



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

1200 New Jersey Avenue, SE
Washington, DC 20590

August 30, 2022

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

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

Re: CPF No. 3-2021-059-NOPV

Dear Mr. Norman and Mr. Reynolds:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$204,000, and specifies actions that need to be taken by Dakota Midstream, 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 08.29
12:11:24 -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. Kristopher Coe, P.E., Project Manager, Dakota Midstream, LLC,
kristopher@dakota-midstream.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	)	
	)	
Dakota Midstream, LLC,	)	CPF No. 3-2021-059-NOPV
	)	
Respondent.	)	
	)	

FINAL ORDER

On March 18, April 8, May 18-20, and May 27, 2021, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Dakota Midstream, LLC (Dakota Midstream or Respondent) in Alexander, North Dakota. Dakota Midstream owns and operates approximately 65 miles of pipeline in the Bakken region.¹

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated December 30, 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 Dakota Midstream had committed sixteen (16) violations of 49 C.F.R. Parts 194 and 195 and proposed assessing a civil penalty of \$204,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Dakota Midstream responded to the Notice by letter dated January 30, 2022 (Response) and submitted additional correspondence on March 4 and March 18, 2022. The company 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.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Parts 194 and 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 194.117(b)(1), which states:

¹ Dakota Midstream website, available at <http://dakota-midstream.com/about/> (last accessed May 25, 2022).

§ 194.117 Training.

(a)

(b) Each operator shall maintain a training record for each individual that has been trained as required by this section. These records must be maintained in the following manner as long as the individual is assigned duties under the response plan:

(1) Records for operator personnel must be maintained at the operator's headquarters;

The Notice alleged that Respondent violated 49 C.F.R. § 194.117(b)(1) by failing to maintain training records for each individual assigned duties under the response plan at the operator's headquarters. Specifically, the Notice alleged that Dakota Midstream failed to maintain training records for individual qualifications, tabletop drills, and unannounced PREP drills for 2017-2020.²

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 194.117(b)(1) by failing to maintain training records for each individual assigned duties under the response plan at the operator's headquarters.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 194.107(c)(1)(ix), which states:

§ 194.107 General response plan requirements.

(a)

(c) Each response plan must include:

(1) A core plan consisting of –

(i)

(ix) Drill program – an operator will satisfy the requirement for a drill program by following the National Preparedness for Response Exercise Program (PREP) guidelines. An operator choosing not to follow PREP guidelines must have a drill program that is equivalent to PREP. The operator must describe the drill program in the response plan and OPS will determine if the program is equivalent to PREP.

The Notice alleged that Respondent violated 49 C.F.R. § 194.107(c)(1)(ix) by failing to have a response plan that included a drill program following PREP guidelines, or a program that is equivalent to PREP. Specifically, the Notice alleged that Dakota Midstream failed to conduct equipment deployment PREP drills in 2017, 2018, and 2019.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 194.107(c)(1)(ix) by failing to have a response plan that included a drill program following PREP guidelines, or a program that is equivalent to PREP.

² Dakota Midstream did, however, have a record of a January 4, 2020 unannounced PREP drill.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.61(b), which states:

§ 195.61 National Pipeline Mapping System.

(a)

(b) This information must be submitted each year, on or before June 15, representing assets as of December 31 of the previous year. If no changes have occurred since the previous year's submission, the operator must refer to the information provided in the NPMS Operator Standards manual available at www.npms.phmsa.dot.gov or contact the PHMSA Geographic Information Systems Manager at (202) 366-4595.

The Notice alleged that Respondent violated 49 C.F.R. § 195.61(b) by failing to submit to PHMSA geospatial data for its facility each year, on or before June 15, representing assets as of December 31 of the previous year. Specifically, the Notice alleged that Dakota Midstream failed to submit geospatial data for 2018 and 2019, and submitted its 2020 data late.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.61(b) by failing to submit to PHMSA geospatial data for its facility each year, on or before June 15, representing assets as of December 31 of the previous year.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.208, which states:

§ 195.208 Welding of supports and braces.

Supports or braces may not be welded directly to pipe that will be operated at a pressure of more than 100 p.s.i. (689 kPa) gage.

The Notice alleged that Respondent violated 49 C.F.R. § 195.208 by welding braces or supports directly to pipe that will be operated at a pressure of more than 100 psi gage (PSIG). Specifically, the Notice alleged that during the inspection, PHMSA observed supports welded directly to the pipeline, located down the middle of the 10 Spackler tanks and feeding all the tanks.

In its Response, Dakota Midstream contested the allegation of violation. Specifically, Respondent noted that this pipeline at the above-referenced location has a pressure control valve set to 75 PSIG and will never operate above 100 PSIG. Response at 3 and Exhibit 1. Pursuant to § 195.208, operators may not weld supports to pipe that will be operated at a pressure of more than 100 PSIG. Since Dakota Midstream restricts the pressure on this line to a maximum pressure of 75 PSIG, and there is nothing in the record to indicate that the pressure control valve was malfunctioning, improperly calibrated, or otherwise not accurately restricting the pressure on this line, I find that this pipeline is not being operated above 100 PSIG. Since the pipeline will not be operated above 100 PSIG, the requirements set forth in § 195.208 are not applicable.

Accordingly, after considering all of the evidence, I find that no basis for finding a violation. Based upon the foregoing, I hereby order that Item 4 be withdrawn.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.264(b)(1)(i), which states:

§ 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;

The Notice alleged that Respondent violated 49 C.F.R. § 195.264(b)(1)(i) by failing to install the impoundment around its aboveground breakout tank in accordance with Section 22.11.2 of NFPA-30. Specifically, the Notice alleged that Dakota Midstream failed to establish a one percent slope away from the tanks at both the Wheatland and Spackler tank farms, despite the requirements of Section 22.11.2.1 requiring a one percent or greater slope the first 50 feet away from the tank or to the dike base, whichever is less.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.264(b)(1)(i) by failing to install the impoundment around its aboveground breakout tank in accordance with Section 22.11.2 of NFPA-30.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13), which states:

§ 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:

(1) . . .

(13) Periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13) by failing to have and follow a manual to provide safety during maintenance and normal operations that included periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures and taking corrective action where deficiencies are found. Specifically, the Notice alleged that Dakota Midstream failed to produce records during the inspection evidencing completion of effectiveness reviews for 2019 and 2020.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(13) by failing to have and follow a manual to provide safety during maintenance and normal operations that included periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures and taking corrective action where deficiencies are found.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b), which states:

§ 195.420 Valve maintenance.

(a)

(b) Each operator shall, at intervals not exceeding 7 1/2 months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect each mainline valve to determine that it is functioning properly at intervals not exceeding 7 ½ months but at least twice each calendar year. Specifically, the Notice alleged that Dakota Midstream failed to conduct inspections on each mainline block valve on the Low Rider pipeline at the required intervals for calendar years 2019 and 2020, resulting in eleven missed inspections.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect each mainline valve to determine that it is functioning properly at intervals not exceeding 7 ½ months but at least twice each calendar year.

Item 8: 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 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 at intervals not exceeding 15 months, but at least once each calendar year. Specifically, the Notice alleged that Dakota Midstream failed to conduct inspections and tests on overpressure protection devices located on the Low Rider pipeline, the Spackler and Wheatland tank farms, and Spackler Pump Station for calendar years 2019 and 2020. During the inspection, PHMSA

reviewed certain records, but ultimately could not determine compliance because they failed to include critical safety information, including “as found” pressures and “as left” pressures, to determine if the devices were functioning properly, in good mechanical condition, and adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.428(a) 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 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 at intervals not exceeding 15 months, but at least once each calendar year.

Item 9: The Notice alleged that Respondent violated 49 C.F.R. § 195.430, which states:

§ 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;
- (b) Plainly marked so that its identity as firefighting equipment is clear; and
- (c) Located so that it is easily accessible during a fire.

The Notice alleged that Respondent violated 49 C.F.R. § 195.430 by failing to maintain adequate firefighting equipment at each pump station and breakout tank area. Specifically, the Notice alleged that Dakota Midstream failed to have adequate firefighting equipment at the Wheatland tank farm.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.430 by failing to maintain adequate firefighting equipment at each pump station and breakout tank area.

Item 10: The Notice alleged that Respondent violated 49 C.F.R. § 195.436, which states:

§ 195.436 Security of facilities.

