U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

September 19, 2022

VIA ELECTRONIC MAIL TO: mhummel@northstarmidstream.com

Mr. McMillan Hummel
Chief Executive Officer
NorthStar Holdco Energy, LLC
10077 Grogans Mill Road, Suite 530
The Woodlands, Texas 77380

Re: CPF No. 3-2021-052-NOPV

Dear Mr. Hummel:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of $560,700, and specifies actions that need to be taken by NST Express, LLC to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Central Region, this enforcement action will be closed. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

ALAN KRAMER MAYBERRY

Digitally signed by ALAN KRAMER MAYBERRY
Date: 2022.09.15 14:54:42 -04'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Gregory A. Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Jon Hamel, Senior Vice President, Engineering, NorthStar Holdco Energy, LLC, jhamel@northstarmidstream.com
Mr. Benjamin Rhem, Outside Counsel for NST Express, Jackson Walker L.L.P., brhem@jw.com

CONFIRMATION OF RECEIPT REQUESTED

U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

In the Matter of	)	
NST Express, LLC, a subsidiary of NorthStar Holdco Energy, LLC,	)	**CPF No. 3-2021-052-NOPV**
Respondent.	)	

FINAL ORDER

On various dates between January 2018 and September 2018, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted a pipeline safety inspection of the facilities and records of NST Express, LLC's (NST or Respondent) crude oil pipeline system between East Fairview and Alexander, North Dakota. NST Express, LLC is a subsidiary of NorthStar Holdco Energy, LLC. NST operates 23.6 miles of 12.75-inch O.D. pipeline from its Alexander Station to its East Fairview Station. The system includes two automated river protection valves, one mainline valve, an interconnect location, and two bi-directional pig traps.[1]

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated June 15, 2021, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that NST committed eight violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of $687,100 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional four warning items pursuant to 49 C.F.R. § 190.205, which warned the operator to correct the probable violations or face possible future enforcement action

NST requested, and on June 25, 2021, PHMSA granted an extension to respond to the Notice. NST responded to the Notice by letter dated August 10, 2021 (Response). The Central Region issued its Region Recommendation on December 23, 2021. On January 10, 2022, NST submitted a reply to the Region Recommendation (Reply). NST contested several of the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

[1] Pipeline Safety Violation Report (Violation Report), (June 15, 2021) (on file with PHMSA), at 1.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.262(c), which states:

> **§ 195.262 Pumping equipment.**
> (a) . . . .
> (c) Each safety device must be tested under conditions approximating actual operations and found to function properly before the pumping station may be used.

The Notice alleged that Respondent violated 49 C.F.R. § 195.262(c) by failing to test and determine that pumping station safety devices were functioning properly prior to operation. Specifically, the Notice alleged that seven safety devices for pumping stations located at East Fairview (three devices) and Alexander Station (four devices) were not functioning properly before November 16, 2016, the date when the commodity was introduced to the pipeline.

The Notice further alleged, based on a review of NST's records dated October 3, 2018, and the associated work orders #ST120222 (East Fairview Station) and #ST120221 (Alexander Station), that the fire, Hydrogen Sulfide (H2S), and Lower Explosive Limit (LEL) detectors did not sound any alarms or shutdowns. The Notice alleged that as of October 16, 2018, the condition had not been corrected at the local facility or at the Remote Operations Center.

In its Response, NST stated that all testing of the East Fairview and Alexander Station pumping station safety devices was completed prior to being placed into service in March 2017.[2] NST stated that it concluded commissioning activities, including final check out, prior to placing the pumps into service. NST stated that it included the records of the testing, conducted on February 4, 2017, and satisfactory results in Attachment A to its Response. In addition, NST admitted that the fire, H2S, and LEL detectors "did not trigger the proper shutdowns" during routine testing on October 3, 2018, at the East Fairview Station.[3] However, NST asserted it commenced corrective actions and resolved the issue on October 23, 2018.

In its Reply, NST raised a new argument asserting that the § 195.262(c) testing requirement does not apply to the fire, H2S and LEL detectors because they are not "safety devices" that "prevent overpressuring."[4] NST argued that "[t]he devices referred to in the NOPV do not sense pressure or in any way act to prevent or address fluctuations in pressure."[5] Rather, NST asserted the testing requirements for those devices are found in § 195.446(c)(2) (and mentioned appropriately in Item 6). On these grounds, NST requested withdrawal of this item and the associated proposed civil penalty.

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[2] Response, at 2.

[3] *Id.*

[4] Reply, at 1-2.

[5] *Id.,* at 1.

According to the records provided by NST, the fire, H2S, and LEL detectors were tested prior to the commissioning of the East Fairview and Alexander Station pumping stations. NST provided records indicating that all seven detectors identified in the Notice were tested in February 2017 before commissioning both pump stations in March 2017.

Accordingly, after considering the issues presented, I find that NST did not violate § 195.262(c) because NST submitted sufficient records to demonstrate it tested the fire, H2S and LEL devices at the East Fairview and Alexander Station pumping stations prior to commissioning. Based on the foregoing, I hereby order that Item 1 be withdrawn.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a)(3), which states:

> **§ 195.406 Maximum operating pressure.**
> (a) Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following:
> (1) . . . .
> (3) Eighty percent of the test pressure for any part of the pipeline which has been pressure tested under subpart E of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a)(3) by failing to follow maximum operating pressure (MOP) guidelines by operating segments of its pipeline at a pressure that exceeded 80 percent of the test pressure. Specifically, the Notice alleged five instances of violation at the East Fairview Station between 2017 and 2018. The Notice further alleged that NST provided no records to substantiate that these events occurred due to surge pressures or other variations from normal operations.

In its Response, NST stated that each event that exceeded 80 percent of the test pressure identified in the Notice "was directly caused by surge pressures or other variations from normal operations."[6] NST asserted that the PIT-126 April 2017, PIT-126 January 2018, and PIT-030 January 2018 events were caused by the equalization of station piping. For the PIT-126 August 2017 and PIT-126 February 2018 events, NST stated that the cause of the increased pressures was thermal expansion which triggered the temperature safety valves (TSV), as intended. NST further noted that each instance of elevated pressure was below 110 percent of each pipeline's MOP and lasted for short periods of time. Accordingly, NST requested withdrawal of this item and the associated proposed civil penalty.

According to the records provided by NST, three of the five instances of violation were caused by "surge pressures and other variations from normal operations." NST's records show that the 1) PIT-126 April 2017, 2) PIT-126 January 2018, and 3) PIT-030 January 2018 elevated pressure events were caused by the equalization of station piping, which I agree constitute a variation from normal operation per § 195.406(a). Accordingly, I withdraw three of the five instances of violation.

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[6] Response, at 3.

In its Reply, NST asserted that the thermal expansion events at PIT-126 in August 2017 and PIT-126 constitute variations from normal operation and thus do not result in violations of § 195.406(a)(3).[7] NST cited a prior enforcement order, PHMSA's Operations & Maintenance Enforcement Guidance, Part 195 Subpart F, and a January 10, 2000 PHMSA memorandum to support its argument that thermal expansion constitutes a variation from normal operation.[8]

After reviewing the evidence and arguments, I find the PIT-126 August 2017 and February 2018 elevated pressure events caused by thermal expansion do not constitute surge pressures or variations from normal operations per § 195.406(a), rather, those events constitute abnormal operating conditions.[9] As NST admitted, in both instances, a TSV was triggered to reduce the pressure following a thermal expansion event. The regulations make clear that once a safety device is triggered, an operator has experienced abnormal operation. Section 195.402(d) provides examples of what events constitute abnormal operation and requires operators to create procedures for such events. Section 195.402(d)(1) states that an operator must have and implement procedures for abnormal operations that respond to, investigate, or correct the cause of the "operation of any safety device." A TSV is a safety device that is triggered when a pipeline's pressure exceeds normal operating limits as a result of thermal expansion. The triggering of this safety device, therefore, indicates that an abnormal operating condition has occurred. Because the triggering of the TSV constituted abnormal operation, I find two instances of violation at PIT-126 in August 2017 and February 2018 for the elevated pressure events.

Accordingly, after considering all of the evidence and the legal issues, I find that Respondent violated 49 C.F.R. § 195.406(a)(3) by failing to follow MOP guidelines by operating segments of its pipeline at a pressure that exceeded 80 percent of the test pressure (pressure tested under subpart E of Part 195) for two elevated pressure events at PIT-126 in August 2017 and February 2018.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b), which states:

> **§ 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.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b) by failing to provide adequate controls and protective equipment to limit pressures during surges or other variations

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[7] Reply, at 2.

[8] These sources, however, do not support a finding that thermal expansion events triggering a TSV would constitute a variation from normal operation.

[9] Section 195.402(d)(2) states an operator must have abnormal operation procedures for "[c]hecking variations from normal operation after abnormal operation has ended . . . " This regulation distinguishes abnormal operation from "other variations from normal operations."

from normal operations. Specifically, the Notice alleged that NST failed to limit the operating pressure of the pipeline system from exceeding 110 percent of MOP established under § 195.406(a) on eight separate occasions between 2017 and 2018.

In its Response, NST stated it initially provided inaccurate data to PHMSA and provided the correct data which shows that that the actual discharge pressure for PIT-019 in June, July, and August 2018 was below 110 percent of its MOP. NST stated the correct data also shows that PIT-217 in March 2017 did not exceed 110 percent of its MOP. Accordingly, NST requested withdrawal of these four instances of violation and a reduction of the civil penalty. NST did not contest the remaining four instances of violation at PIT-030. I find that NST submitted sufficient documentation indicating that four of the eight instances identified in the Notice did not exceed 110 percent of MOP in violation of § 195.406(b).

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.406(b) by failing to limit the operating pressure of the pipeline system from exceeding 110 percent of MOP established under § 195.406(a) for four elevated pressure events at PIT-030 in March, November, and December 2017, and in March 2018.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

> **§ 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.

The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test a total of 21 overpressure protection devices at intervals not exceeding 15 months, but at least once each calendar year. Also, the Notice alleged that NST failed to inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it functioned properly, is in good mechanical condition, is adequate from the standpoint of capacity and reliable for operation of the service for 29 devices.[10]

In its Response, NST contested this allegation of violation stating the pump stations were not placed into service until March 2017 and all devices identified in the Notice were tested within 15 months of March 2017. In its Reply, NST stated that the East Fairview Station was also not placed into service until March 2017.

For all 30 devices listed in the Notice, NST failed to provide records which indicate inspections

[10] Although some devices were listed in both tables, the Notice alleged one instance of violation for each device number. Therefore, the Notice alleged 30 instances of violation despite including 50 rows of device numbers.

were conducted in 2017. Although NST noted that the April 23, 2018 inspections occurred within 15 months of the start of operation in March 2017, it nonetheless failed to conduct an inspection in 2017, as required by § 195.428(a). Therefore, I find no reduction in the instances of violation is warranted.

Accordingly, after considering the evidence, I find that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test 21 overpressure protection devices in calendar year 2017 and by failing to inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it functioned properly, is in good mechanical condition, is adequate from the standpoint of capacity and reliable for operation of the service for 29 devices.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.446(c)(2), which states:

> **§ 195.446 Control room management.**
> (a) . . . .
> (c) *Provide adequate information.* Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following:
> (1) . . . .
> (2) Conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays;

The Notice alleged that Respondent violated 49 C.F.R. § 195.446(c)(2) by failing to conduct point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays. Specifically, the Notice alleged that the point-to-point record dated January 31, 2018, did not include confirmation that each point that can impact safety was verified to the relevant SCADA displays. The Notice identified three instances of violation for fire, LEL, and H2S detectors.

The Notice further alleged that the field values and SCADA values recorded have considerable variability without sufficient reconciliation in the records or comments including missing calibration ranges. The Notice alleged that NST did not explain the variabilities or identify corrective actions.

