



October 18, 2023

**By Electronic Mail**

Mr. Gregory Ochs  
Director, Central Region  
U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
901 Locust Street, Suite 462  
Kansas City, MO 64106

**Re: Gary Climate Solutions, LLC  
Notice of Probable Violation and Proposed Civil Penalty  
CPF No. 3-2023-021-NOPV  
Request for Settlement Conference and Hearing**

Dear Mr. Ochs:

Gary Climate Solutions, LLC (GCS or the Company) is in receipt of the above-referenced Notice of Probable Violation (NOPV), Proposed Civil Penalty, and Proposed Compliance Order (PCO) issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) on September 18, 2023. The NOPV was issued following PHMSA's on-site inspection of GCS operations in Garden City, Kansas, during the period of Aug. 30-Sep. 1, 2022. The NOPV alleges six (6) probable violations including four (4) allegations with associated proposed civil penalties totaling \$108,100 (Items 2, 3, 4, and 6), a PCO requirement associated with Item 6, and two (2) associated warning items (Items 1 and 5). For the reasons set forth below, GCS respectfully requests a settlement meeting to discuss the NOPV items, proposed penalty, and PCO requirement. GCS believes these issues are capable of resolution without resort to an informal hearing, and the Company is requesting a hearing in an abundance of caution to preserve its rights.

***GCS Enhanced Oil Recovery Operations***

GCS prioritizes safety and appreciates the coordination and feedback expressed by PHMSA during the inspection and in the above-referenced NOPV. By way of background, GCS is a carbon capture and storage developer focused on generating high-integrity carbon offsets in support of decarbonization efforts advocated by the U.S. government. As it relates to the NOPV, GCS acquired a turnkey facility in Garden City, Kansas, from PetroSantander in April 2021, prior to which PetroSantander owned and operated the facility including when each of the alleged compliance violations occurred. Since April 2021, GCS has owned and operated the facility for the purpose of enhanced oil recovery (EOR) by capturing, compressing, and transporting carbon dioxide (CO<sub>2</sub>) via an approximately fourteen (14) mile four (4) inch injection pipeline from the Bonanza BioEnergy ethanol plant to the Stewart oil field facility. At the facility, CO<sub>2</sub> is distributed through fiberglass lines for injection into Class II CO<sub>2</sub> injection wells. The entire CO<sub>2</sub> pipeline is run at a continuous pressure without any further compression or step downs in pressure and is controlled via a supervisory control and data acquisition (SCADA) system (using programmable logic

controllers) and has redundant communications between the capture facility, Stewart oil field facility, and CO2 injection wells.

### ***Response to NOPV and Statement of Issues***

GCS has endeavored to comply with the pipeline safety regulations since its acquisition of the facility from the prior owner / operator, PetroSantander<sup>1</sup>, and appreciates the opportunity to respond to the NOPV allegations. That said, and without admission, the Company seeks clarity regarding the application of exceptions to the 49 C.F.R. Part 195 regulations because the pipeline facility at issue is used for the sole purpose of the injection of CO2 and recovery of oil in the Stewart oil field. In particular, GCS respectfully requests discussion on the scope and applicability of 49 C.F.R. § 195.1(b)(10) to GCS operations. That provision excepts from Part 195 regulation the:

Transportation of carbon dioxide downstream from the applicable following point:

- (i) The inlet of a compressor used in the injection of carbon dioxide for oil recovery operations, or the point where recycled carbon dioxide enters the injection system, whichever is farther upstream; or
- (ii) The connection of the first branch pipeline in the production field where the pipeline transports carbon dioxide to an injection well or to a header or manifold from which a pipeline branches to an injection well.

In promulgating the exception at (b)(10), PHMSA's predecessor agency made it clear that the exception was intended specifically to apply to "pipelines used in the injection of carbon dioxide for oil recovery operations." See 59 Fed. Reg. 33388, 33390 (Jun. 28, 1994) (emphasis added). As such, GCS requests clarification and discussion of the applicability of the exception to its EOR system in Garden City, Kansas, and expressly reserves the right to raise the applicability of the exception as an issue in a hearing in the event the parties are unable to resolve this matter through settlement.

