

October 24, 2017

Ms. Vicki Hollub
President and Chief Executive Officer
Occidental Petroleum Corporation
5 Greenway Plaza, Suite 110
Houston, TX 77046

Re: CPF No. 4-2014-5025

Dear Ms. Hollub:

Enclosed please find the Decision on the Petition for Reconsideration filed by Centurion Pipeline, LP, a subsidiary of Occidental Petroleum Corporation, in the above-referenced case. For the reasons explained therein, the Decision affirms the violations in the Final Order and does not modify the civil penalty or compliance terms. 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. This Decision constitutes the final administrative action in this proceeding. Service of this Decision 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: Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Scott Janoe, Esq., Baker Botts, LLP, 910 Louisiana St., Houston, TX 77002
Mr. Mike Morgan, General Manager – Operations, Centurion Pipeline, LP, 5 Greenway
Plaza, Suite 110, Houston, TX 77046

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,)	CPF No. 4-2014-5025
a subsidiary of Occidental Petroleum Corp.,)	
)	
Petitioner.)	
)	

DECISION ON PETITION FOR RECONSIDERATION

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 Petitioner),¹ near Snyder, Texas. Centurion operates approximately 2,500 miles of pipeline transporting crude oil in Texas, Oklahoma, and New Mexico.²

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Petitioner, 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, Petitioner 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 Petitioner’s response material on July 9, 2015 (Recommendation).

¹ Centurion is a subsidiary of Occidental Petroleum Corporation. See Centurion’s Petition for Reconsideration and Brief in Support, (April 27, 2017) (on file with PHMSA).

² This information is reported by Centurion for 2015 pursuant to 49 C.F.R. § 195.49.

On March 31, 2017, pursuant to 49 C.F.R. § 190.213, PHMSA issued a Final Order in this proceeding, finding that Centurion committed violations of § 195.404(a) (Item 1) and § 195.442 (Item 2), as alleged in the Notice. The Final Order assessed a reduced civil penalty of \$122,400, and ordered corrective action with respect to Item 1, as set forth in the Compliance Order.

In accordance with 49 C.F.R. § 190.243, Centurion filed a timely Petition for Reconsideration (Petition) of the Final Order on April 27, 2017, seeking reconsideration of the violations, civil penalties, and Compliance Order. The filing of the petition automatically stayed payment of the assessed civil penalty pursuant to § 190.243(c), but did not stay the corrective actions required to be completed under the Compliance Order.

Pursuant to 49 C.F.R. § 190.243, an operator may petition the Associate Administrator for reconsideration of a final order issued under § 190.213. Reconsideration does not constitute an appeal or an opportunity to seek a *de novo* review of the record. It is instead an opportunity for petitioners to request that errors in the final order be corrected or to present information that was not previously available, provided the petitioner submits a valid reason explaining why such information was not presented prior to issuance of the final order. PHMSA may grant or deny, in whole or in part, a petition for reconsideration without further proceedings, but may request additional information or comment if deemed appropriate. Under § 190.243(b), the petitioner must submit reasoning why any additional facts or arguments were not presented prior to issuance of the final order.

Centurion did not submit additional facts or arguments in the Petition. Rather, Centurion continued to argue against PHMSA's interpretations of 49 C.F.R. §§ 195.404(a) and 195.442(c)(5), repeating the same arguments and citing the same information contained in Petitioner's previous submissions and discussed at the hearing. Centurion characterized its Petition as an attempt to clarify certain of its previous statements, which Petitioner asserted PHMSA "may have misinterpreted and/or misapplied."³

Background

On November 12, 2013, in response to a one-call ticket submitted by an excavation contractor, Centurion located and temporarily marked two of its pipelines within the proposed excavation area. The two pipelines were Centurion's parallel eight-inch and six-inch pipelines. Centurion's maps indicated that the eight-inch pipeline was located south of Centurion's parallel six-inch pipeline, but the actual location of the eight-inch pipeline at the site of the excavation was north of the six-inch pipeline within the same right-of-way. Centurion 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.

