

March 31, 2017

Mr. Mike Morgan
General Manager - Operations
Centurion Pipeline L.P.
5 Greenway Plaza, Suite 110
Houston, TX 77046

Re: CPF No. 4-2014-5025

Dear Mr. Morgan:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$122,400, and specifies corrective action that must be completed. 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 completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order is made pursuant to 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. R. M. Seeley, Director, Southwest Region, PHMSA, OPS
Mr. Ahren Tryon, Tryon Law Firm
4148 Hockaday Drive, Dallas, Texas 75229

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)	
)	
Centurion Pipeline, LP,)	
 a subsidiary of Occidental)	
 Petroleum Corp.,)	CPF No. 4-2014-5025
)	
Respondent.)	
)	

FINAL ORDER

Between January and June 2014, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an investigation of an accident that occurred January 30, 2014, on a pipeline operated by Centurion Pipeline, LP (Centurion or Respondent), in Houston, Texas. Centurion operates approximately 2,500 miles of pipeline transporting crude oil in Texas, Oklahoma and New Mexico.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director) issued to Respondent, by letter dated September 30, 2014, 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 Centurion had violated 49 C.F.R. §§ 195.404 and 195.442 and proposed a civil penalty of \$165,600 for the alleged violations. The Notice also proposed ordering certain compliance measures to correct the alleged violations.

Centurion responded to the Notice by letter dated October 30, 2014 (Response), contested the allegations, and requested a hearing. Centurion submitted additional materials on April 20, 2015. A hearing was held on April, 29, 2015, in Houston, Texas, with an attorney from the Office of Chief Counsel, PHMSA, presiding. After the hearing, Respondent provided post-hearing statements for the record by letters dated June 26, 2015 (Closing) and August 14, 2015 (Supplemental Closing). Pursuant to § 190.209(b)(7), the Director submitted a written evaluation of Respondent’s response material on July 9, 2015 (Recommendation).

¹ This information is reported by Centurion for 2015 pursuant to 49 C.F.R. § 195.49.

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. § 195.404(a), which states in relevant part:

§195.404 Maps and records.

- (a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information;
 - (1) Location and identification of the following pipeline facilities;
 - (i) Breakout tanks;
 - (ii) Pump stations;
 - (iii) Scraper and sphere facilities;
 - (iv) Pipeline valves;
 - (v) Facilities to which §195.402(c)(9) applies;
 - (vi) Rights-of-way; and
 - (vii) Safety devices to which §195.428 applies.
 - (2) All crossings of public roads, railroads, rivers, buried utilities, and foreign pipelines.
 - (3) The maximum operating pressure of each pipeline.
 - (4) The diameter, grade, type and nominal wall thickness of all pipe.

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a) by failing to maintain current maps of its pipeline systems. Specifically, the Notice alleged that Centurion did not maintain a current map of the eight-inch Snyder-to-Post crude pipeline. On January 30, 2014, Centurion's pipeline suffered third-party damage during excavation. Maps used by Centurion to temporarily mark the eight-inch pipeline prior to excavation incorrectly showed the pipeline was south of a parallel six-inch pipeline also operated by Centurion. The correct location of the eight-inch pipeline was discovered to be north of the six-inch line.

Respondent argued that the alleged violation should be withdrawn because OPS did not apply a proper standard for determining compliance with § 195.404. In particular, Respondent noted that the regulation requires maps to be "current," but the Notice alleged Respondent's maps were not "accurate." Respondent argued that its maps were indeed current. For example, when Respondent acquired the pipelines in 2007, the Company used in-line inspection data to create the maps and also purchased geospatial data. The pipelines then underwent "mapping data accuracy verification via an internal inspection tool equipped with an inertial mapping unit."² Centurion also planned to use information from the excavation on January 30, 2014, to update its system maps.

Respondent also contended that its maps were far more accurate than the standard for accuracy that applies to the submission of location information in the National Pipeline Mapping

² Closing, at 10.

