



By Electronic Mail

September 21, 2021

Greg Ochs, Director
Central Region
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
901 Locust Street, Suite 462
Kansas City, MO 64106

**Re: PHMSA CPF 3-2021-049-NOPV
DAPL Response, Request for Settlement Conference, and Hearing Request**

Dear Mr. Ochs:

On July 22, 2021, DAPL-ETCO Operations Management, LLC (DAPL or the Company) received the above-referenced Notice of Probable Violation (NOPV), Proposed Civil Penalty (PCP) and Proposed Compliance Order (PCO) issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency). The NOPV obligated DAPL to respond to the NOPV in thirty (30) days. The PHMSA Central Region extended that time an additional thirty (30) days, until September 21, 2021, thus this response is timely.

To reiterate for the benefit of stakeholders with interest in this matter, DAPL was designed and constructed in compliance with, and in many cases exceeding, PHMSA regulations. In its oversight capacity for pipeline safety, PHMSA expended roughly six hundred and twenty-five (625) field inspection days on the Dakota Access Pipeline through 2019, which included the inspection that resulted in the NOPV at issue with this response. These inspections involved five hundred and fifty (550) days regarding pipeline construction with a major focus on the horizontal directional drill (HDD) crossing of Oahe Lake, and seventy-five (75) days regarding pipeline operations. Following those extensive inspections, the Agency did not identify any issues related to the U.S. Army Corps of Engineers federal project area at Lake Oahe in North Dakota, nor were any issues identified that undermine the safety protocols and mitigation measures put in place by DAPL, including those specifically designed to protect the Lake Oahe crossing in North Dakota.

As a demonstration of DAPL's commitment to pipeline safety and integrity, DAPL has already remedied the items referenced in the NOPV. A majority of the NOPV items were either remedied or were in the process of being addressed over two (2) years ago during the Agency's inspection. Notwithstanding that DAPL has now remedied the items in the NOPV, the Company does not believe that they amount to regulatory violations based on the facts and the law. As such, DAPL files this response to request a hearing regarding whether the alleged violations along with the proposed civil penalty should be withdrawn. DAPL believes, however, that the issues raised by the NOPV are capable of resolution outside of a hearing. The Company therefore respectfully requests a settlement conference and that PHMSA refrain from scheduling a hearing to allow the parties that opportunity. In order to preserve its rights in the unlikely event that the parties are unable to resolve the matter through settlement, DAPL is timely filing this response to all items, statement of issues, and request for hearing and the associated proposed penalties. In so doing, DAPL neither admits nor denies any allegation or conclusion set forth in the NOPV.

Response to PHMSA NOPV and Statement of Issues

NOPV Item 1

PHMSA Allegation

§ 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;

“Energy Transfer failed to meet the requirements of NFPA-30 section 22.11.2 applicable to breakout tanks located at six pipeline facilities. Valves used for drainage of storm water were not accessible from outside of the dike as required by NFPA 30. NFPA 30 section 22.11.2.7.1 requires that “control of drainage shall be accessible under fire conditions from outside the dike.” Locations that did not meet this requirement were as follows: Epping Terminal; Johnson's Corner Terminal; Ramberg Terminal; Stanley Terminal; Trenton Terminal; and Watford City.”

DAPL Response to NOPV Item 1 and Statement of Issues

At the time of the PHMSA inspection, the stormwater dike valves were closed, locked, and not in use at all of the six (6) terminal locations referenced in the NOPV. Further, in the unlikely event of a breakout tank fire or other fire inside the impoundment dike at the facilities in question, each of these terminal facilities is designed and constructed to utilize an advanced nitrogen discharged foam fire suppression system in lieu of water in North Dakota, at the request of the State of North Dakota. Additionally, the six terminal locations are located in remote areas, away from city water supplies, and the local fire departments do not have the capabilities to source the quantities of water that would be necessary to adequately cool and suppress a tank fire at the DAPL facilities.

