

June 4, 2025

Mr. Bryan J. Lethcoe  
Director, Southwest Region  
Pipeline and Hazardous Materials Safety  
Administration  
Office of Pipeline Safety  
8701 S. Gessner Road, Suite 630  
Houston, Texas 77074

Via Email: Bryan.Lethcoe@DOT.gov

Re: Denbury Gulf Coast Pipelines, LLC ("Respondent Denbury")  
**Request for Hearing**  
**Statement of Issues**  
CPF No. 4-2025-024-NOPV

Dear Mr. Lethcoe:

This letter serves as a request by Respondent Denbury for a hearing in response to the referenced Notice of Probable Violation and Proposed Civil Penalty dated January 17, 2025 (the "NOPV"). By letter dated January 28, 2025, Respondent Denbury requested an extension of 90 days to respond to the NOPV. By letter dated January 30, 2025, your office granted an extension of time to respond until May 17, 2025. Then, by letter dated May 14, 2025, Respondent Denbury requested an extension of time to respond to the NOPV by June 4, 2025. By letter dated May 15, 2025, your office granted an extension of time to respond until June 4, 2025. As such, this response is timely.

Pursuant to 49 C.F.R. §§ 190.208(a)(4) and 190.211, Respondent Denbury hereby requests a hearing on the NOPV and the proposed civil penalty.

Enclosed herewith, please find Respondent Denbury's Statement of Issues, which it submits pursuant to 49 C.F.R. § 190.211(b). Respondent Denbury reserves the right to supplement and/or amend its Statement of Issues at or before the hearing.

Respondent Denbury requests that said hearing be held in-person at the Southwest Region office in Houston, Texas.

Please be advised that Respondent Denbury intends to be represented by in-house counsel and outside counsel in connection with the requested hearing. Respondent Denbury also intends, pursuant to 49 C.F.R. § 190.211(f), to have a court reporter prepare a transcript of the hearing.

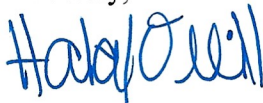
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Respondent Denbury will bear the costs of same and will submit a copy of the transcript to the administrative record.

To allow the parties sufficient time to prepare for a hearing, and given the significance of the allegation, the magnitude of the civil penalty, and that this is a case of first impression, Respondent Denbury respectfully requests that the Presiding Official assigned to this case hold a scheduling conference to set this matter for hearing not less than 180 days from the date of this request. In addition, Respondent Denbury intends to request discovery from PHMSA related to this matter, including but not limited to sworn depositions of PHMSA employees. In the event, however, that Respondent Denbury is not able to conduct discovery, including in the form of depositions, we expect the hearing of this matter to consume not less than one full week.

Thank you for your attention to this matter.

Sincerely,



Haley O'Neill  
Counsel for Respondent Denbury

cc: Rodney Barnwell ([rodney.b.barnwell@exxonmobil.com](mailto:rodney.b.barnwell@exxonmobil.com))  
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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	§	
	§	
	§	

**STATEMENT OF ISSUES OF  
DENBURY GULF COAST PIPELINES, LLC  
TO NOTICE OF PROBABLE VIOLATION  
AND PROPOSED CIVIL PENALTY**

Respondent Denbury Gulf Coast Pipelines, LLC (“Respondent Denbury”) submits this Statement of Issues pursuant to 49 C.F.R. § 190.211(b) in connection with its request for a hearing pursuant to 49 C.F.R. § 190.208(a)(4).

By letter dated January 17, 2025, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) issued to Respondent Denbury a Notice of Probable Violation and Proposed Civil Penalty (collectively, the “NOPV”). By letter dated January 28, 2025, Respondent Denbury requested an extension of 90 days to respond to the NOPV. By letter dated January 30, 2025, the Director, Southwest Region, granted an extension of time to respond until May 17, 2025. Then by letter dated May 14, 2025, Respondent Denbury requested an extension of time to respond to the NOPV by June 4, 2025. By letter dated May 15, 2025, the Director, Southwest Region, granted an extension of time to respond until June 4, 2025.

**BACKGROUND**

The NOPV relates to one out of six phases of a construction inspection, which involved the inspection of welding procedure qualifications and welder qualifications at the Republic Testing Laboratories, LLC (“Republic”) facility located in La Porte, Texas, on September 6, 7, 8, and 11, 2023.

In the NOPV, PHMSA alleges against both Respondent Denbury and Republic, without distinction, 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 Respondent Denbury and Republic, without distinction, in connection with the alleged violation. As to the alleged violation and proposed civil penalties, Respondent Denbury herein states its issues.

## THE ALLEGED VIOLATION

Respondent Denbury states below its factual, regulatory, and/or legal issues that relate to the alleged violation contained in the NOPV.

### 1. 49 C.F.R. § 190.203 Inspections and investigations.

PHMSA alleges that Respondent Denbury and Republic “obstructed the inspection by taking actions that were known or reasonably should have been known to prevent, hinder, or impede the inspection contrary to § 190.203(e).” PHMSA specifically alleges that Respondent Denbury and Republic obstructed the inspection by taking the following actions:

- (1) Physically blocking a PHMSA inspector from interviewing a Denbury welder regarding the subject welding procedure;
- (2) Preventing PHMSA inspectors from being present during welding testing;
- (3) Preventing PHMSA inspectors from observing welding activities;
- (4) Interfering with PHMSA’s examination of a test specimen;
- (5) Refusing to provide PHMSA with requested data relevant to the inspection; and
- (6) Interrupting PHMSA’s examination of a test reading on a piece of equipment.

PHMSA asserts that both Respondent Denbury’s, and Republic’s, “actions hindered, or otherwise impeded PHMSA’s inspection of [Respondent Denbury’s] HDD pipeline operations, without good cause, forcing PHMSA to suspend the inspection prior to completion, and thus obstructed PHMSA’s inspection in violation of 49 U.S.C. § 60118(e)(2)(A) and 49 C.F.R. § 190.203(e).”<sup>1</sup>

Respondent Denbury disputes and objects to the allegations stated in the NOPV, as to Respondent Denbury, on the following grounds:

- a. PHMSA has failed to meet its burden of proof that a violation occurred.
- b. The alleged violation is not supported by the evidence in the case file.
- c. The alleged violation is not supported by the relevant facts.
- d. The NOPV fails to adequately make factual findings or to explain, discuss, or analyze the conclusion that Respondent Denbury is in violation of the subject regulation in the manner alleged; as such, to find a violation upon such grounds would constitute arbitrary and capricious agency action.
- e. PHMSA has failed to establish a causal connection between any action taken by Respondent Denbury and the alleged violation.
- f. The construction inspection that took place on September 6, 7, 8, and 11, 2023 was not an investigation of an accident or incident involving a pipeline facility, and PHMSA does not

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<sup>1</sup> NOPV at 5.

allege that Respondent Denbury took actions that were known or reasonably should have been known to prevent, hinder, or impede an investigation, as required by 49 U.S.C. § 60118(e) and 49 C.F.R. § 190.203(e). As such, an allegation under 49 U.S.C. § 60118(e) and 49 C.F.R. § 190.203(e) cannot stand and this NOPV must be dismissed as against Respondent Denbury.

- g. If the actions set forth in the NOPV occurred, which Respondent Denbury contests, then any such actions were performed with good cause, as set forth in 49 U.S.C. § 60118(e)(2)(B).
- h. If the actions set forth in the NOPV occurred, which Respondent Denbury contests, then any such actions were not known, nor reasonably should have been known, to prevent, hinder, or impede an investigation.
- i. If PHMSA finds that a violation occurred, PHMSA must make a finding of allocation of fault between Respondent Denbury, Republic, and PHMSA's employees.
- j. PHMSA has failed to establish a rational connection between the facts as alleged and the conclusions reached, and, as such, to find a violation would constitute arbitrary and capricious agency action.
- k. The content of the PHMSA case file provided to Respondent Denbury fails to comply with 49 U.S.C. § 60117(b)(1)(C), in that PHMSA has withheld pertinent records from Respondent Denbury. As a result, Respondent Denbury is precluded from access to all relevant facts in the agency's possession, is denied a right granted by Congress, and thus is denied a full and fair opportunity to respond to the agency's allegations. As such, to find Respondent Denbury in violation of the subject regulation would constitute a violation by PHMSA of the Pipeline Safety Act and a violation by PHMSA of Respondent Denbury's right of due process.
- l. To the extent that PHMSA intends to bring each of subparagraphs (1) through (6) from the NOPV<sup>2</sup> as individual violations against Respondent Denbury, then Respondent Denbury states as follows:
  - a. Regarding NOPV allegation "(1) Physically blocking the PHMSA inspector from interviewing a Denbury welder regarding the welding procedure"<sup>3</sup>:
    - i. The case file is void of evidence that any employee of Respondent Denbury "physically block[ed] the PHMSA inspector from interviewing a Denbury welder regarding the welding procedure." Accordingly, this allegation must be dismissed as against Respondent Denbury.
    - ii. The PHMSA inspector completed an interview of the Republic welder, without unreasonable delay, and therefore obstruction did not occur.

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<sup>2</sup> NOPV at 3.

<sup>3</sup> NOPV at 3.

Accordingly, this allegation must be dismissed as against Respondent Denbury.

- b. Regarding NOPV allegation “(2) Preventing PHMSA inspectors from being present during welding testing”<sup>4</sup>:
  - i. The case file is void of evidence that any employee of Respondent Denbury “prevent[ed] PHMSA inspectors from being present during welding testing.” Accordingly, this allegation must be dismissed as against Respondent Denbury.
  - ii. PHMSA inspectors witnessed the non-destructive testing and therefore obstruction did not occur. Accordingly, this allegation must be dismissed as against Respondent Denbury.
- c. Regarding NOPV allegation “(3) Preventing PHMSA inspectors from observing welding activities”<sup>5</sup>:
  - i. The case file is void of evidence that any employee of Respondent Denbury “prevent[ed] PHMSA inspectors from observing welding activities.” Accordingly, this allegation must be dismissed as against Respondent Denbury.
  - ii. The orange opaque screen was in place for safety purposes, and thus performed with good cause pursuant to 49 U.S.C. § 60118(e)(2)(B). Accordingly, this allegation must be dismissed as against Respondent Denbury.
  - iii. PHMSA inspectors were able to safely observe welding activities through the orange opaque screen, which is the purpose of the orange opaque screen and is consistent with industry standards, and therefore obstruction did not occur. Accordingly, this allegation must be dismissed as against Respondent Denbury.
- d. Regarding NOPV allegation “(4) Interfering with PHMSA’s examination of a test specimen”<sup>6</sup>:
  - i. The case file is void of evidence that any employee of Respondent Denbury “interfere[ed] with PHMSA’s examination of a test specimen.” Accordingly, this allegation must be dismissed as against Respondent Denbury.
  - ii. PHMSA inspectors examined the test specimen, both at Republic’s facility and at the Oak Ridge National Laboratory, without unreasonable delay, and therefore obstruction did not occur. Accordingly, this allegation must be dismissed as against Respondent Denbury.

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<sup>4</sup> NOPV at 3.

<sup>5</sup> NOPV at 3.

<sup>6</sup> NOPV at 3.

