PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
WASHINGTON, DC 20590

In the Matter of:	§	
Denbury Gulf Coast Pipelines, LLC,	§	CPF No. 4-2025-024-NOPV
Respondent	§	

MOTION TO DISMISS
DENBURY GULF COAST PIPELINES, LLC

Denbury Gulf Coast Pipelines, LLC ("Respondent Denbury") requests that the Pipeline and Hazardous Materials Safety Administration ("PHMSA") dismiss Respondent Denbury from this case on the following grounds. First, PHMSA's inspection was not an investigation of an accident, and therefore PHMSA fails to state a claim under 49 U.S.C. § 60118(e) and 49 C.F.R. § 190.203(e). Second, Respondent Denbury is not a necessary party to this action as all allegations are based upon actions of Republic Testing Laboratories, LLC ("Republic") and the PHMSA case file contains insufficient evidence to establish a probable violation against Respondent Denbury; therefore, PHMSA must dismiss Respondent Denbury. Accordingly, the alleged probable violation in this case must be withdrawn with respect to Respondent Denbury, and Respondent Denbury must be dismissed from this case.

BACKGROUND

Respondent Denbury owns and operates the 24-inch Delhi pipeline, a segment of which was replaced by a Horizontal Directional Drilling ("HDD") project. PHMSA inspected the HDD project in six phases. The inspection at issue relates to one phase of the welding procedure qualifications and welder qualifications which occurred at the Republic welding facility located

in La Porte, Texas, on September 6, 7, 8, and 11, 2023. Nearly 500 days later and on the last business day of the Biden Administration, PHMSA issued to Republic and Respondent Denbury a Notice of Probable Violation and Proposed Civil Penalty (collectively, the "NOPV") on January 17, 2025.

In the NOPV, PHMSA alleges against both Republic and Respondent Denbury, without distinction between the two parties, one probable violation of the pipeline safety enforcement and regulatory procedures promulgated at 49 C.F.R. Part 190, and proposes to assess civil penalties against Republic and Respondent Denbury, without distinction, in connection with the alleged violation. PHMSA supports its single probable violation with reference to six separate actions which it alleges were performed by both Republic and Respondent Denbury, without distinction.[1] Then, PHMSA's Pipeline Safety Violation Report ("PSVR") refers to three additional actions, for a total of nine actions, that PHMSA alleges were performed by both Republic and Respondent Denbury, without distinction.[2] PHMSA uses the nine actions as the "[n]umber of instances of violation" to bolster the total amount of the proposed civil penalty of $2,366,900, which is presented in the agency's Proposed Civil Penalty Worksheet.

ARGUMENT

Section 1. PHMSA's Inspection was Not the Investigation of an Accident; Therefore, PHMSA Fails to State a Claim under 49 U.S.C. § 60118(e) and 49 C.F.R. § 190.203(e)

PHMSA fails to state a claim under 49 U.S.C. § 60118(e) and 49 C.F.R. § 190.203(e), in that PHMSA fails to allege that Respondent Denbury ***obstructed its investigation of an accident*** as required by the statue and regulation. First, the NOPV arises out of alleged conduct during an inspection conducted at the Republic facility, not an investigation, clearly failing to meet plain

[1] NOPV at 3-5.
[2] PSVR at 7-9.

language of the statute and regulation. Second, even assuming, arguendo, that the terms "inspection" and "investigation" could be used interchangeably, PHMSA's activities were unrelated to an accident or incident, which likewise fails to meet the plain language of the statue and regulation. Therefore, Respondent Denbury must be dismissed from this enforcement case, and the NOPV must be withdrawn as against Respondent Denbury.

PHMSA brings this case under the Pipeline Safety Act ("PSA") and 49 C.F.R. § 190.203(e). The PSA, 49 U.S.C. § 60118(e), requires that the operator of a pipeline facility "afford all reasonable assistance in the *investigation of [an] accident* or incident" involving a pipeline facility," and further that a civil penalty may be imposed against a "person who obstructs" such an *investigation*.[3] Congress provided to PHMSA a definition for the word "obstructs": "actions that were known, or reasonably should have been known, to prevent, hinder, or impede an *investigation* without good cause."[4, 5]

In promulgating a regulation to address obstruction, PHMSA adopted a similar definition. 49 C.F.R. § 190.203(e) states that any "person" who takes "actions that were known or reasonably should have been known to prevent, hinder, or impede an *investigation* without good cause will be subject to administrative civil penalties" (emphasis added). Although 49 C.F.R. § 190.203(e) mentions "inspection" in other parts of the regulation, the enabling act limits PHMSA's assessment of civil penalties to actions brought for obstruction of only an investigation

[3] 49 U.S.C. § 60118(e)(2)(A) (emphasis added). The word "accident" is used in 49 C.F.R. Part 195 to describe the release of hazardous liquid or carbon dioxide resulting in certain consequences (*see* 49 C.F.R. § 195.50), while the word "incident" is defined in 49 C.F.R. Part 191 as the release of gas resulting in certain consequences (*see* 49 C.F.R. § 191.3).
[4] 49 U.S.C. § 60118(e)(2)(B)(i) (emphasis added).
[5] Although the word "inspections" is used in 49 U.S.C. § 60118(e)(2)(A), it is not included in the underlying obligation set forth in § 60118(e)(1), which importantly directs that an operator must make records available and must afford all reasonable assistance "in the investigation of the accident or incident," and does not direct the same for an inspection. *See also* 49 C.F.R. § 190.203(e).

of an accident or incident, and the operative language in the regulation is similarly limiting.[6, 7] To impose $2,366,900 in civil penalties against Respondent Denbury is directly contrary to the DOT's enforcement policy and required procedures, which were published by U.S. Department of Transportation Acting General Counsel, Gregory D. Cote, on March 11, 2025, notably, "The authority to prosecute the asserted violation and the authority to impose monetary penalties, if sought, must be clear in the text of the statute."[8] The text of the statute is clear; it only permits PHSMA to assess civil penalties for obstruction of an investigation of an accident or incident.

Likewise, the regulation is limited specifically to the inspection or investigation of an accident or incident.[9] The regulation does not authorize PHSMA to bring an obstruction claim or to assess civil penalties for obstruction related to any inspection; instead, the inspection must be related to an accident or incident. Notably, the explanation provided by PHMSA in its own rulemaking reveals that PHMSA intended to limit the scope of obstruction to the investigation of an accident, as directed by Congress:

> In the [notice of proposed rulemaking], PHMSA proposed to amend § 190.203(e) to implement section 2 of the 2011 Act, which requires operators to afford all reasonable assistance in the *investigation of an accident or incident* and to make available all records and information that pertain to the accident or incident. The proposed amendment further provides that any person obstructing such an *investigation* can be subject to civil penalties under § 190.223.[10]

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[6] *See* 49 U.S.C. § 60118(e)(1); *see also* 49 C.F.R. § 190.203(e).
[7] When Congress grants authority to an agency to regulate certain activities, that agency must regulate within the bounds of the authority granted by Congress, and an agency cannot extend the scope of its authority by promulgating regulations that exceed the scope of authority granted to the agency by Congress. *Exxon Corp. v. U.S. Sec. of Transportation*, 978 F.Supp. 946, 949 (E.D. Wash 1997).
[8] Memorandum from the U.S. Department of Transportation Acting General Counsel, Gregory D. Cote, on Procedural Requirements for DOT Enforcement Actions at 4 (March 11, 2025) (the "Cote Memo").
[9] 49 C.F.R. § 190.203(e).
[10] Final Rule, 78 Fed. Reg. 58897, 58899 (Sept. 25, 2013); *see also* Notice of Proposed Rulemaking, 77 Fed. Reg. 48112, 48114 (Aug. 13, 2012), proposing an amendment to 49 C.F.R. § 190.203(e), which relates only to "the investigation of an accident or incident".

PHMSA's intent was clearly to restrict obstruction to the investigation of an accident or incident and, here, there should be no dispute that this action involves an inspection unrelated to an active investigation of an accident or incident

Turning to the events that led to this enforcement action, PHMSA performed an inspection at Republic's welding facility to observe and inspect welding procedure qualification and welder qualification in advance of the HDD project. The subject inspection was not an investigation of an accident involving a pipeline facility.[11] In an apparent effort to recharacterize the subject inspection, PHMSA describes in the PSVR an accident that occurred on February 22, 2020, near Satartia, Mississippi.[12] PHMSA's investigation of that accident resulted in an enforcement case, CPF 4-2022-017-NOPV, which case was resolved by a Consent Agreement between PHMSA and Respondent Denbury on March 24, 2023 and the payment of civil penalties by Respondent Denbury in the amount of $2,868,100.[13] As such, the subject inspection cannot be associated with the 2020 accident; rather, the welding procedure and welders were being qualified for a project to replace a segment of the Delhi Pipeline using an HDD. By its own admission, PHMSA was performing "an inspection of this horizontal directional drilling (HDD) construction project."[14]

Assuming that PHMSA could establish that the subject inspection was related to an accident or incident, which it cannot, PHMSA fails to establish that the activities in the subject inspection relate to an *investigation*. In order words, PHMSA does not allege that Respondent Denbury took any actions that were known or reasonably should have been known to prevent,

[11] *See* PSVR at 21-22.
[12] *Id*.
[13] https://primis.phmsa.dot.gov/enforcement-documents/42022017NOPV/42022017NOPV_Consent%20Agreement%20and%20Order_03242023_(20-176125).pdf
[14] PSVR at 22.

hinder, or impede an *investigation*, as required by 49 U.S.C. § 60118(e) and 49 C.F.R. § 190.203(e). Instead, in the NOPV and PSVR, PHMSA attempts to use the words "inspection" and "investigation" interchangeably; but they are not the same. The PSA very specifically provides that 49 U.S.C. § 60118(e) applies to the *investigation of an accident* involving a pipeline facility.[15, 16]

PHMSA itself makes the distinction between "inspections" and "investigations" in its guidance materials. For example, PHMSA's Pipeline Safety Enforcement Procedures list several options that PHMSA may utilize to "assure compliance," and separately lists "field inspections" and "incident investigations" because they are not the same.[17] Again in Section 3 of the Pipeline Safety Enforcement Procedures, PHMSA states that probable violations are typically identified "while conducting inspections," but that probable violations may also be identified during "[i]ncident/accident investigations."[18] An inspection and an investigation are not the same and PHMSA cannot use the terms interchangeably only when it suits the agency's enforcement agenda.

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[15] 49 U.S.C. § 60118(e)(1).

[16] 49 C.F.R. § 195.50 states that an accident includes: a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:

(a) Explosion or fire not intentionally set by the operator.
(b) Release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide . . .
(c) Death of any person;
(d) Personal injury necessitating hospitalization;
(e) 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.

see also 49 C.F.R. § 191.3, which defines an "incident" as "(1) An event that involves a release of gas from a pipeline … that results in one or more of the following consequences: (i) A death, or personal injury necessitating in-patient hospitalization; (2) Estimated property damage of $122,000 or more … (iii) Unintentional estimated gas loss of three million cubic feet or more. * * * (3) An event that is significant in the judgment of the operator, even though it did not meet the criteria of paragraph (1) or (2) of this definition."

[17] Pipeline Safety Enforcement Procedures, Section 1 at 1 (Sept. 18, 2019); https://www.phmsa.dot.gov/pipeline/enforcement/section-1-introduction

[18] *Id*., Section 3 at 2; https://www.phmsa.dot.gov/pipeline/enforcement/section-3-selection-administrative-enforcement-actions.

In this case, Denbury was not required to notify PHMSA of its project because the estimated cost was below the notification threshold of $10 million or more for any planned replacement of line pipe.[19] Nonetheless, Denbury, as a prudent operator, provided a courtesy notification that it would be qualifying its welding procedure, and qualifying its welders, for its upcoming HDD project. Further, PHMSA's own NOPV states that PHMSA was conducting an inspection[20] and PHMSA cannot now claim that it was investigating an accident in an attempt to take advantage of the obstruction statute.

PHMSA's allegation under 49 U.S.C. § 60118(e) and 49 C.F.R. § 190.203(e) is baseless; thus, Respondent Denbury must be dismissed from this enforcement action, and the NOPV must be withdrawn as against Respondent Denbury.

Section 2. Respondent Denbury is Not a Necessary Party; Therefore, PHMSA Must Dismiss Respondent Denbury Because PHMSA Fails to Produce Sufficient Evidence to Establish a Probable Violation Against Respondent Denbury

Each allegation made by PHSMA to support its probable violation is based upon actions taken by Republic, and not Respondent Denbury. Considering that the PSA and the pipeline safety regulations allow an enforcement action against Republic alone, without the need to include Respondent Denbury as a party, PHMSA must dismiss Respondent Denbury because the NOPV and case file fail to produce sufficient evidence to establish a probable violation against Respondent Denbury.

a. Respondent Denbury is Not a Necessary Party

Respondent Denbury has reason to believe that PHMSA included Respondent Denbury as a respondent in this enforcement case because it believes Respondent Denbury is a necessary

[19] 49 C.F.R. § 195.64(c)(1)(i).
[20] NOPV at 1, 3, 4, and 5.

party as the relevant pipeline operator. However, Respondent Denbury is not a necessary party to this enforcement action, and PHMSA may prosecute its enforcement action against Republic as the sole responsible party. Although the PSA limits application of the pipeline safety regulations to "owners or operators of pipeline facilities,"[21] PHMSA has alleged a violation of a procedural statute and a procedural regulation, not the pipeline *safety* regulations found at Parts 192, 193, 194, and 195.[22]

Principles of statutory construction require us to first look at the plain language of the statute to determine whether it is clear.[23] "[W]e assume that in drafting this legislation, Congress said what it meant."[24] When a statute is unambiguous, then the statute must be given its plain meaning. "Each word Congress uses is there for a reason… And it is our practice to 'give effect, if possible, to every clause and word of a statute.'"[25]

In this context, Congress made a clear distinction between an "operator" and a "person," and we must assume that Congress said what it meant. The obstruction statute, 49 U.S.C.§ 60118(e)(2)(A), authorizes PHMSA to impose a civil penalty "on a *person* who obstructs."[26] By statute, a "person" includes "companies" as well as "individuals".[27] Congress did not limit PHMSA's authority to impose a civil penalty for obstruction to only pipeline operators, and by

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[21] 49 U.S.C. § 60102(a)(2)(A).
[22] Although 49 C.F.R. § 195.10 states that a pipeline operator is not "relieved from the responsibility for compliance" with 49 C.F.R. Part 195 by making arrangements with another person, *i.e.* a contractor, for the performance of actions required by 49 C.F.R. Part 195, this NOPV does not allege a violation of 49 C.F.R. Part 195, but instead alleges a violation of 49 U.S.C. § 60118(e) and 49 C.F.R. § 190.203. Thus, 49 C.F.R. § 195.10 does not apply here. As set forth in detail in Section 2 above, 49 C.F.R. § 190.203 authorizes PHMSA to bring an action against a "person" for obstruction, while 49 C.F.R. Part 195 is directed at a pipeline "operator."
[23] *Lewis v. U.S.*, 445 U.S. 55, 60 (1980).
[24] *U.S. v. LaBonte*, 520 U.S. 751 (1997).
[25] *U.S. v. Hopson*, 150 F.4th 1290, 1305 (10th Cir. 2025) (citation modified), quoting *Esteras v. U.S.*, 606 U.S. ----, 145 S.Ct. 2031, 2041 (2025) ("Congress's drafting decisions have significance.").
[26] 49 U.S.C. § 60118(e)(2)(A) (emphasis added).
[27] 1 U.S.C. § 1.

choosing the word "person," Congress authorized PHMSA to impose civil penalties against companies or individuals who are not pipeline operators.

PHMSA makes a similar distinction in its regulations, defining both "operator" and "person" separately:

- "Operator means any owner or operator."[28]
- "Person means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof."[29]

Importantly, the words "operator" and "person" both are used in both 49 U.S.C. § 60118(e) and 49 C.F.R. § 190.203(e), but for different purposes:

- An *operator* must make records available for investigation of an accident or incident.[30]
- An *operator* must provide reasonable assistance during an investigation.[31]
- Compare, however, that any *person* who obstructs an inspection or investigation is subject to civil penalties.[32]

Congress predicted, as here, that a given individual could obstruct an investigation just as could an operator. Compare, also, to enforcement proceedings which PHMSA has authority to bring pursuant to Part 190:

- A Warning may only be brought against an *operator*.[33]
- A Notice of Amendment may only be brought against an *operator*.[34]
- However, a Notice of Probable Violation may be brought against a *person*.[35]

[28] 49 C.F.R. § 190.3.
[29] *Id*.
[30] 49 U.S.C. § 60118(e)(1)(A); 49 C.F.R. § 190.203(e).
[31] 49 U.S.C. § 60118(e)(1)(B); 49 C.F.R. § 190.203(e).
[32] 49 U.S.C. § 60118(e)(2)(A); 49 C.F.R. § 190.203(e).
[33] 49 C.F.R. § 190.205.
[34] 49 C.F.R. § 190.206.
[35] 49 C.F.R. § 190.207.

- Finally, civil penalties may be assessed against any *person*.[36]

Clearly, PHMSA may both (1) subject any *person*, even a person who is not a pipeline operator, to civil penalties for obstructing an investigation, and also (2) bring an NOPV and assess civil penalties against a *person*, even a person who is not an operator. Based upon the statutory and regulatory language, PHMSA may proceed against Republic, even though Republic is not pipeline operator. Respondent Denbury is not a necessary party to this action and must be dismissed on the grounds that, as more fully set forth below, PHMSA fails to produce sufficient evidence to establish even a probable violation against Respondent Denbury.

b. PHMSA Fails to Produce Sufficient Evidence to Establish a Probable Violation Against Respondent Denbury

PHMSA's case file does not contain evidence sufficient to establish any alleged probable violation by Respondent Denbury pursuant to 49 U.S.C. § 60118(e) or 49 C.F.R. § 190.203, and therefore the alleged probable violation must be dismissed as against Respondent Denbury. Not only does the PSA require that PHMSA's case file "include all agency records pertinent to the matters of fact and law asserted,"[37] the recently issued Cote Memo directs the DOT, consistent with Administration policy, that "If the evidence is not sufficient to support the proposed enforcement action, … [t]he reviewing attorney or agency component may also recommend the closure of the case for lack of sufficient evidence."[38] Such is the case here; this NOPV must be dismissed.

Here, PHMSA produced its case file to Respondent Denbury on January 27, 2025. Then, in response to Respondent Denbury's request for production of documents, PHMSA produced

[36] 49 U.S.C. § 60122; 49 C.F.R. § 190.223.
[37] 49 U.S.C. § 60117(b)(1)(C).
[38] Cote Memo at 5.

additional documents on June 24, 2025, and, in PHMSA's words, the agency produced its "second and final response" on October 8, 2025.[39] If PHMSA has produced all pertinent agency records, as required by statute, then PHMSA does not produce evidence sufficient to establish any allegation against Respondent Denbury because the evidence that PHMSA has produced, taken as true and uncontested, could not meet the agency's burden of proof as against Respondent Denbury.

PHMSA bears the burden of proving the allegations it sets forth in an NOPV.[40] In the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020, Congress directed that the Secretary, when implementing enforcement procedures, "require that the agency have the burden of proof, presentation, and persuasion in any enforcement matter."[41] PHMSA must prove its case by a preponderance of the evidence.[42] It follows that, where PHMSA could not meet its burden of proof, the enforcement case must be dismissed.

Although PHMSA brought one alleged violation against Respondent Denbury, the NOPV points to six separate actions to support the violation. In addition, PHMSA inflates the proposed civil penalty to a total amount of $2,366,900 by pointing to nine actions listed in the PSVR.[43] Each of the nine factual allegations is addressed below.

1. "First, Denbury and Republic physically blocked the PHMSA inspector from interviewing a Republic welder that completed a branch weld for a branch weld procedure qualification."[44]

[39] *But see* Letter from Keith Coyle, Chief Counsel, PHMSA, to Jerry Cox, Counsel for Republic (Oct. 27, 2025) producing additional videos in response to Mr. Cox's request.
[40] *In re Butte Pipeline Co.*, Final Order, SPF No. 5-2007-5008, 2009 WL 3190794, at * 1 (Aug. 17, 2009).
[41] Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020, Pub. L. 116-260, 134 Stat. 1182 (Dec. 27, 2020); codified at PSA, 49 U.S.C. § 60117(b)(1)(F).
[42] *In re Alyeska Pipeline Serv. Co.*, Decision on Petition for Reconsideration, CPF No. 5-2005-5023, 2009 WL 5538655, at * 3 (Dec. 16, 2009) (citing *Butte Pipeline Co.*, 2009 WL 3190794 at *1, n.3; *Schaffer v. Weast*, 546 U.S. 49, 56-58(2005)).
[43] PSVR at 7-9.
[44] NOPV at 3.

Although PHMSA's allegation is brought against Republic and Respondent Denbury, PHMSA's case file is void of any evidence that Respondent Denbury took any action to physically block a PHMSA inspector. Therefore, PHMSA has produced not a shred of evidence that would support an allegation against Respondent Denbury, and thus the agency could not meet its burden of proof. As a result, Respondent Denbury must be dismissed from this case, and the alleged probable violation must be withdrawn as against Respondent Denbury.

PHMSA's PSVR points to two items of purported evidence to support this allegation: (1) Statement of Jose Villarreal, and (2) Statement of Estevan Rivas.[45] Both Mr. Villarreal and Mr. Rivas state that Christian Von Qualen, an employee of Republic, "laid his hands" on Mr. Villarreal and questioned Mr. Villarreal about why he was interacting with the welder.[46] Uncontested is that Mr. Von Qualen was an employee of Republic. PHMSA produces not a shred of evidence in its PSVR, nor is any evidence contained elsewhere in PHMSA's case file, that would support the allegation that any employee of Respondent Denbury physically blocked a PHMSA inspector. Accordingly, this allegation cannot support an alleged violation against Respondent Denbury and, thus, Respondent Denbury must be dismissed from this case and the alleged violation must be withdrawn as against Respondent Denbury.

2. "Second, Denbury and Republic prevented PHMSA inspectors from being present during destructive testing of welder qualification weld specimens."[47]

PHMSA's second allegation is brought against Republic and Respondent Denbury, but PHMSA has supplied no evidence that Respondent Denbury prevented the PHMSA inspectors

[45] PSVR at 10.
[46] PSVR, Exhibit A1 at 9; PSVR, Exhibit A2 at 2.
[47] NOPV at 3.

from being present during destructive testing. Accordingly, this allegation must be dismissed as against Respondent Denbury.

PHMSA's case file contains two statements that offer the names of individuals involved in this alleged incident.

- Statement of Estevan Rivas: "PHMSA inspectors were told by Keith Bailey that destructive testing for those welder's [sic] specimens would be conducted the following day on September 8, 2023, since the facility was closed at 1700."[48]
- Statement of Jose Villarreal: "Bailey (Republic Testing) and Taylor (Denbury's 3rd party inspector) notified all welders and personnel that they had to vacate the facility by 5 PM before the gate closes or else be left locked inside."[49]

Uncontested is that Keith Bailey was an employee of Republic and Chris Taylor was an employee of Pipeline Safety, LLC.[50] The case file is void of evidence supporting the notion that any employee of Respondent Denbury took any action to prevent PHMSA from observing the destructive testing, or that Respondent Denbury was even aware that any destructive testing was to take place after the PHMSA inspectors had left the facility. The employees of Respondent Denbury left the facility at 5:00 p.m., the same time that the PHMSA inspectors left the facility.[51] As such, any destructive testing that occurred after 5:00 p.m. was performed by Republic. For that reason alone, this factual assertion, taken as true, could not support a violation by Respondent Denbury. As such, Respondent Denbury must be dismissed from this case, and the alleged violation must be withdrawn as against Respondent Denbury.

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[48] PSVR, Exhibit A2 at 3-4.
[49] PSVR, Exhibit A1 at 12.
[50] PSVR, Exhibit A1 at 11; Declaration of Chris Fields, attached hereto as Exhibit B. Although 49 C.F.R. § 195.10 states that a pipeline operator is not relieved from its responsibility for compliance with 49 C.F.R. Part 195 by making arrangements with another person, *i.e.* a contractor, for the performance of actions required by 49 C.F.R. Part 195, this NOPV does not allege a violation of 49 C.F.R. Part 195, but instead alleges a violation of 49 U.S.C. § 60118(e) and 49 C.F.R. § 190.203. Thus, 49 C.F.R. § 195.10 does not apply here. As set forth in detail in Section 2 above, 49 C.F.R. § 190.203 authorizes PHMSA to bring an action against a "person" for obstruction, while 49 C.F.R. Part 195 is directed at a pipeline "operator."
[51] Declaration of Chris Fields, attached hereto as Exhibit B.

"Third, Denbury and Republic prevented PHMSA inspectors from observing welding activities and the welding parameters produced by the data logger."[52]

PHMSA alleges that Republic and Respondent Denbury prevented the PHMSA inspectors from observing certain activities by placing an "opaque orange screen" between the PHMSA inspectors and the welding activities.[53] This allegation could not support an alleged violation against Respondent Denbury on the grounds that (1) the case file is void of any purported evidence that Respondent Denbury took any action to prevent the PHMSA inspectors from observing the welding activities or the welding parameters produced by the data logger, and (2) the placement of a welding screen was performed for good cause, for the safety of the PHMSA inspectors.

PHMSA refers to three items of purported evidence to support this allegation: (1) Statement of Jose Villarreal, (2) Statement of Estevan Rivas, and (3) Statement of Susan Mathew.[54] Mr. Villarreal and Ms. Mathew both indicate that the orange screen was put into place by Christian Von Qualen, an employee of Republic, and that Mr. Von Qualen told the PHMSA inspectors that they must stay behind the screen:

- Statement of Jose Villarreal: "a screen was put up to separate the welder and PHMSA Inspectors. * * * Von Qualen told PHMSA Inspectors that they cannot move past the screen until the welder has completed his welding pass…"[55]
- Statement of Estevan Rivas: "a screen was put in place as a barrier to prevent PHMSA inspectors' ability to inspect the welding activity."[56]
- Statement of Susan Mathew: "Von Qualen required us to stand behind a screen [ ]and that we cannot cross the screen while the welding was being performed."[57]

[52] NOPV at 4.
[53] *Id*.
[54] PSVR at 12.
[55] PSVR, Exhibit A1 at 16.
[56] PSVR, Exhibit A2 at 6.
[57] PSVR, Exhibit A4 at 3.

Again, uncontested is that Mr. Von Qualen was an employee of Republic. No evidence is found in PHMSA's PSVR, nor is any evidence contained elsewhere in PHMSA's case file, that would support the claim that any employee of Respondent Denbury either placed a screen between the welder and the PHMSA inspectors or told the PHMSA inspectors that they must stay behind the screen.

In addition, the welding screen was put in place for safety reasons, which is common in the industry in order to shield observers, such as the PHMSA inspectors, "from sparks, spatter, and harmful UV and infrared radiation created by the welding arc."[58] In fact, the Occupational Safety and Health Standards require that "[w]orkers or other persons adjacent to welding areas shall be protected from the [arc welding] rays by noncombustible or flameproof screens or shields or shall be required to wear appropriate goggles."[59] 49 U.S.C. § 60118(e)(2)(B) defines "obstructs" to include certain actions taken "without good cause." It goes on to define "good cause" to include "actions such as restricting access to facilities that are not secure or safe for nonpipeline personnel or visitors."[60]

Several factors support good cause for actions taken by Republic for the safety of the inspection. First, the PHMSA inspectors must be considered nonpipeline personnel, or visitors, because they are employees of the federal government and not employees of a pipeline operator or a pipeline contractor. Second, the PHMSA inspectors did not bring to Republic's facility proper personal protective equipment (PPE) for observation of welding activities, yet they desired to observe the welding activities up close and personal.[61] PHMSA produced a list of PPE

[58] Declaration of William Bruce at 1, attached hereto as Exhibit C.
[59] Occupational Safety and Health Standards, Subpart Q – Welding, Cutting and Brazing, 29 C.F.R. § 1910.252(b)(2)(iii).
[60] PSA, 49 U.S.C. § 60118(e)(2)(B)(ii).
[61] Procedural Records, PHMSA PPE Inventory List (produced March 6, 2025).

issued to each inspector; the PHMSA inspectors present were not issued welding goggles, a welding shield, or similar eye protection that would protect one from the dangers of observing welding activities.[62] Third, the PHMSA inspectors did not bring proper PPE, whether issued by PHMSA or not.[63] The placement of a welding screen between the PHMSA inspectors, who did not have proper eye protection, and the welding activities that produce spark, spatter, and harmful UV and infrared radiation, is the very definition of "good cause." The welding screen was put into place because observation of those certain welding activities were not safe for the PHMSA inspectors. Thus, Republic was justified by good cause for erecting the welding screen. Accordingly, Respondent Denbury must be dismissed from this case, and the alleged violation must be withdrawn as against Respondent Denbury.

3. "Fourth, Denbury and Republic interfered with PHMSA's examination of a test specimen."[64]

PHMSA alleges that Republic and Respondent Denbury interfered with PHMSA's examination, yet the case file is void of any evidence that Respondent Denbury interfered in any way. PHMSA relies upon four items of evidence to support this allegation: (1) Statement of Jose Villarreal, (2) Statement of Estevan Rivas, (3) Statement of Susan Mathew, and (4) Email from Susan Mathew to Respondent Denbury's Chad Docekal dated September 11, 2023.[65] However, not evident is how those statements and email relate in any way to the alleged interference with PHMSA's examination of a test specimen. Instead, the statements and email reveal that Mr. Scott Witkowski, an employee of Republic, offered to put the specimen under a microscope.[66] Mr. Witkowski appears to have offered to assist with PHMSA's examination of the test specimen, not

[62] Procedural Records, PHMSA PPE Inventory List (produced March 6, 2025).
[63] Declaration of Christopher Fields at 1, attached hereto as Exhibit B.
[64] NOPV at 4.
[65] PSVR at 13.
[66] PSVR, Exhibit A1 at 16; PSVR, Exhibit A2 at 6, and PSVR, Exhibit A4 at 5.

to have interfered with the examination and not to have prevented it from occurring. Moreover, wholly unclear is how Mr. Witkowski's statements about putting the specimen under a microscope actually interfered with PHMSA's examination.

- Statement of Jose Villarreal: "Witkowski … stated that he can put the specimen under the microscope…."[67]
- Statement of Estevan Rivas: "Witkowski also made a sarcastic statement about putting the specimen under a microscope to get a precise measurement."[68]
- Statement of Susan Mathew: "… Witkowski irritably reacted, stating, 'I can put it under the microscope….'"[69]
- Email dated September 11, 2023: "Just minutes ago, during review of the root bend test specimen, [Witkowski] made a comment about 'it does not take that long to take a measurement, I can put it under the microscope and give you measurements…'"[70]

Uncontested is that Mr. Witkowski is an employee of Republic. PHMSA does not point to any evidence in its PSVR, nor is any evidence found elsewhere in PHMSA's case file, that would support the claim that any employee of Respondent Denbury interfered with PHMSA's examination of a test specimen. The statements complained of all were made by Mr. Witkowski of Republic. PHMSA did not, and apparently cannot, identify any actions or statements made by employees of Respondent Denbury. For that reason alone, Respondent Denbury must be dismissed from this case, and the alleged violation must be withdrawn as against Respondent Denbury.

In addition to the foregoing, readily apparent is that this allegation was brought to introduce a statement that PHMSA characterizes, in an inflammatory manner, as a "sexist comment" made by Mr. Scott Witkowski.[71] Quite unclear is how PHMSA associates the "sexist comment" with interference with examination of a test specimen. More importantly to this

[67] PSVR, Exhibit A1 at 16.
[68] PSVR, Exhibit A2 at 6.
[69] PSVR, Exhibit A4 at 5.
[70] PSVR, Exhibit A7 at 1.
[71] NOPV at 4; PSVR at 12.

motion, however, is that the comment complained about was made by Mr. Witkowski, and Mr. Witkowski alone. PHMSA does not even suggest that any employee of Respondent Denbury made any such comment, sexist or otherwise. Accordingly, Respondent Denbury must be dismissed from this case, and the alleged violation must be withdrawn as against Respondent Denbury.

4. "Fifth, Denbury and Republic refused to provide PHMSA with requested data relevant to the inspection."[72]

PHMSA alleges that Republic and Respondent Denbury refused to provide PHMSA with data that was being recorded by a data logger, yet the allegation also states that there were "unreasonable delays" in providing the data. Refusing to provide data is not the same as a delay in providing the data. PHMSA needs to make up its mind. PHMSA cannot on one hand say that Respondent Denbury refused to provide the data and on the other hand say that there were delays in providing the data. For that reason alone, Respondent Denbury must be dismissed from this case, and the alleged violation must be withdrawn as against Respondent Denbury.

In addition, Respondent Denbury did in fact provide to PHMSA the data that was being recorded by the data logger. The following evidence supports the fact that PHMSA received the data, and PHMSA has not offered and could not offer any evidence to support its assertion that Respondent Denbury refused to provide the data:

- Statement of Susan Mathew: "… Von Qualen came forward and stated that they can retrieve the data."[73]
- Declaration of Chris Fields: "Denbury produced to PHMSA the data from the data logger three days after PHMSA requested the data."[74]

[72] NOPV at 4-5.
[73] PSVR, Exhibit A4 at 4.
[74] Declaration of Christopher Fields at 2, attached hereto as Exhibit B.

Even if production of the data from the data logger was delayed, (a) the data was provided to PHMSA in three days, well within the timeframe provided by regulation, and (b) such delay was reasonable under the circumstances. First, 49 C.F.R. § 190.203(c) provides that, if the Associate Administrator or Regional Director request information from an operator, then the operator "is required to provide specific information within 30 days from the time the notification is received by the operator." Certainly, that regulation demonstrates that PHMSA recognizes 30 days as a reasonable amount of time for an operator to gather and provide information. PHMSA cannot now claim that a three-day delay in gathering and providing the requested data is "unreasonable delay." Three days is quite reasonable in the context of the inspection, given that this inspection continued for several months after the data was requested.

Finally, if PHMSA is alleging that Mr. Scott Witkowski's statement, that the data from the data logger is not required by API 1104, constitutes refusal, then, without addressing the merits of that allegation, Respondent Denbury asserts that any such refusal was advanced by Mr. Witkowski, an employee of Republic, and not by any employee of Respondent Denbury. PHMSA's PSVR points to two inspector statements to support its allegation that Respondent Denbury refused to provide data: (1) Statement of Estevan Rivas, and (2) Statement of Susan Mathew.

- Statement of Estevan Rivas:
    - "I questioned Witkowski what was done to the data recorded on the data logger… and if PHMSA could review the raw data. [Witkowski] instantly shot the question down saying it was not required in API 1104..."[75]
    - "… PHMSA began to ask questions regarding the electronic data from the data logger, Witkowski again resisted . . . and stated it is not required by API 1104."[76]

[75] PSVR, Exhibit A2 at 3.
[76] PSVR, Exhibit A2 at 6.

- Statement of Susan Mathew: "When PHMSA inspector, Rivas requested electronic log from the datalogger, we were faced with resistance from Witkowski that 'its [sic] not required by API 1104.'"[77]

Respondent Denbury reserves any arguments regarding whether it is required to provide PHMSA with data that is not required by API 1104 and was not utilized by Respondent Denbury to qualify its welding procedure or its welders. Nevertheless, each statement offered as evidence by PHMSA indicates that the offending "resistance" or "refusal" came from Mr. Witkowski. PHMSA presents zero evidence that would support the notion that Respondent Denbury refused to provide PHMSA with data from the data logger. Respondent Denbury must be dismissed from this case, and the alleged violation must be withdrawn as against Respondent Denbury.

5. "Sixth, Denbury and Republic interrupted PHMSA's examination of a test reading on a piece of equipment."[78]

PHSMA alleges that Republic and Respondent Denbury prevented a PHMSA inspector from photographing a test reading on a Charpy machine, yet PHMSA offers no evidence that Respondent Denbury took any action to prevent the PHMSA inspector from taking the photograph. In addition, if the PHMSA inspector was prevented from taking the photograph, which Respondent Denbury specifically disputes, then such actions were taken by Republic with good cause, pursuant to 49 U.S.C. § 60118(e)(2)(B), in that access to the Charpy machine is restricted because it is not secure or safe for nonpipeline personnel or visitors.

PHMSA offers two inspector statements to support this allegation: (1) Statement of Jose Villarreal, and (2) Statement of Estevan Rivas. Neither statement presents any evidence that would support PHMSA's assertion that Respondent Denbury did anything to prevent the PHMSA inspector from taking the photograph:

[77] PSVR, Exhibit A4 at 4.
[78] NOPV at 5.

- Statement of Jose Villarreal: "As Rivas was attempting to photograph impact reading on the charpy machine, Witkowski screamed for Rivas to stay back from the machine citing safety reasons..."[79]
- Statement of Estevan Rivas: "During the charpy testing, I attempted to take a photograph of the impact value on the first charpy test, Witkowski instantly yelled out to Sanders from across the room to tell me to step away citing 'safety'…"[80]

The offending interaction was with Mr. Scott Witkowski, an employee of Republic, not with any personnel of Respondent Denbury. Accordingly, Respondent Denbury must be dismissed from this case, and the alleged violation must be withdrawn as against Respondent Denbury.

In addition, visitors to Republic's welding facility are restricted from accessing the area around the Charpy machine because it is unsafe to do so. 49 U.S.C. § 60118(e)(2)(B) defines "obstructs" to include certain actions taken "without good cause." It goes on to define "good cause" to include "actions such as restricting access to facilities that are not secure or safe for nonpipeline personnel or visitors."[81]

Mr. Witkowski cited safety when he expressed concern about the PHMSA inspector being close to the Charpy machine when attempting to take the photograph. It is necessary to enforce a safety zone around a Charpy machine for the safety of nonpipeline personnel and visitor, which is the very definition of "good cause." A Charpy machine has "a heavy pendulum that swings back and forth and could injure someone who is not experienced in operating a Charpy machine."[82]

Finally in regard to the Charpy photograph, PHMSA's case file makes clear that PHMSA's inspector Rivas obtained the photograph that he desired. On April 2, 2025, PHMSA

[79] PSVR, Exhibit A1 at 17.
[80] PSVR, Exhibit A2 at 7.
[81] PSA, 49 U.S.C. § 60118(e)(2)(B)(ii).
[82] Declaration of William Bruce at 1, attached hereto as Exhibit C.

produced to Respondent Denbury a photograph that shows the impact reading of the Charpy machine on the date in question, same in response to Republic's request for production of documents. Specifically, PHMSA represents that Figure 112 is a photograph of the "Charpy Impact Tester … September 11, 2023."[83] A copy of Figure 112 is attached hereto as Exhibit A. In addition, PHMSA produced two videos of Charpy testing.[84] The mystery here is why PHMSA complains about being interrupted so that Republic can address a safety concern, and then spins that interruption as obstruction. Obstruction cannot occur where the PHMSA inspector actually obtained the information requested. An interruption to address a safety concern simply cannot rise to the level of obstruction. As such, Respondent Denbury must be dismissed from this case and the alleged violation must be withdrawn as against Respondent Denbury.

