



U.S. Department
of Transportation
Pipeline and Hazardous

901 Locust Street, Suite 480
Kansas City, MO 64106

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

VIA ELECTRONIC MAIL TO: mhurley@expl.com; kbrown@expl.com

September 14, 2022

Mark Hurley
President and Chief Executive Officer
Explorer Pipeline Co.
P.O. Box 2650
Tulsa, Oklahoma 74136

CPF 3-2022-062-NOPV

Dear Mr. Hurley:

From June 7 through September 20, 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 Explorer Pipeline Co.'s (Explorer) inspection system in Illinois, Missouri, Oklahoma, and Texas.

As a result of the inspection, it is alleged that Explore 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. **§ 195.264 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

Explorer failed to install impoundment around breakout tanks in accordance with Section 22.11.2 of NFPA 30. NFPA 30 Section 22.11.2.7.1 states that “control of drainage shall be accessible under fire conditions from outside the dike.” In the diked area with tanks 423, 424, and 433 at the Wood River tank facility, the dike drainage valve was placed within the diked area rather than having it accessible from outside the diked area. These tanks were constructed in 2003 and construction was required to follow NFPA 30, per § 195.264(b)(1)(i).

2. § 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.

Explorer failed to provide protection against atmospheric corrosion as required by § 195.581. During the field inspections it was noted by PHMSA that the pipe-to-soil transitions in several locations had dis-bonded and flaking paint along with bare steel. In two locations, it appeared pipe was installed uncoated. At the Port Neches Station, a portion of the mainline prover relief piping was uncoated. Additionally, at the Wood River Terminal the drain valve piping to the sump was uncoated. These observations show that Explorer failed to provide protection against atmospheric corrosion on its pipeline.

Proposed Compliance Order

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 \$2,391,142 for a related series of violations. For violation 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 documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

With respect to items 1 and 2 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Explorer Pipeline Co. 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 3-2022-062-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: Kevin Brown, Manager, DOT and Regulatory Compliance, Explorer Pipeline Co.,
(kbrown@expl.com)

PROPOSED COMPLIANCE ORDER

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

- A. In regard to Item number 1 of the Notice pertaining to the dike drainage valve being placed within the diked area, rather than having it accessible from outside the diked area, Explorer must be able to operate the dike drainage valve outside the diked area within ninety (90) days of receipt of the Final Order. Documentation that remediation has been completed shall be submitted to the Central Region Director within one hundred twenty (120) days of the Final Order.
- B. In regard to Item number 2 of the Notice pertaining to providing protection against atmospheric corrosion, Explorer must correct uncoated pipe at the air/soil interface within ninety (90) days of receipt of the Final Order. Documentation that uncoated pipe at the air/soil interfaces has been corrected shall be submitted to the Central Region Director within one hundred twenty (120) days of the Final Order.
- C. It is requested that Explorer 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.