

WARNING LETTER

VIA ELECTRONIC MAIL TO: heath@dakota-midstream.com, tim@dakota-midstream.com
and kristopher@dakota-midstream.com

October 20, 2021

Mr. Heath Norman & Mr. Tim Reynolds
Co-Chief Executive Officers
Dakota Midstream
708 Main St., 10th Floor,
Houston, TX 77002

CPF 3-2021-058-WL

Dear Mr. Norman & Mr. Reynolds:

From March 18, April 8, May 18-20 and May 27, 2021, representatives 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 your records (virtually) and field assets in Alexander, North Dakota.

As a result of the inspection, it appears that Dakota Midstream (DM) has committed a probable violation of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violation is as follows:

1. § 195.49 Annual report.

(a) Each operator must annually complete and submit DOT Form PHMSA F 7000-1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year. An operator must submit the annual report by June 15 each year, except that for the 2010 reporting year the report must be submitted by August 15, 2011. A separate report is required for crude oil, HVL (including anhydrous ammonia), petroleum products, carbon dioxide pipelines, and fuel grade ethanol pipelines. For each state a pipeline traverses, an operator must separately complete those sections on the form requiring information to be reported for each state.

Based on the inspection interview and PHMSA records, DM failed to submit timely annual reports as noted in the table below:

Item	Due Date	Date Filed
2018 Annual Report	6-15-19	8-2-19
2019 Annual Report	6-15-20	7-28-20

2. § 195.54 Accident reports.

(a) Each operator that experiences an accident that is required to be reported under § 195.50 must, as soon as practicable, but not later than 30 days after discovery of the accident, file an accident report on DOT Form 7000-1.

§ 195.52 Immediate notice of certain accidents.

(a) Notice requirements. At the earliest practicable moment following discovery, of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in § 195.50, but no later than one hour after confirmed discovery, the operator of the system must give notice, in accordance with paragraph (b) of this section of any failure that:

(2) Resulted in either a fire or explosion not intentionally set by the operator;

DM failed to provide immediate notification and a 30-day accident report for a January 4, 2020 fire at the Spackler tank farm. After mentioning the fire to a PHMSA inspector during the field audit, the operator filed a late accident report on May 19, 2021.

3. § 195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.

(a) A means must be provided for containing hazardous liquids in the event of spillage or failure of an aboveground breakout tank.

As observed by a PHMSA inspector during the field audit, the Tank 9924 vent does not discharge downward into the containment area. This was identified at the Wheatland Facility.

4. § 195.404 Maps and records.

(a) . . .

(c) Each operator shall maintain the following records for the periods specified:

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

§ 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.

As noted during the inspection interview, DM failed to produce a record of the 2018 review of the emergency plan and procedures.

5. §195.440 Public awareness.

(a) . . .

(i) The operator's program documentation and evaluation of results must be available for periodic review by appropriate regulatory agencies.

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) . . .

(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(12) Establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication.

§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.

As noted during the inspection interview and a data response, DM failed to produce records for the 2020 liaison activities they conducted. Specifically, a May 19, 2021 written data request was answered verbally on May 27, 2021 stating that no records of their 2020 annual meeting with emergency management and emergency responders were found. Liaison records as required by 195.402 (c) (12) and 195.440 and outlined in IBR API RP1162 section 4.4 are required.

DM also failed to produce a record for the 2019 annual implementation review. Specifically, IBR API RP 1162 Section 8.3 requires an annual implementation review.

6. § 195.404 Maps and records.

(a) . . .

(c) Each operator shall maintain the following records for the periods specified:

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

§ 195.403 Emergency response training.

(a) Each operator shall establish and conduct a continuing training program to instruct emergency response personnel to:

(1) Carry out the emergency procedures established under 195.402 that relate to their assignments;

(2) Know the characteristics and hazards of the hazardous liquids or carbon dioxide transported, including, in case of flammable HVL, flammability of mixtures with air, odorless vapors, and water reactions;

(3) Recognize conditions that are likely to cause emergencies, predict the consequences of facility malfunctions or failures and hazardous liquids or carbon dioxide spills, and take appropriate corrective action;

(4) Take steps necessary to control any accidental release of hazardous liquid or carbon dioxide and to minimize the potential for fire, explosion, toxicity, or environmental damage; and

(5) Learn the potential causes, types, sizes, and consequences of fire and the appropriate use of portable fire extinguishers and other on-site fire control equipment, involving, where feasible, a simulated pipeline emergency condition.

As noted and witnessed by two PHMSA inspectors during the inspection interview, DM failed to produce documentation for the 2019 and 2020 emergency response training they conducted. The DM representative related that there were no records of emergency response training in 2019 and 2020.

7. § 195.430 Firefighting equipment.

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

(a) In proper operating condition at all times;

As noted during the inspection interview, DM failed to document portable fire extinguisher monthly inspections individually for 2019 and 2020 but rather provided a master record stating that the extinguishers were inspected. However, these records omitted details necessary to substantiate a compliant inspection. Specifically details necessary to determine that each extinguisher was inspected and is in good condition. In the absence of such information, a compliant inspection to determine that the equipment is in good condition is not possible, and therefore did not occur.

8. **§ 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;

As noted and witnessed by two PHMSA inspectors during the inspection interview, DM failed to document reviews for HCAs. HCA reviews were completed on an ongoing basis without documentation.

9. **§ 195.507 Recordkeeping.**

(a) . . .

(b) Records supporting an individual's current qualification shall be maintained while the individual is performing the covered task. Records of prior qualification and records of individuals no longer performing covered tasks shall be retained for a period of five years.

As noted during the virtual June 15, 2021 data response, DM was unable to produce an operator qualification record for the pilot who inspected the ROW from January–June 2019. His earliest qualification record produced showed a qualification date of July 11, 2019. This equates to about 13 patrols conducted without a qualification record.

Under 49 U.S.C. § 60122 and 49 CFR § 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.

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 correct the items identified in this letter. Failure to do so will result in Dakota Midstream being subject to additional enforcement action.

No reply to this letter is required. If you choose to reply, in your correspondence please refer to **3-2021-058WL**. Be advised that all material you submit in response to this enforcement action is subject to being 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).

Sincerely,

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

cc: Mr. Kristopher Coe, Project Manager, Dakota Midstream, LLC, 1600 Broadway, Suite 1300, Denver, CO 80202 (kristopher@Dakota-Midstream.com)