

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

VIA ELECTRONIC MAIL TO: richard_prior@tcenergy.com; erik_hughes@tcenergy.com; dan_cerkoney@tcenergy.com; and gary_salsman@tcenergy.com

August 15, 2023

Richard Prior
President, Liquids Pipelines
TC Oil Pipeline Operations, Inc.
700 Louisiana Street, Suite 800
Houston, Texas 77002

CPF 3-2023-003-NOPV

Dear Mr. Prior:

From March 29, 2021 through February 1, 2022, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected your pipeline facilities and records in North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Missouri, and Illinois.

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

1. **§ 195.412 Inspection of rights-of-way and crossings under navigable waters.**
(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

TC Oil Pipeline Operations Inc. (TC Oil) failed to inspect the surface conditions on or adjacent to each pipeline right-of-way at intervals not exceeding 3 weeks, but at least 26 times each calendar year. Upon inspection, there were eight (8) instances where the right-of-way was not inspected using a method that allowed the surface conditions to be observed.

<u>Unit</u>	<u>Approximated MP</u>
72679	4.563
72679	52.16
72676	6.9
72678	752.174
72678	752.44
72678	976.5
72678	1025.3
72678	1078

These locations were overgrown with brush and/or tree cover. The records for these locations showed the locations were being inspected by aerial patrol. TC Oil indicated on March 18, 2022, that since PHMSA's inspection, three of the locations noted have been converted to foot patrol and on August 10, 2023, that all locations had been cleared of overgrowth in 2022.

2. **§ 195.402 Procedural manual for operations, maintenance, and emergencies**
(a)
(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:
(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

TC Oil failed to follow its procedures for operating, maintaining, and repairing the pipelines system in accordance with of the requirements of subparts F and H of part 195. Specifically, TC Oil failed to follow its procedure titled "*Liquids Facility Piping Non-Destructive and Atmospheric Inspection*", section 5.3.2, which requires that an item graded 4¹, "to be actioned within 18 months. This action may include remediation, testing, monitoring or a risk assessment."

¹ TC Oil grades atmospheric corrosion on a scale of 1 through 5, with grade 5 being the worst.

PHMSA reviewed the atmospheric corrosion inspection record for the STNTO+32_8 MLV site, which showed that the site was inspected for atmospheric corrosion on June 7, 2018, and was determined to be a grade 4 item, which required TC Oil to take action to address the corrosion within 18 months of discovery, pursuant to its procedures. The atmospheric corrosion graded 4 at the MLV site was not repaired until June 11, 2020, outside of the 18-month window required by the procedure. During the inspection, TC Oil stated that it “acknowledges that the grade 4 coating condition identified during the 2018 inspection program at STNTO+32_8 was remediated at a date exceeding the 18-month timeline due to an error in scheduling. TCE is looking to make improvements to the program to ensure remediation is completed by the required timelines.” On December 1, 2022, TC Oil published a new procedure, “*Liquids Atmospheric Corrosion Inspection (US)*” to better manage this program.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$257,664 per violation per day the violation persists up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022 and before January 6, 2023, the maximum penalty may not exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of \$103,800 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$103,800

Warning Item

With respect to item 2, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct this items. Failure to do so may result in additional enforcement action.

Response to this Notice

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

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

In your correspondence on this matter, please refer to **CPF 3-2023-003-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Gregory Ochs
Director, Central Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

Erik Hughes, Senior Manager, US Regulatory Compliance -Keystone
erik_hughes@tcenergy.com;
Daniel Cerkoney, Director, Regulatory Compliance dan_cerkoney@tcenergy.com;
jessica_kirstine@tcenergy.com;
Gary Salsman, VP of Liquids Field Operations, gary_salsman@tcenergy.com