

# Vinson & Elkins

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## **By Electronic Mail**

July 25, 2022

Ms. Mary McDaniel  
Director, Southwest Region  
U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
8701 S. Gessner Road, Suite 630  
Houston, Texas 77074

**Re: Denbury Gulf Coast Pipelines, LLC  
Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance  
Order, CPF 4-2022-017-NOPV  
Request for Settlement Conference and Hearing**

Dear Ms. McDaniel:

Denbury Gulf Coast Pipelines, LLC ("Denbury") shares the Pipeline and Hazardous Materials Safety Administration's (PHMSA) desire and commitment to ensure public safety and to enhance pipeline system integrity. Consistent with that commitment, Denbury has cooperated with PHMSA and other state and local agencies in responding to and investigating the February 22, 2020 release of CO2 from its Delta Delhi pipeline. This cooperation included the sharing of extensive documentation, providing access to various employees who were involved in responding to this event, and performing and undertaking various studies and initiatives to understand how this event came to occur, thus putting Denbury in position to mitigate, minimize and hopefully avoid any similar event in the future.

As you know, PHMSA investigated and inspected Denbury's facilities and records following the event and issued the above referenced Notice of Probable Violation (NOPV), Proposed Civil Penalty, and Proposed Compliance Order (PCO) to Denbury on May 26, 2022. The NOPV alleges eight separate (8) violations of the Part 195 regulations under 49 C.F.R., and includes a proposed total civil penalty of \$3,866,734 for NOPV items 2, 3, 4, 5, 6, 7 and 8, and a PCO for NOPV items 2, 3, 5, 6, 7 and 8.

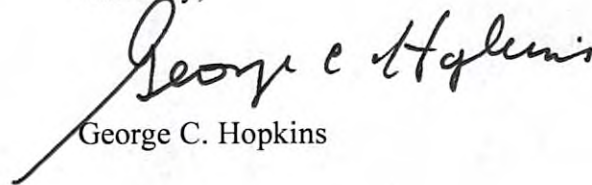
With this letter and pursuant to the Pipeline Safety Act, 49 U.S.C. § 60117(b)(1)(B), Denbury respectfully requests the opportunity to convene an informal settlement meeting with PHMSA to discuss the issues of fact and law raised by the NOPV, as well as the proposed civil penalty of \$3,866,734.

In the event that the parties are unable to resolve the issues, and in order to preserve Denbury's rights, Denbury is timely filing the attached request for a hearing and statement of issues for all items in the NOPV, including the associated proposed civil penalty pursuant to 49 C.F.R. §§ 190.208 and 190.211.

Denbury respectfully requests that PHMSA refrain from scheduling a hearing in order to provide the parties with sufficient time to attempt to resolve these issues.

Thank you for your consideration of this request for an informal settlement meeting and request for hearing, and for your cooperation in response to this event. If you have any questions, please do not hesitate to contact me.

Sincerely,



George C. Hopkins

cc: James Matthews, General Counsel  
Kyle Cook, Assistant General Counsel  
Pipeline and Hazardous Materials Safety Administration,  
Office of Chief Counsel



**Before the  
U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
Office of Pipeline Safety  
Washington, D.C.**

_____	)	
In the Matter of	)	
	)	
Denbury Gulf Coast Pipelines, LLC	)	CPF No. 4-2022-017-NOPV
	)	Notice of Probable Violation
Respondent.	)	
	)	

**Request for Hearing, Statement of Issues, and Response to NOPV**

I. Introduction

Denbury Gulf Coast Pipelines, LLC (“Denbury”) hereby responds to the Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order issued by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) relative to the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (“CFR”). Denbury hereby requests a hearing pursuant to 49 CFR § 190.208.

II. Background

Denbury is a leading operator of CO<sub>2</sub> pipelines in the United States. Our transmission pipelines transport large volumes of CO<sub>2</sub> across the Gulf Coast and Rocky Mountain regions. A principal portion of Denbury’s business involves the capture, transportation and use of CO<sub>2</sub> and our corporate mission includes the utilization of our extensive infrastructure and capabilities to reduce emissions of CO<sub>2</sub> and to provide the industry with a substantial and reliable network of transportation service and storage capabilities. It is our goal to help in decarbonizing our world safely and in a way that protects our employees, nearby communities and the environment.

The Delhi segment of the Delta Pipeline at issue in the NOPV was designed and constructed to play an important role in Denbury’s mission. Prior to February 22, 2020, Denbury believed that its relevant operations complied with all federal and state requirements and that our equipment and programs were appropriately oriented and aligned with the shared goal of being protective of worker safety, the environment and nearby communities. As the events of February 22, 2020, unfolded, it became clear that certain additional actions and initiatives were appropriate in order for Denbury to improve and/or enhance its processes to better fulfill our goals with respect to this particular segment of our CO<sub>2</sub> pipelines. As an example, since the events that led to the release on February 22, 2020, we have revised our geohazard program significantly and included an array of additional mechanisms to reduce the risk that any similar occurrence will arise.

Denbury is contesting the NOPV and requesting a hearing because, among other things, many of the alleged violations rest on incorrect facts in several cases and, in other cases, just ignore



that Denbury followed recognized industry practices to comply in accordance with PHMSA's own regulations. Additionally, many of the alleged violations involve requirements of PHMSA's regulations that were determined not to apply to this segment of our pipeline before the events of February 22, 2020. For instance, the NOPV alleges that Denbury failed to comply with requirements that apply to a pipeline segment that could affect a "high consequence area" ("HCA"). The NOPV does not explain, however, that Denbury, following recognized industry principles and applying the recognized industry practices, determined that the requirements for pipeline segments that could affect an HCA did not apply to this segment.

Denbury has filed this response to resolve its differences with PHMSA regarding the alleged violations and the proposed penalty as a part of this proceeding. Denbury has and will always continue to prioritize safety and the environment, as well as to do its best to be a good neighbor to nearby communities, and we look forward to responding to the claims in this proceeding.

### III. Response to the NOPV

#### **Response to NOPV No. 1**

Denbury does not contest the main assertion of alleged violation number 1, which is that it reported the leak to the National Response Center ("NRC") more than one hour from the time when Denbury confirmed that a release of CO<sub>2</sub> had occurred from its pipeline on February 22, 2020. Denbury disputes, however, that the delay (which at most amounted to 18 minutes in excess of the one-hour deadline for reporting to the NRC) had any effect on state and local agency responses to the CO<sub>2</sub> release, in part because communications with local responders began well-before the NRC report. Denbury further notes that its procedures in effect at the time of this event called for a Denbury Pipeline Regulatory Specialist to notify the NRC, rather than having the NRC notice undertaken by a member of the Health, Safety and Environment ("HSE") Department that notified other regulatory agencies. Denbury has recognized that this division of responsibility added an additional layer of communication and coordination to a time-sensitive reporting function. Consequently, Denbury has revised its notification responsibilities internally so that notifications to all federal, state and local emergency responders are handled by the HSE Department.

