

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

VIA ELECTRONIC MAIL TO: trobby@bayoumidstream.com;
tnellermoe@bayoumidstream.com

November 8, 2022

Travis Roby
Chief Executive Officer
Bayou Midstream / NST Express, LLC
820 Gessner Road, Suite 1450
Houston, Texas 77024

CPF 3-2022-056-NOPV

Dear Mr. Roby:

On various dates between August 2021 and October 2021, a representative 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 Bayou Midstream's subsidiary NST Express, LLC's (NST) crude oil pipeline system between East Fairview and Alexander, North Dakota.

As a result of the inspection, it is alleged that NST 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. **§ 195.452 Pipeline integrity management in high consequence areas.**
 - (a)
 - (b) *What program and practices must operators use to manage pipeline integrity?* Each operator of a pipeline covered by this section must:
 - (1) **Develop a written integrity management program that addresses the risks on each segment of pipeline**
 - (5) **Implement and follow the program.**

NST failed to follow its integrity management procedure for risk analysis in Section 6 of the Northstar Midstream IMP to evaluate the consequences of a potential pipeline failure, as required by § 195.452(f)(3).

Specifically, NST failed to evaluate the consequences of a failure at its Alexander Station and Alexander Junction because it did not estimate the extent of dispersion of hazardous materials that could result from a failure of the breakout tanks or station piping. During the inspection covering 2017 through 2020.

2. **§ 195.507 Recordkeeping.**

Each operator shall maintain records that demonstrate compliance with this subpart.

(a)

(b) Records supporting an individual's current qualification shall be maintained while the individual is performing the covered task. Records of prior qualification and records of individuals no longer performing covered tasks shall be retained for a period of five years.

NST failed to maintain records supporting an individual's current qualification to perform a qualified task. On October 5th, 2021, PHMSA observed an active pipeline excavation site at County Road 13. After PHMSA requested a record of the current qualification of the individual performing the covered task, NST could not provide one. The One Call ticket for the location of the excavation showed that the contractor hired by NST performed the line locate task. A review of additional operations records showed that the contract individual had performed line locate activities for NST since August 2019.

3. **§ 195.563 Which pipelines must have cathodic protection?**

(a) Each buried or submerged pipeline that is constructed, relocated, replaced, or otherwise changed after the applicable date in §195.401(c) must have cathodic protection. The cathodic protection must be in operation not later than 1 year after the pipeline is constructed, relocated, replaced, or otherwise changed, as applicable.

NST failed to demonstrate that it had a functional cathodic protection (CP) system installed in its terminals within one year of operation for the buried pipeline at Alexander Station and Alexander Junction. During the inspection NST provided a map of the existing test points on its mainline pipe, however there were no test points shown within the stations. Additionally, PHMSA found from observation that electrical isolation kits had been installed between the mainline and station piping, indicating that the CP system in place for mainline pipe was not designed for the station piping.

The pipeline was fully operational in 2017, however NST failed to install a CP system within one (1) year of operation and could not provide a justification for not installing CP; therefore, NST was operating without adequate CP.

4. **§ 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.

NST failed to conduct cathodic protection tests on its mainline pipeline and breakout tanks in 2019. From a review of records PHMSA found that the monitoring scheduled for the 26 test points on the mainline pipe and two tanks at the Alexander Station were overlooked in the 2019 calendar year and not conducted until February 2020.

5. § 195.573 What must I do to monitor external corrosion control?

(a)

(c) *Rectifiers and other devices.* You must electrically check for proper performance each device in the first column at the frequency stated in the second column.

Device	Check frequency
Rectifier	At least six times each calendar year, but with intervals not exceeding 2 ½ months
Reverse current switch	
Diode	
Interference bond whose failure would jeopardize structural protection	
Other interference bond	At least once each Calendar year, but with intervals not exceeding 15 months.

NST failed to check the proper performance of an electrical bond located in its Alexander Junction facility. PHMSA found NST pipe electrically bonded to a foreign operator via an above ground jumper wire during the field inspection. NST was aware that the bond was installed, however they did not check it for performance or have any documentation confirming that a failure of the bond would not jeopardize structural protection.

During the inspection PHMSA requested information about the jumper and whether it was a critical bond for the CP system. NST provided a 2021 annual CP report discussing the bond and the need to possibly disconnect it. NST also provided a 2021 depolarized survey report discussing the bond and that it may be supplying protective electrical current to the Alexander interconnect station. NST could not determine if the bond was required for its CP system and failed to establish the necessary checking frequency as required by § 195.573.

6. § 195.579 What must I do to mitigate internal corrosion?

(a)

(b) *Inhibitors.* If you use corrosion inhibitors to mitigate internal corrosion, you must—

(1)

(2) Use coupons or other monitoring equipment to determine the effectiveness of the inhibitors in mitigating internal corrosion; and

NST failed to monitor the effectiveness of internal corrosion control measures in a segment of pipe at its Alexander station. During the field inspection, PHMSA identified a segment of pipe with no flow and without a corrosion coupon. Although NST uses inhibitors to prevent internal corrosion and has coupons in segments with flowing product, it was not able to properly monitor the no-flow segment.

During a review of records and maps of the Alexander Station, PHMSA found that NST built a line segment to accommodate a second pump that was not yet installed. There was no coupon in this section of pipe, and it was not adequately protected or monitored for internal corrosion.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violations occurring on or after May 3, 2021, and before March 21, 2022, the maximum penalty may not 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 \$132,100 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$46,600
3	\$58,400
4	\$27,100

Warning Item(s)

With respect to Item 2, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct this item. Failure to do so may result in additional enforcement action.

Proposed Compliance Order

With respect to Items 1, 3, 5, and 6, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to NST Express, LLC. 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 3-2022-056-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: Travis Nellermoe, Area Operations Manager, Bayou Midstream Bakken,
tnellermoe@bayoumidstream.com

PROPOSED COMPLIANCE ORDER

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

- A. In regard to Item 1 of the Notice pertaining to the failure to follow its integrity management procedure for risk analysis at its facilities, NST must, within 90 days of the receipt of the Final Order:
 - i. Perform a study to determine the extent of dispersion of hazardous materials released from its facilities as a result of a possible failure, and evaluate the severity of consequences of the failure for possible mitigation.
 - ii. Provide the Director, PHMSA Central Region, a report summarizing the results of the study.
- B. In regard to Item 3 of the Notice, pertaining to NST's failure to demonstrate that it had a functional cathodic protection system within one year of operation at Alexander Station and Alexander Junction, NST must:
 - i. Within 30 days of receipt of the Final Order, ensure that cathodic protection (CP) is applied to the buried pipe in its facilities.
 - ii. Within 60 days of receipt of the Final Order:
 - 1. Install sufficient test stations within its facilities to monitor cathodic protection and submit a report to PHMSA of the monitored level of CP at each test station.
 - 2. Verify that any electrical isolation devices are functioning as intended.
 - iii. Send monthly reports to the Director, PHMSA Central Region, outlining the completion of the requirements above, and other actions taken to install adequate CP and test stations. Additionally, NST shall provide the ongoing schedule for completion to achieve compliance.
- C. In regard to Item 5 of the Notice pertaining to the electrical bond at the Alexander Junction, NST shall, within 90 days of receipt of the Final Order, perform a study to determine if the bond is necessary for protection of the pipeline structure, and, based on the findings, establish either an annual or 2 ½ month inspection interval, as outlined by § 195.573(c).
- D. In regard to Item 6 pertaining to internal corrosion mitigation, NST shall, within 90 days of receipt of the Final Order, remove the affected section of pipe or isolate and purge the pipe of crude oil, or install a means of properly monitoring internal corrosion with a coupon.
- E. It is requested that NST Express, LLC, 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 costs associated with preparation/revision of plans, procedures,

studies and analyses; and 2) total costs associated with replacements, additions and other changes to pipeline infrastructure.