System (NPMS). The NPMS, Respondent argued, requires accuracy within 500 feet, while Respondent's maps were only off by eight feet. Respondent argued that it should not be penalized for using "best practices" to maintain its system maps.³ Respondent also asserted that it was under no obligation to map the Company's six-inch line that was near the damaged eight-inch line because the six-inch line was not subject to the pipeline safety regulations in Part 195.

At the Hearing, the Director explained that Respondent's map depicted the eight-inch pipeline in the wrong place. Specifically, the map incorrectly depicted the eight-inch pipeline in relation to the six-inch unregulated pipeline. This is what the Notice meant by alleging the maps were not "accurate." The Director also noted that an Advisory Bulletin previously issued by PHMSA advises operators that documents, including maps, used in the performance of operations required under Part 195 should contain clear and useable information.

Applicable Safety Standards

Section 195.404(a) requires a pipeline operator to maintain "current maps and records" of its pipeline system. Maps include those depicting the location of an operator's pipeline facility, including the location of pipe, valves, safety devices, crossings of roads, utilities, and foreign pipelines, and other information such as maximum operating pressure. As PHMSA has previously stated, "Inherent in an operator's obligation under § 195.404(a) to maintain 'current maps and records' is the need for such records to be complete and accurate."⁴ Under this regulation, an operator is required to maintain not just current maps, but accurate maps.

In 2002, PHMSA issued a safety bulletin titled "Pipeline Safety: Gas and Hazardous Liquid Pipeline Mapping."⁵ The Advisory Bulletin advises each pipeline operator to review information and mapping systems "to ensure that the operator has clear, accurate, and useable information on the location and characteristics of all pipes, valves, regulators, and other pipeline elements for use in emergency response, pipe location and marking, and pre-construction planning."⁶

Findings

On January 30, 2014, Respondent's eight-inch pipeline was damaged during excavation by a third party. Respondent had used its own maps to temporarily mark the eight-inch pipeline prior to the excavation. The maps indicated the pipeline was located south of the Company's parallel six-inch pipeline, but the actual location of the eight-inch pipeline at the site of the excavation

³ Supplemental Closing, at 12.

⁴ *Plantation Pipe Line Co.*, CPF No. 1-2005-5017, at 5, 2009 WL 1211364 (Mar. 27, 2009).

⁵ Pipeline Safety: Gas and Hazardous Liquid Pipeline Mapping, 67 Fed. Reg. 40,768 (June 13, 2002) (Advisory Bulletin).

⁶ *Id.* Because the plain language of the regulation and subsequent guidance issued by PHMSA notified Respondent of the requirement to maintain current maps in accordance with § 195.404, Respondent's contention that it did not have notice of the requirement is rejected.

was north of the six-inch pipeline within the same right-of-way. This evidence demonstrates Respondent's maps were not current or accurate.

While Respondent argued its maps were only off by eight feet, § 195.404(a) does not establish a prescriptive standard of accuracy measured in feet. The regulation establishes a performance standard. PHMSA has explained the performance standard means, at a minimum, that the information must be accurate enough to be useable for its intended purpose. On the date of the excavation, Respondent's maps were used to mark a pipeline for the purpose of avoiding excavation damage, but the maps were inaccurate, which led to inaccurate markings and eventually damage to the pipeline.

Respondent's assertion that an accuracy standard of 500 feet should apply under § 195.404 is rejected. The 500-foot standard cited by Respondent is for the submission of data to the NPMS and is not a regulatory standard under § 195.404. There is no support in Part 195 for Respondent's assertion that the NPMS data submission standard applies to the maps and records required to be maintained under § 195.404.

Respondent also asserted that the Company was not required to accurately reflect the relative location of the unregulated six-inch pipeline. This assertion is also rejected. Section 195.404 required Respondent to have maps and records that showed not only proximity of the regulated eight-inch pipeline to other pipelines, but also nearby utilities and foreign pipelines. Since the maps must include other pipelines and non-pipeline utilities, the maps were required to have an accurate depiction of Respondent's nearby six-inch pipeline.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(a) by failing to maintain a map that depicted the location of its eight-inch pipeline relative to its six-inch line.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.442, which states in relevant part:

§ 195.442 Damage prevention program.

(a)

(c) The damage prevention program required by paragraph (a) of this section must, at a minimum:

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.

The Notice alleged that Respondent violated 49 C.F.R. § 195.442 by failing to provide correct temporary markings in the area of the excavation activity before the activity began. Specifically, the Notice alleged that Centurion failed to provide accurate temporary markings of the eight-inch pipeline when it twice mismarked the pipe's location. Respondent attempted to locate and mark the eight-inch pipeline on November 12, 2013, and again on January 30, 2014 (the day of the accident). Each time, Respondent failed to accurately mark the eight-inch pipeline, which eventually resulted in damage to the pipeline by a third-party contractor using excavation equipment.

On November 12, 2013, in response to a one-call ticket submitted by the excavation contractor, Respondent located and temporarily marked two of its pipelines within the proposed excavation area. The two pipelines were the eight-inch pipeline and the six-inch pipeline. Respondent used existing maps and a Radio Detection RD8000 locator to locate the pipes and mark them. The six-inch pipeline was marked after the eight-inch line. The one-call ticket was renewed five times before excavation eventually started, each time prompting a site visit from Centurion, which verified the two pipelines were still marked.⁷

During excavation on January 30, 2014, two additional, unidentified pipes were discovered in the excavation area. Where Respondent had marked what it expected to be its eight-inch and six-inch pipelines, the excavator uncovered two six-inch pipes. Upon the discovery of a second six-inch pipeline, Respondent believed its own eight-inch pipeline had been mismarked and attempted to locate and correctly mark the line.⁸ The excavator then partially exposed an eight-inch pipeline, which Centurion presumed was its own pipeline. This pipeline, however, was not Respondent's line, but another eight-inch pipeline located directly above Respondent's line. Centurion's line still could not be seen at the excavation site. Believing Respondent's eight-inch line had already been exposed, the excavation continued and Respondent's pipeline was struck and damaged.

At the hearing and in its written submission, Respondent admitted that it had mismarked its eight-inch pipeline.⁹ Respondent disputed, however, that the line was mismarked again during the excavation. The Company argued that because the pipeline was directly beneath the unknown eight-inch pipe that had been exposed, its markings should be considered accurate, regardless of whether it thought the unknown pipe was its own pipeline.¹⁰

Respondent contended further that its temporary markings were within the "area of excavation activity" as required by § 195.442(c)(5) because the marks were directly over the point of impact, and the paint line was in the area the excavator was working. Respondent also argued the Texas Administrative Code defines a "tolerance zone" for excavations that would be roughly 44 inches in this instance.¹¹ In conclusion, Respondent argued that Centurion's marking was exactly over the location where the pipeline was struck and damaged.¹²

⁷ Pipeline Safety Violation Report (Violation Report), (Sep. 30, 2014) (on file with PHMSA), at 11-12.

⁸ Violation Report, Ex. C, at 6 (Internal Review Meeting: Third Party Strike on Centurion's Snyder to Post 8in Crude Oil Pipeline) (Mar. 5, 2014).

⁹ Tr., at 169-70; Violation Report, Ex. C, at 2-3.

¹⁰ Tr., at 172, 180-81; Closing, at fn 12; Supplemental Closing, at 10.

¹¹ Tr., at 179; Closing, at 21 (citing Texas Administrative Code Title 16, Section 18.10).

¹² Supplemental Closing, at 7; Closing, at 20-12.

Applicable Safety Standards

Section 195.442(c)(5) requires a pipeline operator to have a written program to prevent damage to its buried pipelines from excavation activities. The damage prevention program must include, at a minimum, a means to receive notification of planned excavation activities, to notify the prospective excavator of the presence of its pipelines in the area of planned excavation, and to “provide for temporary marking of buried pipelines in the area of excavation activity” before the activity begins.

