

**NOTICE OF PROBABLE VIOLATION,
PROPOSED CIVIL PENALTY,
and
PROPOSED COMPLIANCE ORDER**

ELECTRONIC MAIL - RETURN RECEIPT REQUESTED

October 11, 2022

Gregory McIlwain
Executive Vice President, Operations
Permian Express Partners LLC
1300 Main Street
Houston, Texas 77002

CPF 4-2022-040-NOPV

Dear Mr. McIlwain:

From March 1, 2021 through November 16, 2021, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected Permian Express Partners LLC's (Permian Express) Patoka Pipeline system in Illinois, Missouri, Arkansas, and Texas. Permian Express operates using Energy Transfer Company's (ETC) procedures.

As a result of the inspection, it is alleged that Permian Express has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. **§ 195.52 Immediate notice of certain accidents.**
 - (a) ***Notice requirements.*** At the earliest practicable moment following discovery, of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in § 195.50, but no later than one hour after confirmed discovery, the operator of the system must give notice, in accordance with paragraph (b) of this section of any failure that:

(1) ...

(3) Caused estimated property damage, including cost of clean up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000;

Permian Express failed to provide notification within one hour after it confirmed discovery of an accident where the estimated property damage exceeded \$50,000. Specifically, on August 25, 2020, at 9:00 a.m. an accident occurred in Beaumont, Texas that Permian Express did not report until September 28, 2020 at 2:51 p.m., one month after the accident occurred.

Permian Express stated in its Accident Report-Hazardous Liquid Pipeline Systems No. 20200259-34346 (Accident Report) that the complexity of the excavation and repair caused the delayed notification to the National Response Center (NRC). Permian Express stated that it initially estimated property damage to be below \$50,000 and that it was not until it received repair invoices on September 28, 2020 that the repair cost exceeded \$50,000.

Therefore, Permian Express failed to provide notification within one hour after it confirmed discovery of an accident where the estimated property damage exceeded \$50,000 in accordance with § 195.52(a)(3).

2. § 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.

Permian Express failed to conduct right-of way (ROW) inspections capable of observing the surface conditions on or adjacent to each pipeline. Specifically, when PHMSA attempted to inspect the surface conditions on or adjacent to each pipeline ROW, overgrown vegetation and tree cover obscured the surface conditions above Permian Express's pipeline at four locations. PHMSA's field inspection observed overgrown vegetation on the ROW at the following locations:

- 34.017659, -93.974907 (Near 2970 AR-26, Nashville, AR 71852)
- By Mile Marker 459 (Near 36.542412, -90.891022, Poynor Township, MO 63935)
- 32.787080, -95.628841 (Alba, TX 75410)
- 35.442511, -91.763723 (Big Creek Township, AR 72121)

Due to overgrown vegetation and tree cover, an aerial patrol would not have been able to inspect the surface conditions at the listed locations.

Therefore, Permian Express failed to conduct ROW inspections capable of observing the surface conditions on or adjacent to each pipeline in accordance with § 195.412(b).

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

(a) ...

(i) What preventive and mitigative measures must an operator take to protect the high consequence area? -

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

Permian Express failed to conduct a risk analysis for its pipeline facilities located in Beaumont and Nederland, Texas in accordance with § 195.452(i)(1) and ETC's written procedures. Section 4.6 "Facility Threat/Risk Analysis and Preventive and Mitigative Measures" of ETC's written *Pipeline Integrity Management Plan, ETC Hazardous Liquids IMP_20200415* (IMP) (Revision No. 3, Revision Date: 4/15/2020), requires a facility risk analysis (HAZOP) and mitigative study to be performed for the facilities in Beaumont and Nederland, Texas. Section 4.6 of the IMP states that "[f]or pipeline facility segments such as headers, valves, meters, manifolds, pumps, etc. that meet the definition of pipeline per Section 195.2 and has been determined to affect an HCA and cannot be physically assessed in accordance with IMP Section 5, a facility risk analysis (HAZOP) and preventive and mitigative study shall be performed." Permian Express admitted it did not conduct the risk analysis required by Section 4.6.

