

NOTICE OF AMENDMENT

**VIA ELECTRONIC MAIL TO: Jeff.armstrong@zenithterminals.com;
Shannon.caldwell@zenithterminals.com**

May 6, 2024

Jeff Armstrong
Chief Executive Officer
Zenith Energy Terminals Joliet Holdings, LLC
1 Highland Lane
Metuchen, NJ 08840

CPF 3-2024-032-NOA

Dear Mr. Armstrong:

From September 12, 2022, through November 30, 2022, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected Zenith Energy Terminals Joliet Holdings, LLC's (Zenith Energy) procedures in Morris, Illinois.

As a result of the inspection, PHMSA has identified the apparent inadequacies found within Zenith Energy's plans or procedures. The items inspected and the inadequacies are described below:

- 1. § 195.402 - Procedural manual for operations, maintenance, and emergencies.**
 - (a)**
 - (c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:**
 - (1)**
 - (3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.**

Zenith Energy's procedure for the inspection and testing of Overpressure Safety Devices is inadequate to address the requirements of § 195.428(a). Specifically, subsection C.1 of Zenith Energy's procedure titled, "Overpressure Safety Devices & Scraper Facilities," Version 3, dated October 15, 2021, did not adequately describe the requirement for recording "as-left" settings on relief valves and control valves. Furthermore, subsection C.1 provided guidance for Protective Shutdown Instrumentation testing that required the listing of the reset pressure in the case of deviation only. However, as determined historically by PHMSA, a performance-based regulation, such as § 195.428(a), will generally establish a minimum level of safety which operators must meet or exceed. In this case, operators must annually determine that each pressure safety device is "functioning properly, is in good mechanical condition, and is adequate." Among other things, operators must be able to detect if the set point for an overpressure safety device is drifting because, if that was occurring, the device would not be functioning properly. In addition, as prior enforcement history demonstrated,^a documenting the "as-found" and "as-left" conditions of safety devices ensures compliance with this requirement. PHMSA concluded that there is an important safety reason for operators to record "as-found" and "as-left" settings during inspections in order to ensure each overpressure safety device is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation.

Zenith Energy, therefore, had to review and amend its procedure to ensure that it adequately provides guidance for recording "as-left" settings on overpressure safety devices to comply with the requirements of § 195.428(a). Following the PHMSA inspection, Zenith Energy amended its procedure to reflect that the requirements have the "as-left" setting on the inspection records and to include reinforced language for supervisory roles and responsibilities in ensuring that the task is completed correctly, that required elements of records are documented, and that the record is stored properly. The inadequacies outlined above appear to have been corrected in the procedure with no further action necessary for Item 1.

2. § 195.402 - Procedural manual for operations, maintenance, and emergencies.

(a)

(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1)

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

Zenith Energy's written procedures for conducting operations, maintenance, emergency preparedness, and response activities were inadequate to ensure safe operation of a pipeline facility, in accordance with § 195.402(c)(3). Specifically, Zenith Energy's "Emergency Response Training And Protocols" procedure, Version 3, dated October 15, 2021, required taking

^a PHMSA has brought multiple enforcement actions demonstrating the importance of documenting the "as-found" and "as-left" settings of safety devices to ensure compliance with § 195.428(a). See, Explorer Pipeline Company, CPF No. 3-2013-5010M-NOA, Item 1, Order Directing Amendment (Jul. 9, 2015)

appropriate remedial actions promptly in response to extreme weather events and natural disasters. But it failed to define the term “prompt,” which is necessary to establish compliance with the requirements of § 195.414(d). Moreover, the process described in the “Emergency Response Training And Protocols” procedure did not adequately establish remedial action requirements since the appropriate remedial actions that are required following the initial inspection of an area affected by an extreme weather event or a natural disaster did not include performing additional surveys and patrols and submitting notifications to the affected communities as described by § 195.414(d)(4) and (6).

Zenith Energy’s procedure had to, therefore, be amended to properly describe what a prompt remedial action is and to adequately detail remedial action requirements to comply with the requirements of § 195.414(d). Following the PHMSA inspection, Zenith Energy revised its procedure to establish a definition for taking remedial actions promptly and to expand on the remedial actions requirements by including additional surveys and patrols and notifying the affected communities of the steps that can be taken to ensure public safety. The inadequacies outlined above appear to have been corrected in the aforementioned procedure warranting no further action necessary for Item 2.

3. § 195.452 Pipeline integrity management in high consequence areas.

(a)

(h) What actions must an operator take to address integrity issues?

(1) General requirements. An operator must take prompt action to address all anomalous conditions in the pipeline that the operator discovers through the integrity assessment or information analysis. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity, as required by this part. An operator must be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the long-term integrity of the pipeline. An operator must comply with all other applicable requirements in this part in remediating a condition. Each operator must, in repairing its pipeline systems, ensure that the repairs are made in a safe and timely manner and are made so as to prevent damage to persons, property, or the environment. The calculation method(s) used for anomaly evaluation must be applicable for the range of relevant threats.

(i)

(ii) Long-term pressure reduction. When a pressure reduction exceeds 365 days, the operator must notify PHMSA in accordance with paragraph (m) of this section and explain the reasons for the delay. An operator must also take further remedial action to ensure the safety of the pipeline.

Zenith Energy’s written Integrity Management Program (IMP), Revision 2.22, had an inadequate process for notifying PHMSA of long-term pressure reductions taken to address anomalous conditions in the pipeline, discovered through the integrity assessment or information analysis, as required by § 195.452(h)(1)(ii). Specifically, IMP section 5.6, titled “Process – Repairs,” limited the requirement for notifying PHMSA of a pressure reduction exceeding 365 days to the immediate repair conditions described in § 195.452(h)(4)(i). However, the same notification

requirement also applies to a long-term pressure reduction taken for safety reasons in conjunction with other pipeline anomalous conditions, discovered through the integrity assessment or information analysis, when the schedule for evaluation and remediation of such conditions cannot be met.

Zenith Energy had to, therefore, amend its procedure contained in IMP section 5.6 by requiring PHMSA notification when a pressure reduction associated with pipeline anomalous conditions discovered through the integrity assessment or information analysis will exceed 365 days to comply with § 195.452(h)(1)(ii). Following the PHMSA inspection, Zenith Energy revised its IMP and added language that includes other conditions and scheduling that are not immediate conditions, but which may evolve past scheduling into long-term pressure reductions from temporary pressure reductions. The inadequacy outlined above appears to have been corrected in the IMP with no further action necessary for Item 3.

4. § 195.402 - Procedural manual for operations, maintenance, and emergencies.

(a)

(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1)

(2) Gathering of data needed for reporting accidents under subpart B of this part in a timely and effective manner.

Zenith Energy's written procedures for conducting operations, maintenance, and emergency preparedness and response activities were inadequate to assure safe operation of a pipeline facility in accordance with § 195.402(c)(2). Specifically, Zenith Energy's "Telephonic Reporting And Written Accident Reports Procedure," Version 3, dated October 15, 2021, did not include a provision to provide the notice required under § 195.52(a) for reporting a release resulting in an event described in § 195.50 no later than one hour following the discovery of a release.

Zenith Energy's procedure, therefore, had to be amended to address the requirement for immediately reporting accidents meeting the criteria in § 195.52(a) in a prompt manner. Following the PHMSA inspection, Zenith Energy amended its procedure to provide notice to the National Response Center no later than one hour after confirmed discovery of an accident. The inadequacy outlined above appears to have been corrected in the aforementioned procedure with no further action necessary for Item 4.

5. § 195.402 – Procedural manual for operations, maintenance, and emergencies.

(a)

(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1)

(2) Gathering of data needed for reporting accidents under subpart B of this part in a timely and effective manner.

Zenith Energy's written procedures for conducting operations, maintenance, and emergency preparedness and response activities were inadequate to assure safe operation of a pipeline facility in accordance with § 195.402(c)(2). Specifically, Zenith Energy's "Telephonic Reporting And Written Accident Reports Procedure," did not include a provision to revise or confirm its initial telephonic notice made to the National Response Center (NRC) within 48 hours after the confirmed discovery of an accident as required by § 195.52(d).

Zenith Energy's procedure, therefore, had to be amended to address the requirement for providing new information to the NRC in accordance with § 195.52(d). Following the PHMSA inspection, Zenith Energy modified its procedure to require the revision or confirmation of an initial notice made to NRC within 48 hours after the confirmed discovery of an accident. The inadequacy outlined above appears to have been corrected in the aforementioned procedure with no further action necessary for Item 5.

6. § 195.64 National Registry of Operators.

(a)

(c) Changes. Each operator must notify PHMSA electronically through the National Registry of Operators at <https://portal.phmsa.dot.gov>, of certain events.

(1) An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs:

(i)

(iii) Reversal of product flow direction when the reversal is expected to last more than 30 days. This notification is not required for pipeline systems already designed for bi-directional flow; or

(iv) A pipeline converted for service under § 195.5, or a change in commodity as reported on the annual report as required by § 195.49. (2) Gathering of data needed for reporting accidents under subpart B of this part in a timely and effective manner.

Zenith Energy's written procedures for providing notifications to the National Registry was inadequate, per the requirements of § 195.64(c)(iii) and (iv). Specifically, section B.6.2 of Zenith Energy's Operations & Maintenance Core (O&M) Manual, Version 3, dated October 15, 2021, was not updated to include the regulatory provisions from the latest amendment to § 195.64, which renamed the regulatory section title from "National Registry of Pipeline and LNG Operators" to "National Registry of Operators" (*see* 85 Fed. Reg. 8104 (Feb. 12, 2020)). Furthermore, Zenith Energy's manual incorrectly listed the online address for notifying PHMSA electronically through the National Registry of Operators of the certain events described under § 195.64(c) and failed to require the notification of PHMSA of the events described specifically by § 195.64(c)(1)(iii) and (iv).

Therefore, Zenith Energy had to revise its manual to adequately address these regulatory requirements. Following the PHMSA inspection, Zenith Energy amended its O&M Manual section B.6 to include (1) the correct name “National Registry of Operators,” (2) missing content described under § 195.64(c)(1)(iii) and (iv), and (3) the address for notifying PHMSA. The inadequacies outlined above appear to have been corrected in the aforementioned procedure with no further action necessary for Item 6.

7. § 195.555 What are the qualifications for supervisors?

You must require and verify that supervisors maintain a thorough knowledge of that portion of the corrosion control procedures established under §195.402(c)(3) for which they are responsible for insuring compliance.

Zenith Energy failed to establish adequate procedures for requiring supervisors to maintain a thorough knowledge of the corrosion control procedures established under § 195.402(c)(3) for which they are responsible for ensuring compliance, per § 195.555. Specifically, Zenith Energy’s procedure titled “Corrosion - General Requirements,” Version 3, dated October 15, 2021, required the Maintenance Manager to maintain familiarity with the corrosion control procedures. However, Zenith Energy’s written process did not establish the methods or qualifications used for acquiring and maintaining thorough knowledge of corrosion control procedures for the supervisors, or a method to verify a supervisor’s compliance with the established qualification criteria, such as NACE certification, professional engineering or suitable experience, or practical training.

Zenith Energy needed to develop an adequate process to comply with § 195.555, which includes criteria to establish levels of knowledge and experience of corrosion control procedures for its supervisors and a method to verify a supervisor’s compliance with the established criteria. Following the PHMSA inspection, Zenith Energy revised its procedure to include language that requires the Area/Terminal Manager to annually verify and document that the Maintenance Manager holds a current NACE certification, has at least five years of practical experience in the corrosion control arena, and that they also conduct the annual O&M Procedural review, which houses the procedures established under § 195.402(c)(3) for corrosion control. The inadequacies outlined above appear to have been corrected in the aforementioned procedure with no further action necessary for Item 7.

8. § 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. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

Zenith Energy’s procedures for maintenance and normal operations were inadequate to ensure

the safe operation of a pipeline facility per the requirements of § 195.402(a). Specifically, Zenith Energy failed to make appropriate changes that were deemed necessary as a result of the review of its O&M procedure, entitled “Operation & Maintenance - General,” Version 3, dated October 15, 2021, in accordance with § 195.402(a). Section D of this procedure covered the performance of normal operations and was outdated as it incorrectly indicated that National Center for Construction Education and Research (NCCER) training modules were being utilized for covered tasks training and performance. Zenith Energy had, in fact, transitioned from the covered task list administered by NCCER on December 15, 2020, to the common covered task list managed by Veriforce.

As a regulatory requirement of the annual review of the maintenance and normal operations procedures, Zenith Energy had to amend its procedure to comply with § 195.402(a) by properly addressing the transition to the Veriforce training modules as one of the primary training resources for covered tasks, as well as deeming these modules as company procedures when needed in the absence of specific written company procedures for a particular covered task. Following the PHMSA inspection, Zenith Energy revised its procedure to include a statement that acknowledges the use of Veriforce training modules in the process of qualifying personnel for covered tasks performance and as company procedures, when deemed necessary, due to the absence of specific written Company procedures for particular covered tasks. The inadequacies outlined above appears to have been corrected in the aforementioned procedure with no further action necessary for Item 8.

Response to this Notice

This Notice is provided pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.206. 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. Be advised that all material you submit in response to this enforcement action is subject to being 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 submit written comments, amended procedures, or a request for a hearing under § 190.211. As mentioned above, Zenith Energy has already submitted amended procedures to PHMSA which reflect the amendments required by this Notice. These amended procedures were reviewed and found to be adequate by PHMSA, therefore, no further action or response is required. If no additional response is received within 30 days of receipt of this Notice, this enforcement will be automatically closed.

It is requested that Zenith Energy maintain documentation of the safety improvement costs associated with fulfilling this Notice of Amendment (preparation/revision of plans, procedures) and submit the total to Gregory A. Ochs, Director, Central, Pipeline and Hazardous Materials Safety Administration.

In correspondence concerning this matter, please refer to **CPF 3-2024-032-NOA** 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

cc: Shannon Caldwell, VP of HSE and Regulatory, Zenith Energy,
Shannon.Caldwell@zenithterminals.com

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