- e. Regarding NOPV allegation “(5) Refusing to provide PHMSA with requested data relevant to the inspection”<sup>7</sup>:
  - i. The case file is void of evidence that any employee of Respondent Denbury “refus[ed] to provide PHMSA with requested data relevant to the inspection.” Accordingly, this allegation must be dismissed as against Respondent Denbury.
  - ii. PHMSA inspectors received the data requested from the data logger, without unreasonable delay, and therefore obstruction did not occur. Accordingly, this allegation must be dismissed as against Respondent Denbury.
- f. Regarding NOPV allegation “(6) Interrupting PHMSA’s examination of a test reading on a piece of equipment”<sup>8</sup>:
  - i. The case file is void of evidence that any employee of Respondent Denbury “interrupt[ed] PHMSA’s examination of a test reading on a piece of equipment.” Accordingly, this allegation must be dismissed as against Respondent Denbury.
  - ii. PHMSA inspectors examined and photographed the test reading on the Charpy machine, without unreasonable delay, and therefore obstruction did not occur. Accordingly, this allegation must be dismissed as against Respondent Denbury.
  - iii. Persons are not permitted near the Charpy machine for safety purposes, and thus enforcement of the requirement to remain a safe distance from the Charpy machine was performed with good cause pursuant to 49 U.S.C. § 60118(e)(2)(B). Accordingly, this allegation must be dismissed as against Respondent Denbury.

## **THE PROPOSED CIVIL PENALTY**

PHMSA proposes a civil penalty in the amount of \$2,366,900 in connection with the alleged violation, to which Respondent Denbury states the following issues:

- a. PHMSA has failed to make available to the public, as required by the Administrative Procedure Act and the Memorandum to Secretarial Officers and Heads of Operating Administrations from Gregory D. Cote, U.S. Department of Transportation, Acting General Counsel, dated March 11, 2025, the methods or procedures by which PHMSA determines the amount of proposed civil penalties and the amounts eventually assessed, a denial of Respondent Denbury’s right of due process, and thus, Respondent Denbury is unable to understand the calculation of the civil penalties under the penalty assessment factors and is unable to discern any potential errors in the calculations; as such, the proposed civil penalty should be withdrawn in its entirety.

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<sup>7</sup> NOPV at 3.

<sup>8</sup> NOPV at 3.

- b. The NOPV and the underlying Pipeline Safety Violation Report fail to establish a sufficient evidentiary basis for, or adequate discussion, explanation, or analysis of, the penalty assessment considerations of 49 C.F.R. § 190.225 in support of the proposed civil penalty, and thus, Respondent Denbury has no reasonable opportunity to prepare an adequate defense to contest the proposed civil penalty; as such, the proposed civil penalty should be withdrawn in its entirety.
- c. PHMSA's allegation in Part E7 -- Culpability of the underlying Pipeline Safety Violation Report is (a) unsupported by the evidence, and (b) inaccurate and overstates any such culpability with respect to Respondent Denbury. As a result, the proposed civil penalty must be reduced significantly, if not withdrawn.
- d. To the extent that an alleged violation is not supported by substantial evidence, a rational connection between facts found and conclusions drawn, regulation, or law, such proposed civil penalty may not be imposed and must be withdrawn in its entirety.
- e. To the extent that PHMSA finds that a violation occurred and assesses a civil penalty, PHMSA must allocate fault between (i) Respondent Denbury, (ii) Republic, and (iii) PHMSA's employees, and thereafter allocate the civil penalty accordingly.
- f. Respondent Denbury objects to the magnitude of the proposed civil penalty as: unreasonable; disproportionate to any of the penalty assessment considerations of 49 C.F.R. § 190.225; unsupported by sufficient evidence, or any analysis, that applies the penalty assessment considerations; arbitrary, capricious, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and an abuse of discretion. On these grounds the proposed civil penalty should be withdrawn in its entirety.
- g. The number of instances of violation alleged in the Proposed Civil Penalty Worksheet is inconsistent with the NOPV.
- h. The Proposed Civil Penalty Worksheet inaccurately indicates the duration of the violation.

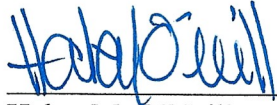
## CONCLUSION

At the hearing in this matter, Respondent Denbury intends to bring forth evidence in the form of documents and/or witness testimony, as well as to examine PHMSA witnesses, Republic witnesses, and the evidence in the administrative record. Respondent Denbury also will present its arguments in support of the issues stated heretofore. Respondent Denbury reserves the right to amend and supplement this Statement of Issues at or before the hearing.



**COUNSEL FOR RESPONDENT DENBURY GULF COAST PIPELINES, LLC**

June 4, 2025



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