



By Electronic Mail

June 15, 2023

Mr. Bryan Lethcoe
Director, Southwest Region
Pipeline and Hazardous Materials Safety Administration
US Department of Transportation
8701 South Gessner, Suite 630
Houston, Texas 77074

**Re: CPF 4-2023-034-NOPV
Notice of Probable Violation, Proposed Civil Penalty and Compliance Order**

Dear Mr. Lethcoe:

Pursuant to 49 C.F.R. § 190.208, Mid Valley Pipeline Company (MVPL or Company) submits this written response to a Notice of Probable Violation (NOPV), Proposed Civil Penalty (PCP) and Proposed Compliance Order (PCO) (collectively referred to as the “Notice”) issued on May 8, 2023, by the Pipeline and Hazardous Materials Safety Administration (PHMSA) and received by MVPL on that same day. The PHMSA Notice alleges seven (7) violations, includes a PCP in the amount of \$119,000 and a PCO requiring remedial actions to ensure compliance with the pipeline safety regulations. PHMSA considered the circumstances regarding two (2) items described in the Notice and has issued those as Warnings.

On May 10, 2023, MVPL requested PHMSA provide the Case File and Civil Penalty Worksheet as allowed by § 190.208(c) and § 190.209(b)(2) and Docket No. PHMSA 2016-0101 and also requested an extension of time to respond to the Notice. PHMSA provided the Case File via electronic mail on May 16, 2023 and by letter dated May 16, 2023 approved an extension of time to respond until June 15, 2023; thus, this response is timely.

By way of background, this Notice was issued following an inspection of the MVPL pipeline system in Michigan, Ohio, Kentucky, Tennessee, Mississippi, Louisiana, Arkansas, and Texas from June 6 through December 1, 2022. MVPL provides this comprehensive response which contests certain findings, requests modifications to the PCO, requests Civil Penalty reductions, explains certain underlying circumstances and indicates what steps the Company has taken to address certain findings.

The Company appreciates PHMSA’s review and consideration of this submission and shares PHMSA’s commitment to pipeline safety, public safety, and pipeline integrity. Should you have any questions please contact me at (713) 989-7126 or via email at todd.nardozzi@energytransfer.com.

Sincerely,

Todd Nardozzi
Director – Regulatory Compliance

cc: Todd Stamm, SVP Operations
Leif Jensen, VP Tech Services
Heidi Slinkard, Chief Counsel

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 cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000

ETC Mid-Valley failed to give notice, at the earliest practicable moment but no later than one hour after confirmed discovery, following discovery of a release of a hazardous liquid resulting in an event where an estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to property of the operator or others, or both, exceeded \$50,000 in accordance with § 195.52(a)(3). Specifically, PHMSA found three occasions in 2021 and 2022 when ETC Mid-Valley experienced reportable accidents but failed to give notice within the required time frame to the National Response Center.

On February 22, 2021, ETC Mid-Valley identified a reportable accident due to estimated property damage of \$81,512. However, ETC Mid-Valley did not notify NRC until March 12, 2021. On June 10, 2021, ETC Mid-Valley identified a reportable accident due to estimated property damage of \$79,229. However, ETC Mid-Valley did not notify NRC until June 11, 2021. On June 29, 2022, at 1234 local time, ETC Mid-Valley identified a reportable accident due to estimated property damage of \$4,651,397. However, ETC Mid-Valley did not notify NRC until June 29, 2022 at 1615 local time.

Therefore, ETC Mid-Valley failed to give notice, at the earliest practicable moment but no later than one hour after confirmed discovery, following discovery of a release of a hazardous liquid resulting in an event where an estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to property of the operator or others, or both, exceeded \$50,000 in accordance with § 195.52(a)(3).

Proposed Civil Penalty

\$39,800 – Please see discussion of PCP calculations on page 12 of this submission.

MVPL Response

MVPL neither admits nor denies the allegation of Probable Violation of § 195.52(a)(3) with respect to the June 29, 2022 accident, however, MVPL disagrees with the PHMSA finding of Probable Violation of § 195.52(a)(3) with respect to the February 22, 2021 and June 10, 2021 reportable accidents and requests that PHMSA withdraw these two (2) instances of Probable Violation thereby reducing the number of instances to one (1) and recalculate the Proposed Civil Penalty accordingly.

The February 22, 2021 reportable accident involved a total of 15 barrels of crude oil released and totally contained on Company property at the MVPL Abbeville Station. Total costs related to estimated property damage were \$81,512 of which \$63,170 was related to environmental remediation. At the time of the release there was no expectation on the part of MVPL that the total environmental costs related to a 15-barrel release would drive the total costs for the event beyond the \$50,000 threshold for immediate notification identified in § 195.52(a)(3). When MVPL determined that this threshold would be exceeded on March 12, 2021, it promptly notified the NRC as required.

The June 10, 2021 reportable accident involved a total of 16.70 barrels of crude oil released and totally contained on Company property at the MVPL Lima Station. Total costs related to estimated property damage were \$79,229 of which approximately \$60,000 was related to repair costs. These costs were elevated due to difficulties experienced during excavation of the failure point overnight. At the time of the release discovery (12:30 pm) on June 10, 2021, there was no immediate expectation on the part of MVPL that the total repair costs would drive the total costs for the event beyond the \$50,000 threshold for immediate notification identified in § 195.52(a)(3). When MVPL determined that this threshold would be exceeded on the morning of June 11, 2021, it promptly notified the NRC at 7:30 am.

In both cases, MVPL acted in good faith and in compliance with § 195.52(a)(3) when it notified the NRC at the earliest practicable moment following discovery that the total costs would exceed \$50,000 (the reportability trigger). Both cases involved relatively small volumes of released crude oil inside Company facilities where there were no anticipated hinderances or complicating factors for MVPL to consider with respect to expeditious and economical clean up and repair efforts and as a result, there was no expectation that the total property damage costs would exceed \$50,000. The expectation that neither event would trigger the immediate notification threshold at the time of the accident was reasonable based on prior accidents with similar volumes and no third-party property impact. It was only after each event was impacted by unforeseen conditions that the costs increased, and the expectations changed. It was that knowledge of the existence of the unforeseen condition, not the occurrence of the accident itself, which triggered the immediate notification requirements, and it was within an hour of the time of gaining knowledge of the unforeseen condition(s) that the NRC was notified. In these circumstances, that is not a violation of § 195.52(a)(3). It is unfair for the agency to penalize MVPL for taking the correct action when conditions were discovered that warranted an immediate notification to NRC albeit sometime beyond one hour after confirmed discovery of the accident which was not immediately reportable at the time of confirmation¹.

PHMSA has previously recognized that an operator may not be able to ascertain the extent of circumstances surrounding an event at the time of occurrence.² Although the circumstances related to the event and the

¹ Confirmed discovery means when it can be reasonably determined, based on information available to the operator at the time a reportable event has occurred, even if only based on a preliminary evaluation. Upon preliminary evaluation of these two events, MVPL had no indication that the costs would exceed \$50,000. It was not until unforeseen circumstances arose that the anticipated costs triggered immediate reporting.

² Southern Star Central Gas Pipeline, Inc., CPF No. 1-2021-037-NOPV, Decision on Petition for Reconsideration (“Southern Star Decision”) relates to timeliness of notification of an incident. While the Southern Star Decision relates to reporting triggered by inpatient hospitalization (as opposed to costs in excess of the reporting threshold), it relates to when an event becomes reportable and so the reasoning is at least analogous to the two MVPL events identified in this response. Southern Star did not immediately report an event when an injured employee was taken to the hospital for medical attention following a head injury from equipment used while relieving pressure on a well in a storage field. Instead, Southern Star only reported the incident within an hour of when the hospital admitted the employee for inpatient treatment. The Decision on reconsideration was that it was not reportable until the operator knew that inpatient hospitalization was expected, not when the employee was transported to the hospital. See Southern Star Decision at page 4:

On reconsideration, I review whether [Southern Star] should have determined, based on the information available, that a reportable event had occurred, even if only based on a preliminary evaluation. While [Southern Star] decided the employee necessitated transport to the hospital for medical attention, that decision alone may not necessarily provide enough information to determine a reportable event has occurred. In some situations, it may be prudent to transport an individual to a hospital for outpatient treatment of injuries that would not be expected to result in inpatient hospitalization.

With that in mind and recognizing [Southern Star]’s staff at the time of the event could not ascertain the extent of the employee’s internal injuries, I find reason to exercise enforcement discretion in this matter and reduce the violation to a warning. Accordingly, the finding of violation is withdrawn.”

Similarly, MVPL would not have determined that a reportable event had occurred at the time of the incident based on

PHMSA decision in this referenced case are distinctly different from either the February 22, 2021 or the June 10, 2021 MVPL accidents, it is clear that PHMSA acknowledges that all information may not be known at the time of discovery of an incident or accident which may impact reportability of the same. Such is the case with respect to the two MVPL accidents discussed above and, upon discovery of circumstances which would lead to costs exceeding \$50,000, MVPL promptly notified the NRC.

For these reasons MVPL requests that PHMSA withdraw two (2) instances of Probable Violation related to the February 22, 2021 and June 10, 2021 reportable accidents, thereby reducing the number of instances of Probable Violation to one (1) for the June 29, 2022 accident and recalculate the Proposed Civil Penalty accordingly.

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.

ETC Mid-Valley failed to inspect the surface conditions on or adjacent to each pipeline right-of-way (ROW) using an appropriate method of inspection in accordance with § 195.412(a).

During the inspection, PHMSA noted several locations along the pipeline where the ROW was overgrown with vegetation, or the overhang of tree branches made it difficult to adequately inspect the ROW by aerial patrols. PHMSA noted seven locations in four units where surface or overhead conditions did not allow for adequate aerial patrols. ETC Mid-Valley failed to provide records of ground patrols for these locations.

The following ROWs had overhanging trees and/or overgrown vegetation that prevented a clear inspection of the ROW from an aerial patrol:

- 1) ROW at BV 55 southwest of Dixie, LA (Unit ID 9754, TX (Longview))
- 2) ROW at MP 294 southwest of Minter City, MS, and MP 388 southeast of Holly Springs, MS (Unit ID 1922, MS, TN (Oxford))
- 3) ROW at BV 626 east of Morgantown, KY and in the Fox Crossing subdivision in Clarksville, TN (Unit ID 84893, TN, KY (Oxford))
- 4) BV 549 northwest of Palmyra, TN, and the ROW at BV 772 southeast of Patriot, IN (Unit ID 1932, KY)

Therefore, ETC Mid-Valley failed to inspect the surface conditions on or adjacent to each pipeline right-of-way using an appropriate method of inspection in accordance with § 195.412(a).

the then-available information (*i.e.*, a small release entirely onsite with no third-party impact). That MVPL knew that a small release onsite occurred is not “enough information to determine a reportable event has occurred.” *Id.* Analogous to the Southern Star Decision, the two MVPL events identified initially appeared to be situations involving an event which did not amount to a reportable incident (*i.e.*, transporting someone to the hospital for treatment which does not amount to inpatient hospitalization as compared to a liquids release of the volume and impact unlikely to cost \$50,000 to address) and, as such, an Operator “at the time of the event could not ascertain the extent [of the potentially triggering event]”. *Id.* As a result, the report was made within an hour of the appropriate trigger to immediate reporting and the finding of violation for the two events should be withdrawn.

MVPL Response

MVPL neither admits nor denies the allegation in the Warning Item described in Item 2 of the Notice related to appropriate method of inspection of the specific areas of the pipeline right-of-way identified by PHMSA in accordance with § 195.412(a) and related Company procedures. The Company has since either completed or has scheduled right-of-way maintenance at these locations to ensure that aerial patrols can continue to be accomplished effectively and will continue to maintain the entire MVPL right-of-way in a corresponding manner.

3. § 195.420 Valve maintenance.

(a) Each operator shall maintain each valve that is necessary for the safe operation of its pipeline systems in good working order at all times.

ETC Mid-Valley failed to maintain each valve that is necessary for the safe operation of its pipeline systems in good working order at all times in accordance with § 195.420(a). Specifically, PHMSA found two leaking valves and a remote operated valve (ROV) that did not respond to open or close signals from the control room.

During the inspection PHMSA observed a leaking valve downstream from MOV 4191 at the Toledo Terminal Station, identified as Valve #15 and a leaking discharge valve from pump unit #4 at the Lima Pump Station. The ROV, BV 400, experienced a communications failure during operation of the valve for the field inspection. The valve did not respond to open or close signals from the control room but could be manually operated.

Therefore, ETC Mid-Valley failed to maintain each valve that is necessary for the safe operation of its pipeline systems in good working order at all times in accordance with § 195.420(a).

Proposed Compliance Order

For Item 3 of the Notice pertaining to ETC Mid-Valley's failure to maintain each valve that is necessary for the safe operation of its pipeline systems in good working order at all times, ETC Mid-Valley must inspect all valves on the Mid-Valley Pipeline System and repair or replace any valves that are not in good working order, including testing communications with the control room for ROVs, and provide the associated inspection records and work orders to the Director, Southwest Region, PHMSA within **180** days of issuance of the Final Order.

MVPL Response

MVPL neither admits nor denies the allegation of Probable Violation described in Item 3 of the Notice related to compliance with § 195.420(a) for maintaining each valve necessary for the safe operation of its pipeline system. MVPL points out that the valves noted by PHMSA as leaking at Toledo Terminal and Lima Station are not mainline valves requiring inspection at intervals not exceeding 7.5 months, but at least twice each calendar year per the version of § 195.420(b) in place at the time of the PHMSA inspection. Rather these valves are on a preventative maintenance schedule and were inspected on July 29, 2021 and July 14, 2021 respectively prior to the 2022 PHMSA inspection. Both were left in good condition and working order. Copies of the Preventative Work Orders are included with this submission under Attachment A.

At the time of the PHMSA inspection neither valve was leaking or weeping to a degree that would constitute an immediate hazard to persons or property and each was routinely monitored during station inspections performed by company personnel until repairs were completed. Each valve was also operable during this time.

BV 400 is a mainline valve requiring inspection at intervals not exceeding 7.5 months, but at least twice each calendar year per the version of § 195.420(b) in place at the time of the PHMSA inspection. BV 400 was inspected on August 16, 2022 prior to the PHMSA inspection and was noted on the inspection report to be in good working order and was partially operated. The communication link with the remote-control center was also exercised during this inspection. The record documenting this inspection including SCADA records indicating the partial remote cycling of this valve are included with this submission also under Attachment A. MVPL notes that this valve is not located in a High Consequence Area (HCA) or in an area where the valve would be depended upon to protect a waterway and also that the valve was able to be operated manually while the communication issue existed.

MVPL promptly addressed the conditions associated with all of the valves PHMSA identified and supplied the agency with documentation of the completed remedial measures on February 20, 2023. Copies of these records are again included for PHMSA review also under Attachment A.

While MVPL is not contesting the PHMSA finding, the Company is requesting PHMSA modify the PCO associated with Item 3. As currently written, the Proposed Compliance Order would require MVPL to inspect all valves on the MVPL system and repair or replace any valves that are not in good working order, including testing communications with the control room for ROVs, and provide the associated inspection records and work orders to the Director, Southwest Region, PHMSA within 180 days of issuance of the Final Order.

This requirement is overly broad, unwarranted and unfounded given the fact that PHMSA performed an inspection of the entirety of the MVPL pipeline system from Texas to Michigan and did not identify a related systemic issues and did not provide any evidence in the Notice, the Pipeline Safety Violation Report or any other supporting documentation that MVPL had any valves outside of the three (3) identified at the Toledo Terminal, Lima Station and BV 400 respectively, where there existed any conditions that required remedial measures. For these reasons the PCO is requested to be modified as follows:

*For Item 3 of the Notice pertaining to ETC Mid-Valley's failure to maintain each valve that is necessary for the safe operation of its pipeline systems in good working order at all times, ETC Mid-Valley must inspect **the valves on the Mid-Valley Pipeline System identified by PHMSA at Toledo Terminal Station (valve #15), Lima Pump Station (Unit 4 discharge valve) and BV 400** and repair or replace any that are not in good working order, including testing communications with the control room for ROVs, and provide the associated inspection records and work orders to the Director, Southwest Region, PHMSA within 180 days of issuance of the Final Order.*

Provided these modifications to the PCO are made by PHMSA, MVPL believes that the documentation provided with this submission in Attachment A that details remediation of the identified conditions with the Toledo Terminal Station (valve #15), Lima Pump Station (Unit 4 discharge valve) and BV 400 constitute completion of the PCO and the Company requests this be noted when the Final Order in this matter is issued.

4. § 195.432 Inspection of in-service breakout tanks. (a)

....

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks according to API Std 653 (except section 6.4.3, Alternative Internal Inspection Interval) (incorporated by reference, see § 195.3). However, if structural conditions prevent access to the tank bottom, its integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3). The risk-based internal inspection procedures in API Std 653, section 6.4.3 cannot be used to determine the internal inspection interval.

ETC Mid-Valley failed to inspect the physical integrity of its in-service atmospheric breakout tanks in accordance with § 195.432(b) and failed to follow its manual of written procedures for conducting normal operations and maintenance activities in accordance with § 195.402(a). Specifically, ETC Mid-Valley failed to conduct monthly in-service visual inspections on several breakout tanks (BOTs) in the Hebron and Oxford areas.

Standard Operating Procedure HLT.05 Inspection of In-Service Breakout Tanks Procedure, dated 10/15/2021, Section 7.1 requires monthly in-service visual inspections on all above ground atmospheric and low-pressure breakout tanks (BOTs). PHMSA reviewed records for the Hebron and Oxford areas and found the following eleven instances of missed monthly inspections:

Hebron Area:

- BOT 1 – missed June 2021
- BOT 2 – missed August 2021
- BOT 87 – missed September 2021
- BOT 91 – missed July 2021
- BOT 113 – missed March 2021

Oxford Area:

- BOT 3 – missed July 2021 and October 2021
- BOT 7 – missed October 2021, January 2022, March 2022, and July 2022

Therefore, ETC Mid-Valley failed to inspect the physical integrity of its in-service atmospheric breakout tanks in accordance with § 195.432(b) and failed to follow its manual of written procedures for conducting normal operations and maintenance activities in accordance with § 195.402(a).

Proposed Civil Penalty

\$39,400 – Please see discussion of PCP calculations on page 12 of this submission.

MVPL Response

MVPL neither admits nor denies the allegation of Probable Violation described in Item 4 of the Notice related to compliance with § 195.432(b) and specifically the conducting of monthly in-service visual inspections of the seven (7) atmospheric breakout tanks PHMSA identified. MVPL has reviewed the monthly breakout tank inspection frequencies specified in the Company electronic maintenance management system and updated these frequencies to be required each calendar month instead of calendar days to ensure compliance with § 195.432(b) and API 653, section 6.3.1.2 which specifies that routine in-service inspections shall not exceed one month.

5. § 195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(a)

(i) After December 16, 2004, notify the Administrator or a state agency participating under 49 U.S.C. Chapter 601 if the operator significantly modifies the program after the administrator or state agency has verified that it complies with this section. Notifications to PHMSA may be submitted by electronic mail to InformationResourcesManager@dot.gov, or by mail to ATTN: Information Resources Manager DOT/PHMSA/OPS, East Building, 2nd Floor, E22-321, New Jersey Avenue SE., Washington, DC 20590.

ETC Mid-Valley failed to notify the Administrator after it made significant modifications to its Operator Qualification (OQ) Program in accordance with § 195.505(i) and its *Standard Operating Procedure HLA.18 Operator Qualification Plan*, dated 12/15/2021. Specifically, ETC Mid-Valley failed to timely notify PHMSA of three significant modifications to its OQ Program.

SOP HLA.18 Section 7.11 *Notification to PHMSA and State Agencies* states that significant changes, such as a change in the number of covered tasks identified by the operator and changes in span of control, will be reported to PHMSA.

PHMSA reviewed the *HLA.18 Operator Qualification Plan Revision Log*, dated 10/21/2021 which stated ETC Mid-Valley changed the number of covered tasks identified on May 4, 2018, but did not notify PHMSA until October 28, 2020, a delay of over two years. ETC Mid-Valley made additional changes to the number of covered tasks on March 24, 2021 and notified PHMSA on April 12, 2021. ETC Mid-Valley made changes to span of control for several covered tasks on August 11, 2021 and added additional covered tasks on October 21, 2021. ETC Mid-Valley has not notified PHMSA of the changes made in August and October 2021.

Therefore, ETC Mid-Valley failed to notify the Administrator after it made significant modifications to its OQ Program in accordance with § 195.505(i) and its procedures.

Proposed Civil Penalty

\$39,800 – Please see discussion of PCP calculations on page 12 of this submission.

Proposed Compliance Order

For Item 5 of the Notice pertaining to ETC Mid-Valley's failure to notify the Administrator after it made significant modifications to its Operator Qualification (OQ) Program, ETC Mid-Valley must notify the Administrator of the August and October 2021 significant modifications and provide a copy of the submitted notification to the Director, Southwest Region, PHMSA within **30** days of issuance of the Final Order.

MVPL Response

MVPL neither admits nor denies the allegation of Probable Violation described in Item 5 of the Notice related to notification of the PHMSA Administrator regarding significant modifications to its Operator Qualification (OQ) Program in accordance with § 195.505(i) and Company SOP HLA.18 Operator Qualification Plan.

Most recently, the Company notified the PHMSA Administrator of significant changes to its OQ Program on April 28, 2023. This notification encompassed the program changes identified by PHMSA in Item 5 of the Notice in addition to other significant changes made more recently to the program that were effective on March 15, 2023. A copy of this notification is included with this submission under Attachment B. MVPL requests that PHMSA review this most recent OQ Program submission and note that the PCO associated with Item 5 of the Notice is satisfied and complete when the Final Order in this matter is issued.

The Company will continue to submit timely notifications of significant OQ Program changes to the PHMSA Administrator in accordance with § 195.505(i) and the Company OQ Program. Assurance that these notifications are made will be accomplished by following the Company SOP revision process. This process involves a series of internal Company notifications regarding proposed changes to any SOP (including HLA.18 Operator Qualification Plan). The proposed changes are reviewed by internal subject matter experts and collaterally impacted groups (including regulatory compliance) for approval. If approved the document moves through the management of change process to publication. Significant changes to the Operator Qualification Plan will be noted by regulatory compliance via this process and if deemed necessary a notification to the PHMSA Administrator will be made.

6. § 195.581 Which pipelines must I protect against atmospheric corrosion and what coating material may I use?

(a) You must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

ETC Mid-Valley failed to protect aboveground pipe from atmospheric corrosion by cleaning and coating each pipeline or portion of pipeline that is exposed to the atmosphere in accordance with § 195.581(a). Specifically, PHMSA observed three locations where coating material had deteriorated and showed bare pipe at the soil-to-air interfaces. PHMSA observed bare pipe at the Toledo Terminal Station, the Denver Station, and at BV 220.

Therefore, ETC Mid-Valley failed to protect aboveground pipe from atmospheric corrosion by cleaning and coating each pipeline or portion of pipeline that is exposed to the atmosphere in accordance with § 195.581(a).

Proposed Compliance Order

For Item 6 of the Notice pertaining ETC Mid-Valley's failure to protect aboveground pipe from atmospheric corrosion by cleaning and coating each pipeline or portion of pipeline that is exposed to the atmosphere, ETC Mid-Valley must ensure all pipe on the Mid-Valley pipeline system that is exposed to the atmosphere is protected. ETC Mid-Valley must follow its procedure and remediate all areas with coating damage and provide inspection and remediation records, including before and after pictures, to the Director, Southwest Region, PHMSA within **180** days of issuance of the Final Order.

MVPL Response

MVPL disagrees with the PHMSA finding of Probable Violation of § 195.581(a) and the PCO associated with the same.

The atmospheric corrosion control inspections at the Toledo Terminal, Denver Station and BV 220 were conducted on dates indicated in the table below and prior to the 2022 PHMSA inspection:

Location	Prior Inspection Date	Case Condition Designation
Toledo Terminal	October 15, 2021	Case 1
Denver Station	September 7, 2021	Case 4
Block Valve (BV) 220	August 8, 2021	Case 2

Copies of these inspection reports are included with this submission in Attachment C. The most severe condition noted was a Case 4 at Denver Station. A copy of Company SOP HLD.44 “Atmospheric Corrosion Inspection” which provides a description of each Case, 1 up to 7, was provided to PHMSA during the course of the 2022 inspection. A condition meeting the description of Case 4 does not require remedial action.

MVPL does not argue that small areas of deteriorated coating showing bare pipe and/or coating damage were present during the PHMSA inspection at the Toledo Terminal, Denver Station and BV 220. Upon discovery, remedial actions were initiated by the Company and documentation of completion was provided to PHMSA on February 20, 2023 for the Toledo Station and BV 220 locations. The Company has recently completed remedial actions at Denver Station and has included documentation of such along with additional copies of the remedial records for Toledo and BV 220 with this submission also under Attachment C.

MVPL is contesting this PHMSA finding of Probable Violation based upon: 1) Had the conditions observed by PHMSA during the inspection been present during the prior atmospheric corrosion inspections detailed above and been rated a Case 5, 6 or 7 requiring remediation per SOP HLD.44, the timing of such remediation would have been subject to Company SOP HLD.40 “Corrosion Control Remedial Action”, Section 4.0 Frequency. A copy of SOP HLD.40 is included with this submission also under Attachment C. Section 4.0 specifies that atmospheric corrosion protection be restored within three calendar years following discovery, not to exceed 39 months from the date the deficiencies are discovered; 2) Upon discovery, remedial actions were initiated and completed within the timeframe provided in SOP HLD.40; and 3) The fact that PHMSA observed these conditions approximately one (1) year following the routine atmospheric corrosion inspections conducted by MVPL per § 195.583(a) discussed above, does not then allow PHMSA to use these observations to support a Probable Violation of § 195.581(a) and remove the opportunity for MVPL to document and remediate such conditions within the timeframe allowed by its own SOP. An SOP which for the record, has been reviewed on multiple occasions by PHMSA and found to be sufficient and compliant with applicable regulations.

For the reasons discussed above and information provided in the supporting attachments, the Company requests that PHMSA withdraw the Probable Violation of § 195.581(a) and the PCO associated with the same. However, should PHMSA choose to ignore the facts presented above that demonstrate that MVPL was in compliance with § 195.581(a) at the time of the inspection and uphold the Probable Violation, the Company requests that the PCO be modified.

As currently written, the PCO would require MVPL to remediate all areas with coating damage and provide inspection and remediation records, including before and after pictures, to the Director, Southwest Region, PHMSA within **180** days of issuance of the Final Order.

