

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
WASHINGTON, DC 20590

In the matter of:	§	
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ONEOK NGL Pipeline, L.L.C.	§	CPF No. 4-2021-048-NOPV
	§	
Respondent	§	
	§	

**STATEMENT OF ISSUES
OF
ONEOK NGL PIPELINE, L.L.C.
TO
NOTICE OF PROBABLE VIOLATION,
PROPOSED CIVIL PENALTY,
AND
PROPOSED COMPLIANCE ORDER**

ONEOK NGL Pipeline, L.L.C. (“Respondent”) submits this Statement of Issues pursuant to 49 C.F.R. § 190.211(b) in connection with its request for a hearing pursuant to 49 C.F.R. § 190.208(a)(4) and (b)(4).

By letter dated November 15, 2021, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) issued to Respondent a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (collectively, the “NOPV”), CPF No. 4-2021-048-NOPV, which was received by Respondent via email on the same date. By letter dated December 1, 2021, the Director, PHMSA Southwest Region, granted an extension of time to respond to the NOPV for an additional 30 days, until January 14, 2022. By letter of even date herewith, Respondent has requested a hearing in this matter, and this Statement of Issues is served therewith.

BACKGROUND

The subject NOPV relates to the investigation related to an accident which occurred on April 28, 2020, at Respondent’s Eastlake II Pump Station in Eastland County, Texas.

In the NOPV, PHMSA alleges three violations of the pipeline safety regulations promulgated at 49 C.F.R. Part 195, proposes to assess civil penalties in connection with all three of the said alleged violations, and proposes to issue a compliance order in connection with two of the said alleged violations, all pursuant to the procedural and enforcement regulations promulgated at 49 C.F.R. Part 190, Subparts A and B. As to such alleged violations, proposed civil penalties and proposed compliance orders, Respondent herein states its issues.

THE ALLEGED VIOLATIONS

Respondent states below its factual, legal and/or regulatory issues that relate to the alleged violations of the NOPV. The numbered paragraphs below correspond with the numbered Items of the NOPV. Each numbered paragraph begins with a citation to the subject regulation and a summary of the agency's allegations.

1. 49 C.F.R. § 195.52 (b) – Immediate notice of certain accidents.

PHMSA alleges that Respondent failed to notify the National Response Center (NRC) at the earliest practicable moment, following discovery of a release of hazardous liquid resulting in a fire or explosion not intentionally set by the operator, but no later than one hour of “a reportable accident as defined in § 195.50.” PHMSA further alleges that Response experienced an unintentional release of hazardous liquid which resulted in a flash fire at its Eastland II Pump Station in Eastland County, Texas, on April 28, 2020 at 5:00 p.m. CST. PHMSA finally alleges that Respondent did not report the accident to the NRC until May 1, 2020, at 11:22 p.m. CDT.

Respondent does not dispute the allegations stated in the NOPV.

2. 49 C.F.R. § 195.402(c)(11) – Procedural manual for operations, maintenance, and emergencies.

PHMSA alleges that Respondent “failed to develop and follow written procedures for tie-in work on its pipeline facilities to include the use of mud plugs and monitoring for the lower explosive limit (LEL),” which PHMSA claims “are both necessary to maintain safety during normal operation and maintenance activities.” PHMSA specifically alleges that Respondent failed to have procedures “for utilizing and installing mud plugs as vapor barriers to minimize the likelihood of accidental ignition of vapors as required by § 195.402(c)(11).” PHMSA further alleges that, on April 28, 2020, Respondent’s contractor personnel performed tie-in work using a mud plug as a vapor barrier and further alleges that Respondent has no written procedures in its operations and maintenance manual “reflecting the use of mud plugs as a vapor barrier during tie-in work.”

PHMSA further alleges that Respondent “failed to prepare and follow written procedures for monitoring LEL of flammable vapors to minimize the likelihood of accidental ignition in areas near facilities identified under paragraph § 195.402(c)(11).” PHMSA specifically alleges that Respondent did not establish procedures for monitoring LEL which PHMSA alleges is an action necessary to minimize the likelihood of accidental ignition of vapors.

PHMSA finally alleges that the lack of written procedures, regarding the use of mud plugs and the monitoring of the LEL for operator personnel to follow during tie-in work, resulted in the accident.

Respondent disputes and objects to the allegations stated in the NOPV, on the following grounds:

- a. PHMSA has failed to meet its burden of proof that a violation occurred.
- b. The alleged violation is not supported by the evidence in the case file.
- c. The alleged violation is not supported by the relevant facts.
- d. The NOPV fails to adequately make factual findings or to explain, discuss, or analyze the conclusion that Respondent is in violation of the subject regulation in the manner alleged.
- e. The NOPV fails to explain its conclusions in a manner that is sufficient to allow Respondent a reasonable opportunity to prepare an adequate defense.
- f. Given the manner in which the cited regulation is being applied in this alleged violation, PHMSA has failed to provide Respondent, or the regulated community as a whole, fair notice of the agency's interpretation of the subject regulation.
- g. PHMSA has failed to provide a rational connection between the facts alleged and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
- h. The content of the PHMSA case file provided to Respondent fails to fulfill the requirements of Section 108 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020; as a result, Respondent is precluded from access to all relevant facts in the agency's possession and thus is denied a full and fair opportunity to respond to the agency's allegations.

3. 49 C.F.R. § 195.402(c)(13) – Procedural manual for operations, maintenance, and emergencies.

PHMSA alleges that Respondent failed to periodically review the work of operator personnel to determine the effectiveness of its procedures and alleges that Respondent did not take appropriate corrective actions for found deficiencies. Specifically, PHMSA alleges that Respondent failed to periodically review the work of its personnel "to determine the effectiveness of its procedures for minimizing the potential for hazards where the potential exists for the presence of flammable liquids or gases."

PHMSA alleges that Respondent stated, during the investigation, that it had performed the periodic review of its procedures to determine their effectiveness and no deficiencies were identified. PHMSA further alleges that it identified a history of reportable accidents prior to the April 28, 2020 accident which involved accidental ignition of vapors, and, thus, that Respondent's procedure was deficient.

PHMSA finally alleges that, following PHMSA's investigation, Respondent revised its procedure to address certain deficiencies.

Respondent disputes and objects to the allegations stated in the NOPV, on the following grounds:

- a. PHMSA has failed to meet its burden of proof that a violation occurred.
- b. The alleged violation is not supported by the evidence in the case file.

- c. The alleged violation is not supported by the relevant facts.
- d. The NOPV fails to adequately make factual findings or to explain, discuss, or analyze the conclusion that Respondent is in violation of the subject regulation in the manner alleged.
- e. The NOPV fails to explain its conclusions in a manner that is sufficient to allow Respondent a reasonable opportunity to prepare an adequate defense.
- f. Given the manner in which the cited regulation is being applied in this alleged violation, PHMSA has failed to provide Respondent, or the regulated community as a whole, fair notice of the agency's interpretation of the subject regulation.
- g. PHMSA has failed to provide a rational connection between the facts alleged and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
- h. PHMSA erroneously supports its allegations with evidence of subsequent remedial measures taken by Respondent.
- i. The content of the PHMSA case file provided to Respondent fails to fulfill the requirements of Section 108 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020; as a result, Respondent is precluded from access to all relevant facts in the agency's possession and thus is denied a full and fair opportunity to respond to the agency's allegations.

THE PROPOSED CIVIL PENALTIES

PHMSA proposes a total of \$495,047 in civil penalties in connection with alleged violations Item 2 and Item 3, as to each of which Respondent states the following issues:

1. PHMSA has failed to make available to Respondent or to the public, as required by the Administrative Procedure Act, fair notice of the methods and procedures by which PHMSA determines the amount of proposed civil penalties and the amounts eventually assessed.
2. The NOPV and the underlying Pipeline Safety Violation Report fail to establish a sufficient evidentiary basis for, or adequate discussion, explanation, or analysis of, the penalty assessment considerations of 49 C.F.R. § 190.225 in support of the proposed civil penalties, and thus Respondent has no reasonable opportunity to prepare an adequate defense to contest the proposed civil penalties.
3. Respondent objects to the magnitude of the proposed penalties as: unreasonable; disproportional to any of the penalty assessment considerations of 49 C.F.R. § 190.225; unsupported by sufficient evidence or any analysis that applies the penalty assessment considerations; arbitrary, capricious, or otherwise not in accordance with law; and an abuse of discretion.
4. To the extent that the related alleged violation is not supported by substantial evidence, a rational connection between facts found and conclusions drawn, regulation, or law, such proposed civil penalty may not be imposed.

THE PROPOSED COMPLIANCE ORDER

PHMSA proposes to order Respondent to perform the following actions, as to which Respondent states the following issues:

1. Regarding the alleged violation in Item 2 of the NOPV, develop detailed procedures for (1) the use of mud plugs “for the prevention and mitigation of vapors igniting while performing hot work/tie-ins on its pipeline facilities,” and (2) “LEL monitoring while performing normal operation and maintenance for the prevention of accident vapor ignition.”
 - a. The record reflects that Respondent had procedures addressing LEL monitoring on the date of the accident, April 28, 2020.
 - b. To the extent PHMSA is unable ultimately to prove a violation, or any instance of alleged violation, this proposed compliance order cannot be imposed and, therefore, must be withdrawn.
 - c. PHMSA has neither proffered any evidence, made any factual finding, nor provided any explanation, discussion or analysis of the manner in which either the nature of the alleged violations or the public interest warrant issuance of the proposed compliance order; see 49 C.F.R. § 190.217. On those grounds, the proposed compliance order must be withdrawn in its entirety for failure to fulfill a regulatory requirement.
2. Regarding the alleged violation in Item 3 of the NOPV, PHMSA proposes that Respondent conduct a review of certain portions of its *Natural Gas Liquids Operations and Maintenance Manual* to determine whether “further revisions” are required.
 - a. The proposed compliance order is vague and ambiguous, in that the scope and extent of directed actions are not discernable. As such, PHMSA is acting in an arbitrary and capricious manner, and thus the proposed compliance order cannot be imposed and, therefore, must be withdrawn.
 - b. To the extent PHMSA is unable ultimately to prove a violation, the proposed compliance order cannot be imposed and, therefore, must be withdrawn.
 - c. PHMSA has neither proffered any evidence, made any factual finding, nor provided any explanation, discussion or analysis of the manner in which the alleged violations or the public interest warrant issuance of the proposed compliance order; see 49 C.F.R. § 190.217. On those grounds, this proposed compliance order must be withdrawn in its entirety for failure to fulfill a regulatory requirement.

CONCLUSION

At the hearing in this matter, Respondent intends to bring forth evidence in the form of documents and/or testimony, as well as to examine the evidence, documents and any testimony

presented or introduced by PHMSA. Respondent also will present its arguments in support of the issues stated heretofore. Respondent reserves the right to amend and supplement this Statement of Issues at or before the hearing.

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January 14, 2022



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