U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

901 Locust Street, Suite 480
Kansas City, MO 64106

WARNING LETTER

VIA ELECTRONIC MAIL TO: tbrickhouse@bepc.com; cbreiner@bepc.com; dalej@bepc.com

June 28, 2024

Todd Brickhouse
President & CEO
Dakota Gasification Company
1717 East Interstate Avenue
Bismarck, ND 58503-0564

CPF 3-2024-037-WL

Dear Mr. Brickhouse:

From August 15 through August 17, and August 22 through August 23, 2023, representatives 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 the Dakota Gasification Company's (DGC) carbon dioxide pipeline in North Dakota.

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. § 195.440 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.
(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator

provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

DGC failed to follow the provisions of API RP 1162, incorporated by reference, by failing to fully evaluate the effectiveness of its public awareness program, in violation of § 195.440(c). Table 8-1 of API RP 1162 requires effectiveness evaluation at a frequency of every four years, and states that one function of effectiveness surveys is to "assess outreach efforts, audience knowledge and changes in behavior," which, by necessity, requires analysis of trends or changes over time. Similarly, API RP 1162 section E.3.4 states that "[o]perators should try to keep their questions the same over time so that trends can be evaluated." DGC has performed effectiveness evaluation surveys at the required frequency, but has not compared the responses to identify changes over time to evaluate trends or changes in behavior. Consequently, DGC's evaluation of the effectiveness of its public awareness program was not complete as required by § 195.440(c).

2. § 195.452 Pipeline integrity management in high consequence areas.

(a) . . . .
(i) ***What preventive and mitigative measures must an operator take to protect the high consequence area? —***
(1) ***General requirements.*** **An operator must take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. These measures include conducting a risk analysis of the pipeline segment to identify additional actions to enhance public safety or environmental protection. Such actions may include, but are not limited to, implementing damage prevention best practices, better monitoring of cathodic protection where corrosion is a concern, establishing shorter inspection intervals, installing EFRDs on the pipeline segment, modifying the systems that monitor pressure and detect leaks, providing additional training to personnel on response procedures, conducting drills with local emergency responders and adopting other management controls.**

DGC failed to implement preventive and mitigative measures (PMMs) for the pipeline, as required by § 195.452(i)(1). In its PMM evaluation documents, DGC identified alternating current (AC) mitigation in the high consequence area (HCA) designated "DGC/AVS/Coteau" as they only needed PMMs for calendar years 2021 and 2022. However, it had not been implemented by the time of the 2023 inspection. Therefore, DGC failed to meet the requirement to take measures to prevent and mitigate the consequences of pipeline failure that could affect an HCA, as required by § 195.452(i)(1).

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

(a) . . . .
(l) ***What records must an operator keep to demonstrate compliance?***
(1) An operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of this subpart. At a minimum,

an operator must maintain the following records for review during an inspection:

(i) . . . .

(ii) Documents to support the decisions and analyses, including any modifications, justifications, deviations and determinations made, variances, and actions taken, to implement and evaluate each element of the integrity management program listed in paragraph (f) of this section.

DGC failed to adequately document its basis for decision-making in regard to PMMs, as required by § 195.452(l)(1)(ii). DGC provided its 2021 and 2022 PMM evaluation documentation (DGC form PLR-68) for the following identified HCAs: (1) Lake Sakakawea; (2) Enerplus; (3) Tioga/ White Earth; (4) Tervita/Saddle Butte/Hiland; (5) McGregor/Battleview; (4) Little Missouri River; and (5) Charlson/Hess/Bridger. For each identified HCA, the form stated "[c]ontinue current practices. No additional measures needed." No supporting information was provided to justify this conclusion.

DGC also reported that no PMM evaluation forms were completed for calendar year 2020. Consequently, DGC's records were insufficient to document DGC's analysis and decision-making as required by § 195.452(l)(1)(ii).

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed $266,015 per violation per day the violation persists, up to a maximum of $2,660,135 for a related series of violations. For violation occurring on or after January 6, 2023 and before December 28, 2023, the maximum penalty may not 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 $2,391,142 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.

Also, for each violation involving LNG facilities, an additional penalty of not more than $97,179 occurring on or after December 28, 2023 may be imposed. For each violation involving LNG facilities, an additional penalty of not more than $94,128 occurring on or after January 6, 2023 and before December 28, 2023 may be imposed. For each violation involving LNG facilities, an additional penalty of not more than $87,362 occurring on or after March 21, 2022 and before January 6, 2023 may be imposed. For each violation involving LNG facilities, an additional penalty of not more than $82,245 occurring on or after May 3, 2021 and before March 21, 2022 may be imposed. For each violation involving LNG facilities, an additional penalty of not more than $81,284 occurring on or after January 11, 2021 and before May 3, 2021 may be imposed. For each violation involving LNG facilities, an additional penalty of not more than $79,875 occurring on or after July 31, 2019 and before January 11, 2021 may be imposed. For each violation involving LNG facilities, an additional penalty of not more than $77,910 occurring on or after November 27, 2018 and before July 31,2019 may be imposed.

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 correct the items identified in this letter. Failure to do so will result in DGC being subject to additional enforcement action.

No reply to this letter is required. If you choose to reply, in your correspondence please refer to **CPF No. 3-2024-037-WL.** 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).

Sincerely,

GREGORY ALAN OCHS Digitally signed by GREGORY ALAN OCHS
Date: 2024.06.28 14:52:30 -05'00'

Gregory A. Ochs
Director, Central Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

cc: Christopher Breiner, Compliance Supervisor, Dakota Gasification Company (cbreiner@bepc.com)
Dale Johnson, Sr. VP & Plant Manager, Dakota Gasification Company (dalej@bepc.com)