Findings

On November 12, 2013, Centurion responded to a notification of planned excavation by attempting to provide temporary marking of its buried eight-inch pipeline in the area of the planned excavation. After the excavation activity began, it was determined that the marking was not accurate because the marking revealed a six-inch pipeline. After the six-inch pipeline was exposed, Respondent attempted to identify and temporarily mark the eight-inch pipeline again, but that marking too was inaccurate, as the marking turned out to be another operator’s eight-inch line, which was previously unidentified. As the excavation continued, Respondent’s eight-inch pipeline was damaged because its true position was never identified during temporary marking, as required by § 195.442(c)(5).

While Respondent argued that it had complied with the regulation because its pipeline was directly beneath the unidentified eight-inch line that it had marked and all the markings were in the “area of excavation,” I reject this argument. Respondent did not mark its own pipeline, but rather marked an unidentified pipeline operated by another company. Thereafter, excavation continued until Centurion’s pipeline was damaged. Respondent’s markings therefore did not comply with the regulatory requirement.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.442 by failing to provide correct temporary markings on its buried pipeline in the area of excavation activity before the activity began.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 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; 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 \$165,600 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$21,600 for Respondent's violation of 49 C.F.R. § 195.404, for failing to maintain current maps of its pipeline systems.

With respect to the nature and circumstances of the violation, OPS alleged this was a records violation that Respondent discovered and self-reported, which served to mitigate the penalty as reflected in the proposed amount.¹³ With respect to gravity, OPS alleged the violation significantly compromised pipeline safety. OPS did not propose a credit under either the culpability or good faith factors because Respondent failed to take appropriate action to comply with the regulation.

Respondent argued the penalty should be reduced because the proposed amount did not take into consideration the accuracy of Respondent's maps, which were only off by eight feet, and that the six-inch pipeline was unregulated. I have already rejected these assertions above under the Finding of Violation section. Therefore, I find they are not a basis to reduce the penalty.

Respondent also argued the penalty should be reduced because Centurion had taken measures to verify the accuracy of its maps prior to the excavation damage, and in fact, the third-party operator of other pipelines in the area of excavation bears responsibility for the damage. These arguments are also rejected as I find Respondent is responsible for the accuracy of its own pipeline maps, regardless of when or from whom it acquired the pipelines. Respondent had owned the pipelines for approximately seven years prior to the incident, and its efforts to verify the accuracy were insufficient to warrant a penalty reduction in this case.

Finally, contrary to Respondent's assertion, the fact that it self-reported the violation does not require further reduction of the penalty under "good faith." When considering an operator's good faith in attempting to comply, PHMSA looks at the attempt to comply with prior to the occurrence of the violation.¹⁴ Respondent's self-reporting of the violation has no bearing on whether or not the Company had made a good-faith effort to have current maps when the violation occurred. As indicated above, however, the self-report did factor into the proposed penalty under the circumstances factor.

Having reviewed the civil penalty assessment factors, I find the evidence supports assessment of the proposed penalty. Accordingly, Respondent is assessed a civil penalty of \$21,600 for the violation of 49 C.F.R. § 195.404.

¹³ Violation Report, at 7.

¹⁴ *Enterprise Products Operating, LLC*, CPF 4-2013-5011, 2016 WL 1104436, at 9 (Feb. 4, 2016).

Item 2: The Notice proposed a civil penalty of \$144,000 for Respondent’s violation of 49 C.F.R. § 195.442(c)(5), for failing to provide correct temporary markings on a buried pipeline in the area of excavation activity before the activity began.

With respect to the nature and circumstances of the violation, OPS alleged the violation concerned a failure to perform a required activity and it was discovered by PHMSA. With respect to gravity, OPS alleged the violation was a causal factor in the accident, which is the most severe gravity rating. OPS offered mitigating information reflected in the proposed penalty to account for good faith by Respondent and “significant steps” towards compliance, even though compliance was not achieved.¹⁵

Respondent argued the penalty should be reduced because the Violation Report inaccurately stated the violation lasted 79 days, which did not account for the fact that the excavation ticket was reissued several times. At the hearing, OPS explained that duration information was calculated from the date of the first location ticket issuance, but that the civil penalty was not adjusted beyond a single-day violation. Since the duration of the violation did not impact the proposed penalty amount, Respondent’s argument is not grounds to reduce the penalty.

Respondent also stated that the penalty should be reduced because Respondent’s conduct was not “a causal factor in an accident/incident.”¹⁶ Respondent claimed that it had “marked directly over the location of the eight-inch Snyder-to-Post pipeline in the area of excavation activity which was directly over the point of the strike.” Respondent argued that it “would defy logic for PHMSA to assert that the pipeline was struck because Centurion failed to place a mark where the excavation activity was taking place.”¹⁷

I disagree. While other factors contributed to the accident, Respondent’s failure to correctly mark its Snyder-to-Post-eight-inch pipe was a causal factor in the accident. In particular, Respondent mistakenly marked an unidentified pipeline, not its own pipeline. After the unidentified pipeline was unearthed, the excavator continued digging while Respondent believed its pipeline had already been safely exposed. Respondent’s pipeline had not actually been marked and was struck by the excavator as work continued. Therefore, I do not find Respondent’s assertion warrants reducing the penalty.

Finally, Centurion argued that the penalty should be reduced because the third-party operator of the other pipelines in the area of excavation bears responsibility for the damage. While an operator will generally be considered culpable for any failure to comply with a regulation absent some justification for the failure,¹⁸ in this case I find there were certain events outside of Respondent’s control that contributed to the violation. Specifically, a third-party operator of pipelines in the area of the excavation failed to comply with applicable safety requirements by responding to the one-call ticket location requests and by marking its pipelines. The failure of

¹⁵ Violation Report, at 17.

¹⁶ Closing, at 27; Supplemental Closing, at 13; Violation Report, at 16.

¹⁷ Closing, at 27.

¹⁸ *Enterprise Products Operating, LLC*, CPF 4-2013-5011, 2016 WL 1104436, at 9 (Feb. 4, 2016).

that operator to mark its own pipelines in the area of excavation increased the likelihood of confusion between Respondent's pipelines and the unknown and unidentified third-party pipelines during the excavation. Respondent ultimately bears responsibility for accurately marking its own lines, but I find the civil penalty should be reduced to take into consideration these facts concerning culpability.

Accordingly, having reviewed the civil penalty assessment factors, I find the evidence supports assessing a reduced civil penalty of \$100,800 for the violation of 49 C.F.R. § 195.442.

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 **\$122,400**.

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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$122,400 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 the violations cited above in Item 1. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids by pipeline or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601.

Centurion asserted that it complied with the terms of the proposed compliance order because all relevant information gained from its review of the incident has been integrated into the maps and records of the eight-inch pipeline. At the hearing, Respondent presented an updated map that reflected the accurate position of the pipelines relative to each other in the area of the excavation damage. I find these actions did not adequately address the terms of the proposed compliance order, which proposed actions to ensure the map is accurate from milepost 0 through 5.

Accordingly, 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 with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.404(a) (Item 1), Centurion must revise and update information and mapping systems for the Snyder-to-Post eight-inch pipeline from milepost 0 through 5 to accurately reflect the location and identification of the pipeline facilities. Centurion must submit documentation that verifies completion of this compliance order within 90 days following receipt of the Final Order. Documentation must be submitted to the Director, Southwest Region.
2. It is requested that Centurion maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total cost to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

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, demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed the amounts set forth in 49 C.F.R. § 190.223 (currently \$205,638 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. § 190.243, Respondent may submit a petition for reconsideration of this Final Order to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, D.C. 20590, no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

March 31, 2017

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued