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July 22, 2019



Allan C. Beshore
Director, Central Region
Pipeline and Hazardous Materials Safety
Administration
Office of Pipeline Safety
901 Locust Street, Suite 462
Kansas City, Missouri 61406-2641

Via Email: Allan.Beshore@DOT.gov

Re: Wolverine Pipe Line Company ("Respondent")
Request for Hearing and Case File
Statement of Issues
CPF No. 3-2019-5015M

Dear Mr. Beshore:

This letter serves as a request by Respondent for a hearing in response to the Notice of Amendment dated April 11, 2019 (the "NOA"). Respondent received the NOA on April 24, 2019, via USPS Certified Mail. Respondent acknowledged receipt of the NOA on May 5, 2019, and at the same time requested an extension of time to respond until June 22, 2019. Respondent subsequently requested a further extension of time until July 22, 2019. Both of these requests for extension were approved by your office. As such, this response is timely.

Pursuant to 49 C.F.R. §§ 190.206(a) and 190.211, Respondent hereby requests a hearing in the referenced case. Enclosed herewith please find Respondent's Statement of Issues which it submits pursuant to 49 C.F.R. § 190.211(b).

Additionally, following-on to my email to you of July 16, 2019, and pursuant to 49 C.F.R. § 190.209(a), Respondent hereby requests a copy of all materials in the case file.

Respondent reserves the right to supplement its Statement of Issues based on the contents of the above requested case file.

Respondent requests that said hearing be held at the Central Region office in Kansas City, Missouri.



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Please be advised that Respondent intends to be represented by in-house counsel and outside counsel in connection with the requested hearing. Respondent intends, pursuant to 49 C.F.R. § 190.11(f), to have a court reporter prepare a transcript of the hearing. Respondent will bear all costs of same and will submit a copy of the transcript for the case file.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'V. Murchison', followed by a long horizontal line.

Vince Murchison
Counsel for Respondent

cc: Thomas Morneau (Via Email: Tom_Morneau@wplco.com)
Roina Baker



PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
WASHINGTON, DC 20590

In the matter of:

Wolverine Pipe Line Company

Respondent

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CPF 3-2019-5015M

**STATEMENT OF ISSUES
OF
WOLVERINE PIPE LINE COMPANY
TO
NOTICE OF AMENDMENT**

Wolverine Pipe Line Company ("Respondent") submits this Statement of Issues pursuant to 49 C.F.R. § 190.211(b) in connection with its request for a hearing pursuant to 49 C.F.R. § 190.206(a).

By letter dated April 11, 2019, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") issued to Respondent a Notice of Amendment (the "NOA"), CPF No. 3-2019-5015M, which was received by Respondent via certified mail on April 24, 2019. By letter dated June 20, 2019, the Director, PHMSA Central Region, granted an extension of time to respond to the NOA until June 22, 2019. By a second letter dated June 20, 2019, the Director, PHMSA Central Region, granted a further extension of time to respond to the NOA until July 22, 2019. By letter of even date herewith, Respondent has requested a hearing in this matter, and this Statement of Issues is served therewith. Also by said letter, Respondent requested a copy of the PHMSA case file.

BACKGROUND

The subject NOA relates to an inspection from May 22-26 and June 12-16, 2017, by a representative of PHMSA Central Region, of Respondent's procedures for integrity management and operations and maintenance in Portage, Michigan.

In the NOA, PHMSA asserts seven alleged inadequacies of Respondent's plans or procedures, as to which alleged inadequacies Respondent states its issues.

THE ALLEGED INADEQUACIES

Respondent states below its factual, legal and regulatory issues that relate to the alleged inadequacies. The numbered paragraphs below correspond with the numbered Items of the NOA. Each numbered paragraph begins with a citation to the subject regulation and a summary of the agency's allegations.

This Statement of Issues does not address four of the seven alleged inadequacies given that Respondent previously submitted amended procedures which PHMSA found to be satisfactory. PHMSA indicated in the NOA that no further action needs to be taken regarding these four Items (Items 1, 5, 6, and 7). Further, Respondent does not contest alleged inadequacy Item 2. As such, Respondent contests alleged inadequacies Items 3 and 4.

As an initial matter, as to the two contested alleged inadequacies, PHMSA failed to fulfill the threshold requirements for issuing a notice of amendment, provided at 49 C.F.R. § 190.206(b), by failing to specify any proposed revisions of the subject plans or procedures. As a result of this procedural deficiency, alleged inadequacies Items 3 and 4 must be withdrawn.

Further, the almost two-year delay in issuing this NOA has prejudiced Respondent's ability to defend against these charges. On grounds of fundamental fairness, alleged inadequacies Items 3 and 4 should be withdrawn.

3. 49 C.F.R. § 195.402(c)(3) – Procedural manual; maintenance; 49 C.F.R. § 195.420 – Valve maintenance

PHMSA alleges that Respondent's O&M Manual, Section 195.420, did not define how to determine the valve position from the indicator lights on a valve indicator and provided conflicting interpretations for valve position from the indicator lights.

Respondent disputes and objects to the allegations stated in the NOA, on the following grounds:

- 3.1 The alleged inadequacy is not supported by the facts.
- 3.2 PHMSA has failed to carry its burden of proof.
- 3.3 PHMSA has failed to provide, or indeed to suggest, a rational connection between the facts found and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
- 3.4 The allegations of the NOA are so vague and ambiguous as to be incomprehensible and therefore indefensible.
- 3.5 PHMSA failed to meet the threshold requirements for issuing a notice of amendment.
- 3.6 PHMSA has unfairly prejudiced Respondent's ability to defend this alleged inadequacy by taking no action for two years following the inspection.

4. 49 C.F.R. § 195.452(f)-(g) – Integrity management in high consequence areas; elements of an IM program; information analysis

PHMSA alleges that Respondent's Integrity Management Program in High Consequence Areas, Version 2014-1, did not define an information analysis process that addresses all threats for each pipeline and that Respondent's Threat Identification and Risk Assessment Model (TIARA) did not identify any threats for the Kennedy and Niles pipeline segment. PHMSA further alleges that, in Respondent's evaluation process, "it" only identified third party damage as a threat and only developed preventative and mitigative measures to address third party damage.

Respondent disputes and objects to the allegations stated in the NOA, on the following grounds:

- 4.1 The alleged inadequacy is not supported by the facts.
- 4.2 PHMSA has failed to carry its burden of proof.
- 4.3 PHMSA has failed to provide, or indeed to suggest, a rational connection between the facts found and the conclusions reached, and, as such, the agency is acting in an arbitrary and capricious manner.
- 4.4 The allegations of the NOA are so vague and ambiguous as to be incomprehensible and therefore indefensible.
- 4.5 PHMSA failed to meet the threshold requirements for issuing a notice of amendment.
- 4.6 PHMSA has unfairly prejudiced Respondent's ability to defend this alleged inadequacy by taking no action for two years following the inspection.

CONCLUSION

At the hearing in this matter, Respondent intends to bring forth evidence in the form of documents and/or witness testimony, as well as to examine the evidence, documents and any witness testimony presented or introduced by PHMSA. Respondent will also present its arguments in support of the issues stated heretofore. Respondent reserves the right to amend and supplement this Statement of Issues (a) following receipt of the case file, as well as (b) at or before the hearing.

COUNSEL FOR RESPONDENT WOLVERINE PIPE LINE COMPANY

July 22, 2019



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