

June 15, 2022

VIA ELECTRONIC MAIL TO: grgreen@dcpmidstream.com

Mr. George Green
Group Vice President and General Counsel
DCP Midstream, LP
6900 E. Layton Avenue, Suite 900
Denver, Colorado 80237

Re: CPF No. 4-2022-009-NOPV

Dear Mr. Green:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$157,100, and specifies actions that need to be taken by DCP Midstream, LP to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Ms. Alison Barry, Assistant General Counsel, DCP Midstream, aebarry@dcpmidstream.com
Mr. John Pontious, Pipeline Compliance Manager, DCP Midstream,
jdpontious@dcpmidstream.com

CONFIRMATION OF RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of

DCP Midstream, LP,

Respondent.

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CPF No. 4-2022-009-NOPV

FINAL ORDER

From February 22, 2021, through September 24, 2021, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of DCP Midstream, LP's (DCP Midstream or Respondent) storage field in Marysville, Michigan (Marysville Storage Field). DCP Midstream's Marysville Storage Field consists of 4.321 miles of storage field pipeline and four pumps that transport and store natural gas liquids.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated January 21, 2022, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice).² In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that DCP had committed two violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$157,100 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional three warning items pursuant to 49 C.F.R. § 190.205, which warned the operator to correct the probable violations or face possible future enforcement action.

DCP Midstream responded to the Notice by letter dated February 17, 2022 (Response).³ Respondent did not contest the probable violations or proposed civil penalty, but contested the proposed compliance order for Item 2 of the Notice, and asked PHMSA to allow it 120 days from the receipt of the Final Order to submit the results and analysis required by the proposed Compliance Order for Item 3. DCP Midstream also responded to warning Items 1, 4, and 5 of the Notice. Respondent did not request a hearing and therefore has waived its right to one.

¹ See PHMSA Safety Violation Report (on file with PHMSA), at 1.

² Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order, CPF No. 4-2022-009-NOPV (Jan. 21, 2022) (on file with PHMSA).

³ Response to Notice of Probable Violation Proposed Civil Penalty, and Proposed Compliance Order, CPF 4-2022-009-NOPV (Feb. 17, 2022) (on file with PHMSA).

FINDINGS OF VIOLATION

DCP Midstream did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a), which states:

§ 195.412 Inspection of rights-of-way and crossings under navigable waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a) by failing to inspect the surface conditions on or adjacent to its pipeline rights-of-way at intervals not exceeding three weeks, but at least 26 times each calendar year. Specifically, the Notice alleged that PHMSA reviewed patrol records for calendar years 2019, 2020, and 2021 and found 15 inspections that exceeded the three-week (21-day) interval during the three calendar years reviewed. In addition, PHMSA found that patrols were not performed 26 times per year for calendar years 2019 and 2020, and patrol records show a total of only 29 patrols from June 30, 2019, to September 24, 2021. During the inspection, the Notice alleged, DCP Midstream's Plant Supervisor stated that daily shift patrols and weekly patrols were performed at Marysville Storage Field; however, DCP Midstream could not reference any procedures that detailed this requirement. Respondent's written *Liquid Pipeline O&M Manual, Procedure Number F-18, Inspection of: Right of Way, Crossings and Under Navigable Water, Procedure 1 – Onshore Inspections* (Date Revised 10/28/2020) required that onshore inspections be performed at intervals not exceeding three weeks (21 days), but at least 26 times each calendar year.

Respondent did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.412(a) by failing to inspect the surface conditions on or adjacent to its pipeline rights-of-way at intervals not exceeding three weeks, but at least 26 times each calendar year.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b), which states:

§ 195.420 Valve maintenance.

(a)

(b) Each operator shall, at intervals not exceeding 7 ½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.⁴

The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect each

⁴ On April 8, 2022, PHMSA issued a final rule amending § 195.420(b). See "Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards," 68 FR 20940. The version of § 195.420(b) in effect on the date of the Notice is quoted here.

mainline valve to determine that it is functioning properly at intervals not exceeding 7 ½ months, but at least twice each calendar year. Specifically, the Notice alleged that PHMSA reviewed DCP Midstream's records of mainline valve inspections and found 218 inspections that exceeded the required 7 ½ month interval during calendar years 2018, 2019, 2020, and 2021. PHMSA also discovered that inspections were not performed twice each calendar year for 231 inspections in calendar years 2019 and 2020. PHMSA also found that the valve inspection records appeared to be inaccurate, in that the DOT valves were listed on both DOT Liquid Valve Inspection Forms and Non-DOT Liquid Valve Inspection Forms.

Respondent did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect each mainline valve to determine that it is functioning properly at intervals not exceeding 7 ½ months, but at least twice each calendar year.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.⁵

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$157,100 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$75,600 for Respondent's violation of 49 C.F.R. § 195.412(a), for failing to inspect the surface conditions on or adjacent to its pipeline rights-of-way at intervals not exceeding three weeks, but at least 26 times each calendar year. DCP Midstream neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$75,600 for violation of 49 C.F.R. § 195.412(a).

Item 3: The Notice proposed a civil penalty of \$81,500 for Respondent's violation of 49 C.F.R. § 195.420(b), for failing to inspect each mainline valve to determine that it is functioning

⁵ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

properly at intervals not exceeding 7 ½ months, but at least twice each calendar year. DCP Midstream neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$81,500 for violation of 49 C.F.R. § 195.420(b).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$157,100**.

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$157,100 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to Items 2 and 3 in the Notice for violations of 49 C.F.R. §§ 195.412(a) and 195.420(b), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601.

With regard to the violation of § 195.412(a) (Item 2), in the proposed Compliance Order, PHMSA stated that DCP Midstream must update its procedures to address patrolling facilities, specifically the daily shift and weekly patrols mentioned by DCP personnel.

In its Response, DCP Midstream argued it determined that daily and weekly right-of-way patrols are not practicable at the Marysville Storage Field, nor are they required by its standard operating procedures. Respondent stated it would use a scheduling application to ensure timely completion of patrols, performed at intervals not exceeding three weeks (21 days), but at least 26 times each calendar year. DCP Midstream requested that the Compliance Order reflect its decision to follow the right-of-way inspection procedure already included in its Liquid O&M Plan.

The Southwest Region reviewed this request and agreed with DCP Midstream that if it elects to not perform daily and weekly right-of-way patrols, then it need not amend its procedure to

address the daily shift and weekly patrols mentioned by the Plant Supervisor. The Southwest Region therefore recommended withdrawing the proposed compliance order associated with Item 2. I agree with this recommendation, and hereby order that the proposed Compliance Order associated with Item 2 be withdrawn.

With regard to the violation of § 195.420(b) (Item 3), in the proposed Compliance Order, PHMSA stated that DCP Midstream must determine which valves at Marysville Storage Field are DOT jurisdictional valves that are integral to the safe operation of the pipeline system, which components at Marysville Storage Field fall under federal jurisdiction, and update its procedure and records to ensure regulated pipe and components are included in its records as jurisdictional. The proposed Compliance Order further stated that the list of DOT valves and other components that fall under federal jurisdiction at the facility, and associated drawings used to make jurisdictional determinations, must be provided to PHMSA within 30 days of receipt of the Final Order.

In its Response, DCP Midstream stated that it will conduct an analysis of the valves, pumps, and other components of Marysville Storage Field to determine which components fall under the pipeline safety regulations of 49 C.F.R. Part 195. Respondent further stated it expects this review to take longer than the 30 days allowed by the proposed compliance order. DCP Midstream requested that the Compliance Order be amended to allow it 120 days from the date of receipt of the Final Order to submit the requested documentation to PHMSA.

The Southwest Region reviewed this request and recommended allowing Respondent the additional requested time. I agree with this recommendation, and hereby order that the proposed Compliance Order be modified to allow Respondent 120 days from the date of receipt of the Final Order to provide the list of DOT valves and other components that fall under federal jurisdiction at the facility, and associated drawings used to make jurisdictional determinations.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.420(b) (**Item 3**), Respondent must determine which valves at Marysville Storage Field are DOT jurisdictional valves that are integral to the safe operation of the pipeline system, such as those used for station isolation and segment isolation. DCP Midstream must also determine which components at the Marysville Storage Field, including pumps, fall under federal jurisdiction, and update its procedures and records to ensure regulated pipe and components are included in its records as jurisdictional. The list of DOT valves and other components that fall under federal jurisdiction at the facility, and associated drawings used to make jurisdictional determinations, must be provided to PHMSA within 120 days of receipt of the Final Order.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 1, 4, and 5, the Notice alleged probable violations of Part 195, but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 195.404(a)(1)(ii) (**Item 1**) — Respondent's alleged failure to maintain current records of its jurisdictional pipeline systems, including pumps;

49 C.F.R. § 195.452(i)(4) (**Item 4**) — Respondent's alleged failure to conduct an EFRD analysis to consider all factors provided in § 195.452(i)(4) to determine what preventative and mitigative measures must be taken to protect high consequence areas; and

49 C.F.R. § 195.583(b) (**Item 5**) — Respondent's alleged failure to monitor its pipelines for atmospheric corrosion by giving particular attention to pipe at pipe supports.

DCP Midstream presented information in its Response showing that it will take certain actions to address the cited items. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

June 15, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued