

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

VIA ELECTRONIC MAIL

May 8, 2023

Greg McIlwain
Executive Vice President, Operations
Energy Transfer Company
1300 Main Street
Houston, Texas 77002

CPF 4-2023-034-NOPV

Dear Mr. McIlwain:

From June 6 through December 1, 2022, 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 Energy Transfer Company's Mid-Valley Pipeline Company (ETC Mid-Valley) in Michigan, Ohio, Kentucky, Tennessee, Mississippi, Louisiana, Arkansas, and Texas.

As a result of the inspection, it is alleged that ETC Mid-Valley 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 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).

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).

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).

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).

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.

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).

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).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$257,664 per violation per day the violation persists, up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022 and before January 6, 2023, the maximum penalty may not exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation 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 violation 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 violation 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 violation 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 violation 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 violations and recommend that you be preliminarily assessed a civil penalty of \$ 119,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$ 39,800
4	\$ 39,400
5	\$ 39,800

Warning Items

With respect to Items 2 and 7, 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 items. Failure to do so may result in additional enforcement action.

Proposed Compliance Order

With respect to Items 3, 5, and 6 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to ETC Mid-Valley Pipeline. 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 CFR § 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 4-2023-034-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

Cc: Todd Nardozi, Director, Regulatory Compliance, Energy Transfer Company,
todd.nardozi@energytransfer.com

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Energy Transfer Company (ETC) Mid-Valley Pipeline Company, a Compliance Order incorporating the following remedial requirements to ensure the compliance of ETC Mid-Valley Pipeline Company (ETC Mid-Valley) with the pipeline safety regulations:

- A. 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.
- B. 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.
- C. 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.
- D. It is requested (not mandated) that Energy Transfer Company, Mid-Valley Pipeline Company 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 preparation/revision of plans, procedures, studies, and analyses, and 2) total cost associated with replacements, additions, and other changes to pipeline infrastructure.