

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY**

In the Matter of

SFPP, L.P.,

Respondent.

**CPF No. 5-2025-028-NOPV
Notice of Probable Violation**

**REQUEST FOR INFORMAL CONFERENCE AND HEARING, PRELIMINARY
STATEMENT OF ISSUES AND REQUEST FOR DOCUMENTS**

I. Request for Informal Conference

Pursuant to 49 U.S.C. § 60117(b)(1)(B)(i)-(ii), SFPP, L.P. (SFPP) respectfully requests an informal conference to discuss the alleged probable violation, proposed civil penalty, and proposed compliance order in the above-referenced Notice of Probable Violation (NOPV). SFPP anticipates that with further discussions the allegation set forth in the NOPV can be resolved through a mutually agreeable settlement.

II. Request for Hearing

To preserve its rights in the event the parties are unable to resolve this matter via an informal settlement conference, SFPP, pursuant to 49 C.F.R. §§ 190.208(a)(4), 190.208(b)(4), and 190.211(b), respectfully requests an in-person hearing at PHMSA's Western Region office in Lakewood, Colorado to discuss the alleged probable violation, proposed civil penalty, and proposed compliance order in the NOPV. A hearing location of Lakewood, Colorado would maximize efficiency for PHMSA's Western Region-based personnel as well as SFPP. If a hearing is held, SFPP will be represented by in-house counsel as well as outside counsel with Babst Calland.

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III. Background

The NOPV references five above-ground storage tanks (ASTs), two at SFPP's Waston Station (W-14 and W-15) and three at the Concord Station (CC-8, CC-8, and CC-10). At the outset, SFPP believes that PHMSA would benefit from additional information about the Company's inspection, scheduling and maintenance decision-making for the relevant tanks. The Company respectfully offers that this additional detail will demonstrate that at all times relevant to this NOPV, SFPP managed tank inspections, scheduling and maintenance in a manner consistent with 49 C.F.R. § 195.432(b) and the referenced API Std 653 industry standard. A timeline of relevant events relating to these tanks follows:

1963 – Construction of CC-8, CC-8, and CC-10.

4/5-10/2001

Petroleum & Refractory, Inc conducted an API 653 internal inspection of CC-10. Based on the inspection findings, the inspection interval was set at 20 years. Two weeping striker pads were satisfactorily repaired.

3/3-4/2011 & 4/20-21/2011

HMT Inspection conducted an internal inspection of CC-8. Visual (VT) inspection identified four (4) floating roof leg striker plates and three (3) sump cover support plates with product weep paths and weld defects at their attachment welds to the bottom plate. At the time of the post-repair inspection, all areas identified for repair on the floating roof leg striker plate welds were repaired and had Vacuum Box (LT/BT) testing performed by the maintenance contractor and VT, Helium Mass Spectrometer Leak (MS/LT) and Magnetic Particle (MT) testing by HMT Inspection and were found in acceptable condition. HMT recommended the inspection interval for the bottom plate to be 12 years, unless a thin-film lining is installed then the interval could be 20 years (which is was).

10/4-6/2013

HMT Inspection conducted an internal inspection of CC-9. VT inspection identified thirteen (13) internal floating roof striker plates with random areas of service-induced deterioration in the perimeter fillet welds. All areas of recordable metal loss were properly repaired by weld overlay. These repairs were inspected utilizing LT/BT techniques by the maintenance contractor and VT, MT and Helium MS/LT testing by HMT Inspection, with all details found in acceptable condition. The next out-of-service internal inspection should be conducted no later than August 2033 (20-year interval). This interval is based on all bottom repairs being performed and new coating being applied to the bottom before the tank is returned to service.

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6/22-23/2020

HMT Inspection conducted an internal inspection of CC-10. The inspection report expressly included: "All the floating roof striker plates have square corners. One (1) lap welded patch plate on the bottom has square corners. Three (3) of the four (4) floating roof drains do not have reinforcing plates welded to the bottom beneath. These details have been present for an extended period and no corrective action is required." Reinforcing plates were installed beneath the roof drain hose guards supports. Four (4) bottom roof leg striker plates were re-positioned.

12/13/2021

SFPP reported a suspected release from CC-10 to the NRC and the tank sensor detected a leak and a sheen was detected in the water in containment. As a precaution, CC-10 was taken out of service.

2/1-4/2022

HMT Inspection issued an Out-of-Service Inspection report for CC-10. It stated: "Corrosion rate calculations based on this inspection information and the age of the bottom (59 years per data from the name plate) results in a next bottom inspection cycle recommendation of no more than 20 years." The coating was not removed for this inspection. This inspection did not identify any leaks or defects and the tank was returned to service. The contamination was determined to be "weathered" and not indicative of a current release. This site has historical contamination, and heavy rainfall can bring old contamination to the surface.

4/2023

SFPP began storing renewable diesel in CC-10.

10/17/2023

Sample data from CC-10 valve box as part of ongoing monitoring activities identified renewable diesel in soil. SFPP emptied CC-10 and reported a probable release reported to the NRC.

11/12-14 & 30/2023

HMT Inspection conducted an internal inspection of CC-10. VT inspection and LT/BT of the bottom lap welds and bottom floating roof striker plates revealed one through-thickness crack indication that is in the bottom plate adjacent to a floating roof striker plate. Also, VT inspection of the bottom floating roof striker plates revealed five striker plates with poor quality welding with two plates with product weeps present. All 25 of the bottom striker plates were replaced with larger diameter, round, 0.250-inch-thick plates.

1/08/2024

PHMSA 30-day report submitted for CC-10.

1/09/2024

HMT Inspection issued a Final Out-of-Service Inspection Report for CC-10 after the repairs had been completed. It stated: "The next internal inspection should be conducted within 20 years and no later than November 2043".

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2/22/2024

In SFPP's PHMSA supplemental accident report, SFPP identified metal fatigue and stress combined with repeated landing of tank internal roof for drain-dry operations as cause of crack in the striker plate in CC-10.

1989 – Construction of W-14 and W-15

4/19/2010

DJA Inspection Service, Inc. conducted an API 653 internal inspection of W-15. A 20-year inspection interval was calculated.

2/14-17/2011

HMT Inspection conducted an internal inspection of W-14. Corrosion rate calculations based on this inspection information and the age of the bottom (22 years per data from the data plate) resulted in a next inspection cycle recommendation of no more than 20 years.

2/11/2021

SFPP reported a probable release reported to NRC for W-15 and the tank was taken out of service.

3/12/2021

SFPP submitted 30-day report to PHMSA for W-15.

3/17/2021

DJA Inspection Services conducted an API 653 inspection on W-15. and the bottom plate was replaced. The internal bottom coating was removed prior to the API inspection, and a hole was found during the cleaning process. A helium test detected three (3) additional holes. Based on the recommendations of this inspection, the bottom was replaced. After repairs, the inspection interval was set for 10 years in accordance with API 653 requirement to establish a corrosion rate for the new bottom.

4/19/2022

SFPP received a letter of concern from PHMSA that recommended evaluating W-14. This letter stated "SFPP, LP *should re-evaluate* the internal inspection interval of Tank W14 and *consider* performing an internal inspection sooner, because of its service similarity to Tank W15" (emphasis added).

6/6/2022

SFPP responded to PHMSA stating it would move up W-14's internal inspection up eight years and perform it in Q1 2023.

7/8/2022

SFPP reported a probable release reported to NRC for W-14 and the tank was taken out of service.

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7/29/2022

DJA Inspection Services conducted an internal inspection of W-14. A helium test found 5.5-inch crack located in the floor between the sump and outer shell. Product stains present after the sandblasting was completed indicated that the leak was coming from the annular sketch plate to bottom weld between the sump and the shell directly above the underground product line. The bottom of the tank was replaced and the inspection interval was set at 10 years.

8/5/2022

SFPP submitted 30-day report to PHMSA for W-14.

IV. Preliminary Statement of Issues

SFPP respectfully contests the allegation, proposed civil penalty, and proposed compliance order in the NOPV. At the hearing, SFPP intends to raise the following issues.

A. General Factual and Legal Issues

SFPP contends that it inspected the physical integrity of the relevant in-service, atmospheric breakout tanks in accordance with API 653, as required by 49 C.F.R. § 195.432(b). API 653 is a standard developed by the American Petroleum Institute (API) that outlines the minimum requirements for the safe operation, maintenance, and inspection of ASTs. It covers the inspection, repair, alteration, and reconstruction of steel aboveground storage tanks used in the petroleum and chemical industries. The API 653 standard applies to ASTs that are steel, atmospheric-pressure storage tanks originally constructed under API 650 (or predecessor API 12C). These tanks are typically used to store petroleum, chemicals, and other hazardous materials in industrial facilities such as refineries, chemical plants, and terminals, including the tanks at issue here. API 653 internal inspections identify any defects or potential issues that could compromise the integrity of above-ground storage tanks. These inspections are designed to detect issues such as corrosion, leaks, and structural damage that can lead to tank failures, spills, and other hazardous incidents. PHMSA requires breakout tanks to be inspected in accordance with API 653.¹

¹ 49 C.F.R. § 195.432(b).

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The frequency of API 653 internal inspections depends on a range of factors, including the tank's age and the materials it stores. API 653 internal inspections are conducted by Certified Inspectors (CIs) who have been trained in the specific techniques and methods required for this type of inspection.² In general, a tank must undergo its first internal inspection 10 years after the construction date, and then normally every 20 years thereafter. If the CI finds in the internal inspection, corrosion, pitting or any other indicator that may be of concern, the CI may determine that a shorter interval to the next internal inspection is required.

API 653 Section 6.2.1 identifies factors that must be considered to determination inspection intervals. However, PHMSA has apparently inferred that this language also requires operators to re-evaluate the inspection intervals after *any* accident, even if that accident occurs on a different tank. The Standard does not include any such requirement. The Third Edition of 653 as referenced in the NOPV, Section 6.4.2.1 requires intervals between inspections to be determined by the corrosion rates measured during previous inspections *or* anticipated corrosion rates based on experience with tanks in similar service. This requirement provides operators with the choice between actual corrosion rates or experience with other similar service tanks' corrosion rates. Section 6.4.2.1's use of the word "or" means that both methods are not required. To be clear, corrosion did not cause the CC-10 release, it was metal fatigue. Consequently, CC-10's corrosion rate is unchanged based on the accident.

Further, the NOPV asserts that SFPP failed to appropriately establish and follow a schedule for inspecting the relevant tanks. SFPP respectfully contends that this allegation is not supported by the facts. The Certified Inspector appropriately evaluated and set inspection intervals as part of the last internal inspection of each relevant tank. PHMSA's allegation appears to be based on the position that SFPP must re-evaluate inspection intervals based solely on a single accident on another tank, without

² SFPP's L-O&M 2101 Atmospheric Breakout Tanks, Section 3.3 Internal Inspections states: An authorized tank inspector, who will be responsible for conducting both a visual inspection and assuring the quality and completeness of all Non-Destructive Examination (NDE) results, will perform the internal inspection.

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regard to cause or consideration of the other mandatory factors in API Std 563, Chapter 6. Section 6.2.1 provides 13 different factors that *must* be considered to determine inspection intervals for storage tanks.³ These include, but are not limited to, the following:

- a. The nature of the product stored.
- b. The results of visual maintenance checks.
- c. Corrosion allowances and corrosion rates.
- d. Corrosion prevention systems.
- e. Conditions at previous inspections.
- f. The methods and materials of construction and repair.
- g. The location of tanks, such as those in isolated or high risk areas.
- h. The potential risk of air or water pollution.
- i. Leak detection systems.
- j. Change in operating mode (for example: frequency of fill cycling, frequent grounding of floating roof support legs).
- k. Jurisdictional requirements.
- l. Changes in service (including changes in water bottoms).
- m. The existence of a double bottom or a release prevention barrier.

PHMSA has not considered any of these factors other than a prior accident on another tank in its proposed compliance order that would set a different inspection interval for the two Concord tanks.

For tanks CC-8 and CC-9, not only is PHMSA mandating a re-evaluation of the inspection interval, PHMSA goes further by attempting to impose its own inspection interval of 90 days from the date of the Order. This deadline is arbitrary and unwarranted. Each prior internal inspection of CC-8 and CC-9 identified minor issues with the striker plates, which were addressed. At no time did a Certified Inspector require the striker plates in these tanks to be replaced. In fact, the Certified Inspector directly referenced the square striker plates during the 2020 inspection of CC-10 but expressly stated that no corrective actions were required. Square striker plates are not unusual in older tanks as this was standard practice for many years. API 653 does not require square corner striker plates, or any other original construction or repairs in a tank that does not conform to the current API

³ SFPP's L-O&M 2101 Atmospheric Breakout Tanks, Section 3.4 Inspections Frequency Consideration contains the same factors.

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653 standard, to be replaced and upgraded to the current code. Removing the square striker plates could damage the existing tank bottom when gouging the existing plates off the bottom.

Finally, CC-10's roof was jacked to raise it to high setting for the internal inspection in 2022 when there was a suspected leak. The striker plate that cracked in 2023 was welded over a bottom plate lap weld that experienced stress from the jacking operation. While no defects were identified in the 2022 inspection, the jacking of the roof in 2022 likely initiated or contributed to the striker plate crack. So, while CC8 and CC-9 also have square striker plates and similar tank roof landings, they have not had recent roof jack stress placed on plate lap welds. This was a situation that is unique to CC-10. The cause of the release from CC-10 is not a widespread issue that warrants immediate reinspection of the other two tanks.

As to the Waston tanks, on April 19, 2022, PHMSA issued a letter of concern (not a NOPV) after the release on W-15 and stated SFPP *should re-evaluate* the inspection interval for W-14. At that time, PHMSA, appropriately, did not mandate such a requirement. Further, PHMSA did not allege that SFPP failed to *evaluate* the physical integrity of its in-service atmospheric breakout tanks in accordance with API 653 as required. At that time, PHMSA expressly stated SFPP should *re-evaluate* the interval. SFPP took PHMSA's concern seriously and responded in a letter, dated June 5, 2022. SFPP decided accelerate the inspection interval for W-14 by eight years and was fully prepared to conduct an inspection in first quarter of 2023.⁴ PHMSA's Pipeline Safety Violation Report makes no mention of SFPP's accelerated inspection interval which is materially exculpatory evidence.

Further, PHMSA asserts that it reviewed W-14's 2011 internal inspection reports and asserts SFPP identified "widespread soil-side corrosion" at that time. The 2011 report by HMT showed 131 areas of soil side corrosion and recommended repairs by patch plates. A total of 19 lap patches were

⁴ See attached 2022 06 06 SFPP Response to LOC.

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installed to address these areas indicated as shown on page 11 of the HMT report. To put it in relative terms, even if each area had a 12” by 12” plate installed, that would still be less than 1.4% of the W-14’s tank bottom area. Such a small area of the tank’s bottom does not equate to “widespread soil-side corrosion” as PHMSA claims.

Furthermore, PHMSA’s attempt to link the two Watson accidents to a common cause fails. Unlike W-15, W-14 developed a 5.5-inch crack in the bottom between the sump and the shell which was the source of the leak. The cycling of the tank and close proximity of sump to shell is surmised to contribute to the cracking. As a corrective action, W-14’s sump was moved further out.

It is unfortunate W-14 developed a leak prior to the planned accelerated inspection. However, SFPP’s actions to accelerate the inspection were reasonable and the existence of a leak does not automatically result in a regulatory violation. SFPP did accelerate the inspection interval by eight years, even though widespread soil-side corrosion had not been identified.

B. Additional Issues

1. Whether the allegation of probable violation is supported by the facts and the evidence.
2. Whether PHMSA has met its burden of proof by a preponderance of the evidence that a probable violation occurred.
3. Whether the alleged probable violation is consistent with the regulations and the referenced API 653 industry standard.
4. The role of API 653-Certified Inspectors in setting appropriate inspection intervals for tanks.
5. Whether PHMSA provided due process and fair notice, as required by the U.S. Constitution and the Administrative Procedure Act, in issuing an alleged violation for NOPV Item 1 based on the facts and the applicable law.
6. Whether PHMSA’s allegations of noncompliance under NOPV Item 1 are arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).
7. Whether the proposed compliance order is appropriate or should be withdrawn.

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8. Whether the proposed civil penalty is should be withdrawn or reduced to accurately reflect the statutory and regulatory penalty assessment criteria required under 49 U.S.C. § 60122(b) and 49 C.F.R. § 190.225, PHMSA's latest civil penalty policy, the civil penalty worksheet and the facts of this case.
9. Whether NOPV Item 1, the proposed civil penalty, and the PCO obligations contradict PHMSA's O&M Enforcement Guidance, Pipeline Safety Enforcement Procedures and prior enforcement precedent.
10. Whether the fact of a release, alone, provides sufficient grounds to support a violation of 49 C.F.R. § 195.432(b).

V. Request for Documents

Pursuant to 49 C.F.R. § 190.212(c)(2), (c)(3), and (c)(7) and to ensure a full and fair hearing,⁵ SFPP respectfully requests that PHMSA provide copies of any additional documents not otherwise provided by PHMSA, including but not limited to the following documents as soon as possible but no later than 10 business days prior to the informal conference:

1. Any and all notes, documents, or electronic records not otherwise included in the casefile pertaining to PHMSA's investigation of this matter.
2. Any and all notes, memoranda, inspector training materials, guidance and other materials supporting PHMSA's position concerning the alleged probable violation in the NOPV.

These materials are "pertinent to the matters of fact and law" asserted and must therefore be provided pursuant to 49 U.S.C. § 60117(b)(1)(C).⁶

⁵ See Gregory D. Cote, Acting General Counsel, US Dept. of Transportation, "Memorandum to Secretarial Officers and Heads of Operating Administrations," March 11, 2025 (available at <https://www.transportation.gov/sites/dot.gov/files/2025-03/Procedural%20Requirements%20for%20DOT%20Enforcement%20Actions.Cote%20Memo.Signed.03-11-2025.pdf>) at p. 4, 7:

The Department should, where feasible, foster greater private-sector cooperation in enforcement, promote information sharing with the private sector, and establish predictable outcomes for private conduct ... The employees and contractors of DOT responsible for inspections and other investigative functions must not use [its investigative] authorities as a game of 'gotcha' with regulated entities and should follow existing statutes and regulations ... [T]o the maximum extent consistent with protecting the integrity of the investigation, the representatives of DOT should promptly disclose to the affected parties the reasons for the investigative review and any compliance issues identified or findings made in the course of review ... For informal hearings, the record shall include the information that the agency considered "at the time it reached the decision" and its contemporaneous findings.

⁶ Memorandum from Chief Counsel, PHMSA to Acting Associate Administrator for Pipeline Safety, PHMSA, "Revised

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VI. Summary and Request for Relief

For all of the reasons identified above, and in consideration of other matters as justice may require, SFPP respectfully requests that NOPV Item 1 be withdrawn in its entirety, including the proposed civil penalty and the PCO obligations. PHMSA bears the burden of proof of all elements of a proposed violation in an enforcement proceeding.⁷ PHMSA is unable to meet its burden in this action. In the event that this allegation is not withdrawn, SFPP requests that PHMSA significantly reduce the proposed civil penalty and remove or modify the PCO requirements.

As noted above, SFPP believes this issue is capable of resolution without the need to proceed to a hearing and respectfully requests an informal settlement meeting with the Western Region.

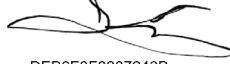
Procedures for Determining the Contents of the Case File in Pipeline Safety Enforcement Proceedings”, May 29, 2025 at p. 5-6:

PHC is advising OPS to consider Congress’ directive ‘that the case file in an enforcement proceeding include all agency records pertinent to the matters of fact and law asserted.’ PHC is further advising OPS to consider the provisions in the DOT Enforcement Memo, including the applicability of the *Brady* rule’s affirmative disclosure framework for materially exculpatory evidence as well as the directive to voluntarily share worksheets, manuals, charts, or other appropriate materials about the calculation of a civil penalty. PHC is advising OPS to consider the other procedural protections afforded to the respondent in developing its revised procedures. The availability of Agency records affects the respondent’s due process rights at various stages of an enforcement proceeding, including in deciding whether to request an informal hearing before a Presiding Official, and, if so, to introduce additional materials prior to a hearing, and to call and present testimony from witnesses during a hearing. The availability of agency records also affects whether the respondent can effectively ‘examine the evidence and witnesses presented by’ OPS.

⁷ See, e.g., In re ANR Pipeline Co, Final Order, CPF No. 3-2011-1011 (Dec. 31, 2012).

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Respectfully submitted this 17th day of
December 2025.

Signed by:

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Attachment:

SFPP, L.P. June 6, 2022 Response to PHMSA Letter of Concern CPF 5-2022-040-LOC