Lyons Sara

From: Coy, Byron (PHMSA) <[redacted]>
Sent: Monday, April 11, 2022 9:09 AM
To: Lyons Sara
Cc: Lehman, David (PHMSA)
Subject: RE: Discuss PHMSA OQ Covered Tasks -- Farmersville, TX (PLD21FR002)
Attachments: OQ FAQ Guidance- FINAL 1 3 21.docx; OQ FAQs - Current.pdf; ContractorCoveredTaskList for Enbridge by Veriforce.pdf; ContractorCoveredTaskList of Boardwalk listed by Veriforce.pdf; NCCER_2015_Covered_Task_List_V1.0rev (1).pdf; 320095022_Final Order_08142012 Pipefitting.pdf; API 1161 2000 Version.pdf; ASME B31Q TASK LIST from WEB at NCCER.docx

Some related info based on our April 7 meeting.
I remain available to assist.

OQ Enforcement Guidance :
https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/OQ_Enforcement_Guidance_%288_25_2016%29.pdf

The new FAQs were posted on the PHMSA web page in late January 2022, and can be accessed at this link: https://www.phmsa.dot.gov/pipeline/operator-qualifications/operator-qualification-overview

OQ Resource Info :https://search.usa.gov/search?query=operator+qualification&affiliate=dot-phmsa-2
https://www.phmsa.dot.gov/pipeline/operator-qualifications/about-operator-qualification

Veriforce OQ Summary : https://veriforce.com/resource/a-look-at-recent-phmsa-oq-enforcement-activities

Search Tool : https://www7.phmsa.dot.gov/regulations-fr/notices

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From: Lyons Sara <[redacted]>
Sent: Thursday, April 7, 2022 3:22 PM
To: Coy, Byron (PHMSA) <[redacted]>; Hippchen, David (PHMSA) <[redacted]>; Ochs, Gregory (PHMSA) <[redacted]>
Subject: RE: Discuss PHMSA OQ Covered Tasks -- Farmersville, TX (PLD21FR002)

Byron, Dave, Greg,

Thank you again for the discussion of OQ covered tasks today. I look forward to hearing back from you soon. If you're interested, this site has basic information on the investigation and a link to our factual docket.

Operator Qualification Frequently Asked Questions

Revised December 23, 2021

This Frequently Asked Questions (FAQs) guidance document provides additional information on operator qualification regulations. PHMSA provides FAQs to help the public understand how to comply with the existing requirements under the Regulations, but FAQs are not substantive rules, are not meant to bind the public in any way, and do not assign duties, create legally enforceable rights, or impose new obligations that are not otherwise contained in the existing regulations and standards.[1]

Use of Off-the-shelf OQ Programs

1 – *What responsibility does an operator have if it chooses to use an off-the-shelf OQ program? (§§ 192.805, 195.505)*

An operator choosing to use an off-the-shelf operator qualification (OQ) program—an OQ program that is not created by the operator—is fully responsible for understanding and meeting the provisions of the OQ requirements under parts 192 and 195. The operator must ensure that any OQ program selected is applicable to its operating characteristics, procedures, and equipment. The operator is responsible for any necessary modifications to the selected program to ensure applicability to the operator's system and compliance with the regulations.

Contractor Qualification

2 – *Are contractors required to have a written OQ program? (§§ 192.805, 195.505)*

No. The operator must ensure that any individuals who perform covered tasks on the operator's pipeline system—whether contractors or operator personnel—meet the requirements of the operator's OQ program. 64 FR at 46859. If contractors have their own written OQ program, operators must verify that it meets the requirements of the operator's OQ program. See 64 FR at 46862.

3 – *How might an operator ensure that individuals employed by contractors are qualified to perform covered tasks? (§§ 192.805, 192.807, 195.505, 195.507)*

[1] PHMSA issued a final rule governing OQ programs that can be found at 64 FN 46853 (Aug. 27, 1999).

The operator must ensure that any individuals performing covered tasks, including contractors and other parties, such as other operator personnel providing routine operation and maintenance (O&M) tasks or mutual aid, comply with the requirements of the operator's OQ program. See 49 CFR 192.805(b) and 195.505(b). The operator must verify and document that the contractor's or other operator personnel's qualifications satisfy the operator's written OQ program. The operator must maintain qualification records for all individuals performing covered tasks, including contractors, in accordance with §§ 195.507 and 192.807.

4 – *Are contractors required to use the operator's procedures when performing covered tasks? (§§ 192.605, 192.805, 195.402, 195.505)*

Operators must ensure that contractors follow the operator's written procedures, just as operator personnel must, pursuant to §§ 192.605 and 195.402. An operator may prepare new procedures or adopt procedures developed by a contractor for a particular task if such procedures are reviewed and approved by the operator in advance of performance of the task. The operator is responsible for ensuring that these procedures are acceptable and meet any applicable regulatory requirements. Records of contractor procedures and the operator's approval of those procedures are required to be maintained. The operator is also responsible for ensuring that the contractors are qualified to perform the covered tasks using these procedures, and that the contractor's procedures meet applicable regulatory requirements.

5 – *Who is responsible for qualifying contractor individuals who perform covered tasks on the operator's pipeline facilities? (§§ 192.805, 192.807, 195.505, 195.507)*

Operators are responsible for ensuring that any individuals performing a covered task on their pipeline facilities are qualified, regardless of whether these individuals are operator employees, contractor employees, or other personnel. Operators must verify and document that any program used for qualification is suitable for the operator's pipeline operating characteristics, equipment, and procedures.

Management of Other Entities Performing Covered Tasks

6 – *What requirements exist related to the qualification of individuals participating in mutual assistance agreements? (§§ 192.805, 195.505)*

Operators sometimes form mutual assistance agreements with other operators to help ensure that they have the resources necessary to complete covered tasks, particularly in times of emergency. Any operator who receives assistance must ensure that all individuals who perform covered tasks on the operator's pipeline are qualified in accordance with the operator's OQ program requirements, including documentation and recordkeeping.

Training Requirements

7 – *How should training be incorporated in an operator's program? (§§ 192.805(h), 192.807, 195.505(h), 195.507)*

Appropriate training is required to ensure that individuals performing covered tasks have the knowledge and skills needed to perform the tasks. Such training should be incorporated in practices leading to the development and qualification of new employees, as well as practices that refresh the knowledge and skills of individuals with considerable experience. The operator shall determine the appropriate training methods for these circumstances. 64 FR at 46861. In particular, any significant change in the procedures for performing the covered tasks should be the subject of training for all individuals performing those covered tasks. Training may also be required for equipment variations or differences. In addition, individuals who fail initial qualification or qualified individuals who fail requalification should be provided with appropriate remedial training in their areas of deficiency prior to reevaluation. It is an operator's responsibility to provide training to ensure individuals have the skills and knowledge necessary to perform covered tasks on the operator's unique pipeline system. Operators must retain these appropriate training records to support individuals' qualifications and requalifications.

8 – *What is the role of computer-based or web-based training in complying with the OQ Rule? (§§ 192.805(h), 192.807(a)(4), 195.505(h), 195.507(a)(4))*

Operators may choose the type and method of training; computer-based and web-based training represent two permissible choices available to operators. Training must address an operator's pipeline system characteristics, equipment, and procedures. See 64 FR at 46863. Training programs and methods may be reviewed by regulators during inspections.

Development of a Covered Task List Process

9 – *What operations and maintenance activities must be included in a compliant OQ program? (§§ 192.801, 195.501)*

Any activity meeting the four-part test, as defined in 49 CFR 192.801 or 195.501, is considered a covered task. Reliance on an off-the-shelf OQ program does not excuse the operator from its regulatory obligation to identify a covered task. 63 FR 46859. If an operator determines an activity is a covered task, the operator must qualify individuals on the covered task, even if the off-the-shelf OQ program does not include operator qualification and training for that particular task.

The pipeline safety regulations require operators to identify covered tasks for all operations and maintenance (O&M) activities that are performed as a requirement of parts 192 and 195, without regard to whether such activities are specifically defined in the operator's O&M manual or arise from performance-based or prescriptive requirements. For performance-based regulations, such as § 195.422: Pipeline Repairs, tasks are "performed as a requirement of this part" if they are integral to meeting the requirements of the regulations. If such tasks also meet the other parts of the definition of covered tasks, they must be treated as covered tasks under the four-part test. For example, PHMSA considered both pipefitting and removal of a casing to make repairs to be covered tasks. See, e.g., CPF Nos. 3-2009-5022 (issued August 14, 2012) and 1-2017-5015 (issued August 15, 2019, and June 26, 2020) on the PHMSA Enforcement Transparency website for further information.

Similarly, while an industry standard, such as ASME B31Q: Pipeline Personnel Qualification or API RP 1161: Pipeline Operator Qualification, may provide a useful starting point for identifying industry-accepted covered tasks, the absence of a task within an industry standard does not mean that the task is not a covered task. Operators must evaluate each task they perform and determine whether it is a covered task using the four-part test.

10 – *How should an operator differentiate between O&M tasks and new construction tasks? (§§ 192.801, 195.501)*

New construction is not covered under the OQ regulations for pipeline safety. The OQ regulations cover operation and maintenance activities. Maintenance activities encompass work done to preserve the serviceability of existing pipelines. This includes in-kind replacement of an existing segment of pipe where the capacity of the pipeline segments is maintained, and service is not expanded. If a replacement segment to an existing pipeline cannot fully and safely operate as designed without the completion of a certain task, then that task should be considered maintenance. Repairs to a pipeline, including replacement of one or more pipe joints, necessitated by threats such as corrosion or third-party damage, should be considered maintenance. The tie-in of a new pipeline or segment to an existing pipeline is an O&M task; any task carried out on that new pipeline or segment thereafter is also an O&M task. Operator accounting practices that differentiate between capital projects and O&M expenditures are irrelevant to the determination of whether a task is covered. See the definition of new construction in the PHMSA Operator Qualification Glossary, which can be found here: https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2020-06/OQ_Glossary.pdf.

11 – *Does the location where a task is performed affect whether it is a covered task? (§§ 192.801, 195.501)*

Yes. For example, if an individual performs a bench test on a regulator at the manufacturer's shop, the activity is not a covered task because the test was not "performed on a pipeline facility," as specified in the regulatory definition of covered task. However, if an individual were to perform the same bench test on a regulator at a compressor station, which is a pipeline facility, the task would be a covered task and the individual would need to be qualified.

12 – *Do emergency responders need to be qualified under the operator's program? (§§ 192.801, 195.501)*

PHMSA recognizes that emergency responders may arrive on scene before operator personnel. Section 192.615 requires operators to establish and maintain relationships with fire, police, or other appropriate public personnel, and § 195.403 requires operators to conduct advance emergency response planning with emergency responders. Any emergency responder who could be reasonably expected to perform manual valve closures or any other covered tasks must be qualified under the operator's OQ program.

Emergency responders who act on behalf of an operator during emergency situations, as an extension of the operator's workforce, similar to a contractor acting at the request or direction of an operator, are required to be qualified under the operator's OQ program. 64 FR at 46861.

Furthermore, any emergency responder who could be reasonably expected to perform manual valve closures or any other covered tasks must be qualified under the operator's OQ program.

Emergency responders need not be qualified by the operator to act on their own accord consistent with their job responsibilities to protect public safety. See 64 FR 46855-56.

13 – *Will the PHMSA Office of Pipeline Safety urge, strongly recommend, or encourage inspectors to use a master list of covered tasks to inspect operators? (§§ 192.801(b), 192.805(a), 195.501(b), 195.505(a))*

No, the PHMSA Office of Pipeline Safety does not develop or maintain a master list of covered tasks applicable to all pipeline operations.

Evaluation Method(s) (Demonstration of Knowledge, Skill, and Ability) and Their Relationship to Covered Tasks

14 – *What are acceptable evaluation methods, and what is observation of an individual? (§§ 192.803, 195.503)*

Acceptable evaluation methods can be found in 49 CFR 192.803 and 195.503. The evaluation methods selected must be appropriate for the covered task. Operators must be able to describe the evaluation method(s) associated with each covered task in their written OQ programs used to determine whether an individual is qualified to perform that task. Evaluation methods for initial and subsequent evaluations must also be specified.

Observation of on-the-job performance is an acceptable method of evaluation but may not be used as the sole method of evaluation under §§ 192.809(e) and 195.509(e). In order to determine an individual's ability to perform a covered task, observation must include methods of assessing the individual's knowledge of the task, as well as the individual's ability to perform it. The evaluation method must include adequate interaction between the observer and the observed to determine that an individual is qualified. For example, when observing performance of a covered task the observer may request the individual to describe the abnormal operating conditions associated with the performance of the covered task.

15 – *What capabilities should be evaluated to qualify an individual to perform covered tasks? (§§ 192.805(b), 195.505(b))*

The qualification process, whether for an initial qualification or a requalification, should address the following factors: (1) the individual's knowledge of the task (e.g., knowledge gained through self-study, classroom training, or computer-based training); (2) the individual's skill in performance of the task (e.g., craftsmanship in performing the steps of the task); (3) the individual's ability (e.g., proficiency/physical capability, to include vision, strength, or agility; or mental comprehension and understanding) to perform the covered task; and (4) the individual's ability to recognize and react to an abnormal operating condition. See 64 FR at 46861-62. The definition of "evaluation" in §§ 192.803 and 195.503 of the OQ regulations provides acceptable methods of evaluating these capabilities.

16 – *When evaluating individuals to ensure they are qualified, under what conditions will individuals be considered to have passed their evaluations? (§§ 192.805(b), 195.505(b))*

The evaluation of an individual's qualifications should be an objective, consistent process that documents an individual's ability to perform the covered task and recognize and react to an abnormal operating condition. The operator should establish the acceptance criteria for the evaluation method used. Individuals must demonstrate they have met the acceptance criteria. See 64 FR at 46861.

17 – *If an individual seeking qualification to perform a covered task fails the evaluation process, how many times can the individual be reevaluated? (§§ 192.803; 192.805(b), (h); 195.503; 195.505(b), (h))*

The operator should determine and specify in its OQ program the number of times an individual can be reevaluated. Remedial training should be considered prior to subsequent reevaluation.

18 – *What is a reasonable time between failure to pass an evaluation and reevaluation? (§§ 192.805(b) and (h), 195.505(b) and (h))*

While the regulation does not specify the period of time that may elapse between evaluations, the operator should establish requirements for reevaluation after an individual's failure to pass an evaluation. If fundamental knowledge, skill, or ability gaps are identified as reasons for the failure, the operator should consider additional training prior to reevaluation. In addition, if the examination process reveals a systematic series of failures over multiple evaluations, an operator should evaluate its training and qualification programs and/or procedures, in the spirit of continuous improvement.

19 – *Should operators implement measures to ensure that the procedures on which qualification is based are consistent with the operator's O&M procedures and the actual practices implemented in the field? (§§ 192.805, 195.505)*

Yes.

20 – *What credentials should a person have to be an evaluator? (§§ 192.805, 195.505)*

Operators' OQ programs may establish criteria that an individual should satisfy to be an evaluator. Although regulations do not specifically define what credentials are required, evaluators should possess the knowledge required to ascertain an individual's ability to perform covered tasks and to substantiate an individual's ability to recognize and react appropriately to abnormal operating conditions (AOC) that might occur while performing these activities. The evaluation process should be objective and consistent.

21 – *Is third-party evaluation a mandatory method? (§§ 192.805, 195.505)*

No.

Development and Documentation of Areas of Qualification for Individuals Performing Covered Tasks

22 – *Are qualified individuals required to carry cards to show the covered tasks for which they are qualified? (§§ 192.805, 195.505)*

No. The operator is responsible for maintaining a record of the current qualification status for individuals performing covered tasks.

23 – *Must plumbers and independent installers performing covered tasks on customer-owned curb-to-meter service lines be qualified? (§ 192.805(b))*

If the piping under consideration is subject to regulation by part 192, the plumber or anyone else performing the covered task for the operator must be qualified under the operator's OQ program.

Covered Task Performed by an Unqualified Individual

24 – *Can new employees work under the guidance of other qualified crewmembers for a period of time? If so, how long? (§§ 192.805(c), 195.505(c))*

The pipeline safety regulations allow for unqualified individuals to perform covered tasks only if they are directed and observed by a qualified individual. While not required by regulation, the operator may establish limitations on the amount of time and the number of unqualified individuals that may perform certain covered tasks under the direction and observation of a qualified individual.

25 – *Should an OQ program specify the maximum distance a qualified individual must be from an unqualified individual who is performing a covered task? (§§ 192.805(c), 195.505(c))*

Operators are not required to specify a maximum distance in their OQ program. However, the qualified individual should be close enough to direct and observe the unqualified individual so that, among other actions, the qualified individual can recognize and react to abnormal operating conditions and take immediate corrective action.

26 – *What is the maximum number of unqualified individuals performing a covered task that a qualified individual can direct and observe? (§§ 192.805(c), 195.505(c))*

Operators should determine the appropriate number of unqualified individuals that can be directed and observed by a qualified individual, which may vary depending on the covered task. The operator should consider all relevant factors, including physical space limitations for multiple individuals to properly and safely perform the covered task, as well as environmental conditions (e.g., noise, visual obstructions, weather, or other on-site conditions).

Work Performance History Review

27 – *What constitutes a work performance history review? (§§ 192.803; 192.809(c), (d); 195.503; 195.509(c), (d))*

A review of work performance history should include a search of existing records for documentation of an individual's past satisfactory performance of covered tasks and verification that the individual's work performance history contains no indications of substandard work or involvement in an incident (as defined in part 191) or accident (as defined in part 195) caused by an error in performing a covered task.

28 – *Under what conditions can a work performance history review be used for qualification of individuals performing covered tasks? (§§ 192.809(d), 195.509(d))*

Work performance history may not be used as the sole method for evaluating individuals performing covered tasks. Operators may use work performance history review in conjunction with other permissible evaluation methods.

Abnormal Operating Conditions (AOC)

29 – *Do qualified individuals need to recognize and react to abnormal operating conditions? (§§ 192.803, 195.503)*

To be qualified to perform a covered task, individuals must not only demonstrate the knowledge, skill, and ability to perform the task, but must also be able to recognize and react to abnormal operating conditions (AOCs) that the operator determines the individuals may be reasonably expected to encounter while performing a covered task. Individuals are not expected to recite a complete listing of AOCs for the covered tasks without referencing manuals or guides provided by the operator. See 64 FR at 46861-62.

Personnel Performance Monitoring (e.g., Determination of Role in Incident)

30 – *Should operators incorporate criteria in their OQ programs regarding the suspension or disqualification of an individual who performs covered tasks? (§§ 192.805(d), (e); 195.505(d), (e))*

The pipeline safety regulations include requirements for operators to (1) evaluate an individual if the operator has reason to believe that the individual's performance of a covered task contributed to an incident (as defined in part 191) or accident (as defined in part 195), and (2) evaluate an individual if the operator has reason to believe that the individual is no longer qualified to perform a covered task.

The operator's written OQ program should describe a process to determine (1) whether an individual is qualified to perform a covered task, (2) when it is necessary to make such a determination, and (3) how the operator will proceed if the process shows that the individual is no longer qualified to perform a covered task.

31 – *How should an operator address a situation in which an individual who is qualified to perform a covered task is performing that covered task incorrectly? (§§ 192.805(e), 195.505(e))*

Each operator should develop written policies for dealing with performance deficiencies. An individual who is found to be incorrectly performing a covered task for which the individual is qualified should be immediately removed from performing that covered task pending a deficiency review, retraining/coaching, reevaluation, suspension, or disqualification in accordance with the operator's policy.

32 – *What must an operator consider in its incident (or accident) investigation and analysis to satisfy provisions of the OQ regulations? (§§ 192.805(d), 195.505(d))*

Operators must have a written process for investigating whether performance of a covered task may have contributed to an incident or accident. The process must identify the individuals who performed the covered task and must include a review of the individuals' actions while performing the covered task.

33 – *How should operators monitor individuals between reevaluation intervals to ensure that the individuals continue to remain properly qualified? (§§ 192.805(e), 195.505(e))*

The regulations require an operator to "evaluate an individual if the operator has reason to believe that the individual is no longer qualified to perform a covered task." The operator must establish and follow a process in its written OQ program to accomplish this.

Reevaluation Interval and Methodology for Determining Same

34 – *How should an operator determine the reevaluation interval for individuals performing covered tasks? (§§ 192.805(g), 195.505(g))*

Necessary reevaluation intervals may be affected by task difficulty or complexity, task importance or safety sensitivity, and the frequency with which a task is performed. Operators may consider existing consensus standards and industry practice, their operating history, and the operational characteristics of their pipeline facilities. For infrequently performed tasks, such as hot tapping, an operator may choose to evaluate and qualify individuals immediately before the task is performed.

Program Performance and Improvement

35 – *How should an operator document compliance with OQ regulations? (§§ 192.807, 195.507)*

The pipeline safety regulations require the operator to maintain records that demonstrate compliance with subpart N of part 192, subpart G of part 195, and with its written OQ program.

All records and documents referenced in the operator's OQ program and necessary to verify compliance with provisions of the regulations must be available and retained for the period specified in the program, consistent with regulatory requirements. Records of prior qualification

and those for individuals no longer performing covered tasks shall be retained for at least five years. 49 CFR 192.807(b), 195.507(b).

36 – *Must records be maintained on the methods used to identify which tasks are covered tasks? (§§ 192.805(a), 192.807, 195.505(a), 195.507)*

The operator is required to maintain records that demonstrate compliance with the pipeline safety regulations. In order to meet this requirement, the operator must include provisions in its OQ program to identify covered tasks. But operators are not required to demonstrate how each of its covered tasks were identified.

37 – *Must records be maintained that show how the operator determined the intervals at which an individual performing a covered task will need to be reevaluated? (§§ 192.805(g), 195.505(g))*

Although it is not required by the pipeline safety regulations, operators are encouraged to maintain records that show how the operator determined the intervals at which an individual performing a covered task will be reevaluated.

Management of Changes

38 – *What types of changes should be communicated to individuals performing covered tasks? (§§ 192.805(f), 195.505(f))*

Numerous changes may occur that impact how a covered task is performed. Changes that need to be communicated to individuals performing covered tasks may include:

a. Modifications to company policies or procedures;
b. Changes to State or Federal regulations;
c. Utilization of new equipment and/or technology; and
d. New information from equipment or product manufacturers.

The operator should include provisions in its OQ program for communicating changes that affect covered tasks to individuals performing those covered tasks. The OQ program should also describe conditions under which changes are sufficiently substantive to require individuals performing covered tasks to be retrained and reevaluated prior to performing the task subject to the change. See 64 FR at 46863.

Under §§ 192.805(i) and 195.505(i), the operator must notify the PHMSA Administrator or a State agency if the operator significantly modifies its OQ program after the Administrator or State agency verifies that the program complies with the pipeline safety regulations. As defined by the PHMSA Operator Qualification Glossary, "significant" includes (but is not limited to): increasing evaluation intervals and span-of-control ratios, eliminating covered tasks, and changing mergers and/or acquisitions, evaluation methods (e.g. written versus observation methods), and the overall OQ plan. The PHMSA Operator Qualification Glossary may be found here: https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2020-06/OQ_Glossary.pdf.

39 – *What will the role of the Federal or State inspector be in evaluating the validity of written examinations and the associated answer keys? (§§ 192.805(b), 195.505(b))*

Federal and State inspectors may evaluate all evaluation methods, including written examinations. Operators should ensure the security and confidentiality of exam questions and responses.

Supervisory Personnel

40 – *Does a supervisor or foreperson need to be qualified for all tasks carried out under his/her management? (§§ 192.805(b), (c); 195.505(b), (c))*

The pipeline safety regulations do not require a supervisor or foreperson to be qualified to perform the covered tasks carried out under his/her supervision. However, he/she must be qualified if he/she performs the tasks or if he/she is the individual assigned to direct and observe an unqualified person who performs the task.

U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

AUG 1 4 2012

Mr. Michael A. Creel
President and CEO
Enterprise Products Operating, LLC
1100 Louisiana Street
Houston, TX 77002

Re: CPF No. 3-2009-5022

Dear Mr. Creel:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of $466,200. It further specifies actions that need to be taken by Enterprise to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order satisfied, as determined by the Director, Central Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

[redacted]

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure
cc: Mr. David Barrett, Director, Central Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Edward C. Lewis, Esquire, Fulbright & Jaworski, LLP, Counsel for Enterprise Products Operating, LLC

CERTIFIED MAIL - RETURN 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	)	
Enterprise Products Operating, LLC,	)	**CPF No. 3-2009-5022**
Respondent.	)	

FINAL ORDER

In September 2007, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), opened an investigation of an incident involving the hazardous liquid pipeline system operated by Enterprise Products Operating, LLC (Enterprise or Respondent), in Clark County, Kansas. Respondent is a subsidiary of Enterprise Products Partners, LP, which transports natural gas, NGL crude oil, refined products, and petrochemicals through more than 50,000 miles of pipeline in North America.[1]

The investigation arose out of an incident that occurred on Enterprise's 12-inch "Brown" line (Brown Pipeline) in Clark County, Kansas, approximately three miles north of Englewood, Kansas, at Mile Post (MP) 362, on September 11, 2007 (Incident). The Brown Pipeline begins in Skellytown, Texas, and runs through Conway, Kansas; the total system is approximately 1,150 miles. The Incident resulted in the release of approximately 14,763 barrels of a highly volatile liquid (HVL), specifically, Y-grade de-methanized NGL mix. Due to its proximity to the Brown Pipeline and the continuing release of flammable product, State Highway 283 was closed for five days.[2]

As a result of the investigation, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated October 28, 2009, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Enterprise had committed various violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of $466,200 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations.

Enterprise responded to the Notice by letter dated November 25, 2009 (Response). The

[1] http://www.enterpriseproducts.com/corpProfile/businessProfile.shtm (last accessed December 27, 2011).

[2] *Pipeline Safety Violation Report (Violation Report), CPF 3-2009-5022*, October 28, 2009 (on file with PHMSA).

company contested the allegations and requested a hearing, which was subsequently held on May 11, 2010, in Kansas City, Missouri, with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Enterprise was represented by counsel. After the hearing, Enterprise provided a post-hearing statement for the record by letter dated June 18, 2010 (Closing).

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.422(a), which states:

> **§ 195.422 Pipeline repairs.**
> (a) Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.

The Notice alleged that Enterprise violated 49 C.F.R. § 195.422(a) by failing to insure, during the repair of its pipeline system, that the repairs were made in a safe manner and so as to prevent damage to persons or property. Specifically, it alleged that on the day before the Incident, bypass piping was installed as part of an effort to remove a maintenance "pig" that had become lodged in the pipeline. The Notice further alleged that the company's own post-incident failure analysis concluded that the failure was caused by the incorrect installation of the connection of a two-inch ball valve to a two-inch fitting on the bypass piping, resulting in damage to the threads.[3]

In its Response, at the hearing, and in its Closing, Enterprise maintained that the repair had been made correctly and safely, and asserted that the fact that an incident occurred did not mean that the repair had not been made in a safe manner. As stated in the job plan for the repair project, Enterprise contended that it had taken "extensive steps to ensure that the bypass project 'was performed in a good and workmanlike manner enforcing all company policies, procedures, specifications, and guidelines.'"[4] Enterprise also stated that it had taken "every reasonable precaution to ensure that the bypass project was performed safely," even listing some of the precautionary measures it had taken in preparation for the project.[5] The company further asserted that "under PHMSA's analysis, any accident following a pipeline repair would constitute a violation of 49 C.F.R. § 195.422," and that such a conclusion was "inappropriate, arbitrary, and capricious."[6]

Enterprise is correct that the mere fact an incident occurs following an accident does not constitute a violation *per se* of the regulation. The heart of the alleged violation, however, is that

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[3] *Notice* at 2.

[4] *Response* at 3.

[5] *Id.* at 3-4

[6] *Response* at 3, *Closing* at 3.

the company failed to conduct the repair in a safe manner and so as to prevent damage to persons or property. Over-tightening a threaded connection can easily damage the threads on the pipe, resulting in threads that are either not fully engaged or are over-engaged when assembled. This can lead to a failure at the pipe connection or excessive stress on the connection. In this case, the record shows that Enterprise had no procedures in its Operations and Maintenance Manual (O&M Manual) or in the Job Plan for this specific repair on how to make a threaded connection safely. Enterprise employees who were interviewed after the Incident reported that they had simply tightened the fitting as hard as they could, using the largest wrench they had available.

According to Enterprise's own report, the most probable cause of the failure was incorrect installation of the 2" ball valve. The report states: "Overall damage to the TOR [thread-o-ring] external threads indicated that the valve was improperly placed on the TOR and tightened, resulting in damage to the internal valve threads and external TOR threads."[7] This conclusion is further supported by the "out-of-roundness of the TOR threads" and "statements from field personnel noting that the plug separated from the pilot of the removal tool when extracted."[8]

The cause of the Incident was the failure of the threaded connection, which was an element of the repair.[9] That the repair itself caused the failure is a strong indication that the repair work was not performed in a safe manner and so as to prevent damage to persons or property. Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.422(a) by failing to insure that the installation of the bypass was made in a safe manner and so as to prevent damage to persons or property.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(3), which states:

> **§ 195.402 Procedural manual for operations, maintenance, and emergencies.**
>
> (a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted....
>
> (c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:
>
> (1) ....
>
> (3) Operating, maintaining, and repairing the pipeline system in accordance

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[7] *Violation Report, Exhibit A, Description of Bypass Failure, MAPL South Leg (12" Brown Line)*, Derek Gilboe, PEng, February 14, 2008, at 4.

[8] *Id.*

[9] *Id.*

with each of the requirements of this subpart and subpart H of this part....

The Notice alleged that Enterprise violated 49 C.F.R. § 195.402(c)(3) by failing to include procedures in its O&M Manual for adequate safety during maintenance and normal operations. Specifically, the manual had no written procedures for installing threaded pipefittings in connection with repairs made in accordance with the requirements of Subpart F.[10]

In its Response, Enterprise stated that its O&M Manual and Operator Qualification (OQ) Documentation complied with § 195.402(c)(3) by requiring that all repairs "be made in a manner that is safe and will prevent injury to persons or damage to property," that "no valve, pipe or fitting... be used... unless it is designed, constructed and tested as required in the Company Engineering Design Standards," and that repairs "be made in accordance with ANSI B31.4, Paragraph 434.5...."[11] However, at the hearing and in its Closing, Enterprise admitted that it had no detailed procedures in its O&M Manual for making threaded connections and did not contest the alleged violation.[12]

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(3) by failing to include procedures in its O&M Manual for adequate safety in repairing its pipeline system in accordance with the requirements of Subpart F.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(a), which states:

> **§ Sec. 195.505 Qualification program.**
> Each operator shall have and follow a written qualification program. The program shall include provisions to:
> (a) Identify covered tasks....

The Notice alleged that Enterprise violated 49 C.F.R. § 195.505(a) by failing to have and follow a written qualification program that included adequate provisions to identify "covered tasks," as that term is defined under § 195.501(b). Specifically, it alleged that Enterprise did not include pipefitting in its list of covered tasks even though § 195.422 requires all repairs to be "made in a safe manner" and "so as to prevent damage to persons or property." The Notice explained that pipefitting, as a covered task, would include the assembly of threaded pipe connections and that it met the four-part test for covered tasks under § 195.501(b) for making repairs on Enterprise's pipeline system.

Throughout this proceeding, Enterprise has argued that pipefitting is not a covered task because it does not meet the four-part test in § 195.501(b). That regulation defines a covered task as any activity that (1) is performed on a pipeline facility, (2) is an operations or maintenance task, (3) is performed as a requirement of Part 195, and (4) affects the operation or integrity of the pipeline. Specifically, the company contends that pipefitting does not satisfy the third prong of

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[10] *Notice* at 2.

[11] *Response* at 4.

[12] *Closing* at 3.

the test because Part 195 "must include a requirement specifically regulating the activity" but there is no specific requirement in Part 195 regarding the use of pipefitting in making safe repairs.[13]

As a preliminary matter, it may be helpful to describe generally the role of pipefitting in the operations and maintenance of pipelines. Pipefitting is the work of fabricating, constructing, operating, and maintaining piping systems in many industries, and most pipeline repair operations involve a pipefitting task of some kind. In this particular case, the repair involved the assembly of threaded steel pipe. Pipefitting that is not performed correctly can cause safety and integrity risks to a pipeline. A pipefitting task that does not follow all the required procedures can cause a future failure or a condition that would require a pipeline to be shut down for further repair.

Enterprise presented three main arguments why it believes pipefitting does not meet the third prong of the test for covered tasks. First, the company argues that the rulemaking history of Subpart G of Part 195, Qualification of Pipeline Personnel, indicates that the intent of the rule is to include only those tasks "specifically regulated through very specific requirements" in Part 195.[14]

According to Enterprise, the preamble of the final rule provides five examples of activities that qualify as covered tasks, and each one represents a task that is specifically required by a particular regulation.[15] In contrast, PHMSA has relied in this case upon a "general provision" in § 195.422 that repairs be made "in a safe manner." The company argues that the lack of a specific regulation about the installation of threaded pipe in Part 195 indicates a conscious decision by PHMSA not to make pipefitting a covered task. If PHMSA had wanted to regulate the joining of threaded steel pipe, it could have easily done so, just as it had done for certain welding practices.[16]

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[13] *Closing* at 5.

[14] *Id.* at 6.

[15] *Closing* at 5-6; 64 FR 46860. Enterprise cites five examples from the preamble of the rule: purging a pipeline; leakage surveys of distribution lines; starting, operating and shutting down gas compressor units; inspection of navigable water crossings; and inspection of breakout tanks.

[16] *Id.* at 10-11. Enterprise further argues that the omission of any specific regulation in Part 195 about pipefitting should be interpreted in the same way as an omission in a statute. *Roberto v. Department of Navy,* 440 F.3d 1341, 1350 (Fed. Cir. 2006). That case, however, states: "When construing a regulation or statute, it is appropriate first to examine the regulatory language itself to determine its plain meaning.... If the regulatory language is clear and unambiguous, the inquiry ends with the plain meaning. However, if the regulation is silent or ambiguous, the court then gives deference to the agency's own interpretations." [Citations omitted].

The company also finds significance in the removal of certain language from the final rule that had appeared in the proposed rule. The proposed rule proposed that activities conducted "pursuant to requirements" in Part 195 satisfied the third prong of the four-part test; the final rule substituted the phrase "performed as a requirement of this Part." Enterprise argues this change demonstrates an intent on the part of the agency to limit covered tasks only to those specifically required by a particular regulation. The final rule, however, indicated that the regulatory text was changed simply as a clarification and gave no indication it was intended as a substantive revision. I would also note that the heading in the preamble of the final rule still retained the phrase, "Tasks Performed Pursuant to a Requirement in 49 CFR Part 192 or 195." *Id.* at 7-8; FR 46860.

I do not read the final rule so narrowly. If Part 195 requires an operator to perform a certain activity, then an operator is obliged to identify the specific covered tasks it performs as part of carrying out that required activity. In this case, Respondent concedes that making repairs in a safe manner, as required by § 195.422, constitutes a covered task.[17]

Making pipeline repairs in a safe manner involves myriad tasks that may vary from one job to another or from one operator to another. The regulation provides flexibility for each operator to identify those particular repair tasks that meet the four-part test and to ensure that individuals performing such covered tasks are properly qualified.

Many of the pipeline safety regulations, including § 195.422, contain performance-based, rather than prescriptive, requirements. Unlike the latter, performance-based regulations require proactive planning, operations, and accountability by an operator for its own unique systems. If covered tasks only include those activities that are specifically regulated by Parts 192 and 195, no performance-based regulation would ever constitute an OQ "requirement" since, by definition, a performance-based requirement (e.g., that a repair be made "in a safe manner") does not consist of specific, detailed procedures that must be followed by each operator.

I interpret § 195.505 more broadly. The OQ regulations require operators to identify covered tasks for all of their operations and maintenance activities that are required by Parts 192 and 195, regardless of whether such activities arise from performance-based regulations or from more prescriptive requirements. For those that are performance-based regulations, such as § 195.422, this means determining which tasks are so integral to meeting the requirements of the regulations that they need to be treated as separate covered tasks under the third prong of the test.

In this case, Enterprise asserts that pipefitting should not be considered a separate covered task under the requirement of making repairs safely under § 195.422. However, a careful review of the record shows that for this particular repair, Enterprise itself identified *multiple* separate covered tasks, including "Install Mechanical Bolt on Clamp," "Install Full Encirclement Weld Sleeve," "Install Composite Repair Sleeve," "Operate/Maintain Stopple Equipment," and "Operate/Maintain Hot Tapping Equipment," and explicitly referenced the general safe-repair requirement found in § 195.422 as constituting the regulatory basis for each task.[18] Therefore, by its own actions and treatment of other repair-related activities related to this particular project, Enterprise recognized that other critical activities were covered tasks, even though they were not "specifically required" by particular regulations in Part 195. Pipefitting is no different.[19]

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[17] *Response* at 5.

[18] *Response* at Section 5.

[19] Both Enterprise and OPS cited the positions taken by different trade and standards-setting organizations to support their respective positions. OPS cited the position of the ASME B31Q Committee's Pipeline Personnel Qualification Standard (PPQ Standard) that the joining of threaded pipe constitutes a covered task. Enterprise countered that the PPQ Standard defines the term "covered task" more broadly than § 195.501(b), and that therefore the B31Q Committee's position is irrelevant. Enterprise also pointed out that the American Petroleum Institute (API) Operator Qualification Workgroup Committee concluded that joining threaded pipe is not a covered task. I would note that neither the API nor the ASME definition of "covered task" is incorporated by reference into the

In this case, it is undisputed that § 195.422 requires repairs to be made safely and that Enterprise properly treated the regulation as a regulatory requirement. The company also prepared a detailed job plan that identified various sub-tasks for this particular repair project that included separate and discrete covered tasks, ostensibly because they were integral to the more general repair requirement and met the four-part test. It failed, however, to identify pipefitting as a separate task even though it too was an essential part of safely repairing the line.

Second, Enterprise argued that it would be overly broad to treat each separate and discrete element of performing pipeline repairs, such as joining threaded pipe, as a covered task. The company contended that if covered tasks were defined so broadly, it would "bootstrap all pipeline maintenance and repair activities as 'covered tasks'" and render the third prong of the four-part test "superfluous."[20]

I disagree. Any maintenance or repair task must satisfy all four prongs of the test in § 195.501(b) to be considered a covered task. Certain common tasks involved in making safe repairs would not be considered covered tasks if they failed to satisfy each of the other three prongs. For example, reading a voltmeter is a common task involved in making many pipeline repairs, but since it is not an operations and maintenance activity, it would not constitute a covered task in and of itself.

PHMSA explained in the preamble of the final rule that the four-part test should not be read too broadly. It used the activity of welding as an example of an activity that might sometimes be a covered task and sometimes not, depending upon the circumstances under which it was performed. If welding were performed as an operations and maintenance activity, such as when installing a weld-over sleeve to repair an anomaly, then it would be considered a covered task. On the other hand, if welding were performed during the fabrication of new installations, then it would not be an operations and maintenance activity and therefore not a covered task.[21]

In similar fashion, pipefitting may be considered a covered task under certain circumstances but not others. Just because pipefitting should have been included as a covered task in performing the repair in question does not mean that it always needs to be in all situations. I therefore reject Respondent's argument that the inclusion of pipefitting as a covered task in meeting the requirements of § 195.422 in this case renders the third prong of the test overly broad or "superfluous."

Third, Enterprise argued that PHMSA had been inconsistent in its treatment of pipefitting as a covered task. The company cited a Notice of Amendment case, Valero Terminaling and Distribution Company, CPF No. 4-2008-5003M, as showing that PHMSA had not consistently

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pipeline safety regulations. While the positions of industry groups are useful and relevant in the interpretation of PHMSA regulations, they are not determinative.

[20] *Closing* at 7.

[21] 64 FR 46860.

considered the joining of threaded pipe as a covered task under Part 195.[22] Enterprise claimed that the case "addressed an alleged failure of Valero to include joining of threaded pipe as a covered task under Part 195 in its OQ manual."[23] However, PHMSA alleged only that Valero needed to finalize the development of internal training modules for the task of threaded pipe; the case did not address the need to identify pipefitting as a covered task.[24] While Valero stated that it did not consider the joining of threaded pipe to be a covered task, it did not explain which element of the four-part test was not met, and the communications between PHMSA and Valero did not address this issue.

In rebuttal, the agency cited several other Notices of Amendment (NOAs) issued to other pipeline operators on this issue. While Enterprise noted that none of these NOAs set forth a legal rationale for PHMSA's position,[25] these NOAs still demonstrate that the agency has considered both pipefitting[26] generally and the assembly of threaded connections[27] specifically as covered tasks for other operators and has required operators to be more specific than simply listing repairs as a single task.

In summary, upon consideration of all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.505(a) by failing to properly identify pipefitting, when performed during pipeline repairs as required by § 195.422, as a covered task in its written qualification program. In reaching this conclusion, I reject Enterprise's various arguments that pipefitting does not satisfy the third prong of the four-part test used to determine whether a particular activity qualifies as a covered task.

I would note this finding does not reach the larger issue of whether pipefitting must always be treated as a covered task for other operators or for all repairs. Each operator needs to review its own operations and maintenance activities in light of the regulatory requirements, including § 195.422, to determine whether pipefitting is an integral component of meeting such requirements and whether it satisfies each prong of the four-part test. If so, it should be included as a covered task.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

§ Sec. 195.505 Qualification program.

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[22] *Closing* at 12.

[23] *Id.*

[24] Notice of Amendment, Valero Terminaling and Distribution Company, CPF No. 4-2008-5003M, Jan. 28, 2008.

[25] *Closing* at 9.

[26] SemCrude L.P., CPF No. 3-2006-5013M, February 26, 2006; Center Terminal Company – Toledo, CPF No. 3-2006-5019M, March 3, 2006; Ergon Trucking, Inc., CPF No. 3-2006-5023M, March 6, 2006; Jayhawk Pipeline, LLC, CPF No. 3-2006-5022M, March 6, 2006.

[27] Buckeye Pipeline Company, CPF No. 1-2005-5007M, March 28, 2005; Bridger Pipeline LLC, CPF No. 3-2008-5016M, Dec. 23, 2008; Magellan Pipeline Company, LP, CPF No. 3-2009-5017M, October 8, 2009.

> Each operator shall have and follow a written qualification program. The program shall include provisions to:
> (a) ....
> (b) Ensure through evaluation that individuals performing covered tasks are qualified....

The Notice alleged that Enterprise violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified. Specifically, the Notice alleged that Enterprise failed to evaluate company personnel who installed the two-inch bypass to ensure that they were qualified to perform the task of joining pipe using threaded connections.

In its Response and at the hearing, Enterprise did not contest the allegation that its personnel had not been qualified to perform pipefitting but, as in the preceding Item, asserted that pipefitting was not a covered task. Given my decision that Enterprise failed to include pipefitting as a covered task to meet the requirements of § 195.422, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 199.105(b), which states:

> **§ 199.105 Drug tests required.**
> Each operator shall conduct the following drug tests for the presence of a prohibited drug:
> (a) ....
> (b) *Post-accident testing.* As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

The Notice alleged that Enterprise violated 49 C.F.R. § 199.105(b) by failing to drug test, as soon as possible after the accident, nine employees whose performance could not be completely discounted as a contributing factor to the accident. Specifically, the Notice alleged that Respondent did not conduct post-accident drug testing of the nine employees who had been involved with the installation of the bypass repair, that the performance of these employees could not be completely discounted as a contributing factor to the Incident, and that it was possible a drug test could have revealed whether employee performance had been affected by drug use.

In its Response, Enterprise stated that it was not required to conduct drug testing on the individuals involved in the bypass project due to the circumstances of the Incident.[28] At the

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[28] *Response* at 7.

hearing and in its Closing, however, Enterprise did not contest the alleged violation, but challenged the alleged number of employees who should have been drug tested.[29]

Enterprise claimed that because only one employee performed the actual work of joining the threaded pipe, he was the only individual who should have been subject to drug testing. However, the company offered no evidence, based on the best information available immediately after the accident, that the performance of the other employees could have been completely discounted as a contributing factor to the accident. Since Enterprise had not yet conducted its own accident investigation and determined that the threaded connection was the cause of the Incident, it could not have concluded that the performance of the other employees could not have contributed to the accident. Therefore, the employees who should have been drug tested included all who were involved in the installation of the bypass piping

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 199.105 by failing to drug test, as soon as possible after the Incident, each of the nine employees whose performance could not be completely discounted as a contributing factor to the accident.

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 $100,000 per violation for each day of the violation, up to a maximum of $1,000,000 for any related series of violations. 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; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. 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 $466,200 for the violations cited above.

Item 1: The Notice proposed a civil penalty of $100,000 for Respondent's violation of 49 C.F.R. § 195.422(a), for failing to insure that repairs were made in a safe manner and so as to prevent damage to persons or property. As noted above, I found that Enterprise failed to insure that the installation of the bypass was made in a safe manner and so as to prevent damage to persons or property. Respondent requested a reduction of the proposed penalty to "reflect the proactive measures Enterprise took to prevent the Incident and its quick response to minimize the amount of the release" and to "recognize that the incident did not result in any damages to persons or property."[30] However, it is undisputed that Enterprise's "proactive measures" were

[29] *Closing* at 13.

[30] *Closing* at 3.

not sufficient to ensure the repairs were made safely in the first place.

Given the damage that could have resulted from the Incident, Enterprise is fortunate that the release caused no fatalities or catastrophic property damage. Safety is compromised when an unintended release of HVL occurs, whether or not damages actually result. Respondent's quick response to minimize the amount of the release was prudent, insofar as it was in the company's best interest to contain the product and to mitigate any damage, but it does not affect the circumstances or gravity of the violation itself. None of Respondent's arguments warrants a reduction of the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $100,000 for violation of 49 C.F.R. § 195.422(a).

Item 2: The Notice proposed a civil penalty of $133,100 for Respondent's violation of 49 C.F.R. § 195.402(c)(3), for failing to include procedures in its O&M Manual providing for adequate safety during maintenance and normal operations. As noted above, I found that Respondent failed to include procedures providing adequate safety in the installation of threaded connections in performing general repairs in accordance with Subpart F.

Enterprise asserted that "the proposed penalty should be reduced to reflect the steps taken to prevent the incident and to recognize the measures taken by Enterprise to modify its internal procedures in an effort to ensure the incident does not occur again."[31] While Enterprise made an effort to install the bypass safely, it did not have specific procedures for installing threaded pipefittings. The other steps Enterprise took to ensure safety during this repair did not make up for a lack of adequate procedures in its O&M Manual.

While the modifications made to the procedures after the Incident will undoubtedly be useful in preventing future incidents, they do not mitigate the gravity or circumstances of the violation. None of Respondent's arguments warrant a reduction of the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $133,100 for violation of 49 C.F.R. § 195.402(c)(3).

Item 4: The Notice proposed a civil penalty of $133,100 for Respondent's violation of 49 C.F.R. § 195.505(b), for failing to ensure through evaluation that individuals performing covered tasks were qualified. As noted above, I found that Respondent failed to evaluate the company personnel who installed the two-inch bypass to ensure they were qualified to perform the task of joining pipe using threaded connections. The company's own post-incident failure analysis concluded that the failure of this threaded connection resulted in the release of 14,763 barrels of highly volatile liquid. Given the damage that could have resulted from the Incident, Respondent is fortunate that the release caused no fatalities or catastrophic property damage. Safety is compromised when an unintended release of HVL occurs, whether or not damages actually result. Respondent's quick response to minimize the amount of the release was prudent, but does not mitigate the circumstances or the gravity of the violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $133,100 for violation of 49 C.F.R. § 195.505(b).

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[31] *Closing* at 3.

Item 5: The Notice proposed a civil penalty of $100,000 for Respondent's violation of 49 C.F.R. § 199.105, for failing to drug test as soon as possible after the accident each employee whose performance could not be completely discounted as a contributing factor. Respondent contested the amount of the proposed penalty on the basis that there was only one employee who performed work to join the threaded pipe, and therefore only that particular employee should have been subject to drug testing.[32]

As discussed above, Enterprise was not in a position to have known all of the factors contributing to the cause of the accident immediately following the failure. Therefore none of the nine employees who were involved in the installation of the bypass piping could have been completely discounted as a contributing factor to the accident. That Enterprise failed to drug test *any* of its employees after the accident indicates that Enterprise failed to consider the possibility that employee performance was a contributing factor, even though employees were making repairs at the site of the accident only hours before the accident occurred. Respondent's argument does not warrant a reduction of the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $100,000 for violation of 49 C.F.R. § 199.105.

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 **$466,200**.

Payment of the civil penalty must be made within 20 days of service. 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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the $466,200 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 2, 3 and 4 in the Notice for violations of 49 C.F.R. §§ 195.402(c)(3), 195.505(a), and 195.505(b) respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance

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[32] *Closing* at 13.

with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.402(c)(3) (**Item 2**), Respondent must prepare and submit written procedures for pipefitting. Pipefitting includes, but is not limited to: making and connecting threaded pipe and components; assembling flanged pipe and components and coupled connections; bending and connecting instrument and control tubing; and inspecting completed pipefitting assemblies. The procedures shall also include, but not be limited to, descriptions of the following: minimum pipe and component strength; minimum pressure ratings and dimensions of pipe and components; maximum unsupported length of completed assemblies; and other requirements necessary to assure that completed assemblies conform to 49 CFR Part 195. This must be completed and documentation submitted for approval by the Director within 30 days of receipt of the Final Order.

2. With respect to the violation of § 195.505(a) (**Item 3**), Respondent must identify and add to its covered task list any and all operations and maintenance requirements associated with pipefitting. Pipefitting tasks are those described in Item 1 above. The identification of pipefitting tasks must be in conformance with the requirements of 49 CFR Part 195, Subpart G – Qualification of Pipeline Personnel. This must be completed and documentation submitted for approval by the Director within 30 days of receipt of the Final Order.

3. With respect to the violation of § 195.505(b) (**Item 4**), Respondent must prepare and submit to the Director a written evaluation and qualification program for pipefitting tasks in conformance with the requirements of 49 CFR Part 195, Subpart G – Qualification of Pipeline Personnel, within 30 days of receipt of the Final Order. In addition, Respondent must complete the training, evaluation, and qualification of all personnel performing covered pipefitting tasks on its pipeline, and submit documentation of this to the Director within 90 days after receipt of the Final Order.

4. It is requested that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that costs be reported in two categories: (1) the total cost associated with preparing revised plans, procedures, and programs; and (2) the total cost associated with training, evaluating, and qualifying personnel.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed $100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: 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. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

[redacted]

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

AUG 1 4 2012

Date Issued

Operator Qualification Enforcement Guidance

Introduction

The materials contained in this document consist of guidance, techniques, procedures and other information for internal use by the PHMSA pipeline safety enforcement staff. This guidance document describes the practices used by PHMSA pipeline safety investigators and other enforcement personnel in undertaking their compliance, inspection, and enforcement activities. This document is U.S. Government property and is to be used in conjunction with official duties.

The Federal pipeline safety regulations (49 CFR Parts 190-199) discussed in this guidance document contains legally binding requirements. This document is not a regulation and creates no new legal obligations. The regulation is controlling. The materials in this document are explanatory in nature and reflect PHMSA's current application of the regulations in effect at the time of the issuance of the guidance. In preparing an enforcement action alleging a probable violation, an allegation must always be based on the failure to take a required action (or taking a prohibited action) that is set forth directly in the language of the regulation. An allegation should never be drafted in a manner that says the operator "violated the guidance."

Nothing in this guidance document is intended to diminish or otherwise affect the authority of PHMSA to carry out its statutory, regulatory or other official functions or to commit PHMSA to taking any action that is subject to its discretion. Nothing in this document is intended to and does not create any legal or equitable right or benefit, substantive or procedural, enforceable at law by any person or organization against PHMSA, its personnel, State agencies or officers carrying out programs authorized under Federal law.

Decisions about specific investigations and enforcement cases are made according to the specific facts and circumstances at hand. Investigations and compliance determinations often require careful legal and technical analysis of complicated issues. Although this guidance document serves as a reference for the staff responsible for investigations and enforcement, no set of procedures or policies can replace the need for active and ongoing consultation with supervisors, colleagues, and the Office of Chief Counsel in enforcement matters.

Comments and suggestions for future changes and additions to this guidance document are invited and should be forwarded to your supervisor.

The materials in this guidance document may be modified or revoked without prior notice by PHMSA management.

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For a complete “Glossary of Terms” please refer to the following link: http://www.phmsa.dot.gov/staticfiles/PHMSA/Pipeline/TQGlossary/Glossary.html

Enforcement Guidance	Qualification of Pipeline Personnel Parts 192,195
Revision Date	8 25 2016
Code Section	§192.801,§195.501
Section Title	Scope
Existing Code Language	(a) This subpart prescribes the minimum requirements for operator qualification of individuals performing covered tasks on a pipeline facility. (b) For the purpose of this subpart, a covered task is an activity, identified by the operator, that: (1) Is performed on a pipeline facility; (2) Is an operations or maintenance task; (3) Is performed as a requirement of this part; and (4) Affects the operation or integrity of the pipeline.
Origin of Code	192-86, 64 FR 46853, Aug. 27, 1999 195-67, 64 FR 46853, Aug. 27, 1999
Last Amendment	
Interpretation Summaries	G02-09-18 #PI-11-061 192,Date: 9-18-2002 Regarding the applicability of the operator qualification regulations at 49 CFR Part 192, Subpart N to non-company individuals replacing customer-owned service lines (plumbers) and whether the replacement would be considered an operations and maintenance task. The Interpretation asserted that service line replacement with new pipe, whether by insertion or direct burial, is an operations and maintenance (O&M) activity that meets the "four part test" in §192.801(b). The operator is responsible to ensure all individuals are qualified regardless of the type of replacement being performed and regardless of who is responsible for the removed section of line. #PI-09-0003 195,Date: 6-24-2009 Regarding the training of non U.S. based employees for Operator Qualification. Operators must meet the OQ regulations of Part 195 for all emergency response personnel who might perform manual valve closures and any other OQ covered tasks if responding to an emergency in the U.S.
Advisory Bulletin/Alert Notice Summaries	192,195 Date: 1-17-2006 **Advisory Bulletin ADB-06-01 Notification on Safe Excavation Practices and the use of Qualified Personnel to oversee all Excavations and Backfilling Operations** Pipeline operators are to integrate the Operator Qualification regulations into their marking, trenching, and backfilling operations to prevent excavation damage mishaps. Only qualified personnel must oversee all marking, trenching, and

	backfilling operations. Furthermore, pipeline operators are reminded that although excavation is not explicitly addressed in 49 CFR parts 192 and 195, excavation is considered a covered task under the pipeline operator qualifications regulations (49 CFR 192.801-809 and 195.501-509). These regulations require that pipeline operators and contractors be qualified to perform pipeline excavation activities. PHMSA recommends pipeline operators review the adequacy of covered tasks involving line locating, one-call notifications, and inspection of excavation activities. Operators should also review the adequacy of required training, evaluation and qualification methods for each of these covered tasks to ensure that each employee and contractor is qualified to perform that task. 192,195 Date: 11/22/2006 **Advisory Bulletin ADB-06-03 Accurately Locating and Marking Underground Pipelines Before Construction-Related Excavation Activities Commence Near the Pipelines.** Operators were reminded to use qualified personnel for locating and marking pipelines. Specific to operator qualification, the following were required: • Make sure that individuals locating and marking the pipelines have the knowledge, skills, and abilities to read and understand pipeline alignment and as-built drawings, and that they know what other buried utilities exist in the construction area. • Use qualified personnel for locating and marking pipelines. At a minimum, they should have received appropriate training such as that outlined in the National Utility Locating Contractors Association locator training standards and practices. • Operators should use the full range of safe locating excavation practices. In particular, pipeline operators should ensure the use of qualified personnel to accurately locate and mark the location of its underground pipelines**.**
Other Reference Material & Source	OQ Final Rule preamble, August 27, 1999. The OQ Final Rule preamble does not address emergency response personnel who do not perform covered tasks. The OQ Final Rule preamble states, "The rule applies only to personnel performing operations and maintenance activities." (64 FR46856). Hurricane Sandy: Emergency Assistance from Canadian Personnel Letter, dated November 1, 2012. In this letter, PHMSA did not object to the NJ Board of Public Utilities and NY Public Service Commission granting a request from intrastate operators for emergency waivers – provided the waiver was limited to the duration of the emergency, not to exceed 30 days (with potential extensions). The request for waiver was from the requirements of 49 C.F.R. Part 192, Subpart N *Qualification of Pipeline Personnel.* 192, GPTC, API 1161, ASME B31Q
Guidance Information	1. The same requirements apply whether the Operator Qualification program is a self - developed or purchased plan and if the operator uses its own employees

	or contractors to perform covered tasks. 2. There will be some covered tasks that are part of an emergency response activity. Pipeline locating and marking are required to be covered as part of the task list. 3. The performance of certain O&M activities during an emergency – such as manipulating valves – meets the four part test, and is a "covered task." Therefore, the individual(s) performing these tasks – during an emergency – must be qualified.
Examples of a Probable Violation or Inadequate Procedures	1. The operator's qualification procedures did not address the four part test for identifying covered tasks. 2. The operator purchased an operator qualification program, but did not validate the plan to match their operations. 3. The operator did not include/identify all of the covered tasks for their pipeline operations. Examples, contractor and/or subcontractor performed tasks. 4. Operator did not use a qualified individual for emergency response for tasks that met the four part test, i.e. valve operation. 5. Operator did not include pipeline line locating and marking as a covered task. 6. The written operator qualification program does not identify certain O&M activities – that when performed during an emergency – are covered tasks. *Depending on the circumstances, some of the examples listed in this section may be inadequate plans and procedures, and not probable violations. Thus, the enforcement tool to address these issues would be a Notice of Amendment and not a Notice of Probable Violation or a Warning Letter. Section 3 of the Enforcement Procedures provides guidance on selecting the appropriate enforcement action.*
Examples of Evidence	1. Copy of written qualification program or applicable portion that shows omission or deficiency in the plan. 2. Operator records. 3. Contractors performing work on regulated sections of pipe without qualification plan approved or employees qualified under the operator's operator qualification plan. 4. Documented conversations with operator or contractor personnel performing a covered task without qualification or direct supervision.
Other Special Notations	If an activity fails to meet any one of the four criteria, the activity is not considered a covered task under this final rule. The following are hypothetical examples (taken directly from the OQ Final Rule dated August 27, 1999 (64 FR46860) of how the four part test can be used to identify a covered task: **Example 1:** Leakage surveys on gas transmission pipelines. (1) Performed on a pipeline facility? Yes, because leakage surveys are performed immediately above the pipeline and on the pipeline right-of-way. (2) Is an operations and maintenance task? Yes, leakage surveys are conducted in the course of pipeline operations and maintenance activities. (3) Is performed as a requirement of this part? Yes, leakage surveys are required by 49 CFR 192.706 and 192.723.

	(4) Affects the operation or integrity of the pipeline? Yes, if a leakage survey is not properly conducted, a leak might not be detected, resulting in a potentially hazardous situation. **Since all four criteria are met, the leakage survey is a covered task.** **Example 2:** Measuring pipe-to-soil potentials. (1) Performed on a pipeline facility? Yes, pipe-to-soil potentials are measured at cathodic test stations attached directly to the pipeline. (2) Is an operations and maintenance task? Yes, pipe-to-soil potentials are read in the course of pipeline operations and maintenance activities. (3) Is performed as a requirement of this part? Yes, pipe-to-soil potential measurements are required by 49 CFR 192.465 and 195.416. (4) Affects the operation or integrity of the pipeline? Yes, pipe-to-soil potential measurements, if taken improperly, will not accurately reflect the level of cathodic protection being provided. While not affecting the immediate operation of the pipeline, the future integrity of the pipeline might be jeopardized (for example, corrosion might develop), if inadequate cathodic protection is applied to the pipeline over a period of time. **Since all four criteria are met, the measurement of pipe-to-soil potentials is a covered task.** **Example 3:** Meter reading. (1) Performed on a pipeline facility? Yes, a meter is a part of a pipeline facility. (2) Is an operations and maintenance task? Yes, meters are read in the course of pipeline operations and maintenance activities. (3) Is performed as a requirement of this part? No, meter reading is not a requirement of 49 CFR part 192 or part 195. (4) Affects the operation or integrity of the pipeline? No, meter reading has no impact on pipeline operation or integrity. **Because meter reading fails at least one of the four criteria, meter reading is not considered a covered task.** In identifying covered tasks, operators must consider specific activities and not necessarily the job classification of individuals performing the activities, because each job classification may incorporate several activities. For example, an individual with the job classification, ‘‘meter reader,’’ may be assigned activities other than reading a meter, such as distribution line patrolling under 49 CFR Part 192.721, that could be covered tasks.

Enforcement Guidance	Qualification of Pipeline Personnel Parts 192,195
Revision Date	8 25 2016
Code Section	§192.803,§195.503
Section Title	Definitions
Existing Code Language	*Abnormal operating condition* means a condition identified by the operator that may indicate a malfunction of a component or deviation from normal operations that may: (a) Indicate a condition exceeding design limits; or (b) Result in a hazard(s) to persons, property, or the environment. *Evaluation* means a process, established and documented by the operator, to determine an individual's ability to perform a covered task by any of the following: (a) Written examination; (b) Oral examination; (c) Work performance history review; (d) Observation during: (1) Performance on the job, (2) On the job training, or (3) Simulations; (e) Other forms of assessment. *Qualified* means that an individual has been evaluated and can: (a) Perform assigned covered tasks; and (b) Recognize and react to abnormal operating conditions.
Origin of Code	192-86, 64 FR 46853, Aug. 27, 1999 195-67, 64 FR 46853, Aug. 27, 1999
Last Amendment	192-90, 66 FR 43523, Aug. 20, 2001 195-72, 66 FR 43523, Aug. 20, 2001
Interpretation Summaries	
Advisory Bulletin/Alert Notice Summaries	192,195 Date: 12/7/2009 **Advisory Bulletin ADB-09-03 Pipeline Safety: Operator Qualification (OQ) Program Modifications** Informs pipeline operators about the standardized notification process for operator qualification (OQ) plan transmittal from the operator to PHMSA; about the addition to PHMSA's glossary of definitions of the terms "*Observation of on-the-job performance*" as applicable to determining employee qualification and "*Significant*" as applicable to OQ program modifications requiring notification; and lastly about clarifications to assist operators to ensure OQ reviews are being done in conjunction with O&M reviews. The definitions of *on the job performance* and *significant* contained in Advisory Bulletin ADB-09-03 are intended to be advisory in nature. The definitions

	contained in the Advisory Bulletin are not enforceable.
Other Reference Material & Source	192, GPTC, API 1161, ASME B31Q
Guidance Information	1. Operators are required to have a written qualification program that includes definitions of the terms in this section as well as how these terms apply within their pipeline operations. 2. Definitions included in the Operator's OQ plan must be consistent with those found in this section, i.e. §192.803,§195.503. 3. The Operator should note in its written OQ plan that although terms pre-defined in the pipeline safety regulations e.g. Abnormal Operating Condition (AOC), Evaluation, Qualified, etc., may appear in the Operator's OQ plan, the plan should also include (where applicable) those terms that are unique to the Operator's particular pipeline system. The OQ plan should also note that the Operator's application of terms – whether unique to its pipeline system or pre-defined in the pipeline safety regulations – must be applied by the Operator as required in its OQ plan. 4. The terms, while necessary to be consistent with the regulations, are not to be replicated in the written qualification program. 5. In developing the definition of an AOC, operators must identify conditions that would be reasonably recognizable by an individual performing a covered task.
Examples of a Probable Violation or Inadequate Procedures	1. The written qualification program does not include definitions for abnormal operating conditions, evaluations, or qualified as they apply within the operator's daily operations and maintenance activities. 2. The written qualification program does not apply these terms to the operations for the particular pipeline system. 3. The definitions were not consistent with the type of operations conducted by the operator. 4. The definitions were not consistent with the language in the regulation. 5. The operator did not provide for the differences between the types of evaluation methods and how/when they will be applied. *Depending on the circumstances, some of the examples listed in this section may be inadequate plans and procedures, and not probable violations. Thus, the enforcement tool to address these issues would be a Notice of Amendment and not a Notice of Probable Violation or a Warning Letter. Section 3 of the Enforcement Procedures provides guidance on selecting the appropriate enforcement action.*
Examples of Evidence	1. Copy of written qualification program or applicable portion that shows omission or deficiency in the plan. 2. Documented conversations with operator personnel who are charged with establishing the plan. 3. Operator records.
Other Special Notations	The definitions of *on the job performance* and *significant* contained in Advisory Bulletin ADB-09-03 are intended to be advisory in nature. The definitions

	contained in the Advisory Bulletin are not enforceable.

Enforcement Guidance	Qualification of Pipeline Personnel Parts 192,195
Revision Date	8 25 2016
Code Section	§192.805(a),§195.505(a)
Section Title	Qualification Program
Existing Code Language	Each operator shall have and follow a written qualification program. The program shall include provisions to: (a) Identify covered tasks;
Origin of Code	192-86, 64 FR 46853, Aug. 27, 1999 195-67, 64 FR 46853, Aug. 27, 1999
Last Amendment	
Interpretation Summaries	
Advisory Bulletin/Alert Notice Summaries	
Other Reference Material & Source	192, GPTC, API 1161, ASME B31Q
Guidance Information	1. Pipeline operators were required to have a written OQ program in place by April 27, 2001, and to have completed the qualification of individuals performing covered tasks by October 28, 2002. 2. Operator's plan must cover the requirements to perform covered tasks on its pipeline facilities. Each operator shall have a list of covered tasks and the methods used to identify the covered tasks. 3. Some covered tasks are identified in consensus standards – which are incorporated by reference. 4. The operator's plan must address the unique and task specific operations, maintenance, and repair tasks performed on their pipeline system. Therefore, in the event an operator transports natural gas and hazardous liquids, the operator is required to identity each covered task and the qualification requirements for personnel that are unique to the specific operations maintenance, and repair of its natural gas, as well as its hazardous liquids pipeline system. The list of covered tasks should be tailored to encompass those operations, maintenance, and repair tasks used by the operator. 5. In the event an Operator transports multiple commodities through its pipeline system, it is suggested that the Operator's covered tasks list clearly identify the commodity to which the covered tasks applies, e.g. "L" for Hazardous Liquids or "G" for Natural Gas. In those instances where a covered task is identical – regardless of the commodity transported e.g. pipe-to-soil readings – such a distinction may not be necessary.

	6. Operators' program should also note that covered tasks performed on 'transmission' pipelines may be unique and distinct from those performed on 'distribution' pipelines. 7. The written operator qualification plan can be an off the shelf program, a consultant or consortium prepared plan, or a plan developed by the operator. 8. The operator may also use contractors and other third parties and these same requirements would apply to the contractors and third parties performing covered tasks on the pipeline. 9. The Operator's plan must ensure that qualified persons have been evaluated and are capable of performing the assigned covered tasks; and recognize and react to abnormal operating conditions. 10. ***Plains Pipeline, L.P., [4-2009-5005] (Final Order - April 6. 2010)*** Found that the operator failed to identify the covered tasks of installing, inspecting, and maintaining its Vapor Corrosion Inhibitor (VpCI) system. The VpCI system was a proprietary system that a vendor had installed and tested. The Final Order ruled that even though there are instances in which a pipeline contractor may contract for the performance of specialized services for which company personnel do not have subject-matter expertise, **§195.505(a)** still requires the pipeline operator to identify the covered tasks that will be performed and to ensure that persons performing such tasks are capable of performing the task; there is no difference between tasks performed by third-party contractors or pipeline employees. CP, CO. 11. ***Enbridge Energy Company, Inc., [4-2005-8004] (Final Order - Aug. 22, 2007)*** Found that the operator failed to specifically identify each covered task performed on its hazardous liquid pipeline system including the abnormal operating conditions associated with each task. The operator qualification program at issue in the case stated that the covered tasks identified for natural gas pipelines could also be used to qualify individuals performing tasks on hazardous liquid pipelines. The Final Order ruled that it is not sufficient for the operator to identify covered tasks performed on its natural gas pipelines and then assume those same tasks and abnormal operating conditions are transferable to hazardous liquid pipelines. CP. 12. ***Kinder Morgan Liquids Terminals, LLC [CPF 1-2011-5008] (Consent Agreement and Order – July 17, 2013)*** This case was settled. The Operator agreed to complete the corrective actions specified in Section II (Work to be Performed) of the Consent Agreement and Order. During its field review, the PHMSA inspector noted that KM failed to identify tank painting or the application of coatings and their repair as a covered task in its written qualification program. By way of this Consent Agreement and Order, KM agreed to adequately identify and list in its written Operations Qualification program tank painting as a covered task. CO, CP. 13. ***Enterprise Products Operating, LLC., [3-2009-5022] (Final Order - Aug. 14, 2012)*** Found that the operator failed to properly identify pipefitting as a covered task, when performed while making a repair to its pipeline involving the installation of a threaded connection. The Final Order ruled that the OQ regulations require Operators to identify covered task for all of their operations and maintenance activities that are required by sections 192.805(a) and 195.505(a), regardless of whether such activities arise from performance-based regulations or from more prescriptive requirements; and Operators must recognize that other critical activities

	may be covered tasks. Covered tasks do not only include those activities that a re specifically regulated by Parts 192 and 195, but also those activities that are performance-based. Each Operator needs to review its own operations and maintenance activities in light of the regulatory requirements to determine whether a task – such as pipefitting – is an integral component of meeting such requirements, and whether the task satisfies each prong of the four-part test. If so, the Operator should include and identify that activity as a covered task. CP, CO. 14. ***Marathon Pipe Line, LLC [4-2010-5013] (Consent Agreement and Order – May 11, 2012)*** This case was settled. The Operator agreed that it would incorporate the installation and operation of bentonite mud plugs as a vapor barrier to isolate hazardous vapors as a covered task(s) in its operator qualification (OQ) program. The Operator also agreed to introduce training to ensure that individuals performing this covered task(s) have the necessary knowledge and skills to perform the task(s). CO, CP
Examples of a Probable Violation or Inadequate Procedures	1. The operator or contractor has no written operator qualification program. 2. The written operator qualification program duplicates the language in the code sections and is not written specific to the operations. 3. The written operator qualification program was not specific for natural gas or hazardous liquids pipeline facilities. 4. The written operator qualification program does not include a specific list of covered tasks. 5. The operator did not include/identify all of the covered tasks for their pipeline operations. Examples, contractor and/or subcontractor performed tasks. 6. The written operator qualification program does not include a requirement for application of the four-part test to all covered tasks. 7. There is no documentation using the four-part test by the operator to define covered tasks, or identify tasks performed that do not meet the four-part test. 8. The written operator qualification program does not define new construction or O&M activities. 9. The written operator qualification program does not identify all applicable covered tasks as required by the operator qualification rule. Some examples include: excavation activities performed by company personnel, regulator installation/replacement, odorizing gas, odorant sampling, pipeline patrolling, leak survey, cathodic protection of metal portions of distribution system, pipeline marking, welding on steel pipeline, pipeline repair, line replacement, valve maintenance, backfilling, maintaining hazardous vapor detection system, maintaining operating SCADA equipment, pipefitting of screw-type fittings or small valves, integrity management tasks (e.g., launching and receiving pigs), purging of gas pipelines, service line installations, service line repair, start up and shut down of a pipeline, NDT of welds (for repair and on operating lines), operating main-line valves, breakout tank static protection (line velocity), , prevention of microbiological induced corrosion (MIC), e.g. in-line inspection, close interval survey, jeeping pipeline for damaged or disbanded coating, repair methods, etc. 10. The operator did not identify additions, revisions, or deletions of covered tasks. 11. The operator did not implement the requirements of the written operator qualification program.

	Depending on the circumstances, some of the examples listed in this section may be inadequate plans and procedures, and not probable violations. Thus, the enforcement tool to address these issues would be a Notice of Amendment and not a Notice of Probable Violation or a Warning Letter. Section 3 of the Enforcement Procedures provides guidance on selecting the appropriate enforcement action.
Examples of Evidence	1. No written qualification program. 2. Copy of written qualification program or applicable portion that shows omission or deficiency in the plan. 3. Documented conversations with operator personnel who are charged with identifying covered tasks within the plan. 4. Written covered task list. 5. Records of development for the covered task list. 6. Four part test verification for all listed covered tasks.
Other Special Notations	Some distribution operators were granted a waiver for compliance with the qualification of employees. For plumbers replacing customer owned service lines in both the State of Pennsylvania and the State of Ohio waivers were granted and received PHMSA approval to allow for extended time periods for compliance for qualification of plumbers replacing customer owned service lines.

Enforcement Guidance	Qualification of Pipeline Personnel Parts 192, 195
Revision Date	8 25 2016
Code Section	§192.805(b),§195.505(b)
Section Title	Qualification Program
Existing Code Language	Each operator shall have and follow a written qualification program. The program shall include provisions to: (b) Ensure through evaluation that individuals performing covered tasks are qualified;
Origin of Code	192-86, 64 FR 46853, Aug. 27, 1999 195-67, 64 FR 46853, Aug. 27, 1999
Last Amendment	
Interpretation Summaries	
Advisory Bulletin/Alert Notice Summaries	
Other Reference Material & Source	192, GPTC, API 1161, ASME B31Q
Guidance Information	1. Operators have the opportunity to use company employees, contractors, and other subcontracted parties to conduct activities that are considered "covered tasks" on their pipeline facilities. 2. All individuals performing covered tasks are required to be initially qualified through evaluation. 3. The operator is required to qualify the tasks using the company program or ensure that the other contracted parties are initially qualified in accordance with the regulations. 4. Operator must ensure through evaluation that individuals performing covered tasks are qualified. In addition, "qualified" means the individuals can (a) performed the assigned covered tasks; and (b) recognize and react to AOCs. Therefore, if an individual is unable to "perform" the assigned covered tasks, then by definition, the individual is not qualified. 5. "Actual performance" of the tasks must be part of the Operator's evaluation to determine if an individual is qualified to perform the assigned covered tasks. An Operators' knowledge evaluations must be based on actual on the job performance of the covered tasks. 6. ***ENSTAR Natural Gas Co.,* [5-2004-0003] (Final Order - April 28, 2009)** Found that operator violated **§ 192.805(b)** because ENSTAR employees were not able to recognize and react to AOCs that may occur. During the

	inspection, Respondent's Control Center personnel were questioned by the OPS Inspection team and could not properly recognize excursions above MAOP as AOCs. The Final Order determined that Control Center personnel must be able to readily identify excursions from MAOP as AOCs in order to address quickly and properly these potentially dangerous conditions. CP. 7. ***West Texas Gas, Inc.,* [*CPF 4-2005-1015] (Final Order - Mar. 31, 2008)*** Found that the operator violated **§ 192.805(b)** because the operator's written qualification program only identified generic abnormal operating conditions (AOCs), but did not include provisions that identified task-specific AOCs for each covered task. The operator cited OPS guidance FAQ 4.3 in support of its contention that identification of task-specific AOCs is optional. The Final Order ruled that FAQ 4.3 and the text of the regulation are consistent with each other, and that the regulation requires operators to identify both task-specific and generic AOCs. CP.
Examples of a Probable Violation or Inadequate Procedures	**General** 1. The operator or contractor has no written operator qualification program. 2. The written operator qualification program duplicates the language in the code sections and is not written specific to the operations. 3. The written operator qualification program does not contain criteria for evaluating the qualifications of individuals performing covered tasks. 4. The written operator qualification program does not identify any AOCs. 5. The written operator qualification program does not identify both generic and task specific AOCs. 6. The written operator qualification program and evaluation materials identify generic and task specific AOCs, but do not address the required reactions to the generic and task specific AOCs. 7. Operators do not evaluate individuals on AOC recognition and reaction. 8. Operators do not have documentation showing evaluation of qualified individuals for recognition and reaction to AOCs. 9. Operator documentation demonstrates evaluation for AOC recognition and reaction, but field inspection of individuals performing covered tasks reveals unfamiliarity with subject. 10. Operators include AOC evaluation for employees, but do not ensure AOC evaluation for contractor individuals. 11. Operators do not include generic and task specific AOC evaluation as a part of the periodic re-evaluation process for covered tasks. 12. Operators do not implement the written operator qualification program requirements for evaluation and qualification of individuals. 13. The operator did not implement the requirements of the written operator qualification program. **Company Employees** 14. Operators do not document the evaluation methods used for qualification or re-qualification (re-evaluation for qualification). 15. Operators do not document that individuals have been evaluated for generic and task specific AOC recognition and reaction. 16. Operators qualify individuals by observation of work that is not specific to the individual or the covered task being performed. 17. Operators have individuals performing covered tasks that have not been

	qualified for those tasks. This can also be due to operator failure to correctly identify their covered tasks (e.g., identifying main replacement as new construction). 18. Operators have irregularities with evaluation records that leave the qualification of individuals in doubt. Examples are: use of the exam key for the written exam with the correct answers bolded and italicized; re-marking of exams by the individual to make a 100% score following review rather than re-taking the exam; welding being performed with a weld rod size for which the individual is not qualified. 19. The operator used a meeting sign-in sheet as the sole record of qualification for employees of the company. 20. The written operator qualification program does not identify task-specific evaluation methods used to initially qualify individuals. 21. The written operator qualification program does not identify how or by what methods individuals will become initially qualified. 22. Operators allow individuals who have not been evaluated and qualified to perform covered tasks. 23. The Operator did not document that the individual performing the covered tasks had been evaluated and qualified. 24. Operators do not ensure through evaluation that individuals performing covered tasks are qualified and possess the task-specific knowledge, skills, and ability to perform the assigned covered tasks, and to recognize and react to abnormal operating conditions. Examples are use of knowledge-only testing for all tasks, use of performance evaluations without interaction to ensure the knowledge level of the individual performing the task, or use of one knowledge test to qualify individuals for all tasks. 25. Operators do not perform any evaluations for qualification of individuals performing covered tasks. 26. Evaluators do not possess the required knowledge to ascertain an individual's ability to perform covered tasks and to substantiate an individual's ability to recognize and react appropriately to abnormal operating conditions that might occur while performing these activities. 27. The evaluation process is not objective and consistent. That is to say, the process does not ensure that evaluators are knowledgeable about the subject tasks in order to conduct effective evaluations. 28. Supervisors and or foreman are not qualified although they are performing covered tasks and or serving as the individual assigned to direct and observe an unqualified person performing covered tasks. 29. Operators allow the following to be performed during the evaluation process: two individuals evaluated and qualified each other based on the knowledge of each that the other had been performing the task successfully in the past (commonly referred to as a "brother-in-law" process, and amounts to work performance history review, which is not allowed as a single evaluation method), some individuals performed evaluations and were (a) not qualified to do the work themselves; (b) were not subject matter experts (SMEs) in that subject; and (c) were not provided a "script" to go by during the evaluation (such as a corrosion tech was evaluated by someone who was not himself a corrosion tech).

30. In a one-on-one performance evaluation, "group" performance evaluations were employed rather than “individual” or “hands-on” tests. “Group” performance evaluations do not ensure each individual is qualified; evaluator failed to initial the subtasks as required by the Operator’s procedures.
31. Field inspections indicate that individuals performing covered tasks are inadequately qualified (such as O&M procedures were inadequate, materials for repair were not suitable for the service intended, employees were not following proper gas distribution practices, missed procedure steps, incorrect use of equipment, unfamiliar with operation of equipment being used, incorrect result when performing task).
32. Operators do not have supporting documentation, such as evaluation records, for qualification of individuals that perform covered tasks.
33. Operators do not ensure that knowledge tests are consistent with O&M procedures or operator practices.
34. The written program does not include a process for ensuring operator qualification, evaluations, and performance of covered tasks during the merger with or acquisition of other entities.
35. The operator fails to ensure that individuals who stayed with the acquired or merged pipeline system are qualified to perform covered tasks.

Contractor

36. The written operator qualification program does not have a provision to ensure contractors are qualified to perform their covered tasks.
37. The written operator qualification program does not have a provision to ensure contractors have been evaluated to recognize and react to generic and task specific abnormal operating conditions.
38. Operators do not review qualified contractors and subcontractors for compliance with the requirements for operator qualification.
39. Contractors qualified through an outside party evaluate the individual’s knowledge, but do not evaluate the individual’s skill and ability to perform covered tasks or the individual’s ability to recognize and react to abnormal operating conditions.
40. The contractor is not evaluated on its knowledge of the tasks; its skill in performance of the tasks; or in its ability to perform covered tasks.
41. Operators do not perform job site verification of contractor employees.
42. The written operator qualification program does not have a provision for assessing the evaluation criteria and methods used by contractors performing covered tasks to determine if qualifications are consistent with operator requirements.
43. The written operator qualification program does not have a provision to ensure contractor performance of covered tasks is consistent with the operator's requirements.
44. There is no documentation that provides the necessary assurance that the procedures on which a qualifying vendor’s evaluations are based are the same as or consistent with those used by operator employees and contractors in the field.
45. Operators allow other regulated operators to perform covered tasks under contract, but the contract operators are not identified as approved

	contractors, nor have their company's operator qualification programs been reviewed for consistency with the contracting operator's qualification program requirements. 46. The operator's written qualification program does not require that an individual from any other entity performing covered tasks on behalf of the operator (e.g., through mutual assistance agreements) be evaluated and qualified prior to performing the task. 47. An individual from another entity that performed covered tasks on behalf of the operator was not evaluated and qualified consistent with the operator's program requirements. *Depending on the circumstances, some of the examples listed in this section may be inadequate plans and procedures, and not probable violations. Thus, the enforcement tool to address these issues would be a Notice of Amendment and not a Notice of Probable Violation or a Warning Letter. Section 3 of the Enforcement Procedures provides guidance on selecting the appropriate enforcement action.*
Examples of Evidence	1. Written Operator Qualification program. 2. Copy of written qualification program or applicable portion that shows omission or deficiency in the plan regarding individual qualifications. 3. Written Qualification Records of operator personnel. 4. Written Operator Qualification Review for contractor program for qualification of individuals. 5. Written Operator Qualification Review for contract personnel. 6. Written Qualification Records for contract personnel. 7. Documented conversations with operator personnel who are charged with qualifying individuals. 8. Documented conversations with operator or contractor personnel performing covered tasks.
Other Special Notations	

National Transportation Safety Board
Washington, D.C. 20594

Office of Railroad, Pipeline and Hazardous Materials Investigations

May 12, 2022

John Gale
Director, Office of Standards and Rulemaking
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Dear Mr. Gale:

I am requesting a formal interpretation of PHMSA's Operator Qualification (OQ) Rule.

The National Transportation Safety Board is conducting an investigation of a natural gas-fueled explosion that occurred during routine maintenance on a gas transmission line.[1] The operator did not designate launching and receiving pigs as a covered task prior to the accident; they relied on on-the-job training for pigging-specific operations. Similarly, industry guidance such as API 1161, *Recommended Practice for Pipeline Operator Qualification (OQ)*, and ANSI/GPTC Z380.1, *Guide for Gas Transmission, Distribution, and Gathering Piping Systems*, may not prompt operators to identify launching and receiving pigs as a covered task.

Please answer the following questions to clarify how the federal regulations apply:

- Must activities be specifically prescribed in the regulations to be "performed as a requirement of this part" in accordance with 49 CFR 192.801(b)(3)?
- Is "launching and receiving pigs" a covered task as defined in 49 CFR 192.801(b) and 49 CFR 195.501(b)?
    - Does it matter which regulation the activity is being performed to meet (i.e., 49 CFR 192.493, 192.632, 192.710, 192.750, 192.921, 192.937, 195.11(b)(10), 195.416, 195.452, 195.579(a), or any other requirement of 49 CFR Parts 192 or 195)?

[1] See the public docket at https://data.ntsb.gov/Docket/Forms/searchdocket and search for NTSB Accident ID PLD21FR002. Because this investigation is open, the docket will be updated in the future.

- Does it matter if the activity is being performed in preparation to meet the regulatory requirement (e.g., a gauge pig is being launched in preparation for a required in-line inspection tool)?
- Does it matter if the activity is being performed to meet a performance-based requirement (e.g., a cleaning pig is being launched to prevent and/or mitigate internal corrosion)?

The NTSB staff appreciates PHMSA's continued support of our ongoing investigation and your timely response to this request.

Sincerely,

Sara Lyons
Investigator-in-Charge

Operator Qualification Evaluation

"S"-Satisfactory "U"-Unsatisfactory

"NC"-Not Checked "NA"-Not Applicable

For items marked "U", "NC", "No"or "NA" an explanation **MUST** be included in the comments section.

Section 4: Document Program Plan and Scope

Code	Question	S, U, NC, NA
192.805/ 195.505	Does the operator have an OQ Plan? If "U" is Marked, fill out the remaining sections of the form "NC" with the following comment "The operator inspected was unable to present at the time of the inspection, an Operator Qualification Plan as required by 192.805/195.505."	
Comments:		

Regulation	Question	S, U, NC, NA
192.805(a)/ 195.505(a)	Does the operator's OQ plan have procedures for identifying covered tasks that meet the Four-Part Test?	
Verify:	Is the task performed on a pipeline facility?	
	Is the task an operations or maintenance task?	
	Is the task performed as a requirement of Part 192/Part 195?	
	Does the task affect the operation or integrity of the pipeline?	
	If TAC 8.205 (1) is applicable are leak complaints, reports or complaints and reports listed in their OQ Plan Covered Tasks List?	
	If TAC 8.207 is applicable, is Leak Grading and Repair listed in their OQ Plan Covered Tasks List?	
	Has the operator identified all applicable covered tasks?	
FAQ	FAQ 2.1-What O&M activities must be included in a compliant OQ program?	
	FAQ 2.2-Where are O&M activities found in the pipeline safety regulations and how are they defined?	
	FAQ 2.3-How should an operator differentiate between O&M tasks and new construction Tasks?	
	FAQ 2.4-Does the location where a task is performed affect whether it is a covered task?	
	FAQ 2.5-Can certain tasks be either covered or non-covered depending on when and where they are performed?	
	FAQ 2.6-Under emergency conditions, sometimes a manager is the first to arrive and knows how to respond. Can he/she take action (e.g., close an isolation valve) if the required action is a covered task and she/he is not qualified to perform that task?	
	FAQ 2.7-Will OPS urge, strongly recommend, or encourage inspectors to utilize a master list of covered tasks to inspect operators?	
Consider:	Are the Covered tasks identified in the Operator's OQ plan applicable to their pipeline system?	
	If the operator uses front office personnel to take and dispatch leak complaint and reports, how are they trained to respond to caller's questions concerns and capable of telling a caller how to respond?	
	If the operator uses an "Off-The-Shelf" program they are still fully responsible to understand and meet the provisions of the OQ Rule.	
FAQ	FAQ 1.1-What responsibility does an operator have if it chooses to use an 'Off-the-Shelf' OQ program?	
	FAQ 1.13- Should an operator document the date on which full compliance with provisions of the OQ Rule was achieved?	
	FAQ 1.14-Should an operator ensure that implementation of its OQ program plan is consistent throughout its organization?	
Comments:		

RAILROAD COMMISSION OF TEXAS

OVERSIGHT AND SAFETY DIVISION
PIPELINE SAFETY

September 8, 2021

455-21
Mr. Keith Underwood, President of Operations
XTO ENERGY INC.
22777 Springwoods Village Parkway
Spring, TX 77389

Re: Pipeline Safety Evaluation
Inspection Package Number: INSPPKG-0000076683
UNIT OF COMPANY ID 5972
(All correspondence must include the Inspection Package Number)

Dear Keith Underwood:

Recently, a safety evaluation was conducted of pipeline facilities operated by your company. These facilities are identified in the attached Safety Evaluation Summary. Safety evaluations are conducted in accordance with pipeline safety requirements of the Texas Utilities Code, Section 121.201 for natural and other gas pipeline facilities and TEX. NAT. RES. CODE, Sections 117.001 and 117.011 (Vernon Supp. 2002) for hazardous liquid pipeline facilities.