PHMSA's Additional Allegations Contained in the PSVR, but not in the NOPV

In the context of the proposed civil penalty, PHMSA lodged three additional assertions against "Denbury and Republic" which are addressed in turn.

6. Respondent Denbury and Republic also "provided hostile and or evasive responses to PHMSA inspectors' questions."

7. Respondent Denbury and Republic also "repeatedly questioned PHMSA inspectors' qualifications, education, welding experience and knowledge, and inspection methods."

8. Respondent Denbury and Republic also "attempted to intimidate, harass, threaten, and act aggressively toward PHMSA inspectors during the inspection."[85]

In the NOPV, PHMSA brings one alleged violation against Republic and Respondent Denbury for alleged obstruction and attempts to support its single alleged violation by referring to six separate actions (all taken by Republic). Then, however, PHMSA included in the PSVR

[83] PHMSA's Second Response to Request for Case File and Documents dated April 2, 2025, Inspection Records at 78.
[84] PHMSA's production of documents to Jerry Cox, Counsel for Republic, on Oct. 27, 2025, which included the following titled videos: "Charpy Testing 1_09062023.MOV" and "Charpy Testing 2_09062023.MOV."
[85] PSVR at 9 (Part E1).

penalty section (Part E1) nine separate actions, which PHMSA then used in its civil penalty calculation worksheet as a multiplier to inflate the "number of instances of violation."[86] Ultimately, the effect of PHMSA using these three additional assertions is to attempt to increase the proposed civil penalty, despite not having pleaded these allegations in support of the alleged violation in the NOPV.

First and foremost, factual allegations 7, 8, and 9 must be ignored, in that PHMSA fails to plead and fails to state a claim for which relief can be granted. 49 C.F.R. § 190.207(b)(1) requires that a notice of probable violation include a "[s]tatement of the provisions of the laws, regulations or orders which the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based." Here, the NOPV does not contain any allegation which assertions 7, 8, and/or 9 would support. For that simple reason, PHMSA's assertions 7, 8, and 9 must be ignored and may not be considered as against Respondent Denbury. Specifically, assertions 7, 8, and 9 present no basis to allege obstruction against Respondent Denbury. Any conflict, personality or otherwise, between Mr. Scott Witkowski of Republic and PHMSA inspectors simply cannot support an alleged violation against Respondent Denbury.

In addition, the "evidence" contained in the PSVR assertions 7, 8, and 9, which PHMSA attempts to use to support its claim against Respondent Denbury, indicates clearly that the actions complained of were taken by employees of Republic, and not by employees of Respondent Denbury.

- Statement of Jose Villarreal:
    - "When these concerns were made to Denbury, Scott Witkoski [sic] the Vice President of Republic Testing Laboratory was skeptical and outraged at PHMSA's observation and stormed into the laboratory to inspect the test specimens himself. On the way to the laboratory, Witkowski slammed the

[86] PHMSA-Office of Pipeline Safety-Proposed Civil Penalty Worksheet, Company: Denbury Gulf Coast Pipelines, LLC; May 24, 2024

door on PHMSA inspector Rivas's face who was following right behind him … Witkowski was unapologetic and continued to doubt and question PHMSA Inspectors qualifications and knowledge of API 1104."[87]
    - "Republic Testing Staff were visibly angry and continued to verbally attack PHMSA Inspectors by attacking their qualifications and experience."[88]
    - "Witkowski attacked our inspection methods and displayed anger in his delivery to how we as inspectors should conduct inspections."[89]
- Statement of Estevan Rivas:
    - "Scott Witkowski aggressively went up to me and began to question mine and Villarreal's qualifications, such as welding experience, whether we were engineers, what type of engineering degrees we possessed, and what universities we went to."[90]
    - "Laboratories personnel … began a bombardment of false accusations directed at Villarreal and myself. Accusations included how unprofessional we had acted and once again our qualifications and experience."[91]
- Statement of Susan Mathew: "… Scott Witkowski asked for my qualification and background."[92]

Each statement identifies actions taken by Mr. Scott Witkowski of Republic, and neither are the statements specific enough to support an allegation of obstruction. None of the statements supports a claim against Respondent Denbury. Accordingly, assertions 7, 8, and 9 must be ignored in the context of Respondent Denbury. As such, Respondent Denbury must be dismissed from this case, and the alleged violation must be withdrawn as against Respondent Denbury.

CONCLUSION

PHMSA's allegations fail due to the plain language of the statute and the regulation. Further, all nine of PHMSA's factual assertions, even if taken as true, fail to produce sufficient evidence to consider a probable violation against Respondent Denbury. Respondent Denbury is not a necessary party and, as is evident from the face of PHMSA's pleadings, PHMSA simply

[87] PSVR, Exhibit A1 at 9.
[88] *Id*. at 14.
[89] *Id*. at 15.
[90] PSVR, Exhibit A2 at 4.
[91] *Id*. at 5.
[92] PSVR, Exhibit A4 at 2.

cannot meet its burden of proof. Accordingly, Respondent Denbury must be dismissed from this case, and the alleged probable violation must be withdrawn as against Respondent Denbury.

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