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

1200 New Jersey Avenue, SE
Washington, DC 20590

November 10, 2022

VIA ELECTRONIC MAIL TO: stan.horton@bwpipelines.com

Mr. Stanley C. Horton
President and Chief Executive Officer
Boardwalk Pipeline Partners, LP
9 Greenway Plaza, Suite 2800
Houston, Texas 77066

Re: CPF No. 3-2021-073-NOPV

Dear Mr. Horton:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of $131,800, and specifies actions that need to be taken by your subsidiary, Gulf South Pipeline Company, 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: 2022.11.08 18:11:13 -05'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Tony G. Rizk, Vice President, Technical Services, Boardwalk Pipeline Partners, LP, tony.rizk@bwpipelines.com
Ms. Tina Baker, Manager, Compliance Services, Boardwalk Pipeline Partners, LP, tina.baker@bwpipelines.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	)	
Gulf South Pipeline Company, LLC, a subsidiary of Boardwalk Pipeline Partners, LP,	)	**CPF No. 3-2021-073-NOPV**
Respondent.	)	

FINAL ORDER

From February 5, 2020, through February 9, 2021, pursuant to 49 U.S.C. § 60117, a representative 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 Gulf South Pipeline Company, LLC's (Gulf South or Respondent) in Louisiana and Texas. Gulf South is a subsidiary of Boardwalk Pipeline Partners, LP.[1] Gulf South has approximately 7,500 miles of pipeline that transport natural gas from supply areas in Oklahoma, Texas, Louisiana, Mississippi, and the Gulf of Mexico, and indirectly from the Appalachian Region, to markets in the South Central and Southeastern United States.[2]

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated December 22, 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 Gulf South had violated 49 C.F.R. §§ 192.201(a)(2)(i), 192.605(b)(8), and 192.706(a); proposed assessing a civil penalty of $131,800 for the alleged violations; and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional warning item pursuant to 49 C.F.R. § 190.205, which warned the operator to correct the probable violation or face possible future enforcement action.

After requesting and receiving an extension of time to respond, Gulf South responded to the Notice by letter dated February 4, 2022 (Response). Gulf South contested two of the three

---

[1] Boardwalk Pipelines Website, About Us- Subsidiaries, https://www.gulfsouthpl.com/our-business/default.aspx, (last accessed October 4, 2022).

[2] Boardwalk Pipelines Website, Gulf South Pipeline Company, LLC, Who We Are, https://www.gulfsouthpl.com/about-us/subsidiaries/gulf-south-pipeline-company-lp/default.aspx (last accessed October 4, 2022).

allegations, requested that the proposed civil penalty be eliminated, and contested part of the proposed compliance order. 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. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.201(a)(2)(i), which states:

> **§ 192.201 Required capacity of pressure relieving and limiting stations.**
> (a) Each pressure relief station or pressure limiting station or group of those stations installed to protect a pipeline must have enough capacity, and must be set to operate, to insure the following:
> (1)….
> (2) In pipelines other than a low pressure distribution system:
> (i) If the maximum allowable operating pressure is 60 p.s.i. (414 kPa) gage or more, the pressure may not exceed the maximum allowable operating pressure plus 10 percent, or the pressure that produces a hoop stress of 75 percent of SMYS, whichever is lower;…

The Notice alleged that Respondent violated 49 C.F.R. § 192.201(a)(2)(i) by failing to set its pressure limiting devices to operate at a pressure that does not exceed the maximum allowable operating pressure (MAOP) plus 10 percent. Specifically, the Notice alleged that Gulf South provided calculations showing that the overpressure set point at the Gary meter station was 128 percent of MAOP.

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. § 192.201(a)(2)(i) by failing to set its pressure limiting devices to operate a pressure that does not exceed the MAOP plus 10 percent.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.605(b)(8), which states:

> **§ 192.605 Procedural manual for operations, maintenance, and emergencies.**
> (a) ….
> (b) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.
> (1) ….
> (8) Periodically reviewing the work done by operator personnel to determine the effectiveness and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found.

The Notice alleged that Respondent violated 49 C.F.R. § 192.605(b)(8) by failing to periodically review the work done by operator personnel to determine the effectiveness and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found. Specifically, the Notice alleged that when PHMSA requested documentation of such reviews, Respondent provided Gulf South's Form 1000-20: *Compliance Manual Effectiveness Review,* however, the forms for 2017, 2018, and 2019 failed to document any assessment of work performed as part of its operations and maintenance procedures - *O&M Section 1010, General Procedures (Section 1010)*. Therefore, the Notice alleged, Gulf South was unable to present information showing that it had periodically reviewed its procedures for effectiveness based on the work performed by its personnel.

In its Response, Gulf South contested the allegation and contended that OPS failed to meet its burden of proof because "the Notice does not set forth the facts necessary to sustain a probable violation actually occurred."[3] Specifically, Gulf South argued the Notice relies on the wrong form. Respondent noted OPS relies on Form 1000-20: *Compliance Manual Effectiveness Review* to document noncompliance. Respondent indicated the form it actually uses to document changes to procedures based on a review of work done by operator personnel, in accordance with § 192.605(b)(8), is Form 1000-10: *Document Change Request Form*.[4]

Gulf South explained that the purpose of the form cited in the Notice, Form 1000-20, is to document compliance with the requirement in § 192.605(a) to review procedures annually, not to exceed 15 months, but this form is not used to document compliance with § 192.605(a)(8). Rather, Gulf South explained, its procedures at O&M Section 1010 and O&M Section 1020 require use of Form 1000-10 to document changes to procedures based on a review of work done by operator personnel to determine the effectiveness and adequacy of the procedures. Since the Notice referenced the wrong form, Gulf South contended, the Notice failed to present sufficient facts to prove a violation and Item 2 must be withdrawn.

Analysis

Section 192.605(b)(8) requires operators to have and follow a procedural manual for operations, maintenance, and emergencies, which includes procedures for periodically reviewing the work done by operator personnel to determine the effectiveness, and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found. As Respondent noted in its Response, OPS has the burden of proving a violation. Having reviewed the evidence, I find OPS has carried that burden.

During the inspection, OPS requested documentation from Respondent showing the operator had periodically reviewed work done by personnel to determine the effectiveness and adequacy of its procedures as required by § 192.605(b)(8). In response to this request, Respondent provided Forms 1000-20 from 2017, 2018, and 2019. It is undisputed such records failed to document the assessment of work require by § 192.605(b)(8). Absent evidence to the contrary, Respondent's

---

[3] Gulf South Response, at 7.

[4] *Id.*

inability to provide records during the inspection showing it periodically reviewed work done by operator personnel to determine the effectiveness and adequacy of its procedures is sufficient to prove a violation.

While Respondent contended in its Response that the wrong records were provided to OPS during the inspection, a review of Gulf South's Response fails to uncover any additional records purporting to show the operator conducted reviews required by § 192.605(b)(8). Respondent's contention that it uses a different form than the one provided to OPS during the inspection does not on its own rebut the evidence that Respondent failed to comply with § 192.605(b)(8). Respondent has not provided applicable records, either at the time of the inspection when they were requested or in response to the Notice, that purport to demonstrate compliance.

Accordingly, after considering all of the evidence in the record, I find Respondent violated 49 C.F.R. § 192.605(b)(8) by failing to periodically review the work done by operator personnel to determine the effectiveness and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.706(a), which states:

> **§ 192.706 Transmission lines: Leakage surveys.**
> Leakage surveys of a transmission line must be conducted at intervals not exceeding 15 months, but at least once each calendar year. However, in the case of a transmission line which transports gas in conformity with §192.625 without an odor or odorant, leakage surveys using leak detector equipment must be conducted-
> (a) In Class 3 locations, at intervals not exceeding 7 ½ months, but at least twice each calendar year;

The Notice alleged that Respondent violated 49 C.F.R. § 192.706(a) by failing to conduct leakage surveys on Class 3 transmission lines that transport gas without an odor or odorant using leak detector equipment, at intervals not exceeding 7 ½ months, but at least twice each calendar year. Specifically, the Notice alleged that Gulf South used three leak detectors, in four locations, that were not designed for detecting leaks from underground pipe. The Notice stated that Gulf South used the Bacharach Leakator 10, TIF 8800X, and Sensit TKX leak detectors, in Westlake, West Monroe, Sterlington, and Lafayette, Louisiana from 2017 to 2020. The Notice alleged that the manufacturer design specifications indicated that the detectors were designed for detecting leaks in aboveground pipe. Therefore, the Notice alleged that Gulf South's leakage surveys at those locations were inadequate and not in compliance with § 192.706(a).

In its Response, Gulf South argued that § 192.706(a) is a performance-based regulation that requires the use of leak detector equipment but does not specify any criteria for that equipment.[5] Gulf South argued that the choice of equipment is up to the discretion and engineering judgment

[5] Gulf South Response, at 8.

of the operator.[6] Gulf South stated that the Notice and the Violation Report provided no technical analysis or data supporting their statements that its leak detectors were improper or ineffective.[7] Specifically, Gulf South argued that the Violation Report did "not contain the manufacturer design specifications, a 'review of manufacturer design specifications,' or the findings of such a review."[8]

Gulf South also argued that the Notice's distinction between leak detectors for aboveground pipe and belowground pipe has no basis in the regulation, regulatory guidance, PHMSA case law or industry literature.[9] Gulf South explained that gas migrates up "through the ground cover" where it can be detected by "sight (because of dead vegetation or surface bubbling), sound, or a leak detection device."[10] Therefore, argued Gulf South, although its pipeline is buried below ground, the equipment is held at ground level to detect if methane is reaching the surface.[11] Gulf South concluded by asserting that OPS had not satisfied its burden of demonstrating a violation of § 192.706 because it had failed to provide any analysis supporting the allegation that the leak detectors it used were improper or ineffective.[12]

In the Region Recommendation, OPS stated that the leak detectors used by Gulf South in four locations were inadequate because they were not designed to detect gas from underground pipelines. The Director provided a summary of the manufacturers' design specifications from brochures and instruction manuals. For the Bacharach Leakator 10, OPS explained the instruction manual describes the device as an instrument suited for "heating service contractors, utility personnel, and other users who are interested in pinpointing gas leaks, and testing gas appliances in residential, commercial, and industrial installations." OPS explained further that the usage example in the operator's manual was detecting a gas-air mixture from an unlit burner of a natural gas stove. OPS explained that the Leakator 10's manual does not describe it as an instrument suitable for underground pipelines, and the manual does not indicate it is meant for walking or sweeping near the ground. Furthermore, OPS explained, the manual specifically states the device is "not to be used in any application that is beyond its intended purpose or beyond the scope of its specifications."

For the TIF 8800X, OPS acknowledged that the brochure references underground utilities but provided no guidance on how to do a walking survey. Moreover, OPS stated, the relevant training material and manual indicated that the primary use of the TIF 8800X was for detecting

---

[6] *Id.*

[7] *Id.*

[8] *Id.*, internal quotation removed.

[9] Gulf South Response, at 9.

[10] *Id.*

[11] *Id.*

[12] *Id.*

gas at appliances, meter sets, and other exposed sections of pipeline. For the Sensit TKX, OPS explained that its brochure states it is "perfect for finding leaks along exposed pipe" but neither the operating brochure nor its instruction manual state it is to be used for buried pipeline.

Analysis

Section 192.706(a) requires leakage surveys on Class 3 transmission lines that transport gas without an odor or odorant using leak detector equipment, at intervals not exceeding 7 ½ months, but at least twice each calendar year. When promulgating § 192.706, a number of commenters objected to the mandated use of leak detector equipment, arguing that it would restrict the flexibility of operators when conducting leakage surveys and that other methods of surveys are available, such as observing dead vegetation. PHMSA explained that such other methods are "not always effective."[13] In the absence of odorant, which allows for the early detection of leaks by smell, PHMSA noted that leakage surveys with leak detector equipment "provide the most satisfactory means of protection."[14] PHMSA further stated:

> Gas detector surveys were proposed under § 192.706 to provide a compensatory measure of protection for the public where transmission lines carry unodorized gas in Class 3 and Class 4 locations and to provide added protection in Class 4 locations even when gas is odorized. In the opinion of OPS, to conduct leakage surveys without using detector equipment would not yield a level of safety comparable to that provided by odorization of gas . . . .
>
> In light of further comments, OPS wants to point out that neither § 192.705 nor § 192.706 specifies how patrols or leakage surveys are to be accomplished. The rules are written in performance language. Thus, for example, both aerial patrols and aerial leakage surveys would be acceptable where they are *appropriate and effective*.[15]

Gulf South correctly notes that § 192.706(a) is a performance-based regulation. It does not dictate how every leakage survey must be accomplished or specify the models of equipment an operator must always use. However, the leakage survey must achieve the performance standard established by the regulation, that is, it must be capable of detecting leaks. As noted in the preamble to the final rule, the operator's method for complying with the regulation must be "appropriate and effective." In guidance, PHMSA has elaborated that leak detection surveys must be performed utilizing commercially available and currently accepted industry leakage survey methods and equipment adequate to the purpose of identifying gas leaks.[16] Though the guidance is not a binding regulation, the guidance provides notice to industry that operators must

---

[13] 40 Fed. Reg. 20279, 20281-82 (May 9, 1975).

[14] *Id.*

[15] *Id.* (emphasis added).

[16] Letter to Image Information Solutions, PI-09-0018, Interpretation Response | PHMSA https://www7.phmsa.dot.gov/regulations/title49/interp/PI-09-0018 (dot.gov) (last accessed October 4, 2022).

meet the performance standard by using equipment that is appropriate for the survey method and that is effective in identifying gas leaks during the survey.[17]

Having reviewed the entire case file, as well as the brochures, data sheets, and user manuals for the leak detectors, I find that the equipment Gulf South used to conduct leakage surveys was inappropriate for the intended purpose of conducting leakage surveys of buried pipelines. All three instruments are small, hand-held devices equipped with flexible probes measuring only about 14-inches to 20-inches in length. Devices such as the Bacharach Leakator 10, TIF 8800X, and Sensit TKX may be suitable for precise locating (or *pinpointing*) the location of a leak already known to exist where a person can position the probe in close proximity to the source. They are not suitable for surveying the right-of-way of a buried gas transmission line for the presence of leaks. As indicated by their design, and reinforced by their data sheets, brochures, or manuals, these instruments are designed to access hard to reach places and find the exact source of a gas leak.[18] For example, the Sensit TKX Instruction Manual presumes the user knows there is a leak and therefore, directs the user to "[a]pproach suspected leak areas with the sensor until the tick begins to increase."[19] The TIF 8800X user manual also presumes the user is aware of the leak and thus instructs the user to "[s]earch the general area of the suspected leak."[20] Such devices designed for pinpointing the exact source of a known leak are inappropriate for a gas leak survey of a transmission line where an instrument must traverse long distances at slow speeds close to the ground surface.

---

[17] While Respondent argued industry literature does not distinguish between leak detectors for aboveground pipe and belowground pipe, PHMSA takes notice of American National Standards Institute's (ANSI) Gas Piping Technology Committee's (GPTC) *Guide for Transportation of Natural and other Gas by Pipeline: Minimum Federal Safety Standards*, 2022 Edition (GPTC Guide), a common industry guide that offers leakage survey guidance to operators. PHMSA has not incorporated the GPTC Guide by reference in its regulations, but notes the industry literature refutes Respondent's assertion. For example, section 4.4, *Leak surveys and test methods,* of the GPTC Guide explains for "buried piping, sampling of the atmosphere should, where practical, take place as close to ground surface as permitted by gas detector design, due to the potential for rapid diffusion of leaking gas to the atmosphere." In addition, "[t]he survey should be conducted at speeds slow enough to allow an adequate sample to be continuously obtained by placement of equipment intakes over the most logical venting locations, giving consideration to the location of gas facilities." In recognition that a particular gas detection instrument may not be suitable for every use, the GPTC Guide advises that when selecting a leak detection instrument the operator should consider the different uses, such as: (i) leak survey; (ii) leak investigation (first response); (iii) leak classification (barholing); or (iv) pinpointing.

[18] The Bacharach Leakator® 10's data sheet specifically notes that it "is an ideal instrument for pinpointing combustible gas leaks…" Available at https://www.mybacharach.com/product/leakator-10-combustible-gas-leak-detector/ (Last accessed October 4, 2022). *See also,* the Sensit TKX Quick Start Instructions which starts with the hint "[a]s you approach the source of the leak continue adjusting the wheel without moving the sensor head to a uniform tick sound until you locate the exact location of the leak." Available at https://www.sensit-direct.com/files/sensit-quick-start-guides/tkx.pdf (Last accessed October 4, 2022).

[19] Sensit TKX Instruction Manual, available at https://www.sensit-direct.com/pdfs/cache/www.SENSIT-direct.com/902-00000-02/manual/902-00000-02-manual.pdf (Last accessed October 4, 2022).

[20] TIF 8800X User Manual, available at https://www.testequipmentdepot.com/robinair/pdf/tif8800x_manual.pdf (Last accessed October 4, 2022).

Accordingly, after considering all of the evidence in the record, I find Respondent violated 49 C.F.R. § 192.706(a) by failing to conduct leakage surveys on Class 3 transmission lines that transport gas without an odor or odorant using leak detector equipment, at intervals not exceeding 7 ½ months, but at least twice each calendar year.

The above 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.[21]

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 $131,800 for the violations cited above.

Item 1: The Notice proposed a civil penalty of $32,100 for Respondent's violation of 49 C.F.R. § 192.201(a)(2)(i), for failing to set its pressure limiting devices to operate at a pressure that does not exceed the MAOP plus 10 percent. In its Response, Gulf South argued that the proposed civil penalty was unwarranted and requested that it be withdrawn. Quoting PHMSA's Pipeline Safety Enforcement Procedures, Gulf South argued that the purpose of a civil penalty is to "reinforce the message of the Notice of Probable Violation, draw attention to the problem area, emphasize the need for lasting attention, and deter the respondent and other operators from committing future violations." Gulf South argued that a civil penalty was unnecessary to advance any of those objectives in this case. Gulf South contended that its policy of setting relief valve set point pressures at MAOP plus five percent, a setting that is more conservative than allowed under the regulation and which creates a greater margin of safety, demonstrated its longstanding commitment to safety. Gulf South noted that it accepted full responsibility for the violation and promptly began implementing a comprehensive solution that involved reviewing and confirming the accuracy of relief valve set points at all pressure limiting stations in its system. Gulf South argued that the safety risk at pressure relieving station is not significant and therefore, no risk is posed to facilities located outside of the station. Lastly, Gulf South argued that PHMSA bears the burden of demonstrating that the proposed civil penalty is appropriate.

---

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

PHMSA's decisions and selections regarding enforcement actions are discretionary and involve complex considerations made on a case-by-case basis.[22] As the Respondent correctly notes, the civil penalties serve many purposes, including but not limited to emphasizing the need for lasting attention, and deterring the respondent and other operators from committing future violations.

Therefore, while I acknowledge Gulf South's commitment to safety and its initiative in developing a three-year program to confirm the accuracy of the relief valve set points at approximately 1200 other pressure limiting stations, I do not find that such corrective actions warrant the withdrawal or reduction of the civil penalty for its failure to comply at the Gary meter station, where the set point was well over the regularly limit. Regarding the nature and circumstances of the violation, PHMSA noted in the Violation Report that the alleged violation related to Gulf South's failure to set its pressure limiting devices to operate at a pressure that does not exceed the MAOP plus 10 percent and that the violation was discovered by PHMSA. It is uncontested that Gulf South failed to set its pressure limiting devices to operate at a pressure that would not exceed MAOP plus 10 percent in the connecting pipe between the regulator and the relief valve at its Gary meter station. It is also uncontested that this violation was discovered during an inspection because of PHMSA's request to review relief device set points for meter stations, including accurate calculation for relief capacity.

Regarding gravity, PHMSA noted in the Violation Report that pipeline safety was minimally affected; therefore, the proposed civil penalty has already accounted for the fact that the safety risk at the pressure relieving station was not significant. Regarding culpability and good faith, Gulf South did not contest the violation and has thus acknowledged that it failed to comply with an applicable requirement of Part 192 and did not have a reasonable justification for its non-compliance.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $32,100 for violation of 49 C.F.R. § 192.201(a)(2)(i).

Item 3: The Notice proposed a civil penalty of $99,700 for Respondent's alleged violation of 49 C.F.R. § 192.706(a). In its Response, Gulf South argued that the civil penalty must be withdrawn because OPS failed to identify specific locations where improper leak detection equipment was used. Gulf South contended that OPS speculated it had failed to comply with the regulation a minimum of twice a year, at the four locations identified in the Notice, for four years, resulting in a total of 32 instances of violation. Noting that the Violation Report stated "[s]pecific locations of equipment used for individual patrols/surveys of Class 3 segments was not provided by Gulf South," Respondent averred that presuming 32 instances of violation was unsupported by evidence.

It is uncontested that Gulf South used the Bacharach Leakator 10, TIF 8800X, and Sensit TKX to conduct leak detection surveys in Westlake, West Monroe, Sterlington, and Lafayette, Louisiana from 2017-2020. I have found that those leak detectors are not appropriate for conducting the

---

[22] Pipeline Safety Enforcement Procedures, Section 3 at 1 (September 15, 2020) https://www.phmsa.dot.gov/pipeline/enforcement/section-3-selection-administrative-enforcement-actions (Last accessed October 4, 2022).

required leak surveys. Identification of specific survey locations is unnecessary because each leak survey performed from 2017-2020 in Westlake, West Monroe, Sterlington, and Lafayette, Louisiana was not in compliance with § 192.706(a). Consequently, I find that the 32 instances of violation are supported by the record. Regarding the nature and circumstances of the violation, PHMSA noted in the Violation Report that the alleged violation related to Gulf South's conduct regarding leak detection surveys using inappropriate leak detector equipment and that the violation was discovered by PHMSA. Regarding gravity, PHMSA noted in the Violation Report that the violation did not occur within an HCA or "could affect" HCA. As Gulf South noted, it did not provide specific locations that would have permitted OPS to determine if certain locations were in an HCA or not. Therefore, I find that the gravity selection is supported by the evidence OPS collected. Regarding culpability and good faith, Gulf South failed to comply with an applicable requirement of Part 192 and did not have a reasonable justification for its non-compliance.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $99,700 for violation of 49 C.F.R. § 192.706(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 **$131,800**.

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 $131,800 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, and 3 in the Notice for violations of 49 C.F.R. §§ 192.201(a)(2)(i), 192.605(b)(8), and 192.706(a), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601.

With regard to Item 2 in the Notice for violation of § 192.605(b)(8), the Notice proposed ordering Respondent to provide a written procedure to address the periodic review of work done to determine the effectiveness of its normal operations and maintenance procedures. Respondent argued these terms must be withdrawn because the Notice did not allege that Respondent failed to have adequate procedures.

Pursuant to 49 U.S.C. § 60118(b), PHMSA may order an operator to comply with the pipeline safety regulations. In this case, PHMSA found Respondent violated § 192.605(b)(8). Accordingly, PHMSA may order Respondent to comply with that regulation. Section 192.605(b)(8) requires operator to have and follow procedures for periodically reviewing the work done by operator personnel to determine the effectiveness and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found. Under such circumstances, I find it appropriate to order Respondent to take actions to ensure that it has and follows procedures that comply with § 192.605(b)(8). This includes making sure Respondent's procedures prescribe frequency and documentation requirements to ensure not only that Respondent conducts reviews periodically as required but also documents those reviews so that PHMSA can verify compliance. Therefore, Respondent must submit procedures for complying with § 192.605(b)(8) as proposed in the Notice.

With regard to Item 3 in the Notice for violation of § 192.706(a), the Notice proposed ordering Respondent to perform an adequate leakage survey at all sites identified in the Notice and report those results to the Director. Respondent argued that the terms must be withdrawn because OPS failed to provide analysis supporting the allegation and therefore failed to meet its burden of proof. I have already found that the record supports a finding of violation because Respondent failed to use the appropriate equipment to conduct its leak surveys. Therefore, Respondent must perform an adequate leak survey as proposed in the Notice.

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 § 192.201(a)(2)(i) (**Item 1**), Respondent must continue with the program already submitted to Central Region on June 8, 2020. Quarterly updates must be submitted to the Director until the program is successfully completed.

2. With respect to the violation of § 192.605(b)(8) (**Item 2**), Respondent must submit written procedures for periodically reviewing work done to determine the effectiveness of its normal operations and maintenance procedures. The procedures must prescribe frequency and documentation requirements for a complete review of all normal maintenance and operations procedures within a reasonable time period. Respondent must submit the written procedures to the Director within 90 days of the issuance of the Final Order and provide semi-annual reports to the Director on the results of the revised program until completion of the review of all procedures in the time prescribed by the procedure.

3. With respect to the violation of § 192.706(a) (**Item 3**), Respondent must, within

> 90 days of receipt of the Final Order, perform an adequate leakage survey at all sites identified in the Notice and report the results to the Director. The report must specifically include the grade of all leaks discovered by the survey.

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

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

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

WARNING ITEM

With respect to Item 4, the Notice alleged a probable violation of Part 192, but identified it as a warning item pursuant to § 190.205. The warning was for:

> 49 C.F.R. § 192.947(d) **(Item 4)** ─ Respondent's alleged failure to maintain, for the useful life of the pipeline, documents to support any decision, analysis and process developed and used to implement and evaluate each element of the baseline assessment plan and integrity management program.

If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

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

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

ALAN KRAMER MAYBERRY
Digitally signed by ALAN KRAMER MAYBERRY
Date: 2022.11.08 18:10:10 -05'00'

November 10, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued