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**AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS' COMMENTS ON
THE PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION'S
REQUEST FOR COMMENT**

**"PIPELINE SAFETY: OPERATOR QUALIFICATION FREQUENTLY ASKED
QUESTIONS"**

**DOCKET NO. PHMSA-2020-0086
86 FED. REG. 3956**

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I. INTRODUCTION

The American Fuel & Petrochemical Manufacturers (“AFPM”) welcomes the opportunity to comment on the Pipeline and Hazardous Materials Safety Administration’s (“PHMSA”) request for comment entitled, “Pipeline Safety: Operator Qualification Frequently Asked Questions” (“request” or “notice”).¹ On January 15, 2021, PHMSA issued this request soliciting comment on a revised set of operator qualification frequently asked questions (“FAQs”). The revised FAQs would replace current FAQs that are outdated or no longer relevant and are intended to ensure that each FAQ is tied to a specific regulatory requirement. AFPM supports PHMSA’s proposal provides a minor clarification and suggested edits herein.

II. AFPM’S INTEREST IN PHMSA’S NOTICE

AFPM is a national trade association representing nearly 90 percent of the U.S. refining and petrochemical manufacturing capacity. AFPM’s member companies produce the gasoline, diesel, and jet fuel that drive the modern economy, as well as the petrochemical building blocks that are used to make the millions of products that make modern life possible. As such, AFPM members strengthen economic and national security while supporting more than 3 million jobs nationwide.

To produce these essential goods, AFPM members depend on all modes of transportation to move their products to and from refineries and petrochemical facilities and have made significant infrastructure investments to support and improve the safety and efficiency of the transportation system. AFPM member companies rely upon an uninterrupted, affordable supply of crude oil and natural gas as feedstocks for the transportation fuels and petrochemicals they manufacture. Pipelines are the primary mode for transporting crude oil and natural gas to refiners and petrochemical facilities and refined products from those same facilities to distribution terminals serving consumer markets.

Pipelines provide a safe, reliable, efficient, and cost-effective way to move bulk liquids, particularly over long distances. AFPM member companies own, operate, and rely on pipeline transportation as part of their daily operations. AFPM members are committed to protecting the health and safety of their workers, contractors, customers, and the communities where fuels and petrochemical products are transported. AFPM supports informed, risk-based, and cost-justified regulations related to pipelines, and is committed to working with PHMSA on this issue.

III. AFPM’S COMMENTS ON PROPOSED FREQUENTLY ASKED QUESTIONS

PHMSA uses FAQs and other guidance materials to clarify the Federal pipeline safety regulations (“PSRs”). In this notice, PHMSA proposes revisions to the operator qualification FAQs by modifying and eliminating some of the current FAQs. The proposed revisions are

¹ See 86 Fed. Reg. 3956 “Pipeline Safety: Operator Qualification Frequently Asked Questions,” Docket No. PHMSA-2020-0086, published January 15, 2021 <https://www.federalregister.gov/documents/2021/01/15/2021-00152/pipeline-safety-operator-qualification-frequently-asked-questions>.

intended to tie each FAQ to a specific operator qualification regulatory requirement and to eliminate obsolete FAQs.

Like all PHMSA guidance, FAQs are not rules, nor do they create legally enforceable rights, assign duties, or impose new obligations that are not contained in the existing regulations and standards. Pipeline operators must comply with the underlying safety standards referred to in the FAQs.

PHMSA's operator qualification PSRs are codified in 49 CFR part 192, subpart N, and 49 CFR part 195, subpart G. PHMSA originally developed pipeline operator qualification FAQs following a series of public meetings in 2003. The FAQs address PHMSA's operator qualification PSRs, which help to ensure that qualified individuals perform covered tasks on pipeline facilities and reduce the probability and consequences of pipeline incidents caused by human error. Each operator is responsible for ensuring that its contractors and vendors comply with the requirements of the operator's qualification program.

PHMSA subject matter experts (“SMEs”) reviewed the 63 current FAQs to determine whether any should be revised, added, or deleted. As a result of this review, PHMSA proposes publishing a total of 40 FAQs for public notice. AFPM appreciates PHMSA taking this step to update and modernize the FAQs and the opportunity to provide feedback on these standards. AFPM agrees with many of the revisions, and as such provides no input. However, we provide feedback below on specific FAQs with which we seek further clarification or revision.

