

February 8, 2024

VIA ELECTRONIC MAIL TO: pierce.norton@oneok.com

Pierce H. Norton II
President and Chief Executive Officer
ONEOK, Inc.
100 West Fifth Street
Tulsa, Oklahoma 74103

CPF No. 3-2023-001-NOPV

Dear Mr. Norton:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Magellan Midstream Partners, LP, which was executed on January 31, 2024. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission and acknowledgement of receipt, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosures: Consent Order and Consent Agreement

cc: Mr. Gregory A. Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Danny Scroggins, Senior Attorney, ONEOK, Danny.Scroggins@oneok.com
Mr. Mark Materna, Director, Pipeline Integrity, ONEOK, Mark.Materna@oneok.com

CONFIRMATION OF RECEIPT REQUESTED

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

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In the Matter of)))))
MAGELLAN MIDSTREAM PARTNERS, LP,))))	CPF No. 3-2023-001-NOPV
Respondent.)))))

CONSENT AGREEMENT

From December 4, 2020, through August 13, 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.), investigated a rupture on Magellan Midstream Partners, LP (Magellan or Respondent)'s 6-inch nominal diameter hazardous liquid pipeline system in Commerce City, Colorado, a suburb of Denver. The rupture of the pipeline on December 4, 2020, resulted in the release of a reported 487 barrels of diesel fuel in a high consequence area (HCA). Following the rupture, Respondent took actions to remediate the effects of the spill. On September 25, 2023, Magellan was acquired by ONEOK, Inc.

As a result of the investigation, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated May 8, 2023, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Magellan committed violations of three provisions of 49 C.F.R. part 195 (Items 1-3) and proposed a civil penalty of \$655,941.

Magellan responded to the Notice by letter dated July 27, 2023 (Response). The company contested the probable violations and the proposed civil penalties. Respondent requested a hearing and also asked for the opportunity to meet informally with PHMSA to discuss Items 1-3 in the Notice.

PHMSA and Magellan (the Parties) subsequently met to discuss the issues raised in the Response. As a result of those discussions and as explained in more detail below, the Parties have agreed to a Consent Agreement by which PHMSA makes findings of violations for each of the Items alleged in the Notice and Respondent will pay a reduced civil penalty in the amount of **\$399,147**.

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 U.S.C. § 60101, *et seq.* and 49 C.F.R. Part 190, and upon consent and agreement, 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 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 Consent Agreement (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 Respondent 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 for the Dispute Resolution provisions set forth herein. Respondent agrees to withdraw its request for an administrative hearing regarding the Notice.

4. This Agreement shall apply to and be binding upon PHMSA and Respondent, 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 Respondent'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 Respondent 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 Respondent's pipeline system referenced herein, Respondent will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer. Respondent will provide written notice of the transfer to the 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. Respondent 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. Respondent 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. Except as set forth herein, this Agreement does not constitute a finding of violation of any other federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of a violation of any law, rule, regulation, or requirement, except in a proceeding to enforce the provisions of this Agreement or in future PHMSA enforcement actions.

II. Findings of Violation:

11. ***Item 1 - 49 C.F.R. § 195.401(a)***: The Notice alleged that Magellan failed to appropriately respond to the SCADA-indicated abnormal operation conditions. Specifically, the Notice alleged that Respondent operated the 6-inch Commerce City to Fountain Terminal pipeline at a level of safety lower than that required by Part 195 subpart F and its procedures when the pipeline was re-started after the First Shutdown and ran for seven minutes while discharging diesel fuel into an HCA. Without admission and for settlement purposes only, Respondent disputes, but agrees not to contest, the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.401(a).

12. ***Item 2 - 49 C.F.R. § 195.402(a)***: The Notice alleged that Magellan did not follow its procedures for handling abnormal operations. Specifically, the Notice alleged that Respondent failed to investigate and correct the cause of abnormal operation between the time of the First Shutdown at 05:17 am MST and prior to the Restart at 05:39 am MST. Following informal discussion, Respondent does not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.402(a).

13. ***Item 3 - 49 C.F.R. § 195.402(a)***: The Notice alleged that Magellan did not follow its procedures for handling emergencies. Specifically, the Notice alleged that Respondent failed to initiate its Code Red Event Procedure for approximately 1 hour and 25 minutes after the First

Shutdown at 05:17 am MST. Following informal discussion, Respondent does not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.402(a).

14. Items 1-3 will be considered by PHMSA as prior offenses in any future PHMSA enforcement action taken against Respondent.

III. Civil Penalty:

15. *Item 1:* The Notice proposed assessing a civil penalty in the amount of \$218,647 for Item 1. Respondent requested a reduction of the proposed civil penalty. During informal discussion, Magellan presented evidence showing little or no known environmental damage resulting from the spill. PHMSA agrees a reduction is appropriate based on reconsideration of the civil penalty multipliers used in this case. The evidence presented warrants removal of the civil penalty multiplier that is applied when environmental damage occurs. However, this adjustment does not result in a reduction to the civil penalty. Accordingly, Respondent agrees to pay a civil penalty in the amount of **\$218,647** for the violation in Item 1.

16. *Item 2:* The Notice proposed assessing a civil penalty in the amount of \$218,647 for Item 2. Respondent requested a reduction of the proposed civil penalty. During informal discussion, Magellan presented evidence showing little or no known environmental damage resulting from the spill. PHMSA agrees a reduction is appropriate based on reconsideration of the gravity factor. A reduction to the gravity factor, from 40 points to 17 points, is warranted because the evidence shows that the violation did not increase the severity of the reportable accident, which results in the civil penalty multipliers being no longer applicable. Respondent agrees to pay a reduced civil penalty in the amount of **\$68,800** for the violation in Item 2.

17. *Item 3:* The Notice proposed assessing a civil penalty in the amount of \$218,647 for Item 3. Respondent requested a reduction of the proposed civil penalty. During informal discussion, Magellan presented evidence showing little or no known environmental damage resulting from the spill and the reportable accident was not a consequence of the violation. PHMSA agrees a reduction is appropriate based on reconsideration of the civil penalty multipliers used in this case. The evidence presented warrants removal of the civil penalty multiplier that is applied when environmental damage occurs. Additionally, the civil penalty multiplier imposed for a reportable accident is not warranted for this Item because the violation did not cause the reportable accident. Respondent agrees to pay a reduced civil penalty in the amount of **\$111,700** for the violation in Item 3.

18. Respondent shall pay an adjusted total civil penalty in the amount of **\$399,147**, pursuant to the payment instructions at 49 C.F.R. § 190.227(a), to be paid in full no later than 20 days from the *Effective Date* of this Agreement.

IV. Enforcement:

19. 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 \$266,015 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 the determinations made by the Director, or in accordance with decisions of the Associate Administrator if resolved pursuant to the Dispute Resolution process herein. The maximum civil penalty amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223.

V. Dispute Resolution:

20. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement. If Respondent 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, Respondent 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, Respondent must provide the Associate Administrator with all information Respondent 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.

VI. Effective Date:

21. 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.

VII. Recordkeeping and Information Disclosure:

22. Unless otherwise required in this Agreement, Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five (5) years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA determines release of any information submitted pursuant to this Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

VIII. Modification:

23. 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.

IX. Termination:

24. This Agreement will remain in effect until the Civil Penalty in Section III is paid. The Agreement shall not terminate until the Director confirms, in writing, that the Agreement is terminated in accordance with this paragraph. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement.

XI. Ratification:

25. 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.

26. The Parties hereby agree to all findings, conditions, and terms of this Agreement.

[Signature Lines on Following Page]

For Magellan Midstream Partners, LP

Jason A. Smith, Vice President of Asset Integrity

Date

For PHMSA:

Director, Central Region, Office of Pipeline Safety

Date