Therefore, Permian Express failed to conduct a risk analysis for its pipeline facilities located in Beaumont and Nederland, Texas in accordance with § 195.452(i)(1).

4. § 195.573 What must I do to monitor external corrosion control?

(a) ...

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by § 195.401(b). However, if the deficiency involves a pipeline in an integrity management program under § 195.452, you must correct the deficiency as required by § 195.452(h).

Permian Express failed to correct identified corrosion control deficiencies. Specifically, Permian Express failed to correct three identified corrosion control deficiencies within one calendar year, as required by its procedure.¹

¹ Section 4.0 of the *Corrosion Control Remedial Action, HLD.40* (Effective Date 4/1/2018) procedure requires the restoration of inadequate cathodic protection levels within one calendar year.

From December 4, 2019 through November 11, 2020, Permian Express's records indicated that the pipe-to-soil readings for the cathodic protection readings on the bottom of Tank 355 were below the protection criteria. Permian Express installed a new ground bed for Tank 355 in August 2021 and filed a remedial record on December 9, 2021 indicating that the required remediation had been completed. However, this remediation did not occur within one year calendar after Permian Express identified the deficiency, as required by its procedure.

In addition, PHMSA's review of the annual pipe-to-soil readings for cathodic protection identified locations with low readings in calendar years 2018, 2019, and 2020. In total, PHMSA identified thirteen test stations where Permian Express failed to correct the deficiencies. The locations are:

Station ID	2020 CP Reading mV	2019 CP Reading mV	2018 CP Reading mV	Field Verification	Depol
31521 + 60	-0.821	-0.842	No Off reading		
32392 + 80	-0.769	-0.653			
32395 + 44	-0.77	No reading			
19114 + 02.2	-0.812	-0.712	-0.864		
19404 + 10.6	-0.821	-0.811	-0.857		
23263 + 68	-0.81	-0.824	-0.872		
24235 + 20	-0.847	-0.724	-1.108	-0.847	
16626 + 72	-0.585	-0.415	-0.685		-0.627
16674 + 24	-0.615	-0.653	-0.685		-0.697
17123 + 04	-0.752	-0.794	-0.854		
17186 + 40	-0.689	-0.639	-0.593		No Depol-100mv
17260 + 32	-0.814	-0.762	-0.917		
10507 + 30.6	-0.572	-0.498	No readings		

Further, Permian Express failed to remediate depleted groundbeds and deficiencies that are needed to ensure the proper performance of rectifiers on its cathodic protection system within one calendar year. PHMSA's review of the rectifier inspection records for calendar years 2018, 2019, and 2020 on the Patoka Discharge and Corsicana segments discovered five instances where the rectifier readings had no current output for a period between six months to two years. The deficient rectifier stations are 32841 + 60, 33190 + 08, 0 + 00, 16463 + 04, and 5702 + 92.8. The records show that the groundbeds on stations 16463 + 04 and 5702 + 92.8 were depleted and that Permian Express failed to remediate these deficiencies within one calendar year.

Therefore, Permian Express failed to correct identified corrosion control deficiencies in accordance with § 195.573(e) and its procedures.

5. § 195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months
Offshore	At least once each calendar year, but with intervals not exceeding 15 months

Permian Express failed to inspect its pipeline exposed to the atmosphere for evidence of atmospheric corrosion in accordance with § 195.583(a). Specifically, Permian Express did not perform an atmospheric corrosion inspection on portions of its onshore pipeline system at least once every three calendar years, but with intervals not exceeding 39 months.

Permian Express began operating this pipeline system on February 1, 2017. However, records reviewed for atmospheric corrosion inspection from Station 14245 + 38.7 through Station 24018 + 72 and the Patoka Tank Farm indicated that the atmospheric corrosion inspections were first completed between October 12, 2020, and December 29, 2020, seven months past the maximum 39-month inspection interval.