Each operator shall provide protection for each pumping station and breakout tank area and other exposed facility (such as scraper traps) from vandalism and unauthorized entry.

The Notice alleged that Respondent violated 49 C.F.R. § 195.436 by failing to provide protection for each pumping station and breakout tank and other exposed facility from vandalism and unauthorized entry. Specifically, the Notice alleged that Dakota Midstream failed to have a fence or other protection from unauthorized entry.³

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.436 by failing to provide

³ The Notice also alleged that Dakota Midstream failed to lock valves.

protection for each pumping station and breakout tank and other exposed facility from vandalism and unauthorized entry.

Item 11: The Notice alleged that Respondent violated 49 C.F.R. § 195.438, which states:

§ 195.438 Smoking or open flames.

Each operator shall prohibit smoking and open flames in each pump station area and each breakout tank area where there is a possibility of the leakage of a flammable hazardous liquid or of the presence of flammable vapors.

The Notice alleged that Respondent violated 49 C.F.R. § 195.438 by failing to prohibit smoking and open flames in each pump station area and each breakout tank area where there is a possibility of the leakage of a flammable hazardous liquid or of the presence of flammable vapors. Specifically, the Notice alleged that Dakota Midstream failed to have a “No Smoking” sign at the Wheatland tank farm, or otherwise have identifiable prohibitions on smoking at this location.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.438 by failing to prohibit smoking and open flames in each pump station area and each breakout tank area where there is a possibility of the leakage of a flammable hazardous liquid or of the presence of flammable vapors.

Item 12: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(d), which states:

§ 195.440 Public awareness.

(a)

(d) The operator’s program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:

(1) Use of a one-call notification system prior to excavation and other damage prevention activities;

(2) Possible hazards associated with unintended releases from a hazardous liquid or carbon dioxide pipeline facility;

(3) Physical indications that such a release may have occurred;

(4) Steps that should be taken for public safety in the event of a hazardous liquid or carbon dioxide pipeline release; and

(5) Procedures to report such an event.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(d) by failing to have a public awareness program that specifically included provisions to educate the public, appropriate government organizations, and persons engaged in excavation activities on the matters set forth in § 195.440(d)(1)-(5). Specifically, the Notice alleged that Dakota Midstream’s public

awareness program in 2018, 2019 and 2020 failed to educate all the appropriate parties, and failed to include all the requisite information.⁴

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.440(d) by failing to have a public awareness program that specifically included provisions to educate the public, appropriate government organizations, and persons engaged in excavation activities on the matters set forth in § 195.440(d)(1)-(5).

Item 13: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c), which states:

§ 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.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c) by failing to 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. Specifically, the Notice alleged that Dakota Midstream failed to follow API RP 1162 Section 8.4, which requires an effectiveness evaluation of all four audiences every four years. During the inspection, Dakota Midstream did not produce any records demonstrating that it completed an effectiveness review pursuant to API RP 1162, Section 8.4.⁵

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.440(c) by failing to follow the general program recommendations, including baseline and supplemental requirements of API RP 1162.

Item 14: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with § 195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. However, if tests at those intervals are impractical for separately protected short sections of

⁴ See Notice at 6 (listing out each deficiency).

⁵ Dakota Midstream did not otherwise provide justification in its public awareness program or procedural manual as to why compliance with API RP 1162 Section 8.4 is not practicable and not necessary for safety.

bare or ineffectively coated pipelines, testing may be done at least once every 3 calendar years, but with intervals not exceeding 39 months.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1) by failing to conduct tests on protected pipeline at least once each calendar year, but with intervals not exceeding 15 months, to determine whether cathodic protection required by Subpart H complies with § 195.571. Specifically, the Notice alleged that Dakota Midstream failed to conduct the annual cathodic protection survey on the Wheatland tanks during the December 8, 2018 survey.

Respondent contested this allegation of violation. Specifically, Dakota Midstream stated that cathodic protection readings could not be taken during the December 8, 2018 survey because it was determined that the ground was too frozen to achieve effective measurements. Response at 9. In April 2019, when ground conditions improved, a cathodic protection survey was completed at the Wheatland breakout tanks. *Id.*

The requirements set forth in § 195.573(a)(1) clearly state that these tests must be completed at least once each calendar year, but with intervals not exceeding 15 months. By failing to perform the cathodic protection survey in December 2018, Dakota Midstream failed to conduct the requisite testing for calendar year 2018. Performing the next annual cathodic protection survey in 2019 does not negate the company's failure to conduct testing in calendar year 2018.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(a)(1) by failing to conduct tests on protected pipeline at least once each calendar year, but with intervals not exceeding 15 months, to determine whether cathodic protection required by Subpart H complies with § 195.571.

Item 15: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) . . .

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by § 195.401(b). However, if the deficiency involves a pipeline in an integrity management program under § 195.452, you must correct the deficiency as required by § 195.452(h).

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e) by failing to correct identified deficiencies in its corrosion control as required by § 195.401(b).⁶ Specifically, the Notice alleged that on December 8, 2018, Dakota Midstream learned that cathodic protection on its Spackler tanks was inadequate, but failed to correct the deficiency by the next inspection cycle on April 17, 2019. Further, on April 17, 2019, Dakota Midstream learned that cathodic protection on both Wheatland tanks was inadequate, but failed to correct it by the next inspection cycle on June 27, 2020.

⁶ 49 C.F.R. § 195.401(b)(1) requires that, “[w]hen 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.”

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(e) by failing to correct identified deficiencies in its corrosion control as required by § 195.401(b).

Item 16: The Notice alleged that Respondent violated 49 C.F.R. § 195.581(a), which states:

§ 195.581 Which pipelines must I protect against atmospheric corrosion and what coating material may I use?

(a) You must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

The Notice alleged that Respondent violated 49 C.F.R. § 195.581(a) by failing to clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere. Specifically, the Notice alleged that during the inspection, PHMSA observed large portions of insufficiently coated pipe at the Spackler pump station.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.581(a) by failing to clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere.

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

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.⁷

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 \$204,000 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$24,100 for Respondent's violation of 49 C.F.R. § 194.117(b)(1) for failing to maintain training records for each individual assigned duties under the response plan at the operator's headquarters. The Notice included the instruction that, "[i]f

⁷ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

you are a small business and would like PHMSA to consider your classification as such in this enforcement action including, under appropriate circumstances, a potential penalty reduction or waiver under Section 223 of the Small Business Regulatory Enforcement Fairness Act (SBREFA), please respond with the relevant information you wish to be considered. Refer to 13 CFR Part 121 for more information about small business size eligibility provisions and standards.” Notice at *Response Options for Pipeline Operators in Enforcement Proceedings*.

In its Response, Dakota Midstream requested a reduction of the proposed civil penalty amount because it will have an overly punitive effect on its ability to operate as a Small Business, as classified by the US Small Business Administration. Response at 11. On March 4, 2022, Dakota Midstream clarified to PHMSA that it would be financially able to pay the proposed civil penalty, but the penalty amount should be lowered due to the fact that it was a small business and the penalty amount would disproportionately affect it as compared to other larger operators (Letter). Letter at 1. On March 18, 2022, upon request from OPS, Dakota Midstream provided an income statement for December 2020 to November 2021.

Under Section 223 of SBREFA, “[u]nder appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.” Pursuant to § 190.225(a)(5), in determining the amount of a civil penalty, I must consider “[t]he effect on the respondent’s ability to continue in business.” In its Letter, Dakota Midstream informed PHMSA that it could pay the penalty amount, and did not provide any information on how the proposed penalty would affect its ability to continue in business. Respondent’s income statement also does not provide sufficient information on its ability to continue in business. Therefore, I find no reason to reduce the civil penalty based on Dakota Midstream’s ability to continue in business.

In regard to the remaining civil penalty assessment factors for Item 1, I see no reason to reduce the penalty amount. This was a record-keeping violation that was discovered by PHMSA. Although pipeline safety was minimally affected, Dakota Midstream failed to comply with an applicable requirement and did not provide a reasonable justification for its noncompliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$24,100 for violation of 49 C.F.R. § 194.117(b)(1).

Item 2: The Notice proposed a civil penalty of \$27,600 for Respondent’s violation of 49 C.F.R. § 194.107(c)(1)(ix) for failing to have a response plan that included a drill program following PREP guidelines, or a program that is equivalent to PREP. For the reasons set forth above, I do not believe a penalty reduction for Dakota Midstream’s ability to continue in business is warranted.

In regard to the remaining civil penalty assessment factors for Item 2, I see no reason to reduce the penalty amount. This was an activities violation that was discovered by PHMSA. Although pipeline safety was minimally affected, Dakota Midstream failed to comply with an applicable requirement and did not provide a reasonable justification for its noncompliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$27,600 for violation of 49 C.F.R. § 194.107(c)(1)(ix).

Item 3: The Notice proposed a civil penalty of \$28,300 for Respondent’s violation of 49 C.F.R. § 195.61(b) for failing to submit to PHMSA geospatial data for its facility each year, on or

before June 15, representing assets as of December 31 of the previous year. For the reasons set forth above, I do not believe a penalty reduction for Dakota Midstream's ability to continue in business is warranted.

In regard to the remaining civil penalty assessment factors for Item 3, I see no reason to reduce the penalty amount. In its Response, Dakota Midstream requested a further reduction due to the technical nature of the violations, and the fact that the company corrected the 2019 error promptly. The Violation Report accurately notes that this is an activities violation, even though Respondent considered it merely a "technical" violation. Violation Report at 22. Further, the company did not promptly remedy the 2019 violation. It waited approximately six months before submitting the requisite data to PHMSA. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$28,300 for violation of 49 C.F.R. § 195.61(b).

Item 7: The Notice proposed a civil penalty of \$31,100 for Respondent's violation of 49 C.F.R. § 195.420(b) for failing to inspect each mainline valve to determine that it is functioning properly at intervals not exceeding 7 ½ months but at least twice each calendar year. For the reasons set forth above, I do not believe a penalty reduction for Dakota Midstream's ability to continue in business is warranted.

In regard to the remaining civil penalty assessment factors for Item 7, I see no reason to reduce the penalty amount. This was an activities violation that was discovered by PHMSA. Although pipeline safety was minimally affected, Dakota Midstream failed to comply with an applicable requirement and did not provide a reasonable justification for its noncompliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$31,100 for violation of 49 C.F.R. § 195.420(b).

Item 8: The Notice proposed a civil penalty of \$14,600 for Respondent's violation of 49 C.F.R. § 195.428(a) for failing to 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 at intervals not exceeding 15 months, but at least once each calendar year. For the reasons set forth above, I do not believe a penalty reduction for Dakota Midstream's ability to continue in business is warranted.

In regard to the remaining civil penalty assessment factors for Item 8, I see no reason to reduce the penalty amount. This was a record-keeping violation that was discovered by PHMSA. Although pipeline safety was minimally affected, Dakota Midstream failed to comply with an applicable requirement. The company received a good faith credit, however, because it provided a reasonable justification for its noncompliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$14,600 for violation of 49 C.F.R. § 195.428(a).

Item 14: The Notice proposed a civil penalty of \$10,300 for Respondent's violation of 49 C.F.R. § 195.573(a)(1) for failing to conduct tests on protected pipeline at least once each calendar year, but with intervals not exceeding 15 months, to determine whether cathodic protection required by Subpart H complies with § 195.571. For the reasons set forth above, I

do not believe a penalty reduction for Dakota Midstream's ability to continue in business is warranted.

In its Response, Dakota Midstream requested a further reduction because it corrected the noncompliance as soon as weather conditions permitted. This information was already factored into the proposed penalty amount. Violation Report at 73. I see no reason to further reduce the penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,300 for violation of 49 C.F.R. § 195.573(a)(1).

Item 15: The Notice proposed a civil penalty of \$40,400 for Respondent's violation of 49 C.F.R. § 195.573(e) for failing to correct identified deficiencies in its corrosion control as required by § 195.401(b). For the reasons set forth above, I do not believe a penalty reduction for Dakota Midstream's ability to continue in business is warranted.

In regard to the remaining civil penalty assessment factors for Item 15, I see no reason to reduce the penalty amount. This was an activities violation that was discovered by PHMSA. The violations occurred not within a high consequence area (HCA), or "could affect" HCA. Dakota Midstream failed to comply with an applicable requirement, and did not provide a reasonable justification for its noncompliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$40,400 for violation of 49 C.F.R. § 195.573(e).

Item 16: The Notice proposed a civil penalty of \$27,600 for Respondent's violation of 49 C.F.R. § 195.581(a) for failing to clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere. For the reasons set forth above, I do not believe a penalty reduction for Dakota Midstream's ability to continue in business is warranted.

In its Response, Dakota Midstream requested a further reduction because it promptly corrected the noncompliance. Addressing the noncompliance post-inspection, however, does not accord the operator a credit for the culpability civil penalty assessment factor. *See* Violation Report at 16 (providing for credits when "[a]fter the operator found the non-compliance, the operator took documented action to address the cause of the non-compliance, and was in the process of correcting the non-compliance *before PHMSA learned of the violation*" and "After the operator found the non-compliance, the operator took documented action to address the cause of the non-compliance, and corrected the non-compliance *before PHMSA learned of the violation.*") (emphasis added).⁸ Therefore, I see no reason to reduce the penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$27,600 for violation of 49 C.F.R. § 195.581(a).

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 **\$204,000**.

⁸ In its written recommendation submitted pursuant to § 190.2019(b)(7), the Region Director recommended withdrawing the proposed penalty in light of Respondent's corrective action. However, PHMSA has consistently held in previous enforcement cases that corrective action taken after PHMSA identifies a violation does not warrant a reduction to the penalty. *See, e.g., In re NuStar Pipeline Operating Partnership, L.P.*, CPF No. 3-2021-005-NOPV, Item 2, 2021 WL 5907916 (Dec. 1, 2021). Therefore, the penalty is not reduced.

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 \$164,000 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 4, 5, 6, 9, 10, 11, 12, 13 and 16 in the Notice for violations of 49 C.F.R. §§ 195.208, 195.264(b)(1)(i), 195.402(c)(13), 195.430, 195.436, 195.438, 195.440(d), 195.440(c) and 195.581(a), 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 alleged violation of § 195.208 (Item 4), that item has been withdrawn. Accordingly, the proposed compliance order terms with respect to Item 4 are also withdrawn.

The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 195.430 (Item 9), Respondent has installed firefighting equipment at the Wheatland tank farm. Response at Exhibit 2.
2. With respect to the violation of § 195.438 (Item 11), Respondent has installed “No Smoking” signage at the Wheatland tank farm. Response at Exhibit 3.
3. With respect to the violation of § 195.440(d) (Item 12), Respondent has amended its public awareness program to specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation activities on the matters set forth in § 195.440(d)(1)-(5). Response at Exhibit 4.
4. With respect to the violation of § 195.581(a) (Item 16), Respondent has cleaned and recoated the above-ground piping within and around the Spackler pump station. Response at Exhibit 5.

Accordingly, I find that compliance has been achieved with respect to these violations. Therefore, the compliance terms proposed in the Notice for these violations are not included in this Order.

With regard to the remaining violations, 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 § 195.264(b)(1)(i) (**Item 5**), Respondent must correct the sloping issue at the Spackler tank farm. Dakota Midstream must submit a progress update to the Central Region Director within 90 days of the Final order and documentation of completed work within 180 days of the Final Order.⁹
2. With respect to the violation of § 195.402(c)(13) (**Item 6**), Respondent must provide documentation that a procedure has been developed and the first cycle of effectiveness reviews has been completed within 90 days of the Final Order.
3. With respect to the violation of § 195.436 (**Item 10**), Respondent must install fencing or other protection to prevent vandalism or unauthorized entry at the Wheatland tank farm. Dakota Midstream must submit a progress update to the Central Region Director within 90 days of the Final Order and documentation of completed work within 180 days of the Final Order.
4. With respect to the violation of § 195.440(c) (**Item 13**), Respondent must conduct a review of all audiences and submit documentation of completed work to the Central Region Director within 180 days 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.

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

⁹ Dakota Midstream is encouraged to also correct the sloping issue at the Wheatland tank farm and submit documentation to the Director at the same time. Although the Wheatland tank farm was not included in the Proposed Compliance Order, the Violation Report stated that Dakota Midstream “failed to establish a 1 % slope away from the tanks at both the Wheatland and Spackler tank farms.” Violation Report at 30. If the Wheatland tank farm is not corrected, Dakota Midstream may be subject to additional future enforcement.

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: 2022.08.29
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Alan K. Mayberry
Associate Administrator
for Pipeline Safety

August 30, 2022

Date Issued