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RESPONSE TO CPF 3-2021-059-NOPV

Mr. Gregory A. Ochs
Director, Central Region, OPS
Pipeline and Hazardous Materials Safety Division
901 Locust Street, Ste 480
Kansas City, MO 64106

January 30, 2022

CPF 3-2021-059-NOPV

Dear Mr. Ochs,

On December 30, 2021, Dakota Midstream, LLC received a Notice of Probable Violation from your office relating to a series of PHMSA inspections that were conducted on our jurisdictional crude oil pipeline located in North Dakota, between the dates of March and May of 2021.

In that letter, PHMSA outlines sixteen (16) areas of possible violation to 49 CFR 195 regulations. Dakota Midstream, LLC hereby responds to the alleged violations cited in the above-referenced NOPV. In our response below, each alleged violation in the NOPV will be recited, followed by Dakota Midstream's response.

Item #1:

§ 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;

As noted during a verbal response on May 27, 2021, DM failed to produce records of required Qualified Individual, Tabletop, and Unannounced PREP drills as detailed in the

table below. Verbal responses to written data requests were made by DM compliance and operations personnel to PHMSA inspectors on May 27, 2021.

	Required in 3 Yrs.	2017	2018	2019	2020
QI	12	records missing	records missing	records missing	records missing
Tabletop	3	records missing	records missing	records missing	records missing
Unannounced	3	records missing	records missing	records missing	1/4/2020

Dakota Midstream Response: *Dakota Midstream understands the importance of maintaining records and will preserve the data during future iterations of the Qualified Individual, Tabletop, and Unannounced PREP drills.*

Item #2:

§ 194.107 General response plan requirements

(a) Each response plan must include:

A core plan consisting of—

(ix) Drill program — an operator will satisfy the requirement for a drill program by following the National 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.

As noted in a verbal response, DM failed to conduct equipment deployment PREP drills in 2017, 2018, and 2019. Verbal responses to written data requests were made by DM compliance and operations personnel to PHMSA inspectors on May 27, 2021.

Dakota Midstream Response: *Dakota Midstream understands the importance of equipment deployment drills and will include them in future iterations of our operator training program.*

Item #3:

§ 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.

Per the inspection interview, DM failed to submit annual updates to NPMS or filed late as noted below:

Item	Due Date	Submittal Date
2018 NPMS submittal for 2017	6-15-18	No submittal made
2019 NPMS submittal for 2018	6-15-19	No submittal made
2020 NPMS submittal for 2019	6-15-20	12-20-20

Dakota Midstream Response: *Dakota Midstream understands the importance of ensuring that our pipeline information is up to date and available to the general public. While no changes to our assets have been made from December 2017 to present, we acknowledge that we are still responsible for reviewing and submitting data within the NPMS system. The employee responsible for the yearly NPMS submittal has been terminated (effective June 2020), and since then we have endeavored to correct the alleged violation noted above. We will continue to submit the NPMS data in a timely manner pursuant to the requirements outlined in 49 CFR 195.61.*

In accordance with this goal, the technical nature of the violations for 2017 and 2018, and the fact that the submittal for 2019 was promptly cured in Dec. 2020, we respectfully request that the civil penalty associated with this probable violation be revoked or reduced.

Item #4:

§ 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.

DM failed to follow code requirements regarding welding of supports to carrier pipe. Specifically, during the field audit, a PHMSA inspector observed supports welded directly to the jurisdictional pipeline section, located down the middle of the 10 Spackler tanks and feeding all the tanks.

Dakota Midstream Response: *The area referenced in the above violation is located in the center of an atmospheric tank battery which is separated from the jurisdictional pipeline by a Pressure Control Valve (PCV 9301) which is set to 75 PSIG. Further, because the tank battery is open to atmosphere and the pressure within the carrier pipe is limited to 75 PSIG by PCV 9301. Accordingly, the carrier pipe in question has not and will never operate above 100 PSIG. Please see Exhibit 1 for additional information.*

Therefore, Dakota Midstream respectfully requests that this alleged violation be withdrawn for the reasons stated.

Item #5:

§ 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; and

As noted by a PHMSA inspector during the field audit and documented by photographs, DM failed to establish a one percent (1%) slope away from the tanks at both the Wheatland and Spackler tank farms. Specifically, the requirements of IBR NFPA 30 Section 22.11.2.1 requiring a one percent (1%) or greater slope the first 50 feet away from the tank or to the dike base, whichever is less, were not met based on visual observation of reverse slope conditions at both tank farms.

***Dakota Midstream Response:** Dakota Midstream understands the importance of maintaining our facilities and following the requirements laid out in IBR NFPA 30. We will correct this issue as soon as weather and ground conditions permit.*

Item #6:

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

(a)

***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.

DM failed to produce records of evaluation of procedure effectiveness for 2019 and 2020. The operator stated that the last procedure effectiveness review was in 2015 when the jurisdictional portion of the DM Low Rider Crude pipeline System went into service.

Dakota Midstream Response: *Dakota Midstream understands the importance of procedural review and its role in the safety and maintenance of jurisdictional pipeline systems. Accordingly, we will include annual reviews of our procedures as part of our document control process.*

Item #7:

§ 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.

DM failed to conduct valve maintenance inspections on the mainline block valves at each end of the regulated Low Rider pipeline at the required intervals for the years 2019 and 2020, as described in the table below. DM failed to produce inspection and test records for the required inspections. There were a total of eleven missing inspections.

Dakota Midstream Response: *Dakota Midstream understands the importance of maintaining our facilities, specifically our mainline valves. We will preserve records of each instance of valve maintenance and ensure that each mainline valve is inspected twice per year (at intervals not to exceed 7.5 months).*

Item #8:

§ 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 7½ 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.

As noted during the inspection interview and a verbal response from DM to PHMSA on May 27, 2021, DM failed to produce records substantiating that compliant inspection and tests were conducted for fourteen Overpressure Protection (OPP) devices on the jurisdictional Low Rider pipeline, the two jurisdictional tanks farms (Spackler and Wheatland), and one jurisdictional pump station (Spackler) for calendar years 2019 and 2020. A master record stating that the fourteen devices were inspected and tested was provided for both June 11, 2019 and April, 20, 2020, with the previous inspection being on May 1, 2018. However, these records omitted certain detail that is necessary to substantiate a compliant inspection and/or test, such as “as found” and “as left” pressures,

or any other individual OPP device details were contained on the master records. In the absence of such information, a compliant inspection to determine that the equipment 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 these devices are used is not possible, and therefore did not occur.

Also noted during the inspection interview, DM failed to provide adequately detailed records of the twelve (ten Spackler, two Wheatland) individual tank overfill protection devices tested on May 1, 2018, June 3, 2019 and April 23, 2020. Rather, a master document stating that all devices were tested was provided with no inspection or test details for any of the tests on the master form. Such records are insufficient to evidence compliance with the requirements of the regulation. To substantiate compliance with the regulation, operators must produce records or other evidence that documents all information necessary to perform a compliant inspection under this regulation.

Dakota Midstream Response: *Dakota Midstream understands the importance of maintaining our facilities, specifically overpressure safety devices and overfill protection system. We will preserve records of each instance of equipment maintenance and ensure that these records contain sufficient evidence to ensure compliance with the requirements of the regulations.*

Item #9:

§ 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.**

As observed by a PHMSA inspector during the field audit, there were no portable fire extinguishers or other fire suppression/protection equipment at the Wheatland tank farm.

Dakota Midstream Response: *Dakota Midstream understands the importance of ensuring that adequate firefighting equipment is available at each pump station and breakout tank area.*

Accordingly, once this deficit was highlighted by the PHMSA Auditor (and prior to the issuance of this NOPV), Dakota Midstream personnel promptly took corrective action by ensuring that portable fire extinguishers were available and clearly visible at the Wheatland tank farm. Please see pictures of portable fire extinguishers available at Wheatland included as Exhibit 2.

Item #10:

§ 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.

As observed by a PHMSA inspector during the field audit, DM failed to secure the Wheatland tank farm from vandalism and unauthorized entry. Specifically, there is no fence or other protection from unauthorized entry. Also, valves are not locked.

Dakota Midstream Response: Dakota Midstream understands the importance of ensuring that our facilities are protected from unauthorized entry and vandalism. Accordingly, we will correct this issue as soon as weather and ground conditions permit.

Item #11:

§ 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.

As observed by a PHMSA inspector during the field audit, DM failed to post a “No Smoking” sign at the Wheatland tank farm, or otherwise have identifiable prohibitions on smoking at this location.

Dakota Midstream Response: Dakota Midstream understands the importance of ensuring that smoking and open flames are prohibited in each pump station area and each breakout tank area. All Dakota Midstream personnel are trained on the importance of this requirement, and §2.16 of our O&M manual specifically disallows smoking (and open flames without adequate precautions) at all Dakota Midstream facilities.

That being said, once the deficit in explicit signage was highlighted by the PHMSA Auditor (and prior to the issuance of this NOPV), Dakota Midstream personnel promptly took corrective action by ensuring that adequate signage was posted at the Wheatland tank farm. Please see pictures of explicit signage at Wheatland included as Exhibit 3.

Item #12:

§ 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.

DM failed to include all required messages to all audiences on the one brochure used in 2018, 2019 and 2020 to educate the affected public, emergency officials, public officials and excavators. Specifically, the messages below were deficient and did not meet the requirements of IBR API RP 1162 section 2.8, Table 2-1.

Message	Issue	Audience Affected	Comments
Emergency Preparedness	Inadequate	Emergency Officials, Public Officials	Emergency phone # only
NPMS	Inadequate	Affected public, Emergency officials, Public officials	Lists www.dot.gov rather than NPMS website
Potential Hazards	Missing	Affected public, Emergency officials, Public officials, Excavators	
Purpose and Reliability	Inadequate	Affected public, Emergency officials, Public officials, Excavators	Says safest method for natural gas not crude oil.

***Dakota Midstream Response:** Dakota Midstream understands the importance of ensuring that the general public and other affected audiences be fully aware of the purpose, reliability, and potential hazards associated with our pipeline. Accordingly, once this deficit was highlighted by the PHMSA Auditor (and prior to the issuance of this NOPV), Dakota Midstream promptly took corrective action by adjusting the brochure brought up during the audit, including rectifying the issues highlighted above. Please see the updated brochure included as Exhibit 4.*

Item #13:

§ 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.

DM failed to conduct a four-year effectiveness evaluation of the affected public, emergency officials, public officials, and excavators when due in 2019 based on a pipeline in-service date of May 1, 2015. Specifically, IBR API RP 1162 Section 8.4 requires an effectiveness evaluation of all four audiences every four years. The operator provided no justification that it was not practicable or necessary for safety.

Dakota Midstream Response: *Dakota Midstream understands the importance of effectiveness surveys in ensuring that the general public and other affected audiences are fully aware of the purpose, reliability, and potential hazards associated with our pipeline.*

Accordingly, we are working with our Public Awareness consultant (Paradigm) to ensure that we can perform an effectiveness evaluation on the 2021 mailer (and every 4 years thereafter).

Item #14:

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

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

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. However, if tests at those intervals are impractical for separately protected short sections of bare or ineffectively coated pipelines, testing may be done at least once every 3 calendar years, but with intervals not exceeding 39 months.

DM failed to conduct the annual cathodic protection survey on the Wheatland tanks during the December 8, 2018 survey.

Dakota Midstream Response: *Dakota Midstream understands the importance of cathodic protection and its role in pipeline maintenance and the prevention of external corrosion. As noted in the verbal response to this alleged violation, Dakota Midstream's cathodic protection contractor (WBI, LLC) mobilized a crew to the Wheatland breakout tanks to perform an annual cathodic protection survey in December of 2018. However, WBI, LLC was unsuccessful as their specialist deemed the ground too frozen to achieve effective measurements. Subsequently, a second CP survey crew was mobilized in April of 2019 (once the ground was deemed sufficiently thawed) in order to recapture the missed cathodic protection data at the Wheatland breakout tanks.*

Accordingly, we respectfully request that this item be removed from the Notice of Probable Violation and that the civil penalty associated with this alleged violation be withdrawn as a corrective action was performed as soon as reasonably practicable.

Item #15:

§ 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).**

DM failed to correct noted deficiencies in a timely manner. On December 8, 2018 the Spackler tanks had cathodic protection that was below criteria on all tanks. This deficiency was not corrected before the next inspection cycle which occurred on April 17, 2019. Also, on April 17, 2019 both Wheatland tanks had cathodic protection that was below criteria. This deficiency was not corrected before the next inspection cycle which occurred on June 27, 2020.

***Dakota Midstream Response:** Dakota Midstream understands the importance of cathodic protection and its role in pipeline maintenance and the prevention of external corrosion. Accordingly, we will ensure that all future cathodic protection readings are within acceptable criteria and that all equipment is adequately protected per 49 CFR 195.573.*

Item #16:

§ 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.**

As observed by a PHMSA inspector during the field audit, DM failed to adequately protect aboveground pipe from atmospheric corrosion at the Spackler pump station. There were large portions of insufficiently coated pipe.

***Dakota Midstream Response:** Dakota Midstream understands the importance of protecting our above-ground facilities against atmospheric corrosion.*

Accordingly, once this deficit was highlighted by the PHMSA Auditor (and prior to the issuance of this NOPV), Dakota Midstream promptly took corrective action by stripping and recoating the above-ground piping within and around the Spackler pump station. Pictures of the re-coated pipe have been included in Exhibit 5 in order to demonstrate our dedication to following the requirements outlined 49 CFR 195.581.

Therefore, we respectfully request that the civil penalty associated with this alleged violation be reduced by 50% as we have rectified the issues highlighted by the PHMSA Auditor.

Dakota Midstream appreciates the opportunity to work with your office and the PHMSA personnel involved in this matter.

In addition to the specific requests outlined above, we respectfully request that your office reconsider the proposed civil penalties associated with the alleged violations to which we have not objected on the grounds that the proposed civil penalties have an overly punitive effect on our ability to operate. Dakota Midstream is classified as a Small Business by the United States Small Business Administration pursuant to the North American Industry Classification System Codes (NAICS).

Further, this audit has provided Dakota Midstream an opportunity to improve its compliance standards and the alleged violations noted in the above-referenced Notice of Probable Violation are not likely to be repeated.

If you have any questions or comments, please feel free to contact me directly at (972) 742-7677 or by email at Kristopher@Dakota-Midstream.com

Sincerely,



Kristopher C. Coe, P.E.
Project Manager
Dakota Midstream