

July 29, 2024

VIA ELECTRONIC MAIL TO: craig@samgaryjr.com

Craig Ambler
President
Gary Climate Solutions, LLC
1515 Wynkoop Street, Suite 700
Denver, Colorado 80202

Re: CPF No. 3-2023-021-NOPV

Dear Mr. Ambler:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Gary Climate Solutions, LLC, which was executed on July 22, 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. Jeff Villalobos, Chief Operating Officer, Gary Climate Solutions, LLC,
jeff@samgaryjr.com
Ms. Catherine Little, Outside Counsel for Gary Climate Solutions, LLC, Bracewell, LLP,
catherine.little@bracewell.com

CONFIRMATION OF RECEIPT REQUESTED

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

Gary Climate Solutions,

Respondent.

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CPF No. 3-2023-021-NOPV

CONSENT AGREEMENT

From August 30 through September 1, 2022, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of Title 49, United States Code (U.S.C.), conducted an on-site pipeline safety inspection of the facilities and records of Gary Climate Solutions, LLC (GCS or Respondent) in Garden City, Kansas. GCS acquired the relevant pipeline facility from PetroSantander (USA), Inc., on April 30, 2021.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated September 18, 2023, a Notice of Probable Violation, Proposed Compliance Order, and Proposed Civil Penalty (Notice), which also included two warnings pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding four violations of 49 C.F.R. Part 195 (Items 2, 3, 4, and 6), proposed ordering Respondent to take certain measures to correct the alleged violations, and proposed a civil penalty of \$108,100. Other probable violations (Items 1 and 5) were brought as warnings, advising the operator to correct the probable violations or face potential future enforcement action. As a result of the informal consultations, the Parties agree that the majority of the instances of probable violations alleged in the Notice related to actions or omissions of the prior operator, PetroSantander, from 2017-2021.

Respondent responded to the Notice by letter dated October 18, 2023 (Response). In its Response, Respondent, without admission to the allegations set forth in the Notice, contested the allegation of violation for Item 6, along with its proposed civil penalty and proposed compliance order, requested a reduction of the civil penalties associated with Items 2 and 3, provided additional information regarding the actions it had taken towards compliance with PHMSA regulations since assuming ownership of the facility from the previous operator in April 2021, and requested a hearing. PHMSA and Respondent (the Parties) subsequently met on February 1, 2023, to discuss the issues raised in the Response, and continued discussion thereafter.

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, reduces the civil penalty for Item 2, withdraws the civil penalty for Item 6, and modifies the compliance order terms for Item 6. Respondent will pay a reduced civil penalty in the amount of **\$57,500**, and Respondent will complete certain compliance actions for Item 6.

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.

11. Except as noted below, Respondent neither admits nor denies any allegation or conclusion in the Notice or this Agreement, but agrees for purposes of this Agreement to accept the findings of violation and to comply with the terms of this Agreement.

II. Findings of Violation:

12. ***Item 2 - 49 C.F.R. § 195.402(a)***: The Notice alleged a failure to follow written procedures by not performing and documenting emergency training of field personnel for years 2017 through 2021. Specifically, the Notice alleged that documentation on Form F-195.403 of emergency training was not provided, nor was documentation of the supervisory review or training of personnel on procedures or hazards specific to carbon dioxide. Although Respondent only owned and operated the facility beginning in mid-2021, Respondent did 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. § 195.440(b):** The Notice alleged a failure to follow the recommendations of API RP 1162 (incorporated by reference, *see* § 195.3) by not performing an annual audit of the implementation of its Public Awareness Plan for 2017 through 2021. Although Respondent did not own or operate the facility until mid-2021, Respondent did not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.440(b).

14. **Item 4 - 49 C.F.R. § 195.505(b):** The Notice alleged a failure to follow the requirements of the written qualification program by not reviewing and approving contractor operator qualification requirements for 2017 through 2021. Although Respondent did not own or operate the facility until mid-2021, Respondent did not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.505(b).

15. **Item 6 - 49 C.F.R. § 195.588(b):** The Notice alleged that a 2018 External Corrosion Direct Assessment (ECDA) was performed without developing and implementing an ECDA plan, per the requirements of § 195.558. Specifically, the Notice alleged that the ECDA plan did not include four elements required by the regulation. Respondent initially challenged the allegation of violation in its Response, noting that Respondent did not own or operate the facility at that time. While neither admitting nor denying the probable violation for this Item, Respondent, for purposes of settlement, has agreed to accept the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.588(b).

16. Items 2, 3, 4, and 6 will be considered by PHMSA as prior offenses in any future PHMSA enforcement action taken against Respondent.

III. Warning Items:

17. **Item 1 - 49 C.F.R. § 195.61:** The Notice alleged the annual submittal to the National Pipeline Mapping System for the calendar year 2018 was not performed. This Item was brought as a warning and does not constitute a finding of violation. While Respondent did not own or operate the facility at the time, Respondent accepted the warning as alleged in the Notice without admission.

18. **Item 5 - 49 C.F.R. § 195.505:** The Notice alleged that an annual OQ program review was not performed for calendar years 2018 and 2020. This Item was brought as a warning and does not constitute a finding of violation. While Respondent did not own or operate the facility at this time, Respondent accepted the warning as alleged in the Notice without admission.

19. For Warning Items 1 and 5, if OPS finds a violation of these provisions in a subsequent inspection, Respondent may be subject to future enforcement action.

IV. Civil Penalty:

20. **Item 2:** The Notice proposed assessing a civil penalty in the amount of \$17,100 for Item 2. Respondent requested a reduction of the proposed civil penalty, asserting that the gravity, culpability, and good faith factors should be reconsidered. PHMSA finds that these factors were appropriately selected in the violation report, but that a reduction to the number of instances of violation is warranted based on evidence provided by Respondent during informal discussions. Respondent shall pay a reduced civil penalty in the amount of **\$16,700** for the violation in Item 2.

21. **Item 3:** The Notice proposed assessing a civil penalty in the amount of \$20,400 for Item 3. Respondent initially requested a reduction of the proposed civil penalty, asserting that the gravity, culpability, and good faith factors should be reconsidered, which was withdrawn following informal discussion. Respondent shall pay a civil penalty in the amount of **\$20,400** for the violation in Item 3.

22. **Item 4:** The Notice proposed assessing a civil penalty in the amount of \$20,400 for Item 4. Respondent did not contest the proposed civil penalty for this Item. As such, Respondent shall pay a civil penalty in the amount of **\$20,400** for Item 4.

23. **Item 6:** The Notice proposed assessing a civil penalty in the amount of \$50,200 for Item 6. Respondent requested a reduction or withdrawal of the civil penalty. PHMSA agrees that a withdrawal of the proposed civil penalty is appropriate based on a review of evidence provided by Respondent during informal discussion and reconsideration of the specific circumstances of the violation occurring prior to Respondent's ownership.

24. Respondent will pay a total reduced civil penalty in the amount of **\$57,500**, 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.

V. Compliance Order:

25. **Item 6:** The Notice proposed certain compliance order actions to address the non-compliance alleged in the Notice. Respondent contested the Proposed Compliance Order. Following discussion of the proposed terms, PHMSA agrees to modify the Proposed Compliance Order to better facilitate completion of an adequate ECDA. As such, Respondent agrees to undertake the following corrective measures:

- a. Respondent must revise its written plans and procedures to satisfy all the applicable requirements of 49 C.F.R. § 195.588 and NACE SP0502 (incorporated by reference, *see* § 195.3). Respondent must complete these revisions within **90 days** of the Effective Date and provide documentation confirming completion to the Central Region Director for review and approval.
- b. Respondent must complete an ECDA on the 14.1 miles of the Garden City carbon dioxide pipeline subject to 49 C.F.R. § 195.452 reported in the May 13, 2024, Annual Report in accordance with the above-referenced rules and standards and its revised procedures, and provide documentation confirming its completion, within

two years of the Effective Date. Respondent must submit quarterly updates to the Central Region Director beginning **90 days** from the Central Region's approval of the revised procedures required under this paragraph until the ECDA is completed.

VI. 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 \$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. All work plans and associated schedules set forth or referenced in Section V (Compliance Order) are automatically incorporated into this Agreement and are enforceable in the same manner.

VII. Review and Approval Process:

27. With respect to any submission under Section V (Compliance Order) of this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission; (b) approve the submission on specified, reasonable conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the foregoing. If the Director approves, approves in part, or approves with conditions, Respondent will take all actions as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures with respect to any conditions the Director identifies. If the Director disapproves all or any portion of the submission, the Director will provide Respondent a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval.

VIII. Dispute Resolution:

28. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement, including any decision of the Director under the terms of Sections V (Compliance Order) and VII (Review and Approval Process). 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. Such request must be made in writing and provided to the Director, counsel for the Central Region, and to the Associate Administrator, 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.

IX. Effective Date:

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

X. Recordkeeping and Information Disclosure:

30. 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, unless a longer period of time is required pursuant to 49 C.F.R. parts 190-199. 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.

XI. Modification:

31. 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.

XII. Termination:

32. This Agreement will remain in effect until the Civil Penalty in Section IV is paid in full and the Compliance Order in Section V is satisfied, as determined by the Director. 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.

XIII. Ratification:

33. 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.

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

[Signature Lines on Following Page]

For Gary Climate Solutions, LLC:

Date

For PHMSA:

Director, PHMSA Central Region, Office of Pipeline Safety

Date