



Via Email to Gregory.Ochs@DOT.gov

December 31, 2021

Mr. Gregory Ochs
Director, Central Region
Pipeline and Hazardous Materials Safety Administration
901 Locust Street, Suite 462
Kansas City, MO 64106

**Re: CPF 3-2021-082-NOPV
Response to NOPV**

Dear Mr. Ochs,

Tallgrass Energy, LP (Tallgrass or Company) respectfully submits this response to the Notice of Probable Violation and Proposed Compliance Order (collectively, NOPV) that the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) issued on December 1, 2021, in the above-referenced enforcement proceeding. In the NOPV, PHMSA alleges that Tallgrass committed a probable violation of the Operator Qualification (OQ) requirements in 49 C.F.R. § 195.505(b) (Item 1). PHMSA also proposed a compliance order regarding this allegation. By way of this letter, Tallgrass respectfully contests this allegation and the proposed compliance order in accordance with 49 C.F.R. § 190.208(b)(1).

I. Summary

PHMSA asserts that Tallgrass's treatment of Abnormal Operating Conditions (AOCs) in its OQ program was "so lacking in detail that they provided no training to personnel such that they would be considered 'qualified' under the definition of § 195.503."¹ Tallgrass respectfully emphasizes that the Company's OQ program includes provisions for ensuring through qualification that individuals performing covered tasks are qualified to recognize and react to AOCs as required under § 195.505(b). The OQ program addresses both generic AOCs and covered-task-specific AOCs and contains sufficient detail to comply with § 195.505. Tallgrass's approach to AOCs is consistent with PHMSA guidance and the regulatory interpretations set out in past enforcement cases. PHMSA has not met its burden of proving a violation of the OQ regulations and this allegation must be withdrawn. Nonetheless, Tallgrass underscores its commitment to continuous improvement, and will continue to refine its OQ program over time to reflect PHMSA and company SME input, and learnings from its operational and training experience.

¹ Notice of Probable Violation at 2.

II. Background

Section 195.505 lists the specific provisions that hazardous liquid pipeline operators must include in their OQ programs. One of those provisions is set out in § 195.505(b), which requires operators to “[e]nsure through evaluation that individuals performing covered tasks are qualified[.]” *Id.* For purposes of § 195.505(b), the term qualified is defined, in relevant part, as “mean[ing] that an individual has been evaluated and can . . . [r]ecognize and react to abnormal operating conditions.” 49 C.F.R. § 195.503. The term abnormal operating condition is further defined to “mea[n] a condition identified by the operator that may indicate a malfunction of a component or deviation from normal operations that may: (a) Indicate a condition exceeding design limit; or (b) Result in a hazard(s) to persons, property, or the environment.” *Id.*

In Item 1 of the NOPV, the Agency alleges that Tallgrass committed a probable violation of 49 C.F.R. § 195.505(b). Specifically, PHMSA states that:

[d]uring the inspection, . . . Tallgrass provided records for the “Task Analysis” (Form OM100-82 GL) as evidence of the process through which it ensured that individuals performing covered tasks were qualified. The AOCs that individuals were trained to recognize and react to were, as identified in the Task Analysis forms so lacking in detail that they provided no training to personnel such that they would be considered “qualified” under the definition of § 195.503. Further, on April 28, 2021, Tallgrass admitted in a follow up email in response to PHMSA’s findings, that its AOC’s were “generic” and was working to correct the issue in 2021. In sum, Tallgrass failed to follow the requirements of § 195.505(b) by providing no detail to its personnel through its Task Analysis process as to how they should react and respond to AOCs, and by failing to incorporate its standard operating procedures into the qualification evaluation process . . .

To support these allegations, the Agency attached to the Violation Report several of the Task Analysis Forms and Performance Assessment Forms that PHMSA reviewed as part of its inspection, as well as an email exchange between Tallgrass and PHMSA.²

III. Response

a. PHMSA has not met its burden of proof and must withdraw the allegation.

The Tallgrass OQ program includes provisions for ensuring through qualification that individuals performing covered tasks are qualified to recognize and react to AOCs as required under § 195.505(b). As part of its 2020 conversion to a new task list, Tallgrass implemented the Task Analysis Forms and the Performance Assessment Forms that PHMSA reviewed during the inspection. Tallgrass undertook task mapping and examined the AOCs as part of this conversion and found them appropriate. The Tallgrass Task Analysis Forms each include a table that lists task-specific AOCs that are organized into recognize and react columns. The recognize column provides a description of the task-specific AOCs that individuals could reasonably be expected to

² Violation Report, Evidence Exhibit A.

encounter and the react column provides a description of appropriate responses.³ The information provided in both columns contains the same level of detail as the examples that PHMSA discussed in the preamble to the 1999 Final Rule that codified § 195.505(b).⁴ The Final Rule provides, in relevant part:

To be qualified, an individual needs to be able to properly perform assigned covered tasks and be able to recognize and react to an abnormal operating condition that may be encountered while performing the covered task. For example, this may include *notifying the responsible parties or taking corrective action to mitigate the condition*. As an example, *an individual who has been qualified to perform leak surveys should be able to recognize and react to an abnormal operating condition such as blowing gas*. Likewise, *an individual who is qualified to perform control of gas pressure and flow should be able to recognize and react to an abnormal operating pressure in a pipeline segment*. (Emphasis added)

The Agency's characterization of Tallgrass' Task Analysis Forms as being "so lacking in detail that they provided no training to personnel" is inconsistent with the very same guidance that PHMSA offered to operators in the Final Rule. Moreover, nowhere in the NOPV or Violation Report has PHMSA explained why the level of detail in Tallgrass' OQ program does not provide personnel with adequate guidance. PHMSA simply states that Tallgrass' materials are insufficient, and that Tallgrass has acknowledged as much.

The Agency's reference to an email from Tallgrass to PHMSA does not prove the alleged violation.⁵ The record shows that the email in question was part of an exchange that Tallgrass initiated on April 26, 2021, to follow up on a request that PHMSA made in an earlier phone call. PHMSA responded to the Company's email by characterizing the task-specific AOCs on the Task Analysis Forms as "generic in nature", and Tallgrass replied by acknowledging the inspector's concern and providing additional follow-up information, including how Company personnel use other procedures in the AOC evaluation process, and ongoing efforts to make improvements to the OQ program. None of the information shared during this cooperative email exchange substantiates the alleged violation. Tallgrass' email response reflects the Company's polite and solicitous response to PHMSA's concern, with a commitment to continue to improve its OQ program. Tallgrass' Task Analysis Forms have indeed been enhanced again since then, in the spirit of continuous improvement.⁶ However, the Task Analysis Forms provided to PHMSA, and included in the Violation Report, did describe the task specific AOCs that individuals could be reasonably expected to encounter, and did set out what personnel should do in response. The Company further notes that the information on the Task Analysis Forms is consistent with PHMSA's enforcement

³ Task Analysis Forms (OM100-82_GL), included in Evidence Exhibit A in PHMSA's Violation Report.

⁴ *Pipeline Safety: Qualification of Pipeline Personnel, Final Rule*, 64 Fed. Reg. 46,853, 46,861 (Aug. 27, 1999)

⁵ Email exchange between PHMSA and Tallgrass, included in Evidence Exhibit A in PHMSA's Violation Report.

⁶ Tallgrass SME's are in the final states of reviewing the AOCs, again, in the normal course, and updating them to reflect operational learnings and provide additional detail. This effort was undertaken not because the earlier AOCs reflected any regulatory non-compliance, but because Tallgrass continually improves its OQ and other compliance programs.

guidance.⁷ PHMSA's OQ FAQ 4.3 provides that operators develop a "thorough listing of AOCs, both task specific and generic."⁸ Tallgrass has done so. The Task Analysis Forms include a list of task specific AOCs and how personnel should react to them and, unlike the operator in one of the enforcement Final Orders cited in PHMSA's OQ Enforcement Guidance, Tallgrass does not rely solely on generic AOCs for compliance purposes.⁹ Moreover, none of the examples of AOC-related non-compliance in the extensive list in PHMSA's OQ Enforcement Guidance is presented by the facts of this case.¹⁰

As for the remaining statements in the NOPV, there is nothing in the OQ regulations or PHMSA's enforcement guidance that prevents an operator from considering other operations and maintenance procedures and standard operating practices during the AOC evaluation process. Indeed, consideration of those other materials aligns with the Agency's admonition that pipeline operators should tailor OQ programs to their specific operations. Reflecting this commonsense approach, the Task Analysis Forms reference relevant Tallgrass O&M procedures. Moreover, the Task Analysis Forms, Performance Assessments and relevant O&M manual sections are not the only materials relevant to the OQ process. Tallgrass also employs both on the job training and Computer Based Training (CBT) on each covered task. The CBT covers how to recognize and react to task-specific AOCs. As an example, Tallgrass has attached a set of screen shots from its CBT module for task *0191_GL - Measure Atmospheric Corrosion*.

PHMSA bears the burden of proof in this enforcement action as the proponent of the NOPV.¹¹ To meet that burden, the Agency must present sufficient evidence to sustain the allegation.¹² PHMSA must also demonstrate that "the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent."¹³ The Agency has not met its

⁷ PHMSA OQ Frequently Asked Questions, Treatment of Abnormal Operating Conditions (AOCs), FAQ 4.3, <https://www.phmsa.dot.gov/pipeline/operator-qualifications/oq-frequently-asked-questions>.

⁸ *Id.*

⁹ See PHMSA Operator Qualification Enforcement Guidance at 15 (Aug. 25, 2016), citing *West Texas Gas, Inc.*, C.P.F. 4-2005-1015, Final Order (Mar. 31, 2008).

¹⁰ *Id.*

¹¹ 49 U.S.C. § 60117(b)(1)(F). Under the Administrative Procedure Act (APA), "the proponent of a rule or order has the burden of proof." 5 U.S.C. § 556(d). See also, *Air Products and Chemicals, Inc.*, Final Order, CPF No. 4-2013-1001 (Aug. 10, 2015) (PHMSA did not meet its burden of proving a violation when it did not produce "any evidence to support its position"); *ExxonMobil Pipeline Co.*, Final Order, CPF No. 5-2013-5007 (Jan. 23, 2015) (PHMSA failed to meet burden of proving that certain measures were required under regulations); *So. Star Central Gas Pipeline, Inc.*, Final Order, CPF No. 3-2008-1005 (Oct. 21, 2011) (finding the evidence insufficient to sustain the allegation); *Golden Pass Pipeline, LLC*, Final Order, CPF No. 4-2008-1017 (Mar. 22, 2011) (PHMSA did not meet its burden of proving that its interpretation of regulatory language was correct); *Butte Pipeline Co.*, Final Order, CPF No. 5-2007-5008 (Aug. 17, 2009) ("PHMSA carries the burden of proving the allegations set forth in the Notice, meaning that a violation may be found only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense."); *Inland Corp.*, CPF No. 1-2017-5003, Final Order at 3 (Mar. 7, 2018).

¹² See e.g., *EQT Corp.*, Final Order, CPF No. 1-2006-1006 (May 13, 2010); *Plains Pipeline, L.P.*, Final Order, CPF No. 4-2009-5009 (Mar. 15, 2011); *Bridger Pipeline Co.*, Decision on Petition for Reconsideration, CPF No. 5-2007-5003 (June 16, 2009).

¹³ *Butte Pipeline Co.*, Final Order, CPF No. 5-2007-5008 (Aug. 17, 2009). PHMSA has acknowledged that a respondent will prevail under this standard where its rebuttal evidence is more persuasive than the evidence provided by OPS. *ANR Pipeline Co.*, Final Order (Dec. 31, 2012) (finding that ANR's "plausible" explanation regarding the

burden in either respect in this case. The Task Analysis Forms include a list of task-specific AOCs and how personnel should react to each one, providing the level of detail required to comply with § 195.505(b). The Performance Assessment Forms and CBT also specify AOCs. Accordingly, Tallgrass respectfully requests that PHMSA withdraw the NOPV.¹⁴

b. In the alternative, PHMSA could convert the NOPV to an NOA.

While withdrawal of the allegation is warranted here, in the spirit of cooperation and continuous improvement, Tallgrass would welcome, in the alternative, a conversion of the NOPV to a Notice of Amendment (NOA). Again, unlike in previous enforcement cases that warranted NOPVs, such as *West Texas Gas, Inc.*,¹⁵ Tallgrass' written qualification program already includes provisions for addressing both generic and covered-task-specific AOCs. The record also shows that the Company is making good faith efforts to continuously improve its OQ program, a fact that Tallgrass emphasized in its email exchange with PHMSA.¹⁶ To the extent that the Agency believes that certain aspects of Tallgrass' procedures with regard to AOCs could be improved, an NOA is the appropriate mechanism for achieving that result. PHMSA has issued NOAs to operators related to AOCs under § 195.505(b) in numerous prior cases.¹⁷

c. If the NOPV is not withdrawn or converted to an NOA, PHMSA should revise the deadlines in the compliance order.

The NOPV includes a proposed compliance order that would require Tallgrass to (1) "[r]evis[e] its OQ program to address the specific AOC's related to its identified covered tasks and submit to the Director for approval within 30 days of receipt of the Final Order"; (2) "[w]ithin 30 days of receiving Director approval of the revised OQ program, . . . implement the program and communicate changes that affect the covered tasks to individuals performing those covered tasks (§ 195.505(f))"; (3) "[r]equalify individuals as required by the revised program within 90 days of receipt of the Final Order"; and (4) "[p]rovide to the Director, PHMSA Central Region a report summarizing the above actions within 120 days of receipt of the Final Order."

While the allegation in this matter must be withdrawn, should further proceedings become necessary in this matter, Tallgrass wishes to preserve the issue of the timing of the Proposed Compliance Order. In that regard, the Agency should modify the last two deadlines in the compliance order to run from the date of the Director's approval of the Company's revised OQ

discovery of a reportable condition on its pipeline was sufficient to warrant withdrawal of the allegation of violation because the "Violation Report contain[ed] no evidence which would rebut ANR's argument").

¹⁴ See e.g., *Cenex Pipeline, LLC*, Final Order, C.P.F. 5-2012-5013 (Dec. 31, 2012)(agreeing with operator that alleged probable violation of § 195.505 for failing to evaluate task-specific AOCs during re-qualifications should be withdrawn)

¹⁵ *West Texas Gas, Inc.*, CPF 4-2005-1015, Final Order (Mar. 31, 2008).

¹⁶ Email exchange between PHMSA and Tallgrass, included in Evidence Exhibit A in PHMSA's Violation Report.

¹⁷ *Permian EOR at Occidental Petroleum*, Notice of Amendment, C.P.F. 4-2020-5016M (Nov. 24, 2020); *Devon Energy*, Order Directing Amendment, C.P.F. No. 5-2019-6001M (Mar. 31, 2020); *Statoil Oil & Gas LP*, Notice of Amendment, C.P.F. 3-2017-6011M (Sep. 29, 2017); *Cenex Pipeline Company*, Notice of Amendment, C.P.F. 5-2011-5016M (Dec. 30, 2011); *Kinder Morgan Liquids Terminals, LLC*, Notice of Amendment, C.P.F. 1-2010-5004M (Apr. 7, 2010); *Salmon Resources Ltd.*, Notice of Amendment, C.P.F. 3-2007-5034M (Dec. 21, 2007).

plan, rather than the date of the final order. The Director's approval of Tallgrass' revised OQ plan is the date used to establish the 30-day compliance deadline for implementing the program and communicating the necessary changes to affected personnel. The 90-day deadline for requalifying individuals to perform covered tasks and 120-day deadline to submit a summary report are also dependent on the Director's approval. To ensure that the compliance deadlines are consistent and account for any time associated with obtaining the Director's approval, Tallgrass respectfully requests that the last two compliance deadlines run from the date of the Director's approval of the revised OQ plan.

IV. Conclusion

As stated previously, the Company's OQ program includes provisions for ensuring thorough qualification that individuals performing covered tasks are qualified to recognize and react to AOCs as required under § 195.505(b); the program addresses both generic AOCs and covered-task-specific AOCs. Tallgrass respectfully requests that PHMSA withdraw the NOPV, but as an alternative would ask that the NOPV be converted to a Notice of Amendment (NOA) as enhancements have been made to the Task Analysis Forms in response to feedback provided by PHMSA.

Tallgrass shares PHMSA's commitment to pipeline safety and continuous program improvement. If you have any questions regarding this response, please do not hesitate to contact me.

Sincerely,



Jennifer Eckels
Manager - Compliance
370 Van Gordon Street
Lakewood, CO 80228
Phone: (303) 763-3486

CC: Tallgrass: Byron Gale, Jay Meyers, Jarid Kling, Nicole Longwell, Crystal Heter
PHMSA: Gabriel Hodill, James Bunn

Enclosure: Attachment 1: Energy WorldNet Example Task-Specific AOC Training (2020)