

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

VIA ELECTRONIC MAIL TO: craig@samgarvjr.com and jeff@samgarvjr.com,

September 18, 2023

Mr. Craig Ambler
President
Gary Climate Solutions, LLC
1515 Wynkoop Street, Suite 700
Denver, CO 80202

CPF 3-2023-021-NOPV

Dear Mr. Ambler:

From August 30 to September 1, 2022, 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.) inspected on-site your carbon dioxide pipeline in Garden City, Kansas.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. **§ 195.61 National Pipeline Mapping System.**
 - (a) **Each operator of a hazardous liquid pipeline facility must provide the following geospatial data to PHMSA for that facility:**
 - (1) **Geospatial data, attributes, metadata and transmittal letter appropriate for use in the National Pipeline Mapping System. . .**
 - (2) . . .
 - (3) . . .
 - (b) **This information must be submitted each year, on or before June 15, representing assets as of December 31 of the previous year. If no changes have occurred since the previous year's submission, the operator must refer to the information provided in the NPMS Operator Standards manual available at www.npms.phmsa.dot.gov or contact the PHMSA Geographic Information Systems Manager at (202) 366-4595.**

GCS failed to make its annual submittal to the NPMS for the calendar year 2018, which was due on June 15, 2019. In response to PHMSA's request for documentation, GCS provided an email exchange indicating that no such submission was made in 2019.

Consequently, GCS failed to meet the requirements of §195.61.

2. **§ 195.402 Procedural manual for operations, maintenance, and emergencies.**
 - (a) ***General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. . .**

GCS failed to follow its manual of written procedures by failing to perform and document emergency training of field personnel. Section P-195.403 of GCS's operations and maintenance manual requires documentation on Form F-195.403 of the following types of training:

- Annual supervisory review of O&M and Emergency Response Manual.
- Review of P-195.402(e) with personnel, including the characteristics and hazards of carbon dioxide and how to react to emergencies.
- Participation in an emergency drill or tabletop exercise on an annual basis.

Form F-195.403 itself states "This form should be used to document training of emergency response personnel conducted under Procedure P-195.403: Handling Emergencies."

In response to PHMSA's request for emergency response training records, GCS provided sign-in sheets for yearly Kansas Pipeline Association (KPA) first responder training in Garden City KS for the years 2017-2021 and a sample tabletop scenario. However, no record of any kind was provided on Form F-195.403, nor was there any documentation provided regarding the supervisory review or training of personnel on GCS procedures or hazards specific to carbon dioxide.

In addition, it is unclear whether personnel attended the KPA events in 2019 and 2021 as the company appears only on the RSVP roster as a sponsor, with no corresponding signatures.

By not performing and documenting the emergency training required by its written operations and maintenance procedures, GCS failed to follow §195.403.

3. § 195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 195.3).

(b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

GCS failed to follow the recommendations of API RP 1162 by not performing an annual audit of the implementation of its Public Awareness Plan. RP 1162 §8.3 states “The operator should complete an annual audit or review of whether the program has been developed and implemented according to the guidelines in this RP.” In response to PHMSA’s request for documentation of this activity for the years 2017 through 2021, GCS submitted an email stating, “It does not appear that PetroSantander had record of any self-audits so we do not have any to provide. There will be one conducted by GCS at the end of the year 2022 and going forward.”

By not performing annual audits of its public awareness program per the recommendation of RP 1162, GCS failed to follow § 195.440(b).

4. § 195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(a) Identify covered tasks;

(b) Ensure through evaluation that individuals performing covered tasks are qualified. . .

GCS failed to follow the requirements of its written qualification program by not reviewing and approving contractor operator qualification (OQ) requirements. Appendix F of the GCS Operator Qualification Program states: “The Company Program Administrator will review the contractor’s current qualifications, criteria, SOC, AOC’s and evaluation processes to ensure that it meets the Company’s qualification requirements. After a full review/assessment of the OQ qualifications, the Program Administrator will develop a matrix to show which tasks are acceptable and meet the company’s current CT list. The Company approved list will then be communicated to applicable internal and contract personnel and included as part of this exhibit. Records of approved contractor qualifications will be maintained within the company’s internal OQ program files.”

GCS employs contractors for some covered tasks, including cathodic protection monitoring and integrity assessment. In response to PHMSA's request for documentation of this activity, GCS did not provide any record of reviewing and/or approving contractor OQ, stating via email that "[n]o documentation of GCS's review and approval of contractors' operator qualification (OQ) programs have been obtained since GCS acquired the pipeline in 2021. In current practice, GCS has notified all contractors that we currently use to forward a copy of their OQ plan to GCS. Those plans will then be reviewed and kept on record."

By not reviewing contractor OQ programs, GCS failed to follow its written qualification program and therefore violated § 195.505(b).

5. § 195.505 Qualification program.

Each operator shall have and follow a written qualification program. . .

GCS failed to follow the requirements of its written qualification program by not reviewing the program each calendar year at intervals not exceeding 15 months. Section 10.2 of the GCS Operator Qualification Program states:

"The program shall be reviewed every fifteen months, but at least once each calendar year. . ."

The OQ Program document includes a revision log listing edits made in recent years, but no revision or review for calendar years 2018 and 2020 is shown. In response to PHMSA's request for documentation of these annual reviews, GCS stated via email that "[n]o annual review of OQ program from 2018 and 2020, under Petrosantander were found in files received after acquisition."

By not reviewing the OQ program on an annual basis, GCS failed to follow its written OQ procedures and therefore violated § 195.505.

6. § 195.588 What standards apply to direct assessment?

(a) If you use direct assessment on an onshore pipeline to evaluate the effects of external corrosion or stress corrosion cracking, you must follow the requirements of this section...

(b) The requirements for performing external corrosion direct assessment are as follows: (1) *General*. You must follow the requirements of NACE SP0502 (incorporated by reference, *see* § 195.3). Also, you must develop and implement a External Corrosion Direct Assessment (ECDA) plan that includes procedures addressing pre-assessment, indirect examination, direct examination, and post-assessment.

(2) . . .

(3) *Indirect examination*. In addition to the requirements in Section 4 of NACE SP0502 (incorporated by reference, *see* § 195.3), the procedures for indirect examination of the ECDA regions must include—

- (i) . . .
- (ii) Criteria for identifying and documenting those indications that must be considered for excavation and direct examination, including at least the following:
 - (A) The known sensitivities of assessment tools;
 - (B) The procedures for using each tool; and
 - (C) . . .
- (iii) For each indication identified during the indirect examination, criteria for—
 - (A) Defining the urgency of excavation and direct examination of the indication; and
 - (B) Defining the excavation urgency as immediate, scheduled, or monitored; and
- (iv) Criteria for scheduling excavations of indications in each urgency level.
- (4) *Direct examination.* In addition to the requirements in Section 5 of NACE SP0502 (incorporated by reference, *see* § 195.3), the procedures for direct examination of indications from the indirect examination must include—
 - (i) . . .
 - (ii) Criteria for deciding what action should be taken if either:
 - (A) Corrosion defects are discovered that exceed allowable limits (Section 5.5.2.2 of NACE SP0502 (incorporated by reference, *see* § 195.3) provides guidance for criteria); or
 - (B) Root cause analysis reveals conditions for which ECDA is not suitable (Section 5.6.2 of NACE SP0502 (incorporated by reference, *see* § 195.3) provides guidance for criteria);
 - (iii) Criteria and notification procedures for any changes in the ECDA plan, including changes that affect the severity classification, the priority of direct examination, and the time frame for direct examination of indications. . .

GCS failed to follow the requirements of §195.588 by not developing and implementing an External Corrosion Direct Assessment plan prior to conducting the 2018 ECDA. In response to PHMSA’s request for the ECDA plan, GCS provided section 2.02 of its Integrity Management Plan (IMP). This section discusses the ECDA approach in generic terms, but does not include all the elements required by §195.588. Specifically,

- IMP § 2.02 does not include any criteria or procedure for classifying indications observed during the indirect assessment phase as severe, moderate, or minor.
- IMP § 2.02 does not include meaningful criteria for prioritizing anomaly excavation urgency as immediate, scheduled, or monitored.
- IMP § 2.02 does not include criteria and notification procedures for any changes to the ECDA plan.
- IMP § 2.02 does not include criteria for deciding what action(s) to take if root cause analysis reveals conditions for which ECDA is not suitable.

By not developing and implementing an ECDA plan meeting the requirements of §195.588, GCS failed to follow the regulation.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$257,664 per violation per day the violation persists, up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022 and before January 6, 2023, the maximum penalty may not exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 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 documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of \$ 108,100 as follows:

<u>Item number</u>	<u>PENALTY</u>
2	\$ 17,100
3	\$ 20,400
4	\$ 20,400
6	\$ 50,200

Warning Items

With respect to Items 1 and 5, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Failure to do so may result in additional enforcement action.

Proposed Compliance Order

With respect to Item 6, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Gary Climate Solutions, LLC. 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 respond as described in the enclosed *Response Options*. 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 the receipt of this Notice. The Region Director may extend the period for responding upon a written request timely submitted demonstrating good cause for an extension.

In your correspondence on this matter, please refer to **CPF 3-2023-021** 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

Enclosure: *Response Options for Pipeline Operators in Enforcement Proceedings*

cc: Jeff Villalobos, Vice President Operations, jeff@samgarvjr.com

PROPOSED COMPLIANCE ORDER

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

1. In regard to Item 6 of the Notice pertaining to GCS's failure to include the required elements of an External Corrosion Direct Assessment (ECDA) plan,
 - a. GCS must revise its written plans and procedures to satisfy all the applicable requirements of 49 CFR §195.588 and NACE SP0502.
 - b. GCS must complete an ECDA on the Garden City CO₂ pipeline in accordance with the referenced rules and standards and its revised procedures no later than December 31, 2023.
2. GCS must complete the above Items within the following time requirements.
 - a. Within 30 days of receipt of the Final Order, GCS must complete the requirements of Item 1a. above.
 - b. Within 150 days of receipt of the Final Order, GCS must provide written documentation confirming the completion of Items 1a. and 1b. above to the Director, Office of Pipeline Safety, PHMSA Central Region.
 - c. If the Items have already been completed prior to receipt of the Final Order, this Compliance Order may be considered satisfied provided that the revised ECDA plan and records of its execution are submitted to PHMSA and found to be in accordance with the applicable requirements.
3. It is requested that GCS maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director, Office of Pipeline Safety, PHMSA Central Region. 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.