During the evaluation, selected physical conditions, written procedures, and records were reviewed. At the time of this evaluation, alleged violations of the minimum safety standards were found and are detailed in the attached correspondence. Action should begin immediately to correct the listed violation(s). For those violation(s) not corrected during the evaluation, submit to this office a schedule and correction plan.

The correction plan should be an item-by-item explanation of exactly how and by what exact date each individual violation will be corrected. The date specified in the Safety Evaluation Summary is the date we should receive your plan, not the date you are to have the alleged violation(s) corrected. Our staff will review the plan for compliance with the safety requirements. Please provide documentation verifying corrective action taken once corrective action is complete. You may send your plan of correction and documentation by email to safety@rrc.texas.gov, or by mail.

The evaluation results reflect the general status and condition of the entire system. It is your responsibility to take action, not only to correct the specific deficiencies listed in the

attachment, but also to recognize and correct any other conditions which do not meet the minimum safety standards.

If you have any questions, please do not hesitate to contact the Oversight and Safety Division by email at safety@rrc.texas.gov or by phone at 512-463-7058.

Sincerely,

[redacted]

Stephanie Weidman
Pipeline Safety Director

Enclosures: Safety Evaluation Summary
Alleged Violation List

Railroad Commission of Texas
Pipeline Safety
Safety Evaluation Summary

Inspection Package: INSPPKG-0000076683 Activity/Classification: Specialized/Gas Operator Qual

Operator:

5972 XTO ENERGY INC.
Keith Underwood
President of Operations
22777 Springwoods Village Parkway
Spring,TX 77389

Unit:

21170 UNIT OF COMPANY ID 5972

Inspection Package Performed

Start Date: 08/16/2021

End Date: 08/19/2021

			Alleged Violations			
Eval No	**System ID and Name**	**System Type**	**Repeat**	**Uncorrected**	**Corrected**	**Total**
INSP-0000111960	1308 SYSTEM OF COMPANY ID 5972	Non-Physical System	0	1	0	1

Action

A plan of correction is due by October 8, 2021

Important Note: The pipeline system(s) listed above are identified by a number and name and represent the physical pipe, valves and other components operated by your company. Additionally, there may be a pipeline system listed that is named System of Company ID Number where number is the identification number of your company. This system is used to represent your company and does not represent any physical pipeline system. For internal purposes it allows the Commission to more properly record inspection work performed at the company level. Where deficiencies are found in programs, plans, procedures, and records at the company level and are not with a specific physical system, alleged violations will be cited against the System of Company ID Number.

Railroad Commission of Texas
Pipeline Safety
Alleged Violation List

All correspondence must include the Inspection Package and Evaluation Number

Inspection Package: INSPPKG-0000076683 Activity/Classification: Specialized / Gas Operator Qual

System Name: SYSTEM OF COMPANY ID 5972 **Evaluation Number:** INSP-0000111960

Item Number: 1.0

Action Needed: Violation requires a plan of correction by 10/8/2021.

Description: Operator's OQ plan did not have procedures for identifying covered tasks using the 4 part test described in 49 CFR 192.801. A covered task is an activity that: 1) is performed on a pipeline facility. 2) is an operations or maintenance task. 3) is performed as a requirement of Part 192. 4) affects the operation or integrity of the pipeline.

Requirement: 49 CFR 192.805(a)

Notes:

Description:

Location:

Comment: Although the operator has procedures for identifying covered tasks, The operator uses ILI as an Integrity Assessment method but did not identify covered tasks related to launchers, receivers, and ILI tools because the operator did not believe these tasks met the 4 part test, specifically that it is not required by 192. ILI, launchers, and receivers tasks are covered under code in 192.710, 192.750, and 192.937(a) and (c).

RAILROAD COMMISSION OF TEXAS

OVERSIGHT AND SAFETY DIVISION
PIPELINE SAFETY

September 8, 2021

455-21
Mr. Jameson Gowin, EHS - Pipeline Compliance
BARNETT GATHERING, LLC
22777 Springwoods Village Parkway
Spring, TX 77389

Re: Pipeline Safety Evaluation
Inspection Package Number: INSPPKG-0000076685
UNIT OF COMPANY ID 8313
(All correspondence must include the Inspection Package Number)

Dear Jameson Gowin:

Recently, a safety evaluation was conducted of pipeline facilities operated by your company. These facilities are identified in the attached Safety Evaluation Summary. Safety evaluations are conducted in accordance with pipeline safety requirements of the Texas Utilities Code, Section 121.201 for natural and other gas pipeline facilities and TEX. NAT. RES. CODE, Sections 117.001 and 117.011 (Vernon Supp. 2002) for hazardous liquid pipeline facilities.

During the evaluation, selected physical conditions, written procedures, and records were reviewed. At the time of this evaluation, alleged violations of the minimum safety standards were found and are detailed in the attached correspondence. Action should begin immediately to correct the listed violation(s). For those violation(s) not corrected during the evaluation, submit to this office a schedule and correction plan.

The correction plan should be an item-by-item explanation of exactly how and by what exact date each individual violation will be corrected. The date specified in the Safety Evaluation Summary is the date we should receive your plan, not the date you are to have the alleged violation(s) corrected. Our staff will review the plan for compliance with the safety requirements. Please provide documentation verifying corrective action taken once corrective action is complete. You may send your plan of correction and documentation by email to safety@rrc.texas.gov, or by mail.

The evaluation results reflect the general status and condition of the entire system. It is your responsibility to take action, not only to correct the specific deficiencies listed in the

attachment, but also to recognize and correct any other conditions which do not meet the minimum safety standards.

If you have any questions, please do not hesitate to contact the Oversight and Safety Division by email at safety@rrc.texas.gov or by phone at 512-463-7058.

Sincerely,

[redacted]

Stephanie Weidman
Pipeline Safety Director

Enclosures: Safety Evaluation Summary
Alleged Violation List

Railroad Commission of Texas
Pipeline Safety
Safety Evaluation Summary

Inspection Package: INSPPKG-0000076685 Activity/Classification: Specialized/Gas Operator Qual

Operator:

8313 BARNETT GATHERING, LLC
Jameson Gowin
EHS - Pipeline Compliance
22777 Springwoods Village Parkway
Spring,TX 77389

Unit:

28714 UNIT OF COMPANY ID 8313

Inspection Package Performed

Start Date: 08/16/2021

End Date: 08/19/2021

			Alleged Violations			
Eval No	**System ID and Name**	**System Type**	**Repeat**	**Uncorrected**	**Corrected**	**Total**
INSP-0000111961	962316 SYSTEM OF COMPANY ID 8313	Non-Physical System	0	1	0	1

Action

A plan of correction is due by October 8, 2021

Important Note: The pipeline system(s) listed above are identified by a number and name and represent the physical pipe, valves and other components operated by your company. Additionally, there may be a pipeline system listed that is named System of Company ID Number where number is the identification number of your company. This system is used to represent your company and does not represent any physical pipeline system. For internal purposes it allows the Commission to more properly record inspection work performed at the company level. Where deficiencies are found in programs, plans, procedures, and records at the company level and are not with a specific physical system, alleged violations will be cited against the System of Company ID Number.

Railroad Commission of Texas
Pipeline Safety
Alleged Violation List

All correspondence must include the Inspection Package and Evaluation Number

Inspection Package: INSPPKG-0000076685 Activity/Classification: Specialized / Gas Operator Qual

System Name: SYSTEM OF COMPANY ID 8313 **Evaluation Number:** INSP-0000111961

Item Number: 1.0

Action Needed: Violation requires a plan of correction by 10/8/2021.

Description: Operator's OQ plan did not have procedures for identifying covered tasks using the 4 part test described in 49 CFR 192.801. A covered task is an activity that: 1) is performed on a pipeline facility. 2) is an operations or maintenance task. 3) is performed as a requirement of Part 192. 4) affects the operation or integrity of the pipeline.

Requirement: 49 CFR 192.805(a)

Notes:

Description: The operator uses ILI as an Integrity Assessment method but did not identify covered tasks related to launchers, receivers and ILI tools because the operator did not believe these tasks met the 4-part test, specifically that it is not required by 192. ILI, launchers and receivers tasks are covered under code in 192.710, 192.750, and 192.937(a) and (c). Although the operator has procedures for identifying covered tasks, the operator did not identify all applicable covered tasks, specifically launcher, receiver, and ILI tasks associated with 192.710, 192.750, and 192.937(a) and (c).

Location: Records

Comment: The operator uses ILI as an Integrity Assessment method but did not identify covered tasks related to launchers, receivers and ILI tools because the operator did not believe these tasks met the 4-part test, specifically that it is not required by 192. ILI, launchers and receivers tasks are covered under code in 192.710, 192.750, and 192.937(a) and (c). Although the operator has procedures for identifying covered tasks, the operator did not identify all applicable covered tasks, specifically launcher, receiver, and ILI tasks associated with 192.710, 192.750, and 192.937(a) and (c).

Lyons Sara

From: McDill, John <[redacted]>
Sent: Friday, April 22, 2022 7:01 PM
To: Lyons Sara
Subject: RE: Covered Task Development Process - Farmersville, TX (PLD21FR002)

Sara -

Atmos Energy's Operator Qualification Program is designed to achieve compliance with both federal regulations and any applicable state-specific requirements as they pertain to operator qualifications. As Subpart N of 49 CFR Part 192 was being implemented in 2001/2002, an internal group of subject matter experts evaluated the operations and maintenance activities performed as a requirement of Part 192 using the four-part test to determine which of those activities were covered tasks. Atmos did not use an "Off-the-Shelf" program. On an annual basis, Atmos formally reviews it's Operator Qualification Plan and continues to refine the Plan, including the list of covered tasks, based on feedback from employees, input from regulators, and evolving industry practices and standards. Other lists of covered tasks including API 1161 and ASME B31Q (which was introduced in 2006) have been used periodically for reference purposes. Launching and receiving in-line inspection tools was not previously included as a covered task because those activities are not an identified requirement in 49 CFR 192. The API 1161 standard likewise does not include launching and receiving in its list of covered tasks. As part of our continuous safety improvement process, a new OQ task (M23 – Launching and Receiving Pipeline Pigs) is being developed and will be required for all Atmos employees and contractor personnel carrying out launching and receiving activities on in-service pipelines.

As a follow-up to my January 21, 2022 email regarding the implementation of our Management of Change (MoC) Procedure (bates 000998-001012), and as initially outlined in the hand-over memo to our incoming Vice President Pipeline Safety (000995-000997), our plan is to roll out the MoC Procedure and training this year (2022). Our Safety and Enterprise Services team, along with other internal stakeholders, are currently using the draft MoC Procedure to support changes underway relative to operating procedures, equipment, and organizational changes in order to gain experience and refine our processes prior to the company-wide rollout. We anticipate formal adoption of the MoC Procedure and accompanying training to begin in late summer or early fall 2022.

If you have any questions or need any additional information, please let me know.

Thank you,
John

John S McDill | Sr VP Utility Operations | Atmos Energy Corporation | [redacted] Office | [redacted] | www.atmosenergy.com

From: Lyons Sara <[redacted]>
Sent: Friday, April 15, 2022 1:48 PM
To: McDill, John <[redacted]>
Subject: [EXT] Covered Task Development Process - Farmersville, TX (PLD21FR002)