Therefore, Permian Express failed to inspect its pipeline exposed to the atmosphere for evidence of atmospheric corrosion in accordance with § 195.583(a).

6. § 195.589 What corrosion control information do I have to maintain?

(a) ...

(c) You must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. You must retain these records for at least 5 years, except that records related to Secs. 195.569, 195.573(a) and (b), and 195.579(b)(3) and (c) must be retained for as long as the pipeline remains in service.

Permian Express failed to maintain corrosion control records in accordance with § 195.589(c). Specifically, PHMSA reviewed Permian Express's records and found a record of an atmospheric corrosion inspection carried out on April 3, 2019, on Tank 348 that failed to indicate any items of concern or items requiring follow-up regarding corrosion on the tank shell. The external inspection report carried out for the same tank from February 18, 2014, indicated that there was corrosion on the shell and roof areas.

According to Permian Express, there were no repair records transferred from the previous operator. During the field inspection of Tank 348 on July 21, 2021, corrosion was observed on portions of the tank. Additionally, the April 3, 2019 inspection report identified gouges on the shell that should be monitored for future signs of accelerated corrosion.

Therefore, Permian Express failed to maintain corrosion control records in accordance with § 195.589(c).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 C.F.R. § 190.223, you are subject to a civil penalty not to exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,142 for a related series of violations. For violations occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violations occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violations occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violations occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violations occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documentation involved for the above probable violation and recommend that you be preliminarily assessed a civil penalty of \$22,800 as follows:

<u>Item number</u>	<u>PENALTY</u>
4	\$22,800

Warning Items

With respect to Items 1, 2, and 5, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these item(s). Failure to do so may result in additional enforcement action.

Proposed Compliance Order

With respect to Items 3, 4, and 6 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Permian Express Partners LLC. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. § 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. § 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments or request a hearing under 49 C.F.R. § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 4-2022-040-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Bryan Lethcoe
Director, Southwest Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Permian Express Partners LLC (Permian Express) a Compliance Order incorporating the following remedial requirements to ensure compliance with the pipeline safety regulations:

- A. In regard to Item 3 of the Notice pertaining to the failure to following the Pipeline Integrity Management Plan which requires a facility risk analysis (HAZOP) and mitigative study to be performed for the facilities in Beaumont and Nederland, Texas. Permian Express must conduct the HAZOP analysis for the Beaumont and Nederland, Texas facilities within **180** days of receipt of the Final Order.
- B. In regard to Item 4 of the Notice pertaining to the failure to carry out timely remediation to restore cathodic protection levels at various stations, Permian Express must submit a plan to have the cathodic protection remediated at the thirteen identified locations within **90** days of receipt of the Final Order. Permian Express must also submit a plan to remediate any identified corrosion control deficiencies from the calendar year 2021 annual pipe-to-soil survey remediated within **90** days of receipt of the Final Order.
- C. In regard to Item 4 of the Notice pertaining to the failure to remediate conditions preventing identified rectifiers on the system from putting out current to the cathodic protection system, Permian Express must submit a remediation plan for all rectifier systems where there has not been current output following the calendar years 2020 and 2021 inspections completed within **90** days of receipt of the Final Order.
- D. In regard to Item 6 of the Notice pertaining to identified corrosion on Tank 348 during the inspection, Permian Express must have the tank re-inspected and submit a remedial plan for all identified corrosion following the re-inspection within **180** days of receipt of the Final Order.
- E. Permian Express shall provide records showing completion of remedial activities and inspections within the submitted remedial action plans for Items A, B, C, and D of this Compliance Order within 60 days of the completion of the inspections and remediations carried out following the Final Order.
- F. It is requested (not mandated) that Permian Express maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Bryan Lethcoe, Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with the preparation/revision of plans, procedures, studies, and analyses, and 2) the total cost associated with replacements, additions, and other changes to pipeline infrastructure.