comply with § 195.402(a). Per procedure OM903 GL “External Corrosion Control for Buried or Submerged Pipelines” dated June 1, 2015, Tallgrass did not follow the design requirements of section 3.2.1 “Current Requirements” which states: “Current requirement estimates may be obtained from the following: Prior experience or test data obtained from pipelines with a similar coating material in similar electrolytes.” Tallgrass did not provide any documentation that it obtained current requirements based on prior experience. In response to PHMSA’s requests for documentation, Tallgrass provided evidence that it installed cathodic protection in 2016 and stated that the engineering design review for CP current requirements had no documentation because it was done “verbally.” Therefore, Tallgrass failed to follow its corrosion control manual by failing to obtain data from the pipelines with similar coating materials in similar electrolytes.

Additionally, Tallgrass failed to follow its procedure OM903 GL in that it did not complete a close-interval survey on its NECL pipeline as required by Section 3.4.1, which states: “Crude Oil Pipelines – Identify not more than 2 years after cathodic protection is installed, the circumstances in which a close-interval survey or comparable

technology is practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE SPO169-2007.” After Tallgrass installed the 53-mile NECL pipeline in 2015, the operator found that there were low cathodic potentials near mainline valve 5 during its annual CP surveys. During the PHMSA inspection, Tallgrass stated that it determined during the course of its annual inspection program that the cathodic protection system was electrically shorted to the electrical power for the motor operated main line valves. Tallgrass added decoupling devices and an additional rectifier and deep well grounded to resolve these problems and subsequently performed a close interval survey of the NECL pipeline in May 2020. Tallgrass’ investigation and correction of cathodic protection problems following the 2015 commissioning of the NECL line were not timely. Because Tallgrass did not determine these circumstances within 2 years of installation of the NECL pipeline, Tallgrass failed to follow its corrosion control manual for close interval surveys.

3. § 195.406 Maximum operating pressure.

(a)

(b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

Tallgrass failed to provide adequate controls and protective equipment to ensure that the pressure in its pipelines during surges or other variations from normal operation did not exceed 110 percent of the established maximum operating pressure. In the five instances listed below Tallgrass allowed the pipeline pressure to surge above 110% of the operating pressure limit (MOP), and therefore did not install adequate controls and protective equipment to control the pressure within the required limit.

1. 130% MOP on 08-04-18 for NECL North line on the Pawnee and Noble meter skids due to power loss and ESD at Buckingham (ERL 1356, 1357, 1358)
2. 115% MOP on 07-26-19 during startup on PXP North (ERL 1679)
3. 114% MOP on 10-10-19 at Pawnee due to shut down of Hereford Ranch Lateral, no surge relief (ERL 1773)
4. 113% MOP on 3-18-20 at McPherson Lateral due to control valve failure (ERL 2018)
5. 114.5% MOP on 6-25-20 at Hereford Lateral/Pawnee due to unintended closure of control valve (ERL 2180)

This violation is a repeat of violations found in CPF # 3-2016-5001, Item # 1.

4. **§ 195.440 Public awareness.**

(a)

(g) The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

Tallgrass failed to conduct its public awareness program in other languages commonly understood by a significant number of non-English speaking population in the area of its pipelines, and therefore failed to comply with the requirements of § 195.440(g). During the records inspection of Tallgrass' public awareness program, PHMSA requested information regarding any content in languages other than English in the mailing program for the affected public. Tallgrass responded that they did not provide content in other languages, but instead included a link to Spanish content on its website. Tallgrass provided records of the Spanish speaking population thresholds for counties in its program that ranged from 13% to 39%, based on census data. Tallgrass did not define in its procedures a threshold, and it was not able to demonstrate the rationale for its decision to not include content in other languages aside from English that are used by a significant number of the relevant speaking population in its public awareness program.

Additionally, in its discussions of the issue, Tallgrass responded to PHMSA's request for information suggesting that any thresholds less than half of the population were not significant. Although neither PHMSA or API Recommended Practice 1162 specify specific thresholds for significant concentration of other languages, the thresholds of 13-39% are statistically significant; therefore, Tallgrass' decision not to conduct its mailing program in other languages is unreasonable.

5. **§ 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)

(4) Include in the program a framework that—

(i) Addresses each element of the integrity management program under paragraph (f) of this section, including continual integrity assessment and evaluation under paragraph (j) of this section;

Tallgrass failed to comply with the requirements of § 195.452(b)(4)(i) because its integrity management program (IMP) did not include elements to assess the risk to high consequence areas (HCAs). Specifically, under § 195.452(f)(6), an operator must include in its IMP a process for the identification of preventive and mitigative measures to protect the HCA.

During the inspection, PHMSA requested records associated with how Tallgrass identified risks and associated preventive and mitigative measures for its facilities that affected HCAs. Tallgrass presented a Facilities Integrity Risk Analysis (FIRA) for its pipeline systems that it completed in December 2018, and put into effect in January 2019. Tallgrass additionally stated that its preventive maintenance program to mitigate identified facility risks was in the early stages of implementation. Therefore, Tallgrass failed to include in its IMP elements to identify preventive and mitigative measures to protect the HCA for its covered facilities from 2016 through 2018.

6. § 195.452 Pipeline integrity management in high consequence areas.

(a)

(i) *What records must an operator keep to demonstrate compliance?* (1) An operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of this subpart. At a minimum, an operator must maintain the following records for review during an inspection:

(ii) Documents to support the decisions and analyses, including any modifications, justifications, deviations and determinations made, variances, and actions taken, to implement and evaluate each element of the integrity management program listed in paragraph (f) of this section.

Tallgrass failed to keep records regarding its § 195.452(g) information analyses using all available information from its corrosion control monitoring program in 2017, as required by § 195.452(l)(ii). During the inspection PHMSA reviewed selected records of excavation and repair of the PXP pipeline from 2015, 2016, and 2017, which included corrosion information from over 500 total repairs documented in the “Pipe Evaluation Reports” (PERs). Tallgrass could not provide documentation showing that the PERs corrosion data was integrated into its continual process for assessment and evaluation (see § 195.452(f)(5)) of the pipeline’s integrity. Therefore, Tallgrass failed to demonstrate compliance with the documentation requirement to support its decisions and analyses, including any modifications, justifications, deviations and determinations made to implement and evaluate each element of its integrity management program, as required under § 195.452(l)(ii).

7. § 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 § 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.

Tallgrass failed to demonstrate that it had conducted tests on protected pipelines at least once each calendar year, but with intervals not exceeding 15 months.

On November 18, 2020, Tallgrass provided a list of cathodic protection test station and breakout tank inspections that were not performed at the required intervals to insure proper performance.

Segment	Mile Post / Station	Identified Facility	Dates of Missing Inspection/Record	Number of Inspections Missed
TANK 4021		Test Station	2017, 2018	2
TANK 4151		Test Station	2019	1
TANK 4152		Test Station	2019	1
4310010000	688+38	Test Station	2020	1
6500010000 TGX	35857+75	Test Station	2017, 2018, 2019	3
7000010000 INACTIVE	2782+15	Test Station	2018, 2019	2
2520	0+06	Test Station	2017, 2018	2
2520	0+11	Test Station	2017, 2018	2
2520	0+12	Test Station	2017, 2018	2
6500010000 PXP INACTIVE	480+02	Test Station	2019	1
6500010000 PXP INACTIVE	100+00	Test Station	, 2017, 2018, 2019	3
6500010000 PXP INACTIVE	426+42	Test Station	2019	1
6500010000 PXP INACTIVE	429+44	Test Station	2019	1
6500010000 PXP INACTIVE	430+10	Test Station	2019	1

6500010000 PXP INACTIVE	484+80	Test Station	2019	1
6500010000 PXP INACTIVE	509+60	Test Station	2017, 2018, 2019	3
6500010000 PXP INACTIVE	546+81	Test Station	2017, 2018	2
6500010000 PXP INACTIVE	581+87	Test Station	2017, 2018	2
6500010000 PXP INACTIVE	699+52	Test Station	2017, 2018	2
6500010000 PXP INACTIVE	800+32	Test Station	2017, 2018, 2019	3
650-001-00- 00-WY	1342+56	Test Station	2017, 2018	2
650-001-00- 00-WY	2652+81	Test Station	2017, 2018	2
650-001-00- 00-WY	2664+90	Test Station	2017, 2018	2
650-001-00- 00-WY	2850+41	Test Station	2017, 2018	2
TANK 5151		Test Station	2017, 2018, 2019	3
TANK 5152		Test Station	2018, 2019	2
TANK 5251		Test Station	2017, 2018, 2019	3
TANK 5252		Test Station	2017, 2018, 2019	3
TANK 5253		Test Station	2017, 2018, 2019	3
TANK 5254		Test Station	2017, 2018, 2019	3
6500010000 PXP INACTIVE	780+03	Test Station	2018, 2019	2

8. § 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 2½ months.
Reverse current switch	
Diode	
Interference bond whose failure would jeopardize structural protection	
Other interference bond	At least once each calendar year, but with intervals not exceeding 15 months.