A. CONTRACTOR QUALIFICATION

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

Per the proposed FAQ’s document,

“[o]perators 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.”

AFPM notes that this FAQ is not applicable to the OQ (Operator Qualifications) program, as the OQ program involves covered tasks, not procedures. A “procedure” is a particular way of accomplishing something or of action. However, as defined by §195.501, a

“covered task” is an activity which meets certain criteria (i.e., the 4 Part Test).² An “activity “as commonly defined means a “behavior or actions of a particular kind.”³ As further evidence of this, the word “procedure” is not present at all in Subpart Q.

In addition, the preamble to the Qualification of Pipeline Personnel Final Rule⁴ makes no mention of qualifying to an operator’s procedures, but rather focuses on performance of an activity or task. As an example, a task or activity may be to operate a valve. The ability to accomplish such a task may include the ability to identify different types of valves an operator may encounter, ability to open or close a valve, ability to determine the position of a valve, and the ability to identify abnormal operating conditions that may be expected when performing this task. However, an operator’s specific procedure is not necessary to demonstrate qualifications to operate a valve because an operator’s specific procedure provides a set of instructions on how to execute the abilities demonstrated in the qualification process.

A complex facility may have hundreds of different procedures that involve operating a valve as part of normal operations and maintenance. This may be due to the vast number of different valve lineups for various product movements and other situations where operator personnel may be instructed to open and close valves. However, it would not be necessary for a person to be evaluated on hundreds of different valve lineup procedures when they all utilize the same general abilities.

Section 195.505(f) requires that changes which affect covered tasks be communicated to individuals performing those covered tasks. So, if a change to a procedure affects a covered task (e.g., change in the steps), then that task would be required to be communicated to an affected individual, but that individual would not necessarily be required to be requalified on the task.

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)

Per PHMSA's proposed guidance,

“[o]perators 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 or contractor individuals. Operators must verify and document that any program used for qualification is applicable to the operator’s pipeline operating characteristics, procedures, and equipment.”

² The four elements that make an activity a covered task are: (1) the activity must be performed on a pipeline facility; (2) the activity must be an operations or maintenance task; (3) the activity must be performed as a requirement of the applicable part (i.e., part 192 or 195); and (4) the activity must affect the operation or integrity of the pipeline.

³ “Activity.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/activity>. Accessed 9 Mar. 2021.

⁴ See 64 Fed. Reg. 46853, “Pipeline Safety: Qualification of Pipeline Personnel,” Docket No. RSPA-98-3783 published August 27, 1999, <https://www.govinfo.gov/app/details/FR-1999-08-27/99-22208/summary>

AFPM requests more clarity in this response, as it could be misinterpreted to mean that a contractor must be qualified to an operator’s specific procedures. An operator should ensure that a contractor’s qualifications are compatible with the operator’s system, procedures, and equipment. This does not mean that a contractor must be qualified to an operator’s procedures, as qualifications are for a task, not a procedure (see discussion above). However, the abilities evaluated through the qualification method must be compatible with the types of equipment and general processes specific to the company’s procedures.

For instance, if a company’s procedures require use of abrasive blasting to remove coating from a pipeline, then the individual’s qualifications must have included the use of such equipment. If the individual’s qualification only included the use of hand tools to remove coating from a pipeline, then an operator would most likely not find those qualifications acceptable if abrasive blasting were used.

B. DEVELOPMENT OF A COVERED TASK LIST PROCESS

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

Per PHMSA's proposed guidance,

“[a]ny activity meeting the four-part test, as defined in 49 CFR §§ 192.801 or 195.501 is considered a covered task, regardless of whether it is already specifically defined in an operator’s operations and maintenance (O&M) manual. Reliance on an off-the-shelf OQ program does not excuse the operator from its regulatory obligation to identify a covered task, even if such a program does not offer operator qualification and training for a particular task. The OQ regulations require operators to identify covered tasks for all O&M activities that are performed as a requirement of parts 192 and 195, without regard to whether such activities arise from performance-based or prescriptive requirements.”

AFPM notes that 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 considers both pipefitting and removal of a casing to make repairs to be covered tasks.⁵ Similarly, while an industry standard such as ASME B31Q: Pipeline Personnel 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

⁵ See, e.g., *Enterprise Products Operating, LLC*, Case CPF No. 3-2009-5022 (issued August 14, 2012), https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_320095022.html?nocache=3733 and *Colonial Pipeline Co.* Case No. CPF 1-2017-5015 (issued August 15, 2019), https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_120175015.html?nocache=2199.

must evaluate each task they perform and determine whether it is a covered task using the four-part test.

This FAQ conflicts with both the plain text of the Pipeline Personnel Final Rule, as well as the express intent of the rule, as discussed in the preamble because it attempts to create a uniform list of covered tasks and attempts to introduce ambiguity into the four-part test, both of which the rule was specifically intended to avoid.⁶

In the Final Rule implementing the OQ program, PHMSA specifically declined to develop a uniform list of covered tasks “[b]ecause of the large differences between operations of pipelines across the country.”⁷ It would be contrary to the intent of the rule for PHMSA to attempt to develop a list of covered tasks that would be applied to all operators in all circumstances, as implied in this FAQ.

The FAQ states that “OQ regulations require operators to identify covered tasks for all O&M activities that are performed as a requirement of parts 192 and 195.” However, being “performed as a requirement of parts 192 and 195” is only one criteria of the four-part test. Simply being required by parts 192 or 195 is not enough to determine that an activity should be a covered task as the FAQ claims.

Moreover, in the enforcement case referenced above involving the removal of casing constituting a covered task, both the compliance order and amended final orders were later withdrawn.⁸ The legal and regulatory arguments made by the operator in its petition for reconsideration demonstrated a direct conflict between the express intent of the rule and PHMSA’s application in the Final Order. While the associate administrator acknowledged that the decision to grant relief would not broadly prohibit OPS from pursuing a Notice of Probable Violation in similar cases, this decision was based on the specific circumstances of the case. This decision by the assistant administrator is further support for the notion that there are “large differences between operations of pipelines across the country,” and the fact that this FAQ is contrary to the intent of the regulation.

It is inappropriate to reference ASME B31Q because this international standard was not created to comply with a specific regulation. Whereas the API (American Petroleum Institute) Recommended Practice 1161 was specifically developed to assist operators in complying with PHMSA’s OQ regulation, including the use of the four-part test to determine applicability. If PHMSA feels the need to reference a standard, it would be more appropriate to reference API 1161.

⁶ See 64 Fed. Reg. 46853, “Pipeline Safety: Qualification of Pipeline Personnel.”

⁷ *Id.* at 46859.

⁸ See “Decision on Petition for Reconsideration,” Case No. CPF 1-2017-5015, June 26, 2020, https://primis.phmsa.dot.gov/comm/reports/enforce/documents/120175015/120175015_Decision%20on%20Petition%20for%20Reconsideration_06262020.pdf.

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

Per PHMSA's proposed guidance,

“[y]es. 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.”

AFPM notes that this statement is not only in direct conflict with the express intent of the Final Rule, as discussed in the preamble,⁹ but it also technically irrational to distinguish between bench testing on the grounds of a compressor station versus identical testing equipment at an offsite location. In fact, per the definition of a “pipeline facility” in §195.2, a building would only be considered part of the “pipeline facility” if it were used in the transportation of hazardous liquids. If the compressor station has a laboratory, office, or other building not directly used in the transportation of hazardous liquid, it would not meet the definition of a “pipeline facility” even if it happened to be co-located on the same property as pipeline facilities (e.g., compressors).

In discussing the meaning of performed on a pipeline facility, PHMSA stated that “[a]n individual who works on a pipeline component that is physically connected to the pipeline system is performing work ‘on a pipeline facility’ and may be subject to the final rules, regardless of whether or not product is flowing through the pipeline. However, a person who repairs a pipeline system or appurtenance, *that has been removed from the system*, would not be performing work on the pipeline, and therefore would *not be performing a covered task* (emphasis added).”¹⁰ In this example, if the testing of a regulator occurred on the same property as co-located pipeline facilities, but disconnected from the pipeline system, it would not meet criteria for being identified as a covered task.

This FAQ is inconsistent with the express intent of the rule and attempts to impose a new standard while circumventing the rulemaking process.

Do emergency responders need to be qualified under the operator’s program? (§§ 192.801, 195.501)

Per PHMSA's proposed guidance,

“[e]mergency responders, such as firefighters and company personnel who would reasonably be expected to perform covered tasks, are required to be qualified under the operator’s OQ program. PHMSA recognizes that emergency responders may arrive on

⁹ See 64 Fed. Reg. 46855-59, “Pipeline Safety: Qualification of Pipeline Personnel.”

¹⁰ *Id.* at 46859.

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."

AFPM notes that this comment is in direct conflict with the plain text of the regulation as well as the express intent of the Final Rule as exhaustively discussed in the preamble. PHMSA intentionally removed Emergency Response personnel from the Operator Qualification rule, as was originally proposed in the Notice of Proposed Rulemaking.¹¹ In the Final Rule, PHMSA explained that "[the] Committee agreed not to re-write the qualification requirements of emergency response personnel" ... "[b]ecause the final rule includes a qualification process for operations and maintenance activities, but does not address emergency response qualification, 49 CFR § 195.403 is amended to retain emergency response training requirements."¹²

PHMSA also stated that "[c]ertain tasks performed on pipeline facilities may be covered tasks when performed in the course of operation and maintenance activities, but may not be covered tasks in the course of other activities."¹³ In the case described in the example above, the activities performed in response to an emergency are not part of a required operations or maintenance task, even if a similar task performed during normal operations and maintenance would be considered a covered task.

This FAQ is inconsistent with the stated intent of the rule and attempts to impose a new standard while circumventing the rulemaking process.

C. EVALUATION METHOD(S) (DEMONSTRATION OF KNOWLEDGE, SKILL, AND ABILITY) AND THEIR RELATIONSHIP TO COVERED TASKS

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

Per PHMSA's proposed guidance,

"[a]cceptable 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 demonstrate that the method(s) associated with each task in their written OQ programs can determine whether an individual is qualified to perform that task. This includes evaluating the knowledge, skill, and ability of an individual relevant to the task.

¹¹ See 59 Fed. Reg. 39506, "Pipeline Safety: Qualification of Pipeline Personnel," RSPA Docket No. PS-94; Notice 2, published August 43, 1994, <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/standards-rulemaking/rulemakings/archived-rulemakings/59396/59-fr-39506.pdf>.

¹² See 64 Fed. Reg. 46853, "Pipeline Safety: Qualification of Pipeline Personnel" at 46861.

¹³ *Id.* at 46860.

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). To determine an individual's ability to perform a covered task, observation must include methods of assessing the individual's knowledge of the procedure, as well as the individual's skill and ability to perform it. The evaluation must include appropriate questions and responses relevant to the covered task. The mere act of watching without any interaction between the observer and the observed is inadequate to determine that an individual is qualified."

AFPM notes that this FAQ attempts to impose a new standard not within the text of the regulation. Currently, the regulation only requires that an evaluation "determine an individual's ability to perform a covered task." This FAQ attempts to impose a more comprehensive standard of evaluating "the knowledge, skill, and ability."¹⁴

In fact, the Final Rule makes no mention of evaluating knowledge or skill, but only discusses evaluating a person's "ability." The regulation requires that an operator provide training to ensure an individual has the necessary knowledge and skills, but there is not an express requirement to include those attributes as part of the evaluation for qualification.¹⁵

In accordance with the preamble discussion in the Final Rule, except for on-the-job performance and work performance history, "[a]ny of the other forms of assessment specified in the definition of evaluation may be used as the sole method of evaluation . . ."¹⁶ The FAQs attempt to expand the evaluation criteria also seems to imply multiple qualifications methods must always be used. This is inconsistent with the stated intent of the rule and attempts to impose a new standard while circumventing the rulemaking process.

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))

Per PHMSA's proposed guidance,

"[i]n order to ensure individuals are qualified, the operator must establish the acceptance criteria appropriate for the evaluation method(s) used to verify that individuals who are qualified to perform covered tasks possess the required knowledge, skills, and ability. See 64 FR at 46861."

Given the Final Rule, AFPM notes that this FAQ misrepresents the explanation as to what an evaluation must verify. The rule states "[t]he evaluation of an individual's qualifications should be an objective, consistent process that documents an individual's ability to perform the

¹⁴ See 49 CFR § 195.503.

¹⁵ See 49 CFR § 195.505(h).

¹⁶ See 64 Fed. Reg. 46853, "Pipeline Safety: Qualification of Pipeline Personnel" at 46859.

covered task.”¹⁷ This FAQ is inconsistent with the stated intent of the rule and attempts to impose a new standard (i.e., requirement to evaluate knowledge and skills).

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

Per PHMSA's proposed guidance,

“[w]hile the regulation does not specify the period that may elapse between evaluations, the operator should establish requirements for reevaluation after an individual’s failure to pass an evaluation. Operators should ensure that the reason for failure is recognized and addressed prior to reevaluation. If knowledge, skill, or ability gaps are identified as reasons for the failure, the operator should provide additional training prior to reevaluation. The operator’s written program should describe how the operator identifies and corrects the causes of failures before reevaluation.”

APFM notes that this FAQ is inconsistent with the plain text of the rule and attempts to impose a new standard (i.e., requirement to identify the reason for failure) while circumventing the rulemaking process. The rule does not impose a requirement to identify the reason an individual failed an evaluation nor to provide training prior to a reevaluation. The operator may do so if they choose, or they may choose not to use the employee, or they may choose to handle evaluation failures through a different process.

D. DEVELOPMENT AND DOCUMENTATION OF AREAS OF QUALIFICATION FOR INDIVIDUALS PERFORMING COVERED TASKS

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

Per PHMSA's proposed guidance,

“[i]f the piping under consideration is subject to regulation by parts 192 or 195, the plumber or anyone else performing the covered task for the operator must be qualified under the operator’s OQ program.”

APFM notes that the FAQ is specific to a function only performed on gas pipelines; therefore, the reference to Part 195 should be removed.

E. MANAGEMENT OF CHANGES

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

¹⁷ See 64 Fed. Reg. 46853, “Pipeline Safety: Qualification of Pipeline Personnel” at 46861.

Per PHMSA's proposed guidance,

“[n]umerous 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 document provisions in its OQ program to describe what changes must be communicated, how these changes are to be communicated, to whom they are to be communicated, and within what time frame communication is required. The program plan 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.”

AFPM notes that the current regulation does not define “significant” and the glossary that is referenced is not a rule or other binding document that may be used to establish a requirement on operators.

Although some of the situations listed may in fact lead to change which would be significant by the common understanding the term, there may also be many situations which satisfy the listed criteria but would not be considered “significant” by its definition. For example, an operator may choose to increase an evaluation interval from 3 years to 39 months to provide greater flexibility in scheduling evaluations. As this “grace period” is common in PHMSA regulations, this increase would not be a significant change for most people. Another example would include “eliminating covered tasks.” If an operator chooses to eliminate a covered task because they no longer perform that task, or if a single task was replaced by multiple more granular tasks, or if a regulation changes that no longer makes such task meet the four-part test, then eliminating a task would not be considered a “significant” change.

As another example, the acquisition of assets or merger of companies would not necessarily lead to a change in the OQ program at all, much less a significant change. Even if multiple OQ plans are combined or harmonized, it is possible that very little would need to be changed, especially if both companies followed a recognized industry standard such as API RP (Recommended Practices) 1161. Therefore, such an event does not necessarily constitute a

“significant” change by the common definition of the term. AFPM cautions that this FAQ attempts to impose a new standard, not currently in the regulation, by circumventing the rulemaking process.

IV. CONCLUSION

AFPM thanks PHMSA for its time and consideration of our comments related to this proposal. AFPM acknowledges the need to tie each FAQ to a specific operator qualification regulatory requirement and to eliminate obsolete FAQs. AFPM shares PHMSA’s goal of increasing pipeline safety, and we look forward to the opportunity to work together on this. Please contact me at (202) 457-0480 or rbenedict@afpm.org if you wish to discuss these issues further.

Sincerely,

A handwritten signature in blue ink that reads "Rob Benedict". The signature is written in a cursive, slightly slanted style.

Rob Benedict,
Vice President, Petrochemicals & Midstream