As such, NFPA-30 section 22.11.2.7.1 would not apply because the valves were not intended to control drainage and would not have been planned to be operated during a fire event given DAPL's reliance on a foam fire suppression system. NFPA-30, section 22.11.2.7 states that “*Where provision is made for draining water from dike areas, such drains shall be controlled to prevent liquids from entering natural water courses, public sewers, or public drains.*” The proceeding section 22.11.2.7.1 which states that the control of drainage (i.e., valves) be accessible under fire conditions from outside the dike, is thus only applicable when provision is made for draining water and when the drainage is controlled.

To address PHMSA's concerns and notwithstanding DAPL's intent to use fire suppression foam in lieu of water, DAPL nevertheless removed the valves at issue and installed new valves outside of the breakout tank impoundment dikes. Even though DAPL believes that it has completed actions necessary to comply with the requirements of the PCO associated with NOPV Item 1, for the above reasons the Company believes that the alleged violation of 49 C.F.R. § 195.264(b)(1)(i) should be withdrawn.

NOPV Item 2

PHMSA Allegation

§ 195.401 General requirements.

(a)

(b) An operator must make repairs on its pipeline system according to the following requirements:

(1) *Non Integrity management repairs.* Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.

“Energy Transfer failed to correct a condition that could adversely affect the safe operation of its pipeline within a reasonable time on its relief valves that utilize a nitrogen supply for correct operation. These type of relief valves use a nitrogen supply appurtenance bottle to maintain the proper relief set point.

[...]

Relief valves are used on this pipeline to relieve overpressure conditions and these relief valves operated by nitrogen are part of the surge overpressure protection for the pipeline. After PHMSA brought this to the operator’s attention, PHMSA asked for the alarm summary information as well as design details and standards for the equipment used. In response to this request for information, the operator also provided necessary actions to correct the condition. In summary, from June 1, 2017 to December 13, 2019, Energy Transfer failed to correct a condition that could adversely affect the safe operation of its pipeline by allowing the relief valve setpoints to fluctuate without taking corrective action.”

DAPL Response to NOPV Item 2 and Statement of Issues

The surge protection system on the DAPL pipeline system has always been and continues to be compliant with 49 C.F.R. Part 195. Prior to placing the pipeline in service, DAPL was successfully hydrostatically pressure tested to a minimum of 125% of maximum operating pressure (MOP) for 8 hours, in compliance with PHMSA regulations. This probable violation specifically involved relief valves located at facilities that utilize nitrogen supply as a part of a protective control system to maintain proper relief set points. As designed, the system generates alarms or alerts for a host of reasons other than an overpressure event, such as for a tank overfill, fluctuation of set points, etc.

The design of the nitrogen supply systems includes regulators to control the nitrogen pressure in the supply lines. These systems in their initial design were exposed to climate conditions such as direct sunlight and the wide-ranging fluctuations in daily ambient temperatures common to the geographical area of North and South Dakota. These conditions could cause the nitrogen pressure to fluctuate and potentially affect the relief valve set point, unrelated to the actual operating pressure of the pipeline. Additionally, the fluctuations in daily ambient temperatures resulting in certain changes in the nitrogen supply system pressure can cause an inadvertent non-safety related alarm or alert related to these protective systems. None of the indications at issue in the NOPV relate to an actual pipeline overpressure event. In addition, many were duplicative alerts.

Based upon a thorough examination of the control system indications at issue, DAPL does not believe that these non-safety related alerts were indicative of a condition that “...*could adversely affect the safe operation of the pipeline system.*” The non-safety related alerts were logged, tracked, and responded to by DAPL. Moreover, DAPL has taken several actions since the Agency’s inspection to increase reliability of the nitrogen supplied relief valves and to further mitigate the unlikely risk of an overpressure event along the pipeline, including the installation of heat tracing and insulation.

Even though DAPL believes that it has completed actions necessary to comply with the requirements of the NOPV PCO related to NOPV Item 2, for the reasons stated herein, the Company requests that the alleged violation of 49 C.F.R. § 195.401(b)(1) be withdrawn.

NOPV Item 3

PHMSA Allegation

§ 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.

“Energy Transfer failed to prepare and follow its Operations and Maintenance Manual (O&M manual), dated May 1, 2018, as required by § 195.402(a). At the time of the inspection, Energy Transfer’s Pipeline Integrity Management Plan, ENGR-PR-0015 (IM plan), was reviewed by PHMSA. The IM plan referenced sections from the O&M manual that were no longer contained in the O&M manual. Specifically, Energy Transfer’s IM plan referenced the following procedures:

- PR-11-0039 Management of Change (MOC)
- PR-11-0036 ILI Assessment Evaluation Response Corrosion Growth Rate & Reassessment
- PR-11-0037 Activating and Deactivating Pipeline
- PR-11-0032 Pipeline Assessment Method Selection
- PR-11-0004 Pressure testing of Pipeline
- PR-11-0006 Pipeline Repair Procedures
- PR-11-0028 Change in MOP, MAOP, COL of a Pipeline System

Even though the IM plan referenced these procedures, they were not part of the O&M manual reviewed at the time of the inspection (effective date May 1, 2018).

[...]

Energy Transfer failed to follow procedures in the current O&M manual by using procedures that had been removed from the O&M and remained referenced in the IM Plan until June 13, 2019.”

DAPL Response to NOPV Item 3 and Statement of Issues

This allegation fails to state a claim because the regulation specific to maintaining and following an operator's integrity management plan is set forth at 49 C.F.R. § 195.452(b)(5). Instead, PHMSA alleges a violation of a separate requirement at 49 C.F.R. § 195.402(a) to maintain and follow operation and maintenance (O&M) procedures. Further, PHMSA is alleging a finding of violation with a substantial proposed civil penalty based on a handful of inadvertent outdated cross-references that had no impact on the implementation of integrity management or O&M procedures on the DAPL pipeline.

By way of background, prior to its acquisition by Energy Transfer (ET) in 2017, Sunoco Pipeline L.P. (SPLP) was responsible for the administration of the safety programs required to operate the DAPL pipeline system. After this acquisition, the SPLP procedures and plans were incrementally replaced with those of ET. The Company made all notifications of these changes in compliance with the requirements of 49 C.F.R. § 195.64. Implementation of the ET O&M procedures precipitated the issuance of a revised IM plan. Therefore, at the time of the Agency's inspection, the SPLP IM plan was still in effect for the DAPL system. Following the inspection, in June of 2019, the SPLP IM plan was retired and the ET IM plan was in effect for the DAPL pipeline system. Notification to PHMSA as required by 49 C.F.R. § 195.64 was made for this change on July 8, 2019.

Although DAPL's IM plan maintained reference to seven (7) retired SPLP O&M procedures that had been replaced with equivalent ET O&M procedures, it was still fully compliant with the requirements of 49 C.F.R. § 195.452. During the inspection, DAPL immediately corrected this inadvertent administrative oversight by removing references to the retired procedures. The retired SPLP O&M procedures referenced in the IM plan were, however, compliant with the applicable requirements of 49 C.F.R. Part 195 at the time and had been routinely reviewed by PHMSA in the course of prior inspections. During the inspection, DAPL provided PHMSA with a matrix cross referencing the applicable SPLP and ET O&M procedures to demonstrate that there were no gaps in procedural coverage.

For the above reasons, the Company believes that the alleged violation of 49 C.F.R. § 195.402 and the associated proposed civil penalty should be withdrawn.

NOPV Item 4 (Warning Item)

PHMSA Allegation

§ 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.

"Energy Transfer failed to set its protective equipment at its Johnson's Corner pump station in accordance with its surge study to control the pressure from exceeding 110 percent of the Maximum Operating Pressure (MOP).

On page 5 of the "Final Report: DAPL/ETCO Shale Oil Pipeline Surge Analysis" (dated June 2, 2017)", it recommends that a shutdown on high discharge pressure for the Johnson's Corner pump station be set at 1335 psi in order to prevent the pipeline pressure from exceeding 110 percent of MOP downstream of the station.

During the PHMSA inspection it was identified in Energy Transfer's "Management of change document 15069" dated June 8, 2019, that the discharge pressure at Johnson's Corner had been set at 1355 PSI and was subsequently corrected by June 8, 2019."

DAPL Response to NOPV Item 4 and Statement of Issues

As an initial matter and as noted above, DAPL was successfully hydrostatically tested to a minimum of 1800 psig (125% of MOP) to establish a MOP of 1440 psig, building in a factor of safety to operation of the pipeline. The predominant wall thickness throughout the DAPL system is 0.419 inches with lower elevation segments constructed with thicker wall pipe (0.625 and 0.750 inches) to build in an additional margin of safety in those areas that can withstand higher pressures of 2100 psig or more (e.g., HDD's, water crossings, valleys, etc.).

The surge study analysis dated June 2, 2017, that PHMSA refers to in support of its allegation was overly conservative. It did not take into account the higher design pressures for portions of the DAPL pipeline system and instead applied the 1440 psig MOP across the system regardless of low elevations where thicker wall pipe was installed. Further, the surge study targeted mitigation measures that would yield a maximum transient pressure limited to 107% of MOP versus the limitation of 110% MOP required under 49 C.F.R. § 195.406(b), providing an additional 3% (43 psi) cushion in the study before DAPL would have exceeded 110% MOP. The 1355 psig setpoint that was in place at Johnson's Corner was still 23 psi below the conservative cushion provided in the surge study. As such, DAPL remained in compliance with 49 C.F.R. § 195.406(b). DAPL nevertheless took prompt action after the inspection to reset its protective equipment at the Johnsons Corner pump station to conform with the conservative surge analysis dated June 2, 2017.

PHMSA regulation 49 C.F.R. § 195.406(b) requires that an operator provide "adequate controls and protective equipment to control pressure" within 110% of MOP. PHMSA has explained previously that an operator must *consider* the potential for surges on its pipelines to understand and account for their potential effects when designing appropriate controls and protective equipment. *Final Order, In re: Enterprise, CPF4-2007-5015 (Dec. 2, 2009) p. 2* ("[i]f an operator has not at least considered the potential for surges on its pipeline, there cannot be an informed judgment about the adequacy of the operator's controls to prevent pressure from exceeding 110 percent of MOP during surges").

As demonstrated by the surge analysis, DAPL considered the potential for surges, considered that potential in the design of the pipeline and facilities, and set the pressure settings accordingly. Further, as noted above, the surge analysis was conservative and built in multiple buffers to prevent against MOP exceedances. For those reasons, there is no basis to conclude that DAPL failed to provide adequate controls and protective equipment on the pipeline segment downstream of the Johnsons Corner pump station with a setting of 1355 psi. As such, DAPL believes this alleged violation is without basis and that this warning item should be withdrawn.

NOPV Item 5 (Warning Item)

PHMSA Allegation

§ 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 7 1/2 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.

“Energy Transfer failed to inspect and test the overpressure safety relief valve at the Redfield station during the calendar year 2018. This relief valve was reported to be inspected and tested during commissioning in 2017, and was not inspected and tested again until January 28, 2019.

During the inspection the operator verbally agreed that the Redfield station relief valve was not inspected and tested in the calendar year 2018.”

DAPL Response to NOPV Item 5 and Statement of Issues

As noted in the PHMSA NOPV, records were provided to demonstrate that the overpressure safety relief valve at issue was inspected and tested during the calendar year 2017 and 2019. It was found to be functioning properly, in good mechanical condition, and adequate from the standpoint of capacity and reliability at the time of those inspections. The subject relief valve was also inspected during calendar year 2018 as required by 49 C.F.R. § 195.428, although the record could not be located during the inspection.