Tallgrass failed to electrically check for proper performance of rectifiers at least six times each calendar year, but with intervals not exceeding 2½ months, as required under § 195.573(c). On November 18, 2020, Tallgrass provided the following list of two rectifier inspections that were not performed at the required intervals:

Mile Post / Station	Identified Facility	Inspection not conducted in the required interval	Date of Missing Inspection/ Record	Number of Inspections Missed
1811+53	Rectifier	Missed 2.5 Month Interval	2019	2

9. § 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 2½ months.
Reverse current switch	
Diode	
Interference bond whose failure would jeopardize structural protection	

Other interference bond	At least once each calendar year, but with intervals not exceeding 15 months.
--------------------------------	--

Tallgrass failed to electrically check for proper performance of other interference bonds at least once each calendar year, but with intervals not exceeding 15 months, as required by § 195.573(c). On November 18, 2020, Tallgrass provided the following list of six inspections of other interference bonds that were not inspected in the required intervals:

Mile Post / Station	Identified Facility	Date of Missing Annual Inspection/Record	Number of Inspections Missed
925+98	Non-Critical Bond	2017, 2018	2
926+51	Non-Critical Bond	2017, 2018	2
1089+36	Non-Critical Bond	2017, 2018	2

10. **§ 195.577 What must I do to alleviate interference currents?**
(a) For pipelines exposed to stray currents, you must have a program to identify, test for, and minimize the detrimental effects of such currents.

Tallgrass's program to identify and address interference currents failed to minimize the detrimental effects of such currents, as required under § 195.577(a). Specifically, Tallgrass failed to minimize interference that had caused low cathodic protection levels on the Northeast Colorado Lateral pipeline. From 2016 to 2019, Tallgrass failed to resolve problems with interference currents that caused low cathodic protection and shorted decouplers at main line valve 5. Tallgrass provided a timeline of actions taken to address the issues. However, at the time of the inspection, Tallgrass failed to address the shorted power system at main line valve 5. Tallgrass failed to take corrective action to minimize the detrimental effects of interference currents on the Northeast Colorado Later pipeline, and at its main line valve 5 since 2016, and therefore failed to comply with § 195.577(a).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 C.F.R. § 190.223, you are subject to a civil penalty not to exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not 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. 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. We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of \$437,300 as follows:

<u>Item number</u>	<u>PENALTY</u>
3	\$151,300
5	\$ 67,000
6	\$ 63,500
7	\$115,500
8	\$ 14,100
9	\$ 25,900

Warning Items

With respect to Items 1, 2 and 10, 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 Items 3 and 4, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Tallgrass Pony Express Pipeline, 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 C.F.R. § 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 3-2021-046-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: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

cc: Jennifer Eckles, Director Compliance, jennifer.eckels@tallgrassenergyllp.com
Crystal Heter, Chief Operating Officer, crystal.heter@tallgrassenergyllp.com
Brad Armsbury, Compliance Engineer, brad.armsbury@tallgrassenergyllp.com

PROPOSED COMPLIANCE ORDER

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

- A. In regard to Item 3 of the Notice pertaining to overpressure protection, Tallgrass must evaluate each facility to ensure that its pipeline system is protected from overpressure using a means of surge protection, installing surge relief devices as necessary. In its evaluation, Tallgrass must prioritize facilities with repeated occurrences of surge pressure events. Tallgrass must, within 60 days of the issuance of the Final Order, provide the results of the evaluation, and a schedule for corrective action to the Director, PHMSA Central Region.
- B. In regard to Item 4 of the Notice pertaining to its public awareness mailing program material, Tallgrass must update its Public Awareness Program to include materials in Spanish and any other non-English language in areas where there is a significant percentage of non-English speaking populations. Tallgrass must, within 60 days of the issuance of the Final Order, provide the Director, PHMSA Central Region for review and approval with its determination of additional languages under which its program will be conducted, and the reasons to include or exclude such languages, and provide a schedule for when the program will be updated.
- C. It is requested that Tallgrass maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Gregory Ochs, Director, Central, 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.