In its Response, NST stated it "conduct[ed User Acceptance Testing (UAT)] . . . and point-to-point verifications through which all critical safety points were properly reviewed, prior to startup."[11] NST admitted, however, that its point-to-point records "do not show that fire, [LEL], or H2S detectors were verified." NST stated that "these values were verified in the UAT for the station [programable logic controller (PLC)]."[12] NST also stated it has a live point-to-point

[11] Response, at 10.
[12] *Id.*

document updated on a regular basis, which it provided as evidence in Attachment C. NST further stated it "is working to modify its point-to-point testing to include a demonstration that fire, [LEL], and H2S detection is properly read in the SCADA."[13]

NST also stated that it corrected the variability in the field values and SCADA values during the checkout. However, NST admitted that "documentation improvements are needed and will be pursued,"[14] with respect to field values and SCADA values records.

In its Reply, NST stated that it no longer contests the findings in this Item.[15]

While NST provided additional information regarding the fire, LEL, and H2S detectors, NST admits its records do not reflect point-to-point verifications between the three detectors and its SCADA display. Section 195.446(c)(2) specifically requires that field equipment be accurately reflected on SCADA displays in the control room. NST admitted that the fire, LEL, and H2S detectors were not properly displayed on SCADA,[16] and NST stated it is no longer contesting this Item in its Reply. NST's remaining arguments are addressed below in the Assessment of Penalty section.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.446(c)(2) by failing to conduct point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.446(e)(3), which states:

> **§ 195.446 Control room management.**
> (a) . . . .
> (e) *Alarm management.* Each operator using a SCADA system must have a written alarm management plan to provide for effective controller response to alarms. An operator's plan must include provisions to:
> (1) . . . .
> (3) Verify the correct safety-related alarm set-point values and alarm descriptions when associated field instruments are calibrated or changed and at least once each calendar year, but at intervals not to exceed 15 months;

The Notice alleged that Respondent violated 49 C.F.R. § 195.446(e)(3) by failing to provide records that verify the correct safety-related alarm set-point values and alarm descriptions when associated field instruments are calibrated or changed and at least once each calendar year, but at

[13] *Id.*

[14] *Id.,* at 11.

[15] Reply, at 1.

[16] Response, at 10 ("At this time, NorthStar is working to modify its point-to-point testing to include a demonstration that fire, gas, and H2S detection is properly read in the SCADA.").

intervals not to exceed 15 months. A total of three instances were identified, one for each type of alarm (fire, LEL, and H2S). Specifically, the Notice alleged that Form 11-12 confirmed that a review was conducted within the required time, but it did not include the required information. The Notice identified that Form 11-12 was inadequate for calendar years 2017 and 2018.[17] Specifically, the Notice alleged that the records did not include the correct alarm set-point values or correct alarm descriptions at the time of the review, nor did the records demonstrate how the correct alarm set-point values and alarm descriptions were confirmed, as required by § 195.446(e)(3). In addition, the Notice alleged that Respondent failed to produce documentation that safety alarm set-point values and alarm descriptions were verified when field instruments were calibrated or changed.

In its Response, NST contested this allegation of violation and stated it provided supporting documentation to Form 11-12 that contains the required information, including the alarms, set-point values, and descriptions. In its Reply, NST asserted it provided further information which "shows the alarm set-point values and alarm descriptions."[18] Therefore, NST requested that the civil penalty be withdrawn.

The information provided in the supporting documentation does not satisfy § 195.446(e)(3) because it fails to show that NST verified its safety-related alarm set-point values and alarm descriptions each calendar year. While NST alleged it provided the alarms, set-point values, and descriptions in the supporting documentation, it did so only for 2017, and the information it did provide was inadequate. The provided information lacked important contextual information, such as the date, how and where NST records this information, nor did it demonstrate what the alarm set-points are, what they were changed to (if applicable) and what the alarms were calibrated at, or to. Therefore, the information provided, both for 2017 and 2018, fails to show that NST verified its safety-related alarm set-point values and alarm descriptions each calendar year.[19]

Accordingly, after considering the evidence, I find that Respondent violated 49 C.F.R. § 195.446(e)(3) by failing to provide records that verify the correct safety-related alarm set-point values and alarm descriptions when associated field instruments are calibrated or changed at least once each calendar year, but at intervals not to exceed 15 months.

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(b)(2), which states:

> **§ 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) . . . .

[17] *See* Ex. G-4, NST PHMSA Data Request – Alarm Set Point.

[18] Reply, at 3.

[19] Importantly, the 2018 information is necessary to evaluate the rationalization process that occurred (mentioned in Form 11-12 (dated February 20, 2018)). The rationalization process frequently results in changes in alarm set-point values, alarm priorities, and alarm descriptions. Without details on the rationalization process, PHMSA cannot determine what, if anything, was changed during that process and the subsequent impact on verification.

(2) Include in the program an identification of each pipeline or pipeline segment in the first column of the following table not later than the date in the second column:

Pipeline	Date
Category 1	December 31, 2001.
Category 2	November 18, 2002.
Category 3	Date the pipeline begins operation.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(b)(2) by failing to identify each pipeline segment that could affect a high consequence area (HCA) prior to beginning pipeline operations. Specifically, the Notice alleged NST provided a report dated June 29, 2018, that determined which pipeline segments could affect an HCA, but the pipeline was commissioned two years earlier on November 16, 2016. In addition, the Notice alleged PHMSA inspectors identified the Alexander Junction pump station as being in a could-affect HCA, but it was not identified as such in the June 2018 report.

In its Response, NST contested the violation asserting that it did identify each pipeline segment that could affect an HCA prior to beginning pipeline operations, but did not provide this information to PHMSA. According to NST, it completed its initial HCA analysis on February 29, 2016 (2016 Initial HCA Map) prior to commissioning in November 2016.[20] NST stated that the initial HCA analysis included a preliminary HCA determination. Thereafter, NST stated it completed its liquid HCA analysis report on June 29, 2018 (2018 Final HCA Analysis). In addition, NST asserted that the Alexander Junction pump station was identified as being in an HCA in the 2018 Final HCA analysis.

After reviewing the evidence, I find the 2016 Initial HCA Map fails to satisfy § 195.452(b)(2) for several reasons. First, it reflected the proposed route of the pipeline which did not extend as far east as the actual pipeline. It also appears to conclude that the entire proposed route is in a could-affect HCA with no supporting analysis or details. The 2016 Initial HCA Map also failed to indicate how many miles of pipeline were analyzed and failed to conclude how many of those miles were in could-affect segments. In addition, the 2016 Initial HCA Map contains only one page showing a proposed route on a map which is repeated five times for various purposes in that document. There is no text explaining the method of analysis, assumptions, or data inputs. When compared to the 2018 Final HCA Analysis, which is a detailed 15-page report, the 2016 Initial HCA Map is clearly inadequate.

With respect to the Alexander Junction pump station, both the 2016 Initial HCA Map and the 2018 Final HCA Analysis failed to indicate that the pump station is in a could-affect HCA. The 2016 Initial HCA Map included a proposed pipeline route which did not extend to the Alexander Junction pump station. The 2018 Final HCA Analysis categorized the pump station as a segment with no impact on an HCA, however, PHMSA determined the pump station is in a could-affect

[20] Response, attach. F.

area and NST agreed with that determination.[21] Therefore, NST failed to identify the Alexander Junction pump station as a pipeline segment that could affect an HCA prior to beginning pipeline operations.

Accordingly, after considering the evidence, I find that Respondent violated 49 C.F.R. § 195.452(b)(2) by failing to identify each pipeline segment that could affect an HCA prior to beginning pipeline operations.

Item 12: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(c), which states:

> **§ 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 ½ 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.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(c) by failing to electrically check rectifiers for proper performance at least six times each calendar year, but with intervals not to exceed two and a half months. Specifically, the Notice alleged that the cathodic protection system was energized on June 23, 2017, and NST could not provide records of inspections for any of the three rectifiers on the system.

Respondent did not contest this allegation of violation. Accordingly, after considering the evidence, I find that Respondent violated 49 C.F.R. § 195.573(c) by to failing to electrically check rectifiers for proper performance at least six times each calendar year, but with intervals not to exceed two and a half months.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

[21] Ex. H-1, The Compliance Group NSTX HCA Report (June 29, 2018), at 10 fig. 2.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed $200,000 per violation for each day of the violation, up to a maximum of $2,000,000 for any related series of violations.[22]

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of $687,100 for the violations cited above.

Item 1: The Notice proposed a civil penalty of $85,300 for Respondent's violation of 49 C.F.R. § 195.262(c), for failing to test and determine that pumping station safety devices were functioning properly prior to operation. NST requested that PHMSA withdraw the penalty. For the reasons stated above, I withdraw the violation and proposed penalty assessment for this item.

Based on the foregoing, I withdraw the proposed penalty for violation of 49 C.F.R. § 195.262(c).

Item 2: The Notice proposed a civil penalty of $70,100 for Respondent's violation of 49 C.F.R. § 195.406(a)(3), for failing to follow MOP guidelines by operating segments of its pipeline at a pressure that exceeded 80 percent of the test pressure (pressure tested under subpart E of Part 195) on five occasions. As noted above, NST provided records, argued the five events fall under the exception in § 195.406(a), and requested that PHMSA withdraw the penalty. However, as explained in detail above, two of the five elevated pressure events were caused by thermal expansion and constitute abnormal operation. Those events, therefore, do not fall under the exception in § 195.406(a). The remaining three elevated pressure events were caused by the equalization of station piping, which constitute variations from normal operation per § 195.406(a). Accordingly, I reduce the instances of violation from five to two.

Based on the foregoing, I assess Respondent a reduced civil penalty of $52,500 for violation of 49 C.F.R. § 195.406(a)(3).

Item 3: The Notice proposed a civil penalty of $87,700 for Respondent's violation of 49 C.F.R. § 195.406(b), for failing to limit the operating pressure of its pipeline system from exceeding 110 percent of MOP established under § 195.406(a) on eight separate occasions between 2017 and 2018.

As noted above, NST contested this violation and requested the penalty be reduced. NST provided evidence indicating that four of the eight alleged instances of violation did not exceed 110 percent of MOP. NST admitted that four instances of violation identified at PIT-030 did

[22] These amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223.

exceed 110 percent of MOP, in violation of § 195.406(a). Therefore, I reduce the instances of violation from eight to four.

NST also requested a reduction in the civil penalty for the corrective actions taken with regard to PIT-030. Specifically, NST stated that it is working to ensure this pipeline segment is in compliance with the operating pressure regulations by only allowing transfers from Alexander to East Fairview to be conducted by gravity flow. In addition, NST stated it will limit the pipeline pressure to 285 psig during transfers from Alexander to East Fairview by not using the pumps at Alexander. While PHMSA encourages prompt corrective action, because PHMSA learned of the violation before corrective action was taken, I find no reduction in the civil penalty is warranted.

Based on the foregoing, I assess Respondent a reduced civil penalty of $64,200 for violation of 49 C.F.R. § 195.406(b).

Item 5: The Notice proposed a civil penalty of $190,500 for Respondent's violation of 49 C.F.R. § 195.428(a), for failing to inspect and test a total of 21 overpressure protection devices at intervals not exceeding 15 months, but at least once each calendar year and by failing to inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it functioned properly, is in good mechanical condition, is adequate from the standpoint of capacity and reliable for operation of the service for 29 devices. In its Response, NST asserted that all of the devices listed in the tables above were tested within 15 months of the March 2017 startup. As explained above, for all 30 devices listed in the Notice, NST failed to provide records which indicate inspections were conducted in 2017, as required by § 195.428(a). Accordingly, I find no reduction in the civil penalty is warranted.

Based on the foregoing, I assess Respondent a civil penalty of $190,500 for violation of 49 C.F.R. § 195.428(a).

Item 6: The Notice proposed a civil penalty of $58,400 for Respondent's violation of 49 C.F.R. § 195.446(c)(2), for failing to conduct point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays. NST requested withdrawal of the civil penalty for several reasons. NST later stated it no longer contests this Item.

NST asserted it has a regularly updated document with point-to-point values. NST stated it "is working to modify its point-to-point testing to include a demonstration that fire, [LEL], and H2S detection is properly read in the SCADA."[23] As noted above, NST failed to conduct point-to-point verification between SCADA displays and the fire, LEL, and H2S detectors. Although NST conducted some testing, I find that this does not warrant reduction in the civil penalty because the testing did not confirm that the fire, LEL, and H2S detectors were properly read on the SCADA displays.

