

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY**

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	)	
In the Matter of	)	
	)	
Boardwalk Petrochemical Pipeline, LLC	)	CPF No. 3-2023-020-NOPV
	)	
Respondent.	)	
	)	

**Request for Hearing, Preliminary Statement of Issues
and Request for Settlement Meeting of
Boardwalk Petrochemical Pipeline LLC**

Pursuant to § 190.208(a)(4) and § 190.211, Boardwalk Petrochemical Pipeline, LLC, submits a Request for Hearing and Preliminary Statement of Issues regarding the Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) issued on August 11, 2023, following an inspection conducted by the Office of Pipeline Safety (OPS). On August 22, 2023, the Director of the Central Region approved an extension of time until October 12, 2023 to respond to the Notice.

The Notice alleges 4 probable violations. Without admitting liability, BPP has elected not to contest Item 2 and will remit the proposed civil penalty associated with this item. Without admitting liability, BPP does not contest the alleged procedural violation in Item 1 but contests the proposed compliance order associated with his item. BPP contests Item 3 and Item 4 in their entirety. BPP requests a hearing on the proposed compliance order for Item 1, and on Items 3 and 4 in their entirety.

BPP is committed to public safety and operating its pipeline facilities in accordance with PHMSA's regulations. BPP takes PHMSA's allegations of violation seriously, however, Item 3 and Item 4 are legally and factually unsupported and must be withdrawn. In addition, the proposed compliance order for Item 1 must be amended.

Concurrently with this Request, BPP has filed a written response with respect to the contested items in the Notice.

As permitted under 49 U.S.C. § 60117(b)(1),¹ BPP requests a settlement meeting to discuss resolution of the alleged violations. BPP also requests that the presiding official delay scheduling a hearing to allow the parties sufficient time to meet to resolve issues through a consent agreement.

¹ 49 U.S.C. § 60117(b)(1) (2018), as amended by The Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020, Pub. L. No. 116-260, div. R, title I, § 108(a)(2), 134 Stat. 2221, 2223 (Dec. 27, 2020).

Request for Hearing

BPP requests that PHMSA convene an in-person hearing regarding Item 3 and Item 4 and the proposed compliance order for Item 1. BPP will be represented by legal counsel at the hearing and intends to raise the issues identified below in its Preliminary Statement of Issues.

Preliminary Statement of Issues

BPP intends to raise the issues set forth below in a hearing in this case. BPP reserves the right to revise these issues at or before the hearing based on any additional information that may be provided in this proceeding.

Item 1: § 195.402(a) Procedural manual for operations, maintenance, and emergencies.

Whether OPS failed to satisfy its burden of demonstrating that, when installing a composite sleeve on a pipeline to repair a gouge, BPP did not first grind out the gouge.

Whether the proposed compliance order is inappropriate and unsupported by the facts, the case file, the Pipeline Safety Laws and relevant Part 190 and Part 195 regulations.

Item 3 § 195.452(d)(2) Pipeline integrity management in high consequence areas.

Whether the allegation that BPP did not include in its Baseline Assessment Plan the pipeline segments in the five geographical areas listed in the Notice is unsupported by the facts and the evidence in the case file.

Whether the allegation that BPP's conclusion that five geographic areas were not newly-identified HCAs constituted a violation of § 195.452(d)(2) when the allegation is unsupported by the facts, evidence in the case file, relevant Part 195 regulations and PHMSA guidance.

Whether OPS failed to satisfy its burden of demonstrating a violation of § 195.452(d)(2) where the case file contains no evidence that the five geographic areas should have been designated as newly-identified HCAs.

Whether OPS failed to satisfy its burden of demonstrating a violation of § 195.452(d)(2) where BPP had no fair notice of OPS's new compliance expectations that were not contained in the regulation or reflected in any PHMSA guidance material or case law.

Whether the proposed compliance order is inappropriate and unsupported by the facts, the case file, the Pipeline Safety Laws and relevant Part 190 and Part 195 regulations.

Whether the proposed civil penalty is inappropriate and unsupported by the facts, the case file, the Pipeline Safety Laws and relevant Part 190 and Part 195 regulations.

Item 4 § 195.452(j)(2) Pipeline integrity management in high consequence areas.

Whether the allegation asserted in the Notice is legally defective because it does not correctly describe the regulatory requirement of either the pre-July 1, 2020 version of § 195.452(j)(2) or the post-July 1, 2020 version of § 195.452(j)(2).

Whether OPS fails as a matter of law to satisfy its burden of demonstrating a violation of § 195.452(j)(2) for conduct occurring before July 1, 2021, which is the date operators were required to comply with the amended regulation that became effective July 1, 2020.

Whether OPS fails to satisfy its burden of demonstrating a violation of the post-July 1, 2020 version of § 195.452(j)(2) when the allegation is unsupported by the facts, evidence in the case file, relevant Part 195 regulations and PHMSA guidance.

Whether OPS fails to satisfy its burden of demonstrating a violation of the pre-July 1, 2020 version of § 195.452(j)(2) when the allegation is unsupported by the facts, evidence in the case file, relevant Part 195 regulations and PHMSA guidance.

Whether the Notice fails to include “a statement of the evidence upon which the allegations are based” as required under Section 190.207(b)(1).²

Whether the proposed compliance order is inappropriate and unsupported by the facts, the case file, the Pipeline Safety Laws and relevant Part 190 and Part 195 regulations.

Whether the proposed civil penalty is inappropriate and unsupported by the facts, the case file, the Pipeline Safety Laws and relevant Part 190 and Part 195 regulations.

Respectfully submitted,

October 03, 2023

² *Id.*