

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

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

December 30, 2021

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

CPF 3-2021-059-NOPV

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 is alleged that Dakota Midstream (DM) has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

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.

Dakota Midstream
Year>>

	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

2. § 194.107 General response plan requirements

(a)

(c) Each response plan must include:

(1) 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.

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

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.

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.

6. **§ 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.**

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.

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.

Valve	Inspections Required	Inspections Performed
Spackler Upstream Block Valve	4	0
Mainline Block	4	1
Wheatland Downstream Block Valve	4	0

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.

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.

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.

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.

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.

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.

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.

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.

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.

Proposed Civil Penalty

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 documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of \$204,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$24,100
2	\$27,600
3	\$28,300
7	\$31,100
8	\$14,600
14	\$10,300
15	\$40,400
16	\$27,600

Proposed Compliance Order

With respect to items, 4, 5, 6, 9, 10, 11, 12, 13 and 16 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Dakota Midstream. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be 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).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 3-2021-059-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

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

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

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

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Dakota Midstream a Compliance Order incorporating the following remedial requirements to ensure the compliance of Dakota Midstream with the pipeline safety regulations:

- A. In regard to item number 4 of the Notice pertaining to welding of supports and braces to pipe that will be operated at a pressure of more than 100 psig, Dakota Midstream must remove all welded supports from the line located within the Spackler Tank Facility. Dakota Midstream must submit a progress update to the Central Region Director with 90 days of the Final order and documentation of completed work within 180 days of the Final Order.
- B. In regard to item number 5 of the Notice pertaining to the requirement that a slope of 1% or greater be maintained for the first 50 feet away from the tank base or to the dike base whichever is less, Dakota Midstream 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.
- C. In regard to item number 6 of the Notice pertaining to procedure effectiveness review, Dakota Midstream 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.
- D. In regard to item number 9 of the Notice pertaining to the lack of firefighting equipment at the Wheatland tank farm, Dakota Midstream must provide documentation that fire extinguishers or other fire suppression equipment are located at the Wheatland tank farm within 90 days of the Final Order.
- E. In regard to item number 10 of the Notice pertaining to the security of the Wheatland tank farm, Dakota Midstream 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.
- F. In regard to item number 11 of the Notice pertaining to the lack of signage at the Wheatland tank farm, Dakota Midstream must install no smoking signs at the Wheatland tank farm. Dakota Midstream must submit documentation of completed work to the Central Region Director within 60 days of the Final Order.
- G. In regard to item number 12 of the Notice pertaining to inadequate public awareness messages, Dakota Midstream must amend messages for all audiences and submit documentation of completed work to the Central Region Director within 180 days of the Final Order.
- H. In regard to item number 13 of the Notice pertaining to conducting a public awareness four-year effectiveness review of all audiences, Dakota Midstream 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.

- J. In regard to item number 16 of the Notice pertaining to protecting pipelines from atmospheric corrosion, 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.
- H. It is requested that Dakota Midstream maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Gregory A. Ochs, Director, Central Region, Pipeline and Hazardous Materials Safety Administration. 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.