DAPL acknowledged during the inspection that the valve inspection record for 2018 was unable to be located. DAPL did not, however, verbally state that the Redfield station relief valve was not inspected and tested, in contrast to PHMSA’s statement in the NOPV indicating otherwise. Since that time, as a preventive and mitigative measure to ensure that this valve continues to be maintained in accordance with the regulations, all required inspection and maintenance is now scheduled via a computerized maintenance management system (CMMS). Additionally, the inspection form and completed inspection forms are also now computerized and maintained in an electronic database.

For all of these reasons, DAPL respectfully requests that this warning item be withdrawn.

NOPV Item 6

PHMSA Allegation

§ 195.440 Public awareness.

(a)

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

“Energy Transfer failed to follow the supplemental requirements of API RP 1162, and did not provide justification in its public awareness program or procedural manual as to why compliance with all or certain provisions of the recommended practice was not practicable or necessary for safety. Specifically, Energy Transfer failed to follow sections 6.1 Considerations For Supplemental Enhancements for the Baseline Program, 6.2 Considerations of Relevant Factors, and 6.3 Hazardous Liquid and Natural Gas Transmission Pipeline Operators. A review of Energy Transfer’s public awareness program evidenced that it did not consider consequences from a spill in areas designated as high consequence areas (HCAs) under part 195 when it determined the scope of its stakeholder audience for its public awareness communications. Energy Transfer used a third party contractor (Paradigm) for its Stakeholder Audience Identification. Energy Transfer stated that a 660 ft. mailing buffer was used for all pipeline systems for mailing to the public, as the stakeholder audience, including crude oil lines for Dakota Access Pipeline. Energy Transfer personnel confirmed to PHMSA verbally during the inspection that the same buffer area was required for natural gas pipelines as that for crude oil pipelines. Energy Transfer could not provide documentation that illustrated how the operator had considered or implemented recommendations associated with supplemental program enhancements due to the consequences of moving crude oil, such as overland spill.

[...]

Energy Transfer verbally explained the process for providing information to the third party vendor as supplying a map to show areas to identify target audiences. Energy Transfer has existing data that is available from liquid pipeline plume models that identify areas that may require a supplemental program enhancement for the public stakeholder audience greater than the standard 660-foot buffer. However, Energy Transfer did not use this data to identify areas for its third-party vendor to expand the standard 660-foot mailing buffer to a larger area, and did not use this data to determine if a 660-foot buffer was sufficient for identifying the coverage area of the stakeholder audience living near the pipeline, and there is no justification in its manual as to why it did not follow the requirements of API RP 1162.”

DAPL Response to NOPV Item 6 and Statement of Issues

DAPL maintains a robust Public Awareness Plan (PAP) under which it provides a variety of notifications to relevant public awareness stakeholders in communication coverage areas referred to as buffers. DAPL’s PAP met and continues to meet all requirements of 49 C.F.R. § 195.440(c) and portions of API RP 1162 incorporated therein.

Neither 49 C.F.R. § 195.440(c) nor applicable portions of API RP 1162 mandate express distances for communication coverage areas. Rather, they require operators to “consider” certain factors specific to their pipelines and determine appropriate coverage areas as well as whether enhancements of the program are warranted. PHMSA’s NOPV expressly cites API RP 1162 sections which outline “considerations” for operators to supplement their public awareness plans where warranted under the specific conditions or circumstances. See API RP 1162, Section 6.1 “*Considerations for Supplemental Enhancements for the Baseline Program*” (“*when conditions along the pipeline suggest [...] forms of enhancement are provided for consideration*”); Section 6.2 “*Considerations of Relevant Factors*” (“*to consider what components [...] should be enhanced*”); and Section 6.3 “*Hazardous Liquid and Natural Gas Transmission Pipeline Operators*” (“*[c]onsiderations for program enhancement [...] could include, for example*”). And while one of the

suggested enhancements is to “*consider*” extending the coverage area under certain circumstances, neither the PHMSA regulations nor API RP 1162 mandate that coverage be extended or dictate a specific distance for extending coverage.

At the time of the inspection, DAPL had regularly considered enhancing the coverage area in compliance with 49 C.F.R. § 195.440, applicable portions of API RP 1162, and its PAP, which was documented consistent with its public awareness program. Further, DAPL had already implemented a number of supplemental enhancements that were determined to be appropriate (e.g., increased stakeholder outreach, increased frequency of targeted distribution of pipeline materials, liaison meetings, and additional emergency response activities such as supplemental training sessions), and considered others, including the extension of the buffer. Because DAPL considered such supplemental enhancements, it complied with API RP 1162 and no justification was required under the regulations. In addition, and as communicated previously to PHMSA in 2019, the Company was at the time of the inspection in the process of reviewing current PAP mailing buffers and considering whether to expand those buffers. As a result and prior to receipt of the DAPL NOPV, DAPL revised its PAP (procedure HLA.17) effective on June 15, 2020. In September of 2020—nearly a year before PHMSA issued the underlying NOPV—DAPL mailed applicable stakeholder communications to updated coverage areas as outlined in the June 15, 2020 PAP. In short, the Company has implemented numerous supplemental enhancements, both specific to DAPL as well as Company-wide, since DAPL was constructed.

For all of these reasons, the Company believes that this allegation, the associated penalty, and PCO should be withdrawn.

NOPV Item 7

PHMSA Allegation

§ 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:

(1) A process for identifying which pipeline segments could affect a high consequence area;

“Energy Transfer failed to continually change its integrity management program (IM program) to reflect operating experience, and failed to evaluate the consequences of a failure on the high consequence area when it identified which pipeline segments could affect a high consequence area. Specifically, Energy Transfer did not continually change its IM program, ENGR-PR-0015 Procedure 2.3.4, which requires that each facility must be evaluated to determine whether or not additional release modeling is required to identify if it could affect an HCA, and also failed to change the program to reflect operating experience.

PHMSA reviewed Energy Transfer’s analysis for facility evaluations within an HCA or could affect area, and asked questions of the operator representatives regarding elements that had been considered in these calculations. Through verbal and email communication PHMSA determined Energy Transfer

did not consider drain down volumes associated with common station valve configurations, operations, and elevations should a failure occur outside of secondary containment such as in the manifold area of facilities, as required in its procedures. Energy Transfer also failed to change its IM program to reflect this operating experience.”

DAPL Response to NOPV Item 7 and Statement of Issues

As an initial matter, it would be highly unlikely for a failure of facility piping of sufficient magnitude to impact a high consequence area (HCA) to occur beyond the areas already determined by DAPL. The very nature of a pipeline facility involves a highly secured area designed with measures to divert flow of any significant volumes of released product to secondary containment (retention ponds, sumps, tank impoundment dikes, etc.) in the event of a tank failure or failure of piping inside the facility. Additionally, facility piping operates at substantially lower pressure than that of the mainline, includes above ground piping and appurtenances from which a release is easily detectable, and is routinely monitored by personnel for any conditions that may lead to a potential release. Due to the operation at lower pressures, it is highly improbable that an event on facility piping would lead to a complete drain down of a tank. Further, each DAPL facility (pump stations and/or breakout tank facility) is designed with remotely operated inlet and outlet mainline valves that would be swiftly closed should a failure occur inside the facility and outside of secondary containment. Closing these valves would significantly limit if not eliminate additional, potential drain down volume from entering the facility from the mainline.

As such, DAPL believes that it followed its process in place at the time of the inspection for identifying which pipeline segments could affect a HCA. With respect to continual updates to the integrity management program to reflect operating experience, as explained in the response to NOPV Item 3 above, the SPLP IM plan effective at the outset of the PHMSA inspection was retired and replaced by the ET IM plan in June 2019, with notice to PHMSA. The ET IM plan, Section 3.6, addresses identifying pipeline facilities that could affect an HCA, and includes consideration of drain down.

As such, DAPL does not believe there is any basis for this allegation or the PCO.

Proposed Civil Penalty

PHMSA proposes a civil penalty of \$93,200 associated with NOPV Items 3 and 6, proposing \$46,600 for each violation. DAPL respectfully requests that the proposed civil penalty for both items be withdrawn because no violations exist for the reasons described above. Further, the proposed penalties do not align with the statutory and regulatory penalty factors that PHMSA is required to consider. 49 U.S.C. § 60122; 49 C.F.R. § 190.225.

Proposed Compliance Order

In its PCO, PHMSA proposes four (4) remedial actions in connection with Items 1, 2, 6 and 7. In order to address the Agency’s concerns and without admission, DAPL has already completed all of the remedial actions outlined in the PCO. As described below, DAPL believes that it has satisfied all of the PCO items and supporting documentation will be made available to PHMSA.

NOPV Item 1

With respect to NOPV Item 1 and the associated PCO provision, DAPL completed removal of the subject valves from their locations and has installed new valves which are located outside of the breakout tank impoundment dikes.

NOPV Item 2

As to NOPV Item 2 and the associated PCO provision, DAPL has taken several actions to increase the reliability of the nitrogen supplied relief valve systems and further mitigate the unlikely risk of an overpressure event along the pipeline. To directly address the nitrogen supply systems, DAPL installed heat tracing and insulation on all surge valve systems and the nitrogen panel regulators are calibrated according to manufacturer's specifications. The heat tracing is temperature regulated to minimize temperature and pressure fluctuations which has resulted in a substantial reduction in nitrogen usage, pressure fluctuations, and resultant alarms. Additionally, DAPL has reduced the overall number of alarms related to the nitrogen supply systems by decreasing the number of duplicate alarms and refining the alarm conditions in accordance with DAPL's control room management (CRM) alarm management process.

NOPV Item 6

As noted above, at the time of the inspection, DAPL was already in the process of reviewing current PAP mailing buffers at issue in NOPV Item 6 and the associated PCO provision. Prior to receipt of the NOPV, DAPL revised its PAP (procedure HLA.17) effective on June 15, 2020. In that updated PAP, DAPL utilized existing data related to the pipeline plume models and other sources to identify areas to expand the public stakeholder audience beyond the standard buffer as a supplemental program enhancement.

NOPV Item 7

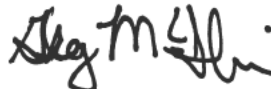
Regarding the PCO provision associated with NOPV Item 7, the DAPL IM plan effective at the outset of the PHMSA inspection was retired and replaced by an updated IM plan in June 2019, with notice to PHMSA. The ET IM plan addresses identifying pipeline facilities that could affect an HCA, and includes consideration of drain down volumes associated with common station valve configurations, operations, and elevations should a failure occur outside of secondary containment such as in the manifold area.

Summary

DAPL shares PHMSA's commitment to pipeline safety, public safety, and pipeline integrity and the Company approached the design, construction, and operation of the DAPL system with that commitment in mind. To that end, the Company appreciates PHMSA's thorough inspections of the DAPL pipeline system. Those inspections have only resulted in the single NOPV at issue in this response, and DAPL has already addressed all of the items identified therein, without admission and as set forth above. Notably, the NOPV did not identify any issues related to the U.S. Army Corps of Engineers federal project area at Lake Oahe in North Dakota or any issues that would undermine the safety protocols and mitigation measures put in place by DAPL, including those specifically designed to protect the Lake Oahe crossing in North Dakota.

DAPL appreciates PHMSA's consideration of this response, request for settlement meeting, and request for hearing, and the Company looks forward to PHMSA's response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg McIlwain', with a stylized flourish at the end.

Greg McIlwain
SVP of Operations
Energy Transfer

cc: Todd Stamm, VP of Operations
Mark Milliken, VP – Technical Services
Chris Lason, VP – Asset Integrity
Grant Ruckel, VP – Government Affairs
Todd Nardozzi, Director – Regulatory Compliance
Jim Wright, Esq., EVP Legal & Chief Compliance Officer
Catherine Little, Esq., Troutman Pepper