NST also stated that it corrected the variability in the field values and SCADA values during the

[23] Response, at 10.

checkout. NST admitted that "documentation improvements are needed and will be pursued,"[24] with respect to field values and SCADA values records. Although NST stated it took corrective action, I find that actions to address the variability in the field values and SCADA values, while commendable, do not warrant reduction in the civil penalty because NST's documentation does not show that point-to-point verifications were conducted in accordance with § 195.446(c)(2).

Based on the foregoing, I assess Respondent a civil penalty of $58,400 for violation of 49 C.F.R. § 195.446(c)(2).

Item 7: The Notice proposed a civil penalty of $54,900 for Respondent's violation of 49 C.F.R. § 195.446(e)(3), for failing to provide records that verify the correct safety-related alarm set-point values and alarm descriptions when associated field instruments are calibrated or changed and at least once each calendar year, but at intervals not to exceed 15 months. NST asserted it provided the missing information in new evidence submitted with the Response and Reply. However, as explained above, the information provided does not satisfy § 195.446(e)(3) because NST failed to provide the 2018 set-point values and descriptions for each type of alarm. I find that no reduction in the civil penalty is warranted because the penalty included three instances of violation associated with each type of alarm, and none of those three of alarms were verified in 2018.

Based on the foregoing, I assess Respondent a civil penalty of $54,900 for violation of 49 C.F.R. § 195.446(e)(3).

Item 8: The Notice proposed a civil penalty of $46,600 for Respondent's violation of 49 C.F.R. § 195.452(b)(2), for failing to identify each pipeline segment that could affect an HCA prior to beginning pipeline operations. Respondent requested PHMSA withdraw this Item. For the reasons stated above, I find NST failed to identify each pipeline segment that could affect an HCA prior to beginning pipeline operations and therefore no reduction in the penalty is warranted.

Based on the foregoing, I assess Respondent a civil penalty of $46,600 for violation of 49 C.F.R. § 195.452(b)(2).

Item 12: The Notice proposed a civil penalty of $93,600 for Respondent's violation of 49 C.F.R. § 195.573(c), for failing to electrically check rectifiers for proper performance at least six times each calendar year, but with intervals not to exceed two and a half months. NST did not contest the civil penalty for this item.

Based on the foregoing, I assess Respondent a civil penalty of $93,600 for violation of 49 C.F.R. § 195.573(c).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **$560,700**.

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[24] *Id.,* at 11.

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the $560,700 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, 3, 5, 6, and 7 for violations of 49 C.F.R. §§ 195.262(c), 195.406(a)(3), 195.406(b), 195.428(a), 195.446(c)(2), and 195.446(c)(3), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601.

With regard to the violation of § 195.262(c) (Item 1), Respondent argued the compliance terms should be withdrawn because it tested the pump station safety devices in February 2017, prior to placing the pump stations into service in March 2017.[25] NST has provided records indicating completion of the proposed compliance order for Item 1. Specifically, NST provided records indicating that the fire, H2S and LEL detectors at East Fairview and Alexander Stations were tested on February 4, 2017, and deemed functional before the pumping station became operational in March 2017.[26] Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice for Item 1 are not included in this Order.

With regard to the violation of § 195.406(a)(3) (Item 2), Respondent argued that Compliance Order item 2 should be modified to refer only to a violation of Item 3. Respondent asserted that each instance of elevated pressure was caused by surge pressures or other variations from normal operations. As noted above, I find that two of the five instances of elevated pressure violated § 195.406(a)(3). Accordingly, I modify Compliance Order item 2 to require further action only for PIT-126.

With regard to the violation of § 195.406(b) (Item 3), Respondent argued that Compliance Order item 2 should be modified. NST argued that current surge analysis is adequate and requested

[25] *Id*., at 16.

