

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

VIA ELECTRONIC MAIL TO: GREG JANS AND MICHAEL WILLIAMS

July 11, 2024

Mr. Greg Jans
Executive Operator
Midway Sunset Cogeneration
3466 W. Crocker Springs Road
Fellows, California 93224

CPF 5-2024-014-NOPV

Dear Mr. Jans:

From March 6, 2023, through March 9, 2023, representatives 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 Midway Sunset Cogeneration's (Midway) natural gas transmission line from the Kern River tie-in to the Midway Plant in Fellows, California. As a result of the inspection, it is alleged that Midway 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. § 192.605 Procedural manual for operations, maintenance, and emergencies.**
 - (a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each**

calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

Midway failed to follow its written procedures for conducting operations and maintenance activities as required by § 192.605(a). Specifically, the Midway-Sunset Mojave Gas Operation Manual states that the review of the operations and maintenance manual will be conducted annually in July of each calendar year. However, Midway representatives were unable to provide PHMSA inspectors with any records indicating that the O&M manual was reviewed at intervals not exceeding 15 months, but at least once each calendar year, as required by § 192.605(a).

During the inspection, Midway representatives could not produce any records evidencing that the company had performed an annual review or updated its O&M manual for calendar years 2019, 2020, 2021, or 2022. Midway did not have any revision logs from these years or evidence otherwise to demonstrate any revisions were made during this period. Therefore, Midway failed to follow its written procedures as required by § 192.605(a).

2. § 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

Midway failed to update and review its Emergency Response Plan (ERP) manual at intervals not exceeding 15 months, but at least once each calendar year, as required by § 192.605(a).

Annual reviews of the ERP are critical to ensure the manual is up-to-date and allow for an adequate response in the event of an emergency. During the inspection, Midway representatives could not produce any records evidencing that the company had performed an annual review or updated its ERP manual for calendar years 2019, 2020, 2021, and 2022. Therefore, Midway failed to follow its written procedures as required by § 192.605(a).

3. § 192.705 Transmission lines: Patrolling.

(a)

(b) The frequency of patrols is determined by the size of the line, the operating pressures, the class location, terrain, weather, and other relevant factors, but intervals between patrols may not be longer than prescribed in the following table:

Maximum interval between patrols		
Class location of line	At highway and railroad crossings	At all other places
1, 2	7 ½ months; but at least twice each calendar year	15 months; but at least once each calendar year.
3	4 ½ months; but at least four times each calendar year	7 ½ months; but at least twice each calendar year.
4	4 ½ months; but at least four times each calendar year	4 ½ months; but at least four times each calendar year.

Midway failed to observe surface conditions on the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation on its pipeline in a Class 1 location at highway or railroad crossings every 7½ months but at least twice each calendar year as required by § 192.705(b).

Midway representatives provided records that indicated transmission pipeline right-of-way patrols were not conducted in accordance with the regulatory requirement. Midway representatives provided patrolling records for highway and railroad crossings in Class 1 locations for the following dates: June 28, 2019, April 27, 2020, April 13, 2021, and December 21, 2021. *See*, Exhibit A.

The patrolling records indicate that between June 28, 2019 and April 27, 2020, Midway failed to conduct the required patrol frequency of twice per year and exceeded the 7½ month interval requirement by approximately 2.5 months. Between April 27, 2020 and April 13, 2021, Midway failed to conduct the required patrol frequency of twice per year and exceeded the 7½ month interval requirement by approximately 4 months. Between April 13, 2021 and December 21, 2021, Midway failed to conduct the required patrol frequency of twice per year and exceeded the 7½ month interval requirement by approximately 0.5 months. Therefore, Midway failed to perform patrols on its pipeline in a Class 1 location at highway or railroad crossings every 7½ months but at least twice each calendar year as required by § 192.705(b).

4. § 192.805 Qualification program.

(a)

(b) Ensure through evaluation that individuals performing covered tasks are qualified;

Midway failed to confirm through evaluation that individuals performing covered tasks were qualified as required by § 192.805 (b). Specifically, Midway personnel did not have the requisite Operator Qualifications (OQs) while performing Road Crossing Inspections on June 28, 2019 and December 21, 2021. *See*, Exhibit B. This covered task is identified in Midway’s DOT Pipeline Operator Qualification Roster. Therefore, Midway failed to comply with § 192.805(b) as required.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$266,015 per violation per day the violation persists, up to a maximum of \$2,660,135 for a related series of violations. For violation occurring on or after January 6, 2023 and before December 28, 2023, the maximum penalty may not exceed \$257,664 per violation per day the violation persists, up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022 and before January 6, 2023, the maximum penalty may not exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not 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.

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 \$43,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$ 21,500
3	\$ 21,500

Warning Items

With respect to items 2 and 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 your receipt of this Notice, you have 30 days to respond as described in the enclosed *Response Options*. 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 receipt of this Notice. The Region Director may extend the period for responding upon a written request timely submitted demonstrating good cause for an extension.

In your correspondence on this matter, please refer to **CPF 5-2024-014-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

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

cc: PHP-60 Compliance Registry
PHP-500 J. Williams, J. Luo (#23-264914)
Michael Williams, DOT Primary Compliance - MWilliams@midwaysunset.com