In addition to the potential application of the exception, and without admission, GCS further believes that there are mitigating factors that should be considered with respect to the proposed civil penalty Items 2 and 3 and that Item 6 should be withdrawn in its entirety due to prior inadvertent miscommunication and submission of the appropriate documentation concurrent with this filing, including the proposed civil penalty. The six (6) allegations set forth in the NOPV, all of which relate to actions or omissions of the prior operator, PetroSantander from 2017-2021, are summarized as follows:

- Item 1 (Warning Item), 49 C.F.R. § 195.61(b), for an alleged failure to provide an annual submittal to the NPMS for the calendar year 2018.

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<sup>1</sup> PHMSA has discussed with GCS that the Agency conducted an inspection of the pipeline under the ownership and operatorship of PetroSantander in 2015. GCS has been unable to locate any records of a prior 2015 inspection and any prior communications with PHMSA, however, whether on PHMSA's transparency website or in response to requests made to PHMSA during the inspection.

- Item 2, 49 C.F.R. § 195.402(a) (with a proposed civil penalty of \$17,100), for an alleged failure to follow its procedural manual for operations, maintenance, and emergencies, for 2017-2021.
- Item 3, 49 C.F.R. § 195.440(b) (with a proposed civil penalty of \$20,400), for an alleged failure to annually audit the implementation of the operator's public awareness program for 2017-2021.
- Item 4, 49 C.F.R. § 195.505(b) (with a proposed civil penalty of \$20,400), for an alleged failure to verify that contractors' operator qualification (OQ) program complied with the operator's program.
- Item 5 (Warning Item), 49 C.F.R. § 195.505(b), for an alleged failure to conduct an annual review of the OQ the program, not to exceed 15 months, for 2018 and 2020.
- Item 6, 49 C.F.R. § 195.588 (with a proposed civil penalty of \$50,200 and a PCO requirement) for an alleged failure to develop and implement an External Corrosion Direct Assessment (ECDA) plan prior to the performance of an ECDA in 2018.

The proposed civil penalties for Items 2 and 3 warrant further reduction due to several mitigating factors. PHMSA acknowledged that there was a minimal impact on pipeline safety and no evidence of a decision not to comply for these violations in its Pipeline Safety Violation Report. Further, GCS has taken proactive steps towards compliance with PHMSA regulations since assuming ownership of the Garden City, Kansas, EOR system, including specific to alleged Items 1-5. Additional clarifying facts, such as that the pipeline is only intermittently located in limited high consequence areas, should also be considered towards mitigation of proposed penalties.

With respect to Item 6, GCS inadvertently provided PHMSA with the incorrect document during the inspection. Instead of providing the 2018 ECDA plan which had been developed and implemented by PetroSantander, a representative for GCS mistakenly provided a document from its Integrity Management Plan. GCS is providing the 2018 ECDA plan to the Agency under separate cover. As such, there is no violation of 49 C.F.R. § 195.588 and Item 6 should be withdrawn along with the proposed penalty and PCO requirement.

### ***Requested Relief and Representation of Counsel***

GCS believes that these issues are capable of resolution without the need to proceed to a hearing and respectfully requests an informal settlement meeting with the Central Region. To preserve its rights for all of the reasons identified above, without admission and in consideration of other matters as justice may require, GCS respectfully requests consideration of the application of the regulatory exception for CO2 pipelines serving EOR, mitigation of the proposed civil penalties for Items 2 and 3, and withdrawal of Item 6 and the entire associated proposed civil penalty.

In advance of the requested settlement meeting or hearing (should it be necessary), and pursuant to 49 C.F.R. § 190.209, GCS requests a copy of the complete case file in this matter, beyond the Pipeline Safety Violation Report and Proposed Civil Penalty Worksheet which have already been provided, including but not limited to documentation associated with prior PHMSA inspections of the Garden City, Kansas, facility and EOR system.



If the Central Region is amenable to an informal settlement conference, GCS requests that the scheduling of a hearing be postponed to allow sufficient time for settlement meetings. In the event the parties proceed to a hearing, GCS will be represented by in-house counsel as well as outside counsel with Bracewell LLP.

Please contact me if you have any questions.

Sincerely,

Jeff Villalobos  
Chief Operating Officer

cc: Wayne, Gilkeson, Gary Climate Solutions, LLC  
Catherine Little, Esq., Bracewell LLP