

Akin Gump Strauss Hauer & Feld LLP
Robert S. Strauss Tower
2001 K Street, N.W.
Washington, DC 20006

T +1 202.887.4000
F +1 202.887.4288
akingump.com

Akin

Emily P. Mallen
+1 202.887.4019/fax: +1 202.887.4288
emallen@akingump.com

August 12, 2024

VIA E-MAIL AND OVERNIGHT EXPRESS MAIL

Alan Mayberry
Associate Administrator for Pipeline Safety
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety
Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Request for Hearing in the Matter of Crescent Midstream, LLC
CPF No. 4-2024-016-CAO

Associate Administrator Mayberry:

Crescent Midstream, LLC (“Crescent” or “Respondent”) is in receipt of a Corrective Action Order (“CAO”) issued by the U.S. Pipeline and Hazardous Materials Safety Administration (“PHMSA”) Office of Pipeline Safety (“OPS”) on August 2, 2024 in the above-referenced docket, related to a July 27, 2024 release of crude oil at Crescent’s Raceland Station in Raceland, Louisiana (“Accident”). Enclosed is a Request for Hearing and Statement of Issues.

Crescent continues to be committed to working cooperatively with PHMSA informally to develop the record necessary to implement a safe and reliable return to service of the Isolated Facility identified in the CAO. Consequently, Crescent is filing this Request for Hearing to preserve its procedural rights to contest the CAO in the event PHMSA and Crescent cannot reach a resolution through informal discussion. To permit the parties time to reach consensus, we respectfully request that PHMSA schedule the hearing 60 days hence with the understanding that Crescent expects to withdraw its request for hearing if the parties can reach satisfactory resolution of the matters in the interim.

Alan Mayberry
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
August 12, 2024
Page 2

In the event that the hearing becomes necessary, Crescent will submit to the Presiding Officer additional pre-hearing materials at least 10 days prior to the date of the hearing pursuant to 49 C.F.R. § 190.211(d).

Sincerely,



Emily P. Mallen
Counsel to Crescent Midstream, LLC

cc (with Enclosures):

Ms. Linda Daugherty, Deputy Associate Administrator, OPS
Mr. Bryan Lethcoe, Director, Southwest Region, OPS
Mr. Jeremiah Ashcroft III, Chief Executive Officer, Crescent Midstream, LLC
Mr. Eric Lyons, Vice President of Engineering and Operations, Crescent Midstream, LLC
Mr. Daniel Pelas, Safety and Compliance Supervisor, Crescent Midstream, LLC

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

_____	)	
In the Matter of	)	
	)	CPF No. 4-2024-016-CAO
Crescent Midstream, LLC	)	
	)	REQUEST FOR HEARING AND
Respondent	)	REQUEST FOR CASE FILE
_____	)	

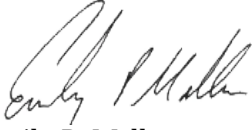
Crescent Midstream, LLC (“Crescent”), pursuant to 49 C.F.R. §§ 190.211 and 190.233 respectfully requests a hearing on the Corrective Action Order (“CAO”) referenced in the caption above. The CAO was issued by the Associate Administrator for the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) on August 2, 2024, and was received by Crescent on the same day. Pursuant to 49 C.F.R. § 190.233(c)(2), this request is timely.

As required by 49 C.F.R. §190.211(b), this Request for Hearing is accompanied by a Statement of Issues that Crescent intends to raise at the hearing. As required by 49 C.F.R. §190.211(b), this document serves as notice that Crescent will be represented by Emily Mallen of Akin Gump Strauss Hauer and Feld, LLP who serves as outside counsel to Crescent.

Crescent shares PHMSA’s goal of ensuring public safety. It continues to be committed to working cooperatively with PHMSA on an informal basis to achieve the goals of the Restart Plan set forth in the CAO. Crescent is confident that it can bring back into service the Isolated Facility and Affected Segment on its Bonfish system, as described in the CAO, following a crude oil release that resulted in their being shut-in beginning on July 27, 2024. Crescent is committed to this informal process as the most practical and efficient means of restarting the facilities in a manner consistent with PHMSA’s statutory pipeline safety mandate. Nevertheless, Crescent is compelled to preserve its due process rights to be afforded an opportunity for a hearing to resolve the allegations set forth in the CAO, and in order to correct the record. To permit the parties time to reach consensus, however, Crescent respectfully requests PHMSA schedule the hearing 60 days hence to provide an opportunity to resolve this matter informally. Crescent reserves its rights to withdraw its request for hearing if the parties can reach satisfactory resolution of these matters in the interim. If a hearing is ultimately required, Crescent intends to submit materials in advance of the hearing in accordance with 49 C.F.R. § 190.211(d) and intends to present testimony at the hearing.

Pursuant to 49 C.F.R. §190.233(c)(3), Crescent requests a copy of all materials in the case file associated with or relied upon in the CAO or in PHMSA's decision to issue the CAO.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily P. Mallen". The signature is fluid and cursive, with the first name "Emily" and last name "Mallen" clearly distinguishable.

Emily P. Mallen
Akin Gump Strauss Hauer and Feld, LLP
Counsel to Crescent Midstream, LLC

Dated: August 12, 2024

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

	)	
In the Matter of	)	
	)	CPF No. 4-2024-016-CAO
Crescent Midstream, LLC	)	
	)	REQUEST FOR HEARING AND
Respondent	)	REQUEST FOR CASE FILE
	)	

In connection with its Request for a Hearing and in accordance with the requirements of 49 C.F.R. § 190.211(b), Crescent Midstream, LLC (“Crescent” or “Respondent”) hereby provides the Statement of Issues that it intends to raise at the requested hearing.

Crescent intends to raise the following issues at the Hearing:

- 1) Whether in issuance of the CAO the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) exceeded its jurisdiction.
- 2) The CAO contains numerous factual errors, unsubstantiated statements, and misleading statements that undermine the findings, determinations, and requirements in the CAO.
- 3) Whether the determination of necessity for the CAO is supported by the evidence or the current status of the Isolated Facility.¹ Specifically, whether:
 - a. PHMSA failed to properly consider the characteristics of Respondent’s pipe and other equipment used in the Isolated Facility and Affected Segment, including the age, manufacture, physical properties, and method of manufacturing, constructing, or assembling the equipment as set forth in 49 U.S.C. § 60112(b)(1).
 - b. PHMSA failed to properly consider the nature of the crude oil the Isolated Facility and Affected Segment transports, the sequence in which the crude oil is transported, and the pressure required for transporting the crude oil as set forth in 49 U.S.C. § 60112(b)(2).
 - c. PHMSA considered factors otherwise factually and legally inappropriate for purposes of issuance of the CAO as set forth in 49 U.S.C. § 60112(b)(7).
- 4) Whether the Associate Administrator exceeded his authority under 49 U.S.C. § 60112(e) and 49 C.F.R. § 190.233(b) by improperly determining that the failure to issue the CAO

¹ For purposes of this request for hearing, Crescent adopts the defined terms set forth in the CAO if not otherwise defined herein.

expeditiously would result in the likelihood of serious harm to life, property, or the environment.

- 5) Whether the Restart Plan makes demands of Respondent that exceed PHMSA's statutory and regulatory authorities under 49 U.S.C. §§ 60101 *et seq.* and 49 C.F.R. Part 195.
- 6) Whether the CAO constitutes an unlawful agency action in violation of the Administrative Procedures Act, 5 U.S.C. § 706.

The preceding issues apply to the CAO as a whole, including each of the corrective action items. Crescent reserves its rights to raise at the Hearing additional issues that may arise before the hearing date, and to challenge the validity of the CAO.

For all the reasons identified above in this Statement of Issues, Crescent's Request for Hearing, and Crescent's response to PHMSA to date on this matter, and Crescent's willingness to meet with PHMSA to discuss these issues further, Crescent respectfully requests that PHMSA agree to schedule the Hearing 60 days hence. In the interim, Crescent reserves its right to withdraw its Request for Hearing as to the aforementioned issues if the parties are able to reach a total or partial resolution on an informal basis.

Sincerely,



Emily P. Mallen
Akin Gump Strauss Hauer and Feld, LLP
Counsel to Crescent Midstream, LLC

Dated: August 12, 2024