

December 1, 2021

VIA ELECTRONIC MAIL TO: ghill@hess.com

Mr. Gregory P. Hill
President and Chief Operating Officer
HESS Corporation
1501 McKinney Street, 28th Floor
Houston, Texas 77010

CPF No. 3-2021-5008

Dear Mr. Hill:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and your subsidiary, Hess North Dakota Pipelines LLC, which was executed on November 29, 2021. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission, or as otherwise provided under 49 C.F.R. § 190.5.

Sincerely,

Alan K Mayberry
Associate Administrator
for Pipeline Safety

Enclosures: Consent Agreement and Consent Order

Cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. John Gatling, Vice President, Hess North Dakota Pipelines LLC, jgatling@hess.com
Mr. Scott Janoe, Counsel, Baker Botts LLP, scott.janoe@bakerbotts.com
Ms. Kimberly White, Counsel, Baker Botts LLP, kim.white@bakerbotts.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	)	
	)	
Hess North Dakota Pipelines LLC,	)	CPF No. 3-2021-5008
	)	
Respondent.	)	
	)	

CONSENT ORDER

By letter dated March 2, 2021, the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (PHMSA), issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) to Hess North Dakota Pipelines LLC (Hess or Respondent).

In response to the Notice, Hess contested certain allegations and requested a hearing. Subsequently, PHMSA and Hess (collectively referred to as the Parties) agreed that the contested issues may be resolved through informal discussions. The Parties engaged in good-faith settlement discussions that have resulted in the Consent Agreement attached to this Order that settles all of the issues in the Notice.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Order. Hess is hereby ordered to comply with the terms of the Consent Agreement, effective immediately.

Pursuant to 49 U.S.C. 60101, *et seq.*, failure to comply with this Consent Order may result in the assessment of civil penalties as set forth in 49 C.F.R. § 190.223.

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

December 1, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of

Hess North Dakota Pipelines LLC,

Respondent.

CPF No. 3-2021-5008

CONSENT AGREEMENT

On July 29 – August 2, August 5 – 9, 12 – 16, and 19 – 23, 2019, 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 Hess North Dakota Pipelines LLC (Hess or Respondent) Red Sky System in Minot, North Dakota.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated March 2, 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 Hess had violated one provision of 49 C.F.R. Part 194, nine provisions of 49 C.F.R. Part 195, and proposed ordering Respondent to take certain measures to correct the alleged violations, and to pay a civil penalty in the amount of \$127,600. Three of the alleged violations were brought as warning items.

On April 1, 2021, Hess responded to the Notice and contested Item 2 in full, requested an amendment to deadline to complete the actions described in the proposed compliance order for Item 4 and 6, requested that the proposed compliance order for Item 7 be withdrawn as moot, and requested a reduction in the proposed civil penalty for Items 5, 8, and 9 of the Notice (Response). In its Response, Hess also requested a hearing on these issues as well as the opportunity for an informal meeting with PHMSA to discuss the challenged items. Subsequent to the filing of the Response, Hess and PHMSA (collectively the Parties) met telephonically on numerous occasions to discuss a possible resolution of the case in lieu of proceeding to a hearing. During the meetings, the Parties offered additional information regarding the allegations, and an agreement was reached that resolves all of the issues in the Notice. As such, on July 12, 2021, Hess formally withdrew its request for a hearing.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and will serve the public interest by promoting safety and protection of the

environment, pursuant to 49 C.F.R. Part 190, and upon consent and agreement of Hess and PHMSA, the Parties hereby agree as follows:

I. General Provisions

1. Respondent acknowledges that as the operator of the pipeline facilities subject to the Notice, Respondent and its referenced natural gas pipeline facilities are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Agreement, Respondent acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. 60101, *et seq.*, and the regulations and orders issued thereunder.

2. After Hess returns this signed Agreement to PHMSA, the Agency's representative will present it to the Associate Administrator for Pipeline Safety, recommending that the Associate Administrator adopt the terms of this Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement

3. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals, except as set forth herein.

4. This Agreement shall apply to and be binding upon PHMSA and Hess, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of Hess's officers, employees, and agents whose duties might reasonably include compliance with this Agreement.

5. This Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

6. Nothing in this Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Hess pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

7. For all transfers of ownership or operating responsibility of Hess's pipeline system referenced herein, Hess will provide a copy of this Agreement to the prospective transferee at

least 30 days prior to such transfer. Hess will provide written notice of the transfer to the PHMSA Central Regional Director no later than 60 days after the transfer occurs.

8. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Hess remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

9. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. Hess agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Agreement.

10. Upon issuance of the Consent Order, the Parties agree to the following terms.

II. Warning Items 1, 3, and 10 of the Notice:

11. *Allegations of Violation – 49 C.F.R. §§ 194.7 (Items 1); 195.402(a) (Item 3); and 195.579(c) (Item 10):* These Items were issued as warning in the Notice, requiring no further action by Hess. Hess did not contest these Items. As such, these Items remain as warning as written in the Notice.

III. Item 2 of the Notice:

12. *Allegation of Violation – 49 C.F.R. § 195.208:* With respect to Item 2 of the Notice, PHMSA agrees to withdraw this Item due to Hess's commitment to perform the following mandated compliance action.

13. *Compliance Action:* Hess shall perform the following compliance action, to be completed within 22 weeks from the *Effective Date* of this Agreement:

- (a) Hess shall move/install a pressure control valve or emergency shutdown valve (ESDV) upstream of the piping to the pig launcher on the Hawkeye Gas Facility NGL skid but downstream of the welded support, as identified in the Notice.
- (b) The specific location of the newly installed/relocated ESDV shall be consistent with the location identified on Exhibit A of this Agreement.
- (c) The newly installed/relocated ESDV will be considered the demarcation point between the non-jurisdictional "in-plant piping system" associated with the Hawkeye Gas Facility and the PHMSA jurisdictional pipeline facilities, subject to operational and design changes that may occur in the future.

IV. Item 4 of the Notice:

14. *Item 4 - Violation of 49 C.F.R. § 192.402(c)(13)*: With respect to Item 4 of the Notice, the Parties agree that Hess violated § 192.402(c)(13), as alleged in the Notice. The Parties acknowledge that PHMSA may choose to consider this Item to be a prior offense in any future PHMSA enforcement action taken against Hess.

15. *Compliance Order for Item 4*: In regard to Item 4 of the Notice pertaining to periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance, Hess must complete development of a review process and send to the Central Region Director within 60 days of the ***Effective Date*** of this Agreement. The first run implementation of the program must begin within 90 days of the ***Effective Date*** of this Agreement, and documentation of the results submitted to the Central Region Director within 360 days of the ***Effective Date*** of this Agreement.

V. Item 5 of the Notice:

16. *Item 5 – Violation of 49 C.F.R. § 195.428(a)*: With respect to Item 5 of the Notice, Hess agrees that it violated § 195.428(a), as alleged in the Notice. The Parties acknowledge that PHMSA may choose to consider this Item to be a prior offense in any future PHMSA enforcement action taken against Hess.

17. *Civil Penalty for Item 5*: Hess shall pay a civil penalty in the amount of **\$60,000** for this violation.

VI. Item 6 of the Notice:

18. *Item 6 – Violation of 49 C.F.R. § 195.452(f)(13)*: With respect to Item 6 of the Notice, Hess agrees that it violated § 195.452(f)(13), as alleged in the Notice. The Parties acknowledge that PHMSA may choose to consider this Item to be a prior offense in any future PHMSA enforcement action taken against Hess.

19. *Compliance Order for Item 6*: In regard to Item 6 of the Notice pertaining to identifying preventive and mitigative (P&M) measures to protect high consequence areas, Hess must complete development of the procedures and send to the Central Region Director by March 30, 2022. The first run implementation of the program must begin within 90 days thereafter, and documentation of the results submitted to the Central Region Director within 180 days after completion of the first run implementation of the program.

VII. Item 7 of the Notice:

20. *Item 7 – Violation of 49 C.F.R. § 195.579(a)*: With respect to Item 7 of the Notice, Hess agrees that it violated § 195.579(a), as alleged in the Notice. The Parties acknowledge that PHMSA may choose to consider this Item to be a prior offense in any future PHMSA enforcement action taken against Hess.

21. *Proposed Compliance Order for Item 7*: In regard to Item 7 of the Notice pertaining to investigating and mitigating the corrosive effects of hazardous liquids on its

pipelines, Hess has provided to PHMSA documentation of completion of the compliance activity proposed in the Notice. As such, no further compliance actions are required of Hess with regard to this violation.

VIII. Item 8 of the Notice:

22. Item 8 – Violation of 49 C.F.R. § 195.579(b)(1): With respect to Item 8 of the Notice, Hess agrees that it violated § 195.579(b)(1), as alleged in the Notice. The Parties acknowledge that PHMSA may choose to consider this Item to be a prior offense in any future PHMSA enforcement action taken against Hess.

23. Civil Penalty for Item 8: Hess shall pay a civil penalty in the amount of **\$10,000** for this violation.

IX. Item 9 of the Notice:

24. Item 9 – Violation of 49 C.F.R. § 195.579(c): With respect to Item 9 of the Notice, Hess agrees that it violated § 195.579(c), as alleged in the Notice. The Parties acknowledge that PHMSA may choose to consider this Item to be a prior offense in any future PHMSA enforcement action taken against Hess.

25. Civil Penalty for Item 9: Hess shall pay a civil penalty in the amount of **\$12,000** for this violation.

X. Enforcement

26. This Agreement is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. § 60122, of up to \$222,504 per violation for each day the violation continues and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not complying with the terms of this Agreement in accordance with determinations made by the Director, or if appealed, in accordance with decisions of the Associate Administrator. The maximum civil penalty amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

XI. Dispute Resolution

27. The Director and Hess will informally attempt to resolve any disputes arising under this Agreement, including but not limited to any decision of the Director. If Hess and the Director are unable to informally resolve the dispute within 15 calendar days after the dispute is first raised, in writing, to the Director, Hess may submit a written request for a determination resolving the dispute from the Associate Administrator for Pipeline Safety, PHMSA. Such request must be made in writing and provided to the Director, counsel for the Central Region, and to the Associate Administrator for Pipeline Safety, no later than 10 calendar days from the 15 day deadline for informal resolution referenced in this paragraph. Along with its request, Hess must provide the Associate Administrator with all information Hess believes is relevant to the dispute. Decisions of the Associate Administrator under this paragraph will constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or

suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process, except as agreed by the Director or the Associate Administrator in writing, or ordered by a court of competent jurisdiction.

XII. Effective Date

28. The term “Effective Date,” as used herein, is the date on which the Consent Order is issued by the Associate Administrator, PHMSA, incorporating the terms of this Agreement.

XIII. Modification

29. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

XIV. Ratification

30. The Parties’ undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

31. The Parties hereby agree to all conditions and terms of this Agreement.

[Signature Lines on Following Page]

For Hess North Dakota Pipelines LLC:

Date

For PHMSA:

Gregory Ochs, Director, Central Region

Date