#### **Response to NOPV No. 2**

Denbury disputes alleged violation number 2. Initially, Denbury notes that PHMSA premises this violation on Denbury's supposed failure to respond to discovered "geohazards" that constitute a "condition that could adversely affect the safe operation of the pipeline system." 49 CFR § 195.401. PHMSA's allegations claim "the terrain, elevation changes, or seismicity of the area surrounding the Delta pipeline [were] conditions that could adversely affect the safe operation of the pipeline." Denbury notes that these allegations involve conditions extrinsic to the pipeline system and are not "conditions" that an operator would repair, so that these allegations seek to impose fines and penalties for "conditions" that appear to be very different than what a textual reading for 49 CFR § 195.401(b)(1) contemplates. As such, Denbury submits that PHMSA has failed to provide fair notice that its authority in 49 CFR § 195.401(b)(1) applies to claims that relate to such extrinsic, geologic conditions.



Moreover, as a factual matter, Denbury plainly identified geohazards as a risk and its program for managing safety risks addressed this concern. Rather than ignoring geohazard risks such as land movement, Denbury's Operations and Safety Manual ("O&M"), O&M 0214, specifically identifies land movement as a safety related condition and provided various measures to track any such events. In fact, Denbury's responses to the risk of land movement are set out in Denbury's manual which requires all of the specific steps laid out by PHMSA – *i.e.*, training and guidance on assessment and remediation for such conditions that could adversely affect the pipeline system.

The Denbury O&M Procedures provide as follows with respect to safety conditions related to land movement:

*3-2 Safety-Related Conditions for Pipelines and Facilities Operated under 49 CFR 195.*

*Per 49 CFR 195.402(a)/CFR 195.55, the following conditions are considered to be safety-related conditions:*

- B) Unintended movement or abnormal loading of a pipeline by environmental causes, such as an earthquake, landslide or flood that impairs the serviceability of the pipeline.*

Attachment 1 to O&M 0214, which sets out the decision-tree for "Identifying a Safety-Related Condition," directs consideration of the following question as part of identifying potential land-movement concerns:

*Has there been any unintended movement or abnormal loading by environmental causes, such as an earthquakes, landslides, or floods that impairs the serviceability of the pipeline?*

In other contexts, such as in operational activity where direct assessment of a pipeline is undertaken, Denbury's program also called for review of potential land-movement impacts. For instance, the direct examination provisions of O&M 0922 identified land-movement concerns as a possible "defect":

*3.1.5 Weather Related and Outside Force*

*These defects include earth movement, heavy rains or floods, cold weather, high winds and lightning. Defects of this nature primarily affect the girth weld area where excessive forces are generated on the segment caused by backfill issues or ground movement. Examples of this threat may include, piping attached to an overhead structure or bridge, pipe near areas prone to flooding or erosion, pipe on steep slopes or inclines, etc. These defects are addressed through inspections and maintenance requirements conducted in conformance with requirement in the O&M Procedures.*

Likewise, Denbury's Patrolling and Leak Detection Procedures under O&M 0215 call for aerial reports that, among other things, require the pilots to communicate the "relative urgency of"



sightings by using various codes. Denbury developed a code to capture land-movement concerns and gave it the following designation: "E. Pipeline exposed due to recent erosion." Consistent with its observational efforts, when Denbury noted surface erosion during its aerial or foot patrols, Denbury followed up on those conditions promptly. In sum, this record makes clear that Denbury was aware of, and took steps that identified, geohazards generally as a risk, and was attentive to specific geohazard risks when specific adverse geohazard conditions were discovered. This is sufficient to meet the regulatory requirements.

Conversely, premising a violation on other, more specific demands for an O&M program, where PHMSA has not identified such requirements in the applicable regulation, essentially seeks to improperly turn the regulation into an *ipso facto* strict liability regime – the examination of an accident will always, in retrospect, reveal some manner in which the risk giving rise to the accident might have been identified in advance and thereby avoided. But perfect foresight is not required, and a notice that is essentially premised on the lack of such foresight cannot be squared with the provisions' focus on responding to "discovered," "adverse conditions."

The NOPV is thus wrong when it asserts that the "terrain, elevation changes, or seismicity of the area surrounding the Delta pipeline" were "conditions" that Denbury did not address sufficiently through its O&M Procedures. Nor did Denbury fail to execute the provisions in the O&M Manual and related internal company written guidance. The O&M Manual addressed the issue, the aerial patrols and pedestrian surveillance were monitoring this area for land movement, and, when recognized land movement events had the potential to expose the pipe if not addressed, or otherwise required a follow-up, Denbury performed.

A second theory that the NOPV alternatively, and equally erroneously, appears to suggest is that there was a *specific* geohazard condition at the failure point, rather than the more generic problem of geohazards *writ large*, and that Denbury was aware of and failed to address it as a known specific condition. To this end, PHMSA states that the failure location was on a steep embankment in an area that had "experienced land subsidence." The NOPV goes on further to assert that the "subsidence caused axial strain on the Delta pipeline, which resulted in the full circumferential girth weld failure." The only evidence cited for the proposition that Denbury had "discovered" these specific conditions as conditions that could "adversely affect" the pipeline is the NOPV's reference to a comment from the Denbury District Manager who observed that the company had experienced "two to three land movement issues per year." PHMSA has badly misconstrued that remark as evidence of "discovery" of an adverse condition of the type that led to this particular failure mechanism. In fact, as explained below, PHMSA has taken that remark entirely out of context and this entire theory has no factual basis given the actual causes that led to the failure.

First, the reference by Denbury's District Manager to "two to three land movement issues per year" was a reference to routine soil erosion events in the area to which many buried pipelines are routinely subject. During his time as District Manager, Mr. Davis had encountered such erosion issues identified during aerial overflights, pedestrian surveillance of rights of way and calls from landowners regarding erosion and sediment transport. It is surprising that PHMSA would use a statement about such erosion to suggest that the land movement giving rise to the Sartia release was a relatively common occurrence that Denbury was aware of and did nothing to monitor or look out for. Again, the "two to three" land movements remark refers to soil erosion concerns



that threatened to expose the pipe, not some other form of land movement that placed strain on the pipe. Moreover, when these aerial or pedestrian surveys noted these conditions, Denbury investigated them.

While the District Manager's terminology for such events may have been an imprecise way of capturing such soil erosion matters, in fact, that was all that was meant by his comment. Nor is it surprising that a comment offered in the immediate context of coordinating response activities might not have been fully clarified in the moment. But, in fact, the District Manager had no experience of prior incidents where large-scale lateral land movements created significant axial strain conditions, such as occurred in this case. And the routine soil erosion events that had been experienced were certainly not sufficient to put Denbury on notice of the more fundamental land-movement risk that led to the failure in this instance.

Likewise, PHMSA is incorrect in suggesting that the source of the "axial strain on the pipeline" was a geohazard in the area where the release occurred. In fact, the land movement that created the axial strains occurred several hundred feet away from the actual failure location and there was, in fact, no known land subsidence or movement at the failure location preceding the release. Moreover, when compared to the failure point, the right of way ("ROW") location of the actual land movement is a more level area where the terrain gently slopes from south to north, rather than being a "steep incline." The soil movement from south to north at this location put axial strain on the pipe segment. This strain, in turn, over-stressed the pipeline at the failure location several hundred feet away and led to the pipe separating at a girth weld.

To the extent PHMSA premises this claim on the images of the area after the release, those conditions are not evidence of subsidence. Rather, the loss of soil around the pipeline segment is plainly a function of pressure from the release itself, rather than the result of an independent geotechnical event. Thus, the steep embankment did not cause the pipeline failure.

Nor did Denbury discover an adverse condition that it then left unaddressed, which condition then caused the failure. The land movement that created the axial strains on the pipeline occurred within a larger area, measuring approximately 950 by 1,200 feet, which far exceeds the boundaries of the ROW. Follow-up reviews by Denbury after the February 22, 2020 event found that this larger area had previously experienced landslide-type events. But the full scope of this larger area and any associated movement in a more localized area within it, was not, and could not, have been readily discovered by Denbury prior to the incident, using either aerial or foot patrols, especially given the significant amount of vegetation covering the area outside the ROW at that time. Only more recent LiDAR surveys have produced the data to determine the scope of this area. Thus, Denbury had not discovered prior to the February 22, 2020 release the precise geohazard risk that PHMSA alleges in the NOPV. While the NOPV states that Denbury neglected geohazards in the "area between Denbury's Tinsley Field and the Highway 3 crossing," Denbury in fact monitored this area for surface erosion and similar recognized risks pursuant to its aerial and pedestrian inspections.

The claims in the NOPV are legally contradictory because Item 2 is premised on a violation involving "non-integrity management repairs" while Items 7 and 8 allege violations of the integrity management requirements of 49 C.F.R. § 195.452. These contradictory claims arise out of the same factual basis: the protection of the Delhi segment from geohazard risks that could affect the



integrity of that pipeline. Having alleged in Item 8 that Denbury failed to identify measures to protect and mitigate risks of geohazards as parts of its integrity management program, the NOPV cannot simultaneously characterize that condition and the allegedly necessary measures as “non-integrity management repairs” that Denbury failed to implement under 49 C.F.R. § 195.401(b)(2).

In addition, although the NOPV alleges that Denbury “discovered” this condition, the NOPV entirely fails to present any facts showing that the conditions alleged, or the information available to Denbury, was adequate for Denbury to determine that a potential threat to the integrity of this part of the Delhi segment existed. There is no factual basis to reach such a conclusion. Even if such proof existed, Item 8 of the NOPV demonstrates that PHMSA’s claims should have been asserted under 49 C.F.R. § 195.401(b)(6).

Denbury disputes the penalty calculation for violation 2 for various reasons including because the facts disprove the claim that Denbury had “discovered” a condition within the meaning of PHMSA’s regulations or that Denbury made a “deliberate decision” to not correct a condition that could adversely affect the safe operation of its system. In fact, Denbury monitored for land movement issues including soil erosion. Denbury was simply not aware of the potential for a large-scale movement of land such as occurred here that put the strain on the Delhi segment, in part due to geological and soil features that extended well outside of Denbury’s ROW. Moreover, Denbury acted in good faith towards its obligations to identify and correct conditions that could adversely affect the safe operation of its pipeline. Denbury did not discover the circumstances that led to the failure on February 22, 2020 before that date and Denbury did not have adequate information to readily discover this condition for the reasons set forth above. For these reasons and others set forth in this Response, even if the alleged violation is not withdrawn (which it should be) the proposed penalty should be reduced significantly.

### **Response to NOPV No. 3**

Denbury disputes alleged violation number 3. The Notice alleges a failure to “have and follow” a manual of written procedures for conducting normal operations and handling emergencies, while acknowledging that Denbury has a written procedure related to these issues. Given PHMSA’s correct acknowledgement that such a manual exists, the NOPV cannot be premised on the failure to “have” such a manual. Thus, the only issue appears to be a claim that Denbury failed to “follow” such procedures by failing to have sufficient contact, coordination and preplanning with public safety officials by “specifically” “fail[ing] to plan emergency response activities and develop proper coordination with local official who would respond to emergencies.”

These assertions are likewise incorrect. At a broad level, it is worth noting that Denbury has provided *Public Awareness / Liaison Records* demonstrating that field operations personnel met annually with appropriate emergency responders to coordinate a mutual response to pipeline emergencies “in order to minimize hazards to life and property,” in accordance with Denbury’s *O&M 0232 Damage Prevention and Public Awareness Section 3.3.2.2*. Specifically, the *Public Awareness / Liaison Records* show that Denbury met individually, in separate targeted meetings, with emergency responders from the Yazoo County Emergency Management Agency (“EMA”), the Yazoo County Sheriff, the Yazoo City Police and the Yazoo Fire Department (hereinafter, collectively referred to as the “Local Emergency Responders”). The check-marked boxes indicating “PA Tool Kit” and “Liaison Meeting” on the *Public Awareness / Liaison Records*



demonstrate that the messaging to the emergency responders followed the Public Awareness Toolkit and met the *Public Awareness & Damage Prevention Plan*. Denbury provided these to PHMSA for 2019, and records for other years are available.

Thus, the liaison records may not include “the invitations” to any such meetings but they demonstrate the more critical point – not the sending of “invitations” but that Denbury, in fact, established and maintained “liaison with fire, police, and other appropriate public officials” and “acquaint[ed] the officials with [Denbury’s] ability in responding to a . . . pipeline emergency and means of communication.” The associated meeting records actually contain the agenda of the topics discussed at the meeting, reflect the identity of the participants and include the materials provided as part of those meetings. Because the Toolkit also requires that the Denbury employee, among other things, discuss with emergency responders the “capabilities the emergency responder can provide and their action procedures,” it is clear that Denbury also sought information and “learn[ed] the responsibility and resources of each government organization that may respond to a . . . pipeline emergency” by gauging the type of response capabilities of the respective agencies. 49 CFR § 195.402(c)(12), (e)(7).

PHMSA’s NOPV seems to rely on a single isolated fact to reject, as categorically inadequate, Denbury’s extensive outreach efforts to the local emergency responders at the county level to meet (c)(12)’s liaison requirement or (e)(7)’s coordination of “preplanned and actual responses” for an emergency. PHMSA’s rejection of Denbury’s entire program seems to have been reduced to the question of whether Denbury reached out to the Fire Chief at the Tri-Community Fire Department in Sartartia, or to some other “affected . . . public authorities” that are not identified. This overly circumscribed focus ignores a wealth of documentation and efforts showing that Denbury complied with these requirements for the Yazoo county emergency response officials, and with the federal requirements regarding public awareness more generally. In choosing to narrow its focus so selectively, and in disregarding Denbury’s annual meetings with the Yazoo County EMA, Yazoo County Fire Department, Yazoo County Sheriff and Yazoo City Police Department, PHMSA ignores its own regulations which can only be sensibly understood in combinations with the emergency response structure that Mississippi utilizes, and which Denbury seeks to respect.

