



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

8701 S. Gessner, Suite 630
Houston, TX 77074

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 11, 2016

Mr. Marshall S. McCrea
President and Chief Operating Officer
Energy Transfer
1300 Main Street
Houston, TX 77002

CPF 4-2016-5009

Dear Mr. McCrea:

On August 4-6, 2015, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code inspected the Energy Transfer pipeline operations and maintenance records, manual procedures and facility located in Jal, New Mexico.

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

1. §195.404 Maps and records.

(c) Each operation shall maintain the following records for the periods specified:

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

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

(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:

(13) Periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

At the time of inspection, Energy Transfer did not provide records for 2012 to 2015 to demonstrate that they reviewed the work done by its personnel to determine the effectiveness of the procedures used in normal operation and maintenance, and have taken corrective action where deficiencies are found.

Energy Transfer's Procedure No. HLA.03, 'Management of Change', Section 4 states that company personnel, in the performance of their daily tasks, will review their work to determine the effectiveness and adequacy of the procedures and initiate a change if required.

At the time of inspection, Energy Transfer did not have any indication on their inspection form that procedures performed during inspection activities were reviewed by the person who did the inspection or by any designated person and that changes to procedures were made is needed.

2. § 195.505 Qualification program.

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

Energy Transfer did not ensure through evaluation that individuals performing aerial patrols are qualified. At the time of inspection, Energy Transfer did not provide records to demonstrate that their patrol pilot was qualified at the time when he conducted, as pilot and observer 13 aerial patrols on pipeline right-of-way from December 2014 to May 17, 2015.

Energy Transfer's Procedure No.HLI.21, 'Inspection of Rights-of-Way & Crossings Under Navigable Waters' Section 4, states that inspection of the surface conditions on or adjacent to each pipeline right-of-way, including off-shore rights-of-way must be conducted at intervals not exceeding 3 weeks, but at least 26 times each calendar year and that methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way. Procedure No.HLI.21 also indicates that personnel must be qualified on OQ Task No. PLOQ701B, 'Pipeline Patrol'.

During the inspection, Energy Transfer admitted that after they found out that "The Pilot" was not qualified on those dates, he was terminated from conducting aerial patrols and that Energy Transfer had hired another company (Basin Aviation) to conduct the task. Basin Aviation started aerial patrolling on June 25, 2015, the following month after "The Pilot's" last patrol on May 17,

2015. Record review conducted by PHMSA indicated that the pilots of Basin Aviation were qualified.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$200,000 per violation per day the violation persists up to a maximum of \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed \$100,000 per violation per day, with a maximum penalty not to exceed \$1,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$24,400 for item 2.

Warning Items

With respect to Item 1, 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 item(s). Failure to do so may result in additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance 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). 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.

In your correspondence on this matter, please refer to **CPF 4-2016-5009** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



R. M. Seeley
Director, Southwest Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Response Options for Pipeline Operators in Compliance Proceedings*