

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

VIA E-MAIL TO MR. TERRANCE HERAUF

February 1, 2022

Mr. Terrance Herauf
Vice President of Operations
Meritage Thunder Creek
1114 Energy Street
Gillette, WY 82716

CPF 5-2022-003-NOPV

Dear Mr. Herauf:

From August 17 through 19, 2021, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected your Thunder Creek NGL pipeline system in Wright, Wyoming.

As a result of the inspection, it is alleged that Meritage Thunder Creek (MTC) has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. §195.420 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.

MTC failed 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. During the PHMSA inspection, MTC stated valves were not inspected, and was unable to produce records demonstrating that it inspected each mainline valve at the requisite intervals for calendar year 2020.¹

2. §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.

MTC failed 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. During the PHMSA inspection, MTC failed to produce records demonstrating that it inspected each relief valve at the requisite intervals for calendar years 2019 and 2020.²

3. §195.408 Communications.

(a)...

(b) The communication system required by paragraph (a) of this section must, as a minimum, include means for:

(1)...

(2) Receiving 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;

MTC failed 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. Specifically, during the PHMSA inspection, a test call was placed to the MTC line marker emergency number (877-619-4680) by PHMSA at 11:44 am on August 17, 2021. The call was not answered. MTC explained to PHMSA that the MTC Supervisor On-Call saw the call was categorized as SPAM and rejected the call.

¹ See 49 C.F.R. § 195.404(c)(3) (requiring operators to maintain a record of each inspection or test required by Subpart F for at least two years or until the next inspection or test is performed, whichever is longer); *see also* PHMSA Pipeline Safety Violation Report (Violation Report) at Exhibits 1-6 (on file with PHMSA).

During the inspection, MTC was unable to produce records for 2018, which it later produced to PHMSA post-inspection. In the future, please ensure that all relevant records are available for PHMSA to review during the inspection.

² *Id.*; *see also* Violation Report at Exhibits 7-12.

4. §195.410 Line Markers.

(a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:

(1)...

(2) The marker must state at least the following on a background of sharply contrasting color:

(i)...

(ii) The name of the operator and a telephone number (including area code) where the operator can be reached at all times.

MTC failed 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. Specifically, the line markers on the Thunder Basin National Grassland 6" mainline had the previous operator's emergency contact information (P66 1-877-267-2290).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of \$45,600 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$22,800
2	\$22,800

Warning Items

With respect to Items 3-4 we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Failure to do so may result in additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. § 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. § 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from the receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 5-2022-003-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Dustin Hubbard
Director, Western Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Enforcement Proceedings*

cc: PHP-60 Compliance Registry
PHP-500 M. Buss, H. Flaherty (#21-199942)