Specifically, in Mississippi, the state-wide emergency response structure expressly relies on a county-based approach:

1. Yazoo County’s [website](#) states that its emergency management department “is a multi-functional agency whose primary duty is to prepare, respond and recover from several types of natural, man-made and technological disasters that may occur in Yazoo County.”
2. Mississippi’s Emergency Management Agency explains on its [website](#) that “each county has a full or part-time emergency management program appointed by local government. The list below will allow you[] to see who your emergency management/civil defense director is and how to contact them.” That list provides contacts for county officials, including for Yazoo County.
3. Mississippi’s Emergency Management Agency also has a 2022 disaster guide for residents, instructing them to contact their respective county officials for any disasters.



Strikingly, Denbury's outreach to the various county emergency responders that PHMSA ignores, while simultaneously asserting Denbury violated PHMSA's regulations, was outreach to the very same local officials that PHMSA has recently expressly recognized as appropriate points of liaison for pipeline operators in their liaison activities and emergency reporting. See 49 CFR §§ 195.402(c)(12) and 195.402(e)(1) ("Operators may establish liaison with the appropriate local emergency coordinating agencies, such as ... county emergency managers, in lieu of communicating individually with each fire, police or other public entity.") (87 Fed. Reg. 20989 (Apr. 8, 2022)).

In addition to the above described meetings with emergency response agencies, Denbury also mailed Pipeline Safety brochures to local citizens and first responders. Denbury has mail delivery records confirming delivery of the brochures to hundreds of citizens and first responders. Moreover, as Denbury has explained, the Fire Chief of the Tri-Community Fire Department in Satartia, Mr. Pettis, was a local inspector of the Mississippi Oil and Gas Board. He had regulatory duties with respect to Denbury's CO<sub>2</sub> production operation and often visited the CO<sub>2</sub> EOR facility at Tinsley, which is co-located with the Tinsley Meter Station, providing opportunities for Denbury to share information about its operations and the risks with the Tri-Community Fire Department's leader.

Nor is there any factual basis to support PHMSA's assertion that Denbury failed to comply with the requirements in section (e)(7) regarding coordination of "preplanned and actual responses during an emergency." In fact, Denbury's procedures and efforts demonstrate compliance. For instance, Denbury's *O&M 0232 Damage Prevention and Public Awareness Plan* specifically identifies emergency officials and local public officials as stakeholders who need to learn about the precautions necessary for an emergency involving hazardous liquids, and calls for coordination between Denbury field management personnel and appropriate emergency responders over "mutual response to pipeline emergencies in order to minimize hazards to life and property."<sup>1</sup> Similarly, the *Public Awareness & Damage Prevention Plan* requires that emergency officials and public officials receive messaging on "emergency preparedness."<sup>2</sup> That messaging must be delivered in accordance with the Emergency Responders PA Toolkit. As noted earlier, the Toolkit requires that the Denbury employee, among other things, discuss with emergency responders the "capabilities the emergency responder can provide and their action procedures," as well as Denbury's ability to respond to an emergency, including, for example, the measures called for by Denbury's ERPs (emergency response plans) to respond to a release.

These ERPs demonstrate substantial planning and discuss multiple emergency scenarios and provide steps to take in the event of each type of failure. For example, the ERPs provide discrete steps to take in the event of catastrophic failure and damage:

*For fire located near or directly involving a pipeline facility, explosion occurring near or directly involving a pipeline facility, and accidental release of hazardous liquid or CO<sub>2</sub> use the following steps as a guide.*

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<sup>1</sup>Sections 3.3 and 3.3.2.2.

<sup>2</sup>Section 6, Table 3.



*Step 1*

- *Call supervisor Phone numbers contained on Tab # 10 (Form 1900-01)*
- *Call DCC Phone numbers contained on Tab # 10 (Form 1900-01)*
- *Call 911*

*Step 2*

- *Secure Area*
- *Ensure Denbury Employee and public safety*

*Step 3*

- *Isolate facility – Tab # 16 (Form 1900-07)*

*Step 4*

- *Assess threats – What's going on here?*

*Step 5*

- *Establish NIMS Response Structure – Tab # 11 (Form 1900-02)*

*Step 6*

- *Assess Damage*

*Step 7*

- *Chronological Record of Emergency: First Facts – Tab # 14 (Form 1900-05)*

*Step 8*

- *Restore Service*

Similar step-by-step procedures exist for other emergency scenarios including operational failures such as CO<sub>2</sub> being detected inside or near a building, and natural disasters such as floods, storms, and wildfires. In sum, the ERPs plainly satisfy the requirement to have preplanned and actual responses to emergency events, and the aforementioned *Public Awareness / Liaison Records* prove that these preplanned responses were communicated to appropriate public officials.

Finally, Denbury notes it does not have any record of having been invited to participate in the emergency rail drill identified by the NOPV. Furthermore, the regulations do not require that Denbury attend emergency trainings held by local personnel. Nor do the regulations require that Denbury invite local first responders to any drills Denbury may perform. Even the National Preparedness for Response Exercise Program (PREP) guidelines do not require that PHMSA-regulated facilities and pipelines conduct drills with the participation of members of the area response community. Having said that, Denbury notes that, in fact, it did invite local emergency responders to many drills but concedes that it has not been able to locate any documentation of those invitations. Denbury is still reviewing its files for any such documentation.

Denbury disputes the penalty calculation for Violation 3 for various reasons including because it is based on factually incorrect premises. As explained, Denbury met with local emergency responders and supplied documents to PHMSA about those meetings. Moreover, local emergency responders were in fact aware of Denbury's pipeline, the product it transported and the



associated hazards. On the night of the events, once a sulfur odor was detected in the area, the head of the incident command understood the possibility that the circumstances in the area could have been related to a leak from Denbury's pipelines and used the emergency contact information that he had to contact Denbury. Denbury's compliance with these requirements also disproves the finding that Denbury failed to act in good faith relative to its obligations under the regulations. For these reasons and others set forth in this Response, even if the alleged violation is not withdrawn (which it should be), the proposed penalty should be reduced significantly.

#### **Response to NOPV No. 4**

Denbury disputes alleged violation number 4. In fact, the evidence that Denbury had an established communication system is demonstrated by various facts from the night of the event, including that the local fire chief (who was the Incident Commander) knew that Denbury's operations included pipelines that transported CO<sub>2</sub>, and had an emergency contact at Denbury in the event of an emergency, including his emergency contact information.

It was precisely because of this relationship that Mr. Pettis was able to call Mr. Davis while Mr. Davis was en route to the Tinsley emergency shutdown valve (after being contacted by Denbury's control room). When Mr. Pettis, the Incident Commander and local fire chief, explained that there was a sulfur odor and gas cloud in the area of Satartia and asked if Denbury was experiencing a loss of pressure from its pipeline segment that was located in that vicinity, Mr. Davis confirmed that it had.

Respectfully, it was the effectiveness of Denbury's internal communication system that led to Mr. Davis mobilizing so quickly and being en route when Mr. Pettis called. And if, prior to February 22, 2020, there had not been outreach to establish means of contact that emergency responders could draw on, Mr. Pettis would not have had any idea about the source of the gas in the area, or whom to call. The fact that the Incident Commander/Fire Chief for the Tri-Community Fire Department in Satartia knew whom to call and already had Mr. Davis's emergency contact information shows that PHMSA's claims in the NOPV are without any factual basis. As a further specific example of Denbury's outreach, Denbury's Pipeline Safety brochure, which was mailed out to hundreds of citizens and first responders, provides an emergency contact number and encourages public safety officials to "[c]ontact Denbury as quickly as possible."

The NOPV seeks to justify its claims that Denbury lacked a communications system with local emergency responders through the fact that Mr. Pettis called Denbury 42 minutes after the Denbury control room had noticed that its pipeline segment was experiencing a pressure loss reading potentially associated with a release. Denbury does not accept the implication that Denbury somehow failed to provide a system for communication with local responders because Denbury did not initiate the use of that system to communicate with appropriate public officials before Denbury had itself further confirmed the fact of release or knew its precise location. In fact, at the time of the contact, Mr. Davis was en route to the Tinsley Meter Station to commence an effort to locate where any release might have occurred on a 9.5-mile segment.

Denbury notes that the regulations call for there to be a communication system, and clearly there was. Thus, Denbury plainly met the stated requirements of the regulations. Moreover, even if the question of whether a "system" has been established turns on Denbury acting in a timely



way to utilize that system (which the regulations do not), this claim also fails because, as Denbury has explained, the pressure drop that its control center noted did not identify where on the 9.5-mile stretch of pipeline the leak may have occurred. Without this information, Denbury was not in a position prior to 7:48 p.m. to provide the notifications that the NOPV seems to contemplate should have been provided, and the lack of which notification seems to be the basis for the NOPV allegation.

As noted above, Mr. Pettis' knowledge of Denbury's operations and his possession of the correct contact information was what led him to communicate to Denbury before Denbury staff could arrive to determine whether that was the area on the pipeline segment where any leak may have been occurring. Such a circumstance, where emergency responders may have superior information sooner than the operator, and where such emergency responders are in the area where the release occurs itself, is precisely the reason that the regulations provide that the communications system be capable of "receiving notices from . . . the public, and public authorities of abnormal or emergency conditions". It seems apparent that the regulations specifically anticipate circumstances where the public or public authorities will be "the first to know" that a release is happening and where. The regulations do not require that the operator always be the first to initiate the use of any communications system and, as noted, contemplate that there will be instances where the opposite occurs. Thus, in this case, the fact that Mr. Pettis was the first to know cannot form the basis to assert a "communications system" violation. Rather, the fact that local officials reached out to Denbury before Denbury had independently confirmed that the pipeline had ruptured shows that Denbury's liaison efforts and communications systems worked, and the regulatory requirements were satisfied. When an incident actually occurred, and local officials were in position to provide Denbury further pertinent information, those local officials promptly communicated valuable information to Denbury.

In Denbury's view, PHMSA's claims relative to this allegation are not premised on the lack of a communication system for Denbury to communicate with Yazoo County fire, police, and other appropriate officials during an incident. Rather, such claims rely instead on the theory that Denbury should have initiated use of that system based on the information that it had observed at its control room before actual confirmation in the field. That is not a proper foundation for the violation alleged. Denbury shares PHMSA's goal of informing local communities and protecting exposed populations from risks associated with Denbury's operations. Denbury also notes that mandating the premature initiation of emergency measures can have some unfortunate side effects, such as when operators raise alarms based on observations from their control room and it turns out that there was no real emergency. Such false alarms can deaden emergency responders and the public to genuine emergencies and cause wasteful use of resources when no emergency is present. Thus, adopting an approach that requires operators to trigger communication requirements more conservatively would contravene one of the main purposes of regularly planning for emergencies and communicating with local officials, which is to ensure that such resources are deployed efficiently and in proportion to what is required, not potentially wastefully when events do not warrant. As discussed above, however, Denbury has made adjustments to its internal allocation of Denbury's reporting responsibilities in light of these events, to strike a balance more directed toward early notification. Should a similar event occur in the future, Denbury will notify the local emergency responders and the NRC, even if Denbury has not visually confirmed a release or identified its location with precision.



It appears that PHMSA's allegations may also be focused on Denbury's lack of direct pre-incident communications with the Tri-Community Fire Department in Satartia, without regard to the many pre-incident contacts that Denbury established with county Local Emergency Responders. To the degree this is the basis for this alleged violation, Denbury notes that it unfairly duplicates the claim alleged in NOPV No. 3 and is counter to the outreach efforts described in response to that violation. And whether NOPV 4 is directed at pre-event communications or those on the night of the event, Denbury further notes that the Mississippi EMA specifically directs the public to contact the county EMA in the event of an emergency.<sup>3</sup> Moreover, as also noted above, in this case the Tri-Community Fire Chief was also the inspector for the Mississippi State Oil & Gas Board and visited Denbury's Tinsley CO<sub>2</sub> EOR facility regularly, providing various pre-incident opportunities to familiarize himself with Denbury's operations and response personnel.

Denbury disputes the penalty calculation for Violation 4 for various reasons including because the underlying findings are factually incorrect. Numerous local responders including Mr. Pettis were in fact aware of Denbury's pipeline, the product it transported and the hazards associated with any release. Had this not been the case, Mr. Pettis would not have known to call Denbury when he heard that there was a sulfur smell in the vicinity of Satartia on the night of February 22, 2020. The fact that Denbury shared this information can also be confirmed through the written materials shared by Denbury with local responders. Denbury notes that the allegation that Denbury's failure to immediately notify all authorities of a release based on the alarm in the control room at 7:07 p.m. "increased the severity of the accident" or caused a "delay in local responders' awareness" is not supported by any factual allegations. As such, Denbury does not have fair notice of how PHMSA believes the severity was increased.

Likewise, the finding that Denbury lacked "a reasonable justification" is incorrect because Denbury was in compliance and had met its obligations. Thus, there is no factual basis to find that Denbury failed to act in good faith relative to the referenced requirements. For these reasons and others set forth in this Response, even if the alleged violation is not withdrawn (which it should be), the proposed penalty should be reduced significantly.

### **Response to NOPV No. 5**

Denbury disputes alleged violation number 5. In fact, Denbury (a) developed a Community Awareness Plan that called for aerial patrols that looked for indicia of land movement like erosion or for flooding that can be a cause of land movement; and (b) complied with its plan. The *Pipeline Patrol / Leak Detection Report* documents Denbury's frequent and customary practice of conducting aerial patrols and inspecting for land movements such as erosion and related risks while on said patrols.

In fact, the results of the aerial patrols reveal that Denbury was tracking the typical "land movement issues" that Denbury's District Manager referenced. For instance, the aerial patrol records reveal a variety of observations related to conditions involving or associated with land movement:

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<sup>3</sup><https://www.msema.org/county-ema/>



- Flooded right-of-way events: 5/9/17, 5/28/17, 6/18/17, and 3/4/19;<sup>4</sup>
- Erosion-related conditions including:
  - “pipeline exposed due to recent erosion,” 12/30/18; and
  - “exposed pipe on ROW 1.8 mi. NE of Yazoo River,” 8/15/17.

These types of erosion events were the “land movement issues” referred to by Denbury’s District Manager in his discussions with PHMSA. In sum, Denbury’s records demonstrate that it conducted the aerial patrols in compliance with its plan and in doing so complied with the regulatory requirement to have such a plan and to follow it.

Denbury disputes the penalty calculation for Violation 5 for various reasons including because the factors considered in the penalty analysis for this alleged violation ignore Denbury’s actions. For instance, the culpability analysis asserts that Denbury was aware of land movement and “did not implement any preventative and mitigative measures.” In fact, the aerial reports sought to identify concerning conditions, tracked such conditions when found which led follow-up regarding those conditions. The records show several references to various “land movement issues” such as erosion being tracked and addressed. Denbury monitored its right of way for land movement issues and followed up when its inspectors observed conditions suggesting land movement. Rather than being out of compliance and failing to act in good faith with respect to its obligations, Denbury took its obligations seriously and sought to comply. Thus, the penalty assessment’s good faith analysis reaches the wrong conclusion that Denbury was out of compliance and “did not have a reasonable justification” for its actions. Both conclusions are wrong. In fact, Denbury inspected its lines for land movement issues and acted reasonably by any measure in doing so.

It is also worth noting that, in terms of good-faith efforts to learn from the event, with the determination that the Satartia segment was a “could-affect” segment within the meaning of 49 CFR § 195.452, Denbury expanded the specific types of geohazards for which it surveys and the types of technologies being used in that effort. These new measures are reasonable in light of all new post-incident information. But such post-incident remedial efforts do not provide a basis to determine that Denbury had failed to follow the requirements of its plan at the time of the event or failed to meet regulatory requirements. For these reasons and others set forth in this Response, even if the alleged violation is not withdrawn (which it should be), the proposed penalty should be reduced significantly.

### **Response to NOPV No. 6**

Denbury disputes alleged violation number 6. Denbury developed an appropriate written continuing public education program and complied with it. PHMSA’s claim in this item seems to be directed at the failure to include the town of Satartia in Denbury’s community awareness plan. As explained below, Denbury’s air dispersion analysis did not identify Satartia as being within the

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<sup>4</sup>There are many other similar references on other days.



area potentially affected by a release from this segment, which is the reason that it was not included in the referenced program.

As to Denbury's actions that satisfied the regulatory requirements, first, Denbury's *O&M 0232 Damage Prevention and Public Awareness Plan* and *Public Awareness & Damage Prevention Plan* are compliant as written because they comprise a continuing public education program that follows the guidance provided in API RP 1162. Regarding implementation of that plan, as stated *supra*, Denbury has records showing that relevant stakeholders—whether they be affected public, emergency officials, or local public officials—received copies of Denbury's Pipeline Safety brochure. Moreover, the Yazoo county officials included in this plan would have responsibility for Satartia, a town in Yazoo County. As to the brochure's specifics, among other things, the brochure alerts key stakeholders to the presence of pipelines in their communities, educates stakeholders on steps to take in the event of a release or emergency, and discusses the steps Denbury has taken to plan for accidents if they occur. Denbury's records confirming that its brochures reached hundreds of stakeholders demonstrate implementation of the continuing written public education program. Against this backdrop, premising a violation based on comments of "unidentified stakeholders," who claim not to have received any outreach, is an insufficient basis for a violation and provides Denbury with no means to defend given the generalized nature of the claim.

Second, Denbury conducted an air dispersion analysis to identify the areas that could be impacted by a release from this segment following recognized industry practices and that analysis did not identify Satartia as an area that could be affected by a leak from the pipeline segment involved in the release. Because of the results of this analysis, Denbury was not required to include residents of the town of Satartia in its public awareness program.

Denbury has, since the incident, extended its public awareness program to include Satartia based on Denbury's addition of an overland spread analysis that uses a computational fluid model to evaluate a release of a gas like CO<sub>2</sub> to the original dispersion analysis. With this additional analysis, Denbury identified the town of Satartia as a "could-affect" HCA. But that assessment happened only after the incident. Nor does Denbury agree that because, pre-incident, Denbury's plan gave Denbury the discretion to extend its buffer to include the town of Satartia, Denbury was somehow in violation of the PHMSA requirements because Denbury failed to exercise that discretion. Up until the incident, Denbury believed that it had delineated the "could-affect" HCAs using recognized industry practices and did not have reason to revisit that determination prior to the February 22, 2020 events. While subsequent events suggested that Denbury should supplement its use of the air dispersion analysis with new tools (such as overland spread analysis) to identify "could-affect" HCAs, those subsequent assessments and associated results do not mean that Denbury was required prior to February 22, 2020 to expand the buffer zone, as a matter of "discretion." Nor is it accurate or correct to assert that Denbury did not have a reasonable justification for its determination that the Town of Satartia was not a "could-affect" HCA. In fact, Denbury followed industry recognized principles for delineating HCAs and that process led to the Town of Satartia not being identified as an HCA. While the analysis was not correct, Denbury cannot be considered to have acted without justification in making its determination.

Denbury disputes the penalty calculation for Violation 6 for various reasons including because the penalty calculations for this violation have several prominent flaws. First, there is a



reference to interviews by PHMSA with “certain stakeholders” that deprives Denbury of any fair notice of the alleged deficiency and therefore deprives Denbury of fair process. Without more precise information about who this “certain stakeholder” is, Denbury is not able to respond. In contrast, Denbury has provided PHMSA with documentary information regarding meetings, sharing of documents and other follow-up with numerous county public authorities including the Yazoo County Emergency Management Agency, the Yazoo County Sheriff, the Yazoo County Fire Department and the Yazoo City Police that show its significant efforts.

Similarly, the NOPV fails to assert that the 2011 determination used by Denbury failed to follow recognized industry practices in delineating could-affect HCAs as 49 CFR § 195.452(b)(6) requires. Denbury concedes that its public awareness program did not include Satartia, but the NOPV’s summary reveals that Denbury established an affected buffer zone for a release from this segment that was 1,760 feet, which was 700 feet larger than the 1,060 feet that Denbury’s program called for at a minimum. The NOPV states that Denbury had the discretion to expand its buffer zone but fails to explain how Denbury should have known to expand the buffer zone before the events in Satartia such that Denbury’s failure to do so then constituted a violation.