[26] *Id.*, attach. 1, at 86-88.

that the requirement to perform a new surge analysis be removed. NST also noted that the PIT-030 issues are related to valve sequencing and facility pressure controls.[27] NST further asserted that the current surge analysis "was reviewed to verify it matched the configuration and that valve closure times were properly represented."[28] However, the above-referenced surge analysis is not adequate for several reasons. It has the incorrect operator name, is undated, and does not state that it reflects NST's current pipeline system. This surge analysis also states that "[t]his study will need to be updated once the pump curve is selected before any final recommendation can be made."[29] While NST stated, in an email and in its Reply, that no update is required because the current configuration matches the configuration reviewed in this surge analysis, NST provided no supporting documentation.[30] Therefore, NST failed to make the necessary updates to the surge analysis. A new surge analysis must be performed that accurately reflects NST's current system. However, as noted above, since I withdrew four of the eight instances of violation, NST must take the compliance actions with respect to PIT-030 only. Accordingly, I modify Compliance Order item 2 to require further action only for PIT-030.

With regard to the violation of § 195.428(a) (Item 5), Respondent did not contest the proposed compliance terms.

With regard to the violation of § 195.446(c)(2) (Item 6), Respondent did not contest the proposed compliance terms.

With regard to the violation of § 195.446(e)(3) (Item 7), Respondent did not contest the proposed compliance terms.

For the above reasons, the Compliance Order is modified as set forth below.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

> 1. With respect to the violation of § 195.406(a)(3) (**Item 2**) and § 195.406(b) (**Item 3**), Respondent must conduct tests, or inspection activities, to confirm that for each pipe segment where pressure was exceeded, at PIT-126 and PIT-030, the pipe integrity has not been compromised and must provide adequate controls and protective equipment to control the pressure within affected segments. This shall include launchers and receivers and associated piping to establish MOP. A new surge analysis to match the configuration of the pipeline shall be completed as part of this action. A plan and associated schedule for completion of activities to confirm pipeline integrity and that adequate controls are performing as designed must be submitted to the Director, Central Region within 30 days of the Final Order.

[27] *See* Ex. C-1, NST Express Surge Report.

[28] Reply, at 3.

[29] Ex. C-1, at 15.

[30] *See* Ex. C-2, RE: Surge Study; Reply, at 3.

Completion of the submitted plan shall not exceed 6 months from the issuance of the Final Order.

2. With respect to the violation of § 195.428(a) (**Item 5**), Respondent must inspect and test all applicable devices to determine and document that they are functioning properly, are in good mechanical condition, and are adequate from the standpoint of capacity and reliability of operation. A schedule for testing of overpressure safety devices must be submitted to the Director, Central Region within 30 days of the Final Order. Completion of this testing shall not exceed 6 months from the issuance of the Final Order.

3. With respect to the violation of § 195.446(c)(2) (**Item 6**) and § 195.446(e)(3) (**Item 7**), Respondent must conduct verifications to confirm that each safety-related alarm set-point value identified in the field is in agreement with the SCADA system and associated display values. A schedule for completion of these actions must be submitted to the Director, Central Region within 30 days of the Final Order. Documentation that indicates calibration ranges, alarm set-point values, checking through SCADA displays that are position sensitive, and comments associated with reconciliation shall be submitted to the Director, Central Region. Completion of this test shall not exceed 6 months from the issuance of the Final Order.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed $200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 4, 9, 10 and 11, the Notice alleged probable violations of Part 195, but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 195.420(b) **(Item 4)** ─ Respondent's alleged failure to inspect each mainline valve to determine if it is functioning properly at intervals not exceeding 7 ½ months;

49 C.F.R. § 195.452(g)(3) **(Item 9) —** Respondent's alleged failure to analyze all available information about the integrity of the entire pipeline and the consequences of a failure;[31]

49 C.F.R. § 195.452(i)(3) **(Item 10) —** Respondent's alleged failure to adequately include a means to evaluate the capability of its leak detection in its Integrity Management Program between November 16, 2017 and September 10, 2018; and

49 C.F.R. § 195.452(l)(1)(ii) **(Item 11) —** Respondent's alleged failure to document 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 § 192.452.

NST presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

ALAN KRAMER MAYBERRY
Digitally signed by ALAN KRAMER MAYBERRY
Date: 2022.09.15 14:53:51 -04'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

September 19, 2022
Date Issued

[31] This regulation was amended after the inspection. The regulation language contained herein was in force at the time of the inspection.