This requirement is overly broad, unwarranted and unfounded given the fact that PHMSA performed an inspection of the entire of the MVPL pipeline system from Texas to Michigan and did not identify a related systemic issues and did not provide any evidence in the Notice, the Pipeline Safety Violation Report or any other supporting documentation that MVPL had any other areas outside of those at the Toledo Terminal, Denver Station and BV 220 where deteriorated coating showing bare pipe and/or coating damage existed that required remediation. For these reasons the PCO is requested to be modified as follows:

*For Item 6 of the Notice pertaining ETC Mid-Valley's failure to protect aboveground pipe from atmospheric corrosion by cleaning and coating each pipeline or portion of pipeline that is exposed to the atmosphere, ETC Mid-Valley must ensure all pipe on the Mid-Valley pipeline system that is exposed to the atmosphere at the Toledo Terminal, Denver Station and BV 220 is protected. ETC Mid-Valley must follow its procedure and remediate all areas with coating damage at the Toledo Terminal, Denver Station and BV 220 and provide inspection and remediation records, including before and after pictures, to the Director, Southwest Region, PHMSA within **180** days of issuance of the Final Order.*

Provided these modifications to the PCO are made by PHMSA, MVPL believes that the documentation provided with this submission that details remediation of the identified conditions at the Toledo Terminal, Denver Station and BV 220 locations constitute completion of the PCO and the Company requests this be noted when the Final Order in this matter is issued.

7. § 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.

ETC Mid-Valley failed to inspect each pipeline or portion of its pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every 3 calendar years, but with intervals not exceeding 39 months for its onshore Mid-Valley Pipeline System in accordance with § 195.583(a).

PHMSA inspected records for the Delhi, LA location and found that ETC Mid-Valley failed to conduct atmospheric corrosion inspections at least once every three calendar years with intervals not to exceed 39 months. ETC Mid-Valley conducted atmospheric corrosion inspections from May 1 through June 2, 2015 but not again until December 9 through December 10, 2020.

Therefore, ETC Mid-Valley failed to inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every 3 calendar years, but with intervals not exceeding 39 months, in accordance with § 195.583(a).

MVPL Response

MVPL neither admits nor denies the allegation in the Warning Item described in Item 7 of the Notice related to inspection of certain areas of the pipeline system exposed to the atmosphere for evidence of atmospheric corrosion in accordance with § 195.583(a) and related Company procedures.

The atmospheric corrosion control points identified by PHMSA were last inspected in 2020 and are currently in compliance with the frequency of inspection identified in § 195.583(a). Further, the Company has since included all atmospheric corrosion control points in its computerized maintenance management system. Inclusion in this system will ensure that the inspection frequencies required by § 195.583(a) and related Company procedures will be achieved.

Proposed Civil Penalty Amounts

Finally, with respect to the Proposed Civil Penalty amounts associated with Items 1, 4 and 5 of the Notice, all should be recalculated and reduced if issued in the Final Order, due to PHMSA erroneously utilizing a multiplier of ten (10) for the "History of Prior Offenses" component in the calculation embedded in the Proposed Civil Penalty Worksheet.

A multiplier of ten (10) indicates six (6) or more "findings" from Final Orders, Consent Orders, and Decisions five (5) years prior to the NOPV. In the Pipeline Safety Violation Report, Part C, "History of Prior Offenses" related to this Notice, PHMSA has arrived at six (6) or more "findings" by including two (2) Energy Transfer Company (OPID 32099) prior cases. It is simply incorrect for PHMSA to utilize these two (2) cases in this manner as they are associated with a separate operator from that of the MVPL system. MVPL has a unique PHMSA Operator Identification Number (12470) and only the "findings" from Final Orders, Consent Orders, and Decisions five (5) years prior to the NOPV directly attributed to MVPL should be utilized here. It is not deniable that MVPL is under the Energy Transfer umbrella of Companies, however this fact does not provide PHMSA with the liberty or justification to treat MVPL any differently than any other unique operating company with respect calculating the "History of Prior Offenses" and in turn the multiplier used for this component of the Proposed Civil Penalty Worksheet.

As such, the multiplier in the Proposed Civil Penalty Worksheet for "History of Prior Offenses" must be adjusted to five (5) by PHMSA which equates to 2-3 "findings" from Final Orders, Consent Orders, and Decisions five (5) years prior to the NOPV which are directly attributable to MVPL. All final Civil Penalty amounts issued must be recalculated accordingly by PHMSA.