Likewise, the finding that Denbury did not act in good faith relative to its obligations under 49 C.F.R. §195.440 lacks any factual basis. Denbury has provided ample documentary proof that it prepared exactly the type of written plan that the regulations contemplate. The air dispersion model from 2011 that Denbury used in fact followed recognized industry principles and used the PHAST method that was accepted by industry and regulators. This fact provides reasonable justification for the scope of the potential impacts from a release that Denbury identified. While Denbury regrets that the Town of Satartia was not included in its public awareness program, PHMSA’s proposed finding entirely fails to consider Denbury’s good faith efforts to comply.

Even if the alleged violation is not withdrawn (which it should be), for these reasons and others set forth in this Response, the proposed penalty should be reduced significantly.

### **Response to NOPV No. 7**

Denbury disputes alleged violation number 7. Denbury’s analysis of the dispersion potential for a release from this segment did not identify Satartia as a “could-affect” HCA with respect to the Satartia segment. Based on this analysis, Denbury did not believe a baseline assessment of the Satartia segment to be required by 49 CFR § 195.452(d)(1).

In 2011, Denbury undertook the HCA “could-affect” analysis for the Delhi line using a PHAST dispersion analysis that applied then state-of-the-art and industry standard principles to model releases from the Delhi segment. The PHAST analysis has generally been considered by industry and regulators to be conservative in that it tended to overstate the dispersion of the materials associated with a release, such that the actual hazards would be less than the PHAST model predicted. In using the PHAST analysis, Denbury followed “recognized industry practices” as 49 CFR § 195.452(b)(6) contemplates and thereby used an approach accepted by industry and regulators alike for modeling such releases. This dispersion analysis did not identify Satartia as a “could -affect” HCA within the meaning of 49 CFR § 195.452. Based on that determination, the requirements in 49 CFR § 195.452(d), including the baseline assessment, did not apply to this segment.



Denbury acknowledges that the events of February 22, 2020 showed that the Town of Satartia was a “could-affect” HCA with respect to the neighboring pipeline segment. The concentrations of CO<sub>2</sub> that reached Satartia from the leak location suggested that the prior modeling should be reviewed to understand why the original modeling did not correlate to the real-world event. Ultimately, Denbury concluded that the PHAST analysis should be supplemented with an overland spread analysis. To do so, Denbury expended considerable effort and cost to develop a density-driven, terrain-based model for predicting the movement of a gas like CO<sub>2</sub> that can, under certain atmospheric and topographic conditions, pool, and flow like a liquid. This effort and expense are notable because there were no off-the-shelf models available for this purpose that did not require substantial further improvements to be useful in better modeling a material like CO<sub>2</sub>.

As noted above, prior to the incident, Denbury followed recognized industry practices and used an air dispersion model accepted by regulators to identify “could-affect” HCAs from a release. Thus, at the time, Denbury fulfilled its obligations under 49 CFR § 195.452(b)(6). Moreover, since the Satartia event, Denbury has considered where, within its whole 1,300 miles of pipeline assets in the United States, it needs to apply this terrain-based overland spread analysis. In this effort, Denbury has supplemented the air dispersion analysis with this overland spread HCA analysis to those certain segments of its line that both (1) lie within 2 miles of an HCA, and (2) have surrounding terrain that suggests released CO<sub>2</sub> could traverse further towards the HCA than an air dispersion analysis would predict. In short, Denbury has reassessed all segments on all of its lines that are located within 2 miles of an HCA where the terrain creates a risk that a leak “could-affect” an HCA with concentrations of CO<sub>2</sub> that would be of regulatory concern.

For the foregoing reasons, Denbury therefore disputes that there was “no reasonable justification” for not performing a baseline assessment as the penalty calculation finds. Denbury was, and remains, aware of this requirement and has fully performed the assessment it understood to be required at all locations. Denbury’s reliance on its air dispersion study in 2011 to identify “could-affect” HCAs for the Satartia segment followed “recognized industry practices” and was a reasonable basis for concluding that no such baseline HCA assessment was required.

Denbury disputes the penalty calculation for Violation 7 for various reasons including because the description of this violation in Item 7 is deficient because it failed to demonstrate how the “could-affect” HCA analysis undertaken by Denbury failed to comply with 49 C.F.R. §195.452. Denbury followed recognized industry practices in compliance with 49 C.F.R. §195.452(b)(6). Merely stating the actual release went beyond the areas delineated fails to explain how the analysis undertaken by Denbury constitutes a compliance failure.

Denbury likewise disputes any suggestion that Denbury at any time conceded that it failed to act in good faith relative to its obligations under 49 C.F.R. §195.452 as it relates to the Satartia events. As explained, Denbury followed recognized industry practices in implementing its “could-affect” HCA analysis. Denbury in fact had a reasonable justification for its determinations about the scope of “could-affect” HCAs on this segment. Without more information about any supposed “acknowledgment “of any deficiency in this analysis at the time, Denbury does not have any meaningful opportunity to respond and the alleged violation is deficient.



Finally, Denbury's response to the events of February 22, 2020 in no way provides evidence that it failed to act in good faith relative to these requirements. Rather, the events of 2020 put Denbury, the industry and regulators on notice that the use of PHAST to model the potential impact of a release from a CO<sub>2</sub> pipeline was insufficient on its own for certain releases, in certain areas.

Even if the alleged violation is not withdrawn (which it should be), for these reasons and others set forth in this Response, the proposed penalty should be reduced significantly.

### **Response to NOPV No. 8**

Denbury disputes alleged violation number 8. Denbury performed a risk analysis of the Delhi segment. Denbury did not either perform a further risk analysis of the Satartia segment pursuant to 49 CFR § 195.452(f) or identify preventive and mitigative measures pursuant to 49 CFR § 195.452(i) for this segment analysis because such requirements all apply to pipelines that have been identified as "could-affect" HCA segments within the meaning of 49 CFR § 195.452. As Denbury has explained, its air dispersion analysis followed recognized industry principles and did not identify the Satartia segment as a "could-affect" HCA segment relative to the now-recognized Satartia HCA. The requirements in question were thus not made applicable to this segment based on the air dispersion analysis performed by Denbury that followed recognized industry practices as 49 CFR § 195.452(b)(6) requires.

Denbury likewise disputes that its Operations and Maintenance Procedures ignored land movement concerns prior to the February 22, 2020 release. As explained above, Denbury identified land movement as a risk and ranked it as the second biggest risk facing this segment after general corrosion. Denbury's operational activity took account of that risk ranking. For instance, Denbury's aerial patrols monitored and detected land movement issues including erosion. Thus, Denbury was monitoring this segment for land movement risks during the period before the events of February 22, 2020. Moreover, when the aerial patrols detected soil-erosion issues that were affecting its pipelines, Denbury responded.

Based on what it has learned since the events in Satartia, Denbury does not dispute that aerial patrols alone would likely not provide sufficient confirmation to support a risk analysis for geohazard conditions of the type actually experienced in this case. But the multi-dimensional risk detection procedures that Denbury has put into place since the February 22, 2020 event demonstrates that Denbury understands how to structure a risk analysis for geohazard conditions once it determines such an analysis to be needed. This analysis includes information from aerial patrols, LiDAR analyses or other technologies (such as strain gauges and slope inclinometers), that can be employed to identify and assess geohazards related to substantial land movement.

Denbury disputes the penalty analysis for this alleged violation for various reasons including because Denbury in fact had a reasonable justification for its actions. As explained above, Denbury followed a recognized industry practice pursuant to 49 CFR § 195.452(b)(6) by using a PHAST analysis that was the then state-of-the-art method to identify "could-affect" HCAs. This analysis did not identify Satartia as a "could-affect" HCA relative to this segment and Denbury relied on those findings to structure its compliance program. The fact that this analysis was later determined to understate the area that could be affected by a release from the Satartia



segment does not have the collateral effect of making all prior reliance on this analysis “unreasonable” or deprive Denbury of any reasonable justification for its reliance on that analysis.

Indeed, the description of the violation is legally insufficient because it fails to explain how Denbury’s dispersion analysis in 2011 using the PHAST model failed to comply with the regulations. As explained, Denbury conducted an analysis under 49 C.F.R. §195.452 that followed recognized industry practice as required by 49 C.F.R. §195.452(b)(6). Without any description of how this 2011 analysis failed to comply with these requirements, this alleged violation fails to prove that Denbury was out of compliance prior to the events of February 22, 2020 or to provide Denbury with sufficient information to respond to the penalty for the alleged violation.

Denbury also disputes the penalty analysis for Violation 8 because it relies on a number of findings that are factually incorrect. These findings include references to “two to three land movement issues per year,” and to a failure to take ‘preventative or mitigative” measures regarding land movement. Likewise, the description of the violation mistakenly states “that these patrols did not identify any land movement concerns.” In fact, as explained earlier, these reports showed that land erosion issues were identified and followed up on.

In addition, PHMSA has provided no explanation whatsoever for its apparent conclusion that any violation “increased the severity” of the events. To a large extent, this finding may reflect PHMSA’s misunderstanding of the comment regarding “two to three land movement issues per year.” In any event, the penalty materials provided by PHMSA deny Denbury any understanding of the facts underlying the determination.

Similarly, Denbury submits that the culpability finding provides an insufficient explanation for its determination. As explained above, Denbury followed recognized industry practices in performing the dispersion analysis for this segment in 2011. When the events of Satartia occurred, they demonstrated that the PHAST analysis needed to be supplemented to releases that occurred in certain areas with certain topography. That recognition and follow-up implementation is not an acknowledgment that the earlier efforts failed to comply with Denbury’s obligations. Moreover, if PHMSA believes that someone at Denbury acknowledged a violation of these requirements, Denbury does not have sufficient information to responds to this assertion from the summary statement provided.

Even if the alleged violation is not withdrawn (which it should be), for these reasons and others set forth in this Response, the proposed penalty should be reduced significantly.

#### **Statement of Issues**

1. Whether PHMSA has met its burden of proof based on facts and applicable law to prove by a preponderance of facts that Denbury failed to comply with the requirements of 49 C.F.R. Part 195 referenced in items 2 through 8 of the NOPV?
2. Whether PHMSA has met its burden of fair notice to Denbury of the facts and specific regulatory provisions that PHMSA relies on to assert the violations alleged in Items 2 through 8 of the NOPV?



3. Whether terrain, elevation changes and seismicity are a condition on a pipeline system within the meaning of 49 CFR § 195.401(b) so that an operator can be fined for failing to repair “terrain, elevation changes or seismicity” under that provision?
4. Whether a pipeline operator that monitors its pipeline for land movement concerns can be found to have violated PHMSA regulations requiring that an operator who discovers any condition that could adversely affect the safe operation of the pipeline correct that condition where the land movement causing the release from the pipeline was a different type of geohazard than what was being monitored for?
5. Whether a pipeline operator with a plan for establishing and maintaining a liaison with fire, police, and other appropriate public officials pursuant to 49 C.F.R. §195.402(c)(12) can be determined to not have established or complied with the requirement to have and implement a plan where it met annually and shared documents with the county emergency management agency, fire department, sheriff and nearby city police merely because the operator did not include a local fire department?
6. Whether a pipeline operator with a manual that sets out procedures for notifying local responders in the event of an emergency can be found to have violated the requirement in 49 C.F.R. §195.402(e)(7) to have such a program simply because one of the local emergency officials initiated a call to Denbury about a release from its pipeline instead of Denbury calling the local emergency responders?
7. Whether PHMSA can sustain a claim that a pipeline operator failed to develop and implement a continuing written education program as required by 49 C.F.R. §195.440 based solely on a claim of an interview by PHMSA with “certain stakeholders” that are not named and who claim not to have received any such information where Denbury furnished PHMSA with copies of its plan and documentation showing meetings with the county emergency management agency, the county fire department and the county sheriff and a city police department?
8. Whether PHMSA can sustain claims of violation by a pipeline operator for alleged violations of requirements in 49 C.F.R. §195.452 where the requirements in question apply only to a pipeline that the operator has determined could affect a high consequence area during periods of time when the operator had followed recognized industry practices in compliance with PHMSA regulations and did not identify this pipeline as one from which a release could affect such a high consequence area?

#### Response to Proposed Compliance Order

In general terms, Denbury does not object to the requirements set out in the Proposed Compliance Order in so far as they seek to impose these remedial requirements on the segment of pipeline at issue in the NOPV. Denbury further notes that it has, in fact, already complied with many of these requirements as Denbury understands them with respect to the pipeline segment at issue in this NOPV. Some of the terms used in the Proposed Compliance Order have the potential to be vague, however, and Denbury reserves the right to seek to oppose or narrow one or more of these proposals should the parties not agree on what the particular requirements might impose.

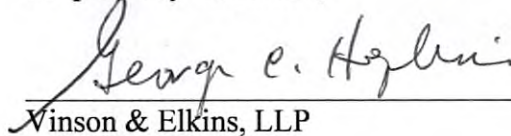


Denbury also notes, however that a number of these compliance requirements relate to alleged violations that Denbury disputes. Should the claims in this NOPV be resolved on terms that result in the dropping or withdrawal of any such violations, then Denbury reserves the right to seek the removal of the corresponding Proposed Compliance Order from any resolution.

#### IV. Summary and Request for Relief

Denbury takes its commitment to pipeline safety seriously. For all the reasons identified above, and in consideration of other matters as justice may require, Denbury respectfully requests that the NOPV, in particular Items 2 through 8 either be withdrawn or substantially revised, along with the associated Proposed Compliance Order items, and that the associated proposed penalties be withdrawn or significantly reduced. Denbury plans to be represented at the hearing by counsel set forth below. In advance of the requested hearing, and pursuant to 49 CFR section 190.209, Denbury further requests a copy of the complete case file in this matter to the extent there any documents in addition to the documents which have already been provided to Denbury upon its previous request.

Respectfully submitted,



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