During excavation on January 30, 2014, two additional, unidentified pipes were discovered in the excavation area. Where Centurion 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

³ Petition, at 2.

pipeline, Centurion learned that its eight-inch pipeline had not been marked and attempted to locate and correctly mark the line. The excavator then partially exposed an eight-inch pipeline, which Centurion presumed was its own pipeline. This pipeline, however, was not Centurion's line, but another eight-inch pipeline located directly above Centurion's eight-inch line. Centurion's eight-inch line still could not be seen at the excavation site. Believing Centurion's eight-inch line had already been exposed, the excavation continued and Centurion's eight-inch pipeline was struck and damaged.

Analysis

Item 1 in the Final Order found that Centurion violated 49 C.F.R. § 195.404(a), which states:

§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 Final Order determined that Petitioner violated 49 C.F.R. § 195.404(a) by failing to maintain current maps of its pipeline systems. Specifically, PHMSA found that Centurion did not maintain a current map of its eight-inch Snyder-to-Post crude pipeline. On January 30, 2014, Centurion's eight-inch 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.

In the Petition, Centurion argued the finding of violation in Item 1 should be reversed for several reasons. The specific assertions made by Petitioner were that: (1) Centurion's maps complied with regulatory and industry standards; (2) Centurion's marking of the other eight-inch pipeline immediately above Centurion's eight-inch pipeline rendered the maps accurate; and (3) Centurion's maps were not required to accurately indicate the position of Centurion's eight-inch pipeline relative to other pipelines in the area.

These arguments were previously raised in response to the Notice, at the hearing, and in subsequent submissions and were rejected in the Final Order. Finding no reason to modify the findings in the Final Order, PHMSA affirms the violation of § 195.404(a).

Item 2 in the Final Order found that Centurion violated 49 C.F.R. § 195.442(c)(5), which states:

§ 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 Final Order determined that Petitioner violated 49 C.F.R. § 195.442(c)(5) by failing to provide correct temporary markings in the area of the excavation activity before the activity began. Specifically, PHMSA found that Centurion failed to provide accurate temporary markings of its eight-inch pipeline when it twice mis-marked the pipe's location. Petitioner attempted to locate and mark its eight-inch pipeline on November 12, 2013, and again on January 30, 2014 (the day of the accident). Each time, Petitioner failed to accurately mark its eight-inch pipeline, which eventually resulted in damage to the pipeline by a third-party contractor using excavation equipment.

In the Petition, Centurion argued the finding of violation in Item 2 should be reversed for several reasons. The specific assertions made by Petitioner were that: (1) Centurion properly marked its pipelines in compliance with regulatory and industry standards; (2) but for the existence of the other eight-inch pipeline immediately above Centurion's eight-inch pipeline, no damage would have resulted to Centurion's line; (3) the finding of violation in Item 2 imposed a strict liability standard on Petitioner; and (4) but for the excavator's failure to comply with Texas law concerning the area of excavation, no damage would have resulted to Centurion's line.

Arguments (1), (2), and (4) were previously raised in response to the Notice, at the hearing, and in subsequent submissions and were rejected in the Final Order. With regard to argument (3), Petitioner did not articulate how the finding of violation in Item 2 of the Final Order imposed a strict liability standard on Centurion. Presumably, Petitioner intended to assert that Item 2 was premised entirely on the fact that excavation activity resulted in damage to Centurion's eight-inch line. This argument is without merit; the finding of violation documented in the Final Order demonstrated that Centurion did not mark its own pipeline, but, rather marked an unidentified pipeline operated by another company. Finding no reason to modify the findings in the Final Order, PHMSA affirms the violation of § 195.442(c)(5).

Conclusion

Based on a review of the record and the information provided in the Petition, I hereby deny the Petition and affirm the Final Order without modification, for the reasons set forth above.

Payment of the \$122,400 civil penalty assessed in the Final Order is now due and must be made within 20 days of service of this Decision. The payment instructions were set forth in detail in the Final Order. 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 United States District Court.

All other terms of the Final Order remain in effect, including terms of the Compliance Order, which were required to be completed by Centurion and submitted to the Director, Southwest Region no later than 90 days from receipt of the Final Order, or no later than July 5, 2017.

This Decision constitutes final agency action taken by PHMSA in the enforcement proceeding. The terms and conditions of this Decision are effective upon service in accordance with 49 C.F.R. § 190.5.

October 24, 2017

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued