U.S. Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

FEB 10 2003

Mr. John Traeger
President
Cenex Pipeline, LLC
803 Highway 212 South
P.O. Box 909
Laurel, MT 59044

RE: CPF No. 5-2001-5003

Dear Mr. Traeger:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of $67,000. The penalty payment and terms are set forth in the Final Order. At such time that the civil penalty is paid and the terms of the compliance order are completed, as determined by the Director, Western Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

cc: Chris Hoidal, Director, OPS Western Region
David A. Veeder, Counsel for Cenex

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
WASHINGTON, DC 20590

In the Matter of	)	
Cenex Harvest State Cooperative (Cenex),	)	**CPF No. 5-2001-5003**
Respondent	)	
	)	

FINAL ORDER

During August 7-11, 2000, pursuant to 49 U.S.C. § 60117, representatives of the Western Region, Office of Pipeline Safety (OPS) conducted an onsite pipeline safety inspection of Respondent's Front Range Pipeline facilities and records in Laurel, Montana. As a result of this investigation, the Director, Western Region, OPS, issued to Respondent, by letter dated July 5, 2001, a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed violations of 49 C.F.R. Part 195, proposed assessing a total civil penalty of $177,000 for the alleged violations, and proposed that Respondent take certain measures to correct the alleged violations. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its procedures for Operations, Maintenance and Emergencies.

In a letter dated September 10, 2001, Respondent submitted a Response to the Notice (Response). Respondent contested two of the allegations of violation and the proposed civil penalty. Respondent requested a hearing which was held on January 15, 2002 in Lakewood, CO. Respondent submitted a post-hearing Response on February 11, 2002.

FINDINGS OF VIOLATION

Uncontested Violations

Respondent did not contest alleged violations §§195.416(a), 195.428, 195.416(i),195.116(e),195.262 and 195.402(a) (Items 4, 5, 7, 8, 9, and 11) in the Notice. Accordingly, I find that Respondent violated 49 C.F.R. Part 195, as more fully described in the Notice:

> 49 C.F.R. §195.416(a) – failure to conduct tank-to-soil potential tests within the required intervals for breakout tank #14 at Cut Bank in 1997 to determine whether the protection was adequate.

49 C.F.R. §195.428(a) – failure to conduct semiannual inspections of pressure control equipment for the 16-inch suction line booster and 10-inch Santa Rita to Cut Bank line in 1997, 1998, and 1999.

49 C.F.R. §195.416(i)– failure to maintain suitable pipe coating to prevent corrosion at the Muscleshell River crossing upstream mainline valve (MLV) (pressure sensing fitting) and downstream MLV (evacuation/injection riser).

49 C.F.R. §195.116(e) – failure to equip several MLVs to clearly indicate whether the valve is open or closed, the remote operated valve indicator light was not working and the aluminum indicator rod was missing at the upstream Muscleshell River; the aluminum indicator rod was missing at the Dutton MLV; the aluminum indicator rod was missing at the downstream MLV near AM 94 and the Teton River crossing.

49 C.F.R. §195.262 – failure to provide adequate ventilation in the pump station buildings, as the vent fan at the Raynesford pump station was inoperative and the fan was not connected to the power source.

49 C.F.R.§195.402(a)– failure to follow cathodic protection procedures, as pipe-to-soil potential readings showed inadequate cathodic protection during 1997 and 1998 on the 6-inch pipeline segment from border to the Santa Rita station, on the 10-inch loop line from the border to the Santa Rita station, on the 16-inch pipeline segment from the border to the Santa Rita station, and in 1998 and 1999, on the 6-inch segment from Santa Rita station to Cut Bank.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

Contested Violations

Item 3 of the Notice alleges violation of 49 C.F.R. §195.420(b), as Respondent's records fail to show that mainline valve (MLV) inspections were conducted within the required 7 ½ month interval for the valves on Respondent's 10-inch and 6-inch Cut Bank to Santa Rita pipelines and on the 10-inch, 6-inch and 10-inch loop line from the Canadian border to the Santa Rita station for 1997, 1998, 1999, and 2000. The Notice further alleges Respondent submitted "visual check" valve inspections records for 1997, 1998, 1999 and 2000, which fail to satisfy §195.420(b). In sum, the Notice alleges Respondent lacked documentation for158 MLV inspections. OPS asserts that the cited valves were mainline valves because they sustain mainline pressure.

In its Response stating issues for the hearing and during the hearing, Respondent argues that the Western Region, OPS, was incorrect and overly broad in characterizing all valves that sustain mainline pressure as mainline valves that should be inspected according to §195.420(b). Respondent further argues that §195.260 identifies the location where valves must be installed and §195.420(b)

requires inspection of MLVs, but neither section defines mainline nor defines what valves must sustain mainline pressure. Respondent asserts §195.260 defines the meaning of a mainline valve, as well as where valves are to be located. Respondent further asserts its interpretation is consistent with ASME/ANSI B31.4. Based on this position, Respondent denies that 158 valves inspections were missed. Respondent concedes that it missed no more than 49 MLV inspections.

Respondent is correct that neither the pipeline safety statute nor part 195 regulations define a "mainline" or "mainline valve." Without a definition of a mainline valve, a common sense approach is needed. The list in §195.260 has been interpreted as referring to examples of mainline valves. Section 195.260 (c) uses the term mainline but only to provide that valves located on a mainline have to be located at certain points along that line. This requirement does not imply that only valves listed in §195.260 are mainline valves.

The examples in §195.260 are consistent with ASME/ANSI. The ASME B31.4 Code provides that mainline valves are to be located at certain locations critical to the safe operation of a pipeline system. Regulations must be read in entirety to ascertain the true nature of the intent and purpose sought to be accomplished. The inspection requirements of Part 195 are not based upon system design but on safety needs.

In this case, after further review and consideration of the purpose that the 158 valves serve to the operation of Respondent's pipeline system, OPS has determined that there were 48 missed mainline valve inspections and not 158 as originally proposed. The valves in question are used for station isolation, segment isolation, water crossing isolation, and lateral isolation. These valves, which are integral to the safe operation of the pipeline system, should have been classified and treated as mainline valves and inspected according to the requirements of §195.420(b). Respondent's records do not show that inspections were conducted within the required intervals. Accordingly, I find Respondent violated 49 C.F.R. §195.420(b).

Item 10 of the Notice alleges violation of 49 C.F.R. §195.410 (a)(1), as Respondent did not have a sufficient number of pipeline markers at two locations, northwest of the MLV upstream of the Missouri River crossing and at milepost 0.3 near the Canadian border. Respondent's explanation is that one of the cited locations is within a hayfield with intense