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

1200 New Jersey Avenue, SE
Washington, DC 20590

September 12, 2022

VIA ELECTRONIC MAIL TO: nthomas@meritagemidstream.com

Mr. Nicholas O. Thomas
Chairman and Chief Executive Officer
Meritage Midstream Services II, LLC
1114 Energy Street
Gillette, Wyoming 82716

Re: CPF No. 5-2022-003-NOPV

Dear Mr. Thomas:

Enclosed please find the Final Order issued in the above-referenced case to Thunder Creek NGL Pipeline, LLC, a subsidiary of Meritage Midstream Services II, LLC. It makes findings of violation and assesses a civil penalty of $45,600. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

ALAN KRAMER MAYBERRY
Digitally signed by ALAN KRAMER MAYBERRY
Date: 2022.09.12 11:05:35 -04'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure (Final Order)

cc: Mr. Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA
Mr. Terrance Herauf, Vice President of Operations, Meritage Midstream Services II, LLC, therauf@meritagemidstream.com
Mr. Hayden Truscott, EHS Manager, Meritage Midstream Services II, LLC, htruscott@meritagemidstream.com

Mr. Robert D. Ayers, Outside Counsel for Meritage Midstream Services II, LLC, Holland & Hart LLP, rdayers@hollandhart.com

CONFIRMATION OF RECEIPT REQUESTED

U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

In the Matter of	)	
	)	
Thunder Creek NGL Pipeline, LLC, a subsidiary of Meritage Midstream Services II, LLC,	)	**CPF No. 5-2022-003-NOPV**
	)	
Respondent.	)	

FINAL ORDER

From August 17 through 19, 2021, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Thunder Creek NGL Pipeline, LLC's (Thunder Creek or Respondent) pipeline system in Wright, Wyoming. Thunder Creek is a wholly-owned subsidiary of Meritage Midstream Services II, LLC. Thunder Creek operates a 115.5-mile Y-Grade natural gas liquids NGL) pipeline.[1] The system receives high-pressure NGL from the Thunder Creek 50 Buttes Gas Processing Plant in Campbell County, Wyoming and the Thunder Creek Steamboat I Gas Processing Plant in Converse County, Wyoming.[2]

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated February 1, 2022, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Thunder Creek had violated the pipeline safety regulations in 49 C.F.R. Part 195 and proposed assessing a civil penalty of $45,600 for the alleged violations. The Notice also included an additional two warning items pursuant to 49 C.F.R. § 190.205, which required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

On February 16, 2022, Meritage Midstream Services II, LLC, on behalf of Thunder Creek, responded to the Notice (Response). Thunder Creek did not contest the allegations of violation and did not request a hearing. In its Response, the company provided additional information, and requested that the proposed civil penalties for Items 1 and 2 be reduced or withdrawn.

[1] Pipeline Safety Violation Report (Violation Report), (February 1, 2022) (on file with PHMSA), at 1.

[2] *Id.*

FINDINGS OF VIOLATION

In its Response, Thunder Creek did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b), which states:

> **§ 195.420 Valve maintenance.**
> (a) ….
> (b) Each operator shall, at intervals not exceeding 7 ½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect each mainline valve at intervals not exceeding 7 ½ months, but at least twice each calendar year, to determine that it is functioning properly. Specifically, the Notice alleged that Thunder Creek failed to produce records demonstrating that it inspected each mainline valve at the requisite intervals for calendar year 2020.

Respondent did not contest this allegation of violation. Accordingly, based on a review of the evidence, I find that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect each mainline valve at intervals not exceeding 7 ½ months, but at least twice each calendar year, to determine that it is functioning properly.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

> **§ 195.428 Overpressure safety devices and overfill protection systems.**
> (a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7 ½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test each relief device on its pipeline used to carry highly volatile liquids, at intervals not exceeding 7 ½ months, but at least twice each calendar year, to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used. Specifically, the Notice alleged that Thunder Creek failed to produce records demonstrating that it inspected each relief valve at the requisite intervals for calendar years 2019 and 2020.

Respondent did not contest this allegation of violation. Accordingly, based on a review of the evidence, I find that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test each relief device on its pipeline used to carry highly volatile liquids, at intervals not exceeding 7 ½ months, but at least twice each calendar year, to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed $200,000 per violation for each day of the violation, up to a maximum of $2,000,000 for any related series of violations.[3]

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of $45,600 for the violations cited above.

Item 1: The Notice proposed a civil penalty of $22,800 for Respondent's violation of 49 C.F.R. § 195.420(b), for failing to inspect each mainline valve at intervals not exceeding 7 ½ months, but at least twice each calendar year, to determine that it is functioning properly. Thunder Creek argued the civil penalty should be reduced or withdrawn for several reasons.

With respect to culpability, Thunder Creek asserted it corrected the non-compliance before PHMSA learned of the violation. Specifically, Thunder Creek explained that when it discovered it missed its first inspection deadline (April 10, 2020) for calendar year 2020, it immediately conducted an inspection on July 23, 2020.[4] However, even though Thunder Creek realized it was out of compliance with § 195.420(b) by July 2020, it did not conduct a second calendar year 2020 inspection as required by the regulation. Rather, Thunder Creek conducted the next inspection on February 23, 2021.[5] Thunder Creek's inspections in 2021 complied with the regulations in 2021, but it did not act to correct the non-compliance in 2020. Accordingly, Thunder Creek is not entitled to a reduction in the penalty because the company did not correct

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[3] These amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223.

[4] Violation Report, at Ex. 4.

[5] *Id.*, at Ex. 5.

the non-compliance for calendar year 2020 prior to PHMSA's inspection.

Thunder Creek also argues the end date of the violation of July 23, 2020, in the Violation Report is evidence that the company is entitled to credit for correcting the violation before PHMSA conducted its inspection. I disagree. The Violation Report shows the operator inspected the mainline valves on August 26, 2019, and was required to inspect them again by April 10, 2020, in order to not exceed the 7 ½ month interval. The next time the valves were inspected was on July 23, 2020, over three months beyond the required interval. The end date of the violation in the Violation Report reflects the next inspection date which occurred beyond the 7 ½ month interval, but that date does not show that the operator corrected the compliance issue before PHMSA's inspection because it remains undisputed that the company failed to conduct two inspections of the valves in the calendar year 2020 and it failed to conduct the first inspection within 7 ½ months of the previous inspection.

With respect to additional considerations, Thunder Creek alleged that a reduction of the civil penalty is warranted due to organizational restructuring efforts that resulted in a new position to oversee PHMSA compliance, and the implementation of a new internal tracking system to more accurately track inspections, both of which occurred prior to PHMSA's inspection.[6] Although PHMSA commends Thunder Creek for making these organizational changes, the non-compliance issue continued through the end of 2020. Further, PHMSA issued a warning letter to Thunder Creek in 2017 for its alleged failure to inspect each mainline valve at the requisite intervals pursuant to § 195.420(b).[7] Thus, Thunder Creek has been aware of this compliance issue for several years, but failed to address the issue sooner.

Also with respect to additional considerations, Thunder Creek stated that the COVID-19 pandemic caused significant operational and personnel challenges that "likely contributed" to the missed inspections."[8] At the beginning of the COVID-19 pandemic, PHMSA issued a Notice of Stay of Enforcement and Notice of Enforcement Discretion to Operators Affected by the Coronavirus (COVID-19) Outbreak.[9] The Stay of Enforcement recognized that operators may face resource constraints due to the COVID-19 pandemic, and required operators to document issues that may impact compliance and promptly notify PHMSA. Thunder Creek, however, did not notify PHMSA that it was experiencing any operational and personnel challenges during this time. Further, Thunder Creek's response did not articulate the specific circumstances it faced that caused the company to be unable to conduct inspections. The operator, therefore, is not entitled to a reduced civil penalty for challenges it was experiencing during the pandemic.

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[6] *Id.*, at 3.

[7] CPF No. 5-2017-5019.

[8] Response, at 3.

[9] *See* PHMSA Stay of Enforcement, Mar. 20, 2020, *available at* https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2020-03/PHMSA%20Notice%20on%20Enforcement.pdf, (last accessed Aug. 15, 2022); *see also* PHMSA Termination of March 20, 2020 Stay of Enforcement, May 19, 2021, *available at* https://www.phmsa.dot.gov/news/notice-pipeline-underground-storage-and-lng-facility-operators-regarding-termination-phmsas, (last accessed Aug. 15, 2022).

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $22,800 for violation of 49 C.F.R. § 195.420(b).

Item 2: The Notice proposed a civil penalty of $22,800 for Respondent's violation of 49 C.F.R. § 195.428(a), for failing to inspect and test each relief device on its pipeline used to carry highly volatile liquids, at intervals not exceeding 7 ½ months, but at least twice each calendar year, to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used. Thunder Creek argued the civil penalty should be reduced or withdrawn for several reasons.

With respect to culpability, Thunder Creek asserted it corrected the non-compliance before PHMSA learned of the violation and that it missed the deadline for the second 2019 inspection by only 10 days. The relief valves were inspected on December 12, 2019, and next inspected on August 13, 2020, and again on March 29-30, 2021. Thunder Creek argued that because it missed the December 2019 inspection by only ten days, the civil penalty should be reduced for identifying the issue and correcting the non-compliance. However, Thunder Creek did not correct the non-compliance. For calendar year 2019, Thunder Creek admitted it did not conduct inspections at intervals not to exceed 7 ½ months. In the calendar year 2020, Thunder Creek completed only one inspection despite implementing a compliance officer position in that same year. Compliance with the regulation in 2021 did not act to correct the non-compliance that occurred in 2019 and 2020. Thunder Creek, therefore, did not correct the non-compliance that occurred in 2019 or 2020 prior to PHMSA's inspection and, therefore, is not entitled to a reduction in the civil penalty.

Thunder Creek argues the end date of the violation in the Violation Report (August 12, 2020) provides evidence that the company corrected the non-compliance prior to PHMSA's inspection. Again, Thunder Creek did not correct the violation before PHMSA conducted its inspection and it cannot claim, simply based on a date in the Violation Report, that it corrected its violation when it did not. The end date in the Violation Report reflects the date that Thunder Creek completed one inspection in 2020, but does not conclude or signify that the inspection due by July 27, 2020 was cured. Further, it is undisputed that Thunder Creek did not conduct two inspections in the calendar year 2020 so no credit is warranted for correcting the violation prior to PHMSA's inspection.

With respect to additional considerations, Thunder Creek stated that due to its organizational restructuring efforts and the unavoidable challenges caused by the COVID-19 pandemic, the civil penalty should be reduced or withdrawn. For the same reasons identified in Item 1, I find that a reduction in the civil penalty is not warranted on those bases.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $22,800 for violation of 49 C.F.R. § 195.428(a).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **$45,600**.

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the $45,600 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

WARNING ITEMS

With respect to Items 3 and 4, the Notice alleged probable violations of Part 195, but identified them as warning items pursuant to § 190.205. The warnings were for:

> 49 C.F.R. § 195.408(b)(2) **(Item 3)** ─ Respondent's alleged failure to have a communication system to provide for the transmission of information needed for the safe operation of its pipeline system, including the ability to receive notices from operator personnel, the public, and public authorities of abnormal or emergency conditions and sending this information to appropriate personnel or government agencies for corrective action; and
>
> 49 C.F.R. § 195.210(a)(2)(ii) **(Item 4)** ─ Respondent's alleged failure to place and maintain line markers over each buried pipeline that had the name of the operator and a telephone number (including area code) where the operator can be reached at all times on a background of sharply contrasting color.

If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

ALAN KRAMER MAYBERRY Digitally signed by ALAN KRAMER MAYBERRY Date: 2022.09.12 11:05:07 -04'00'	September 12, 2022
Alan K. Mayberry Associate Administrator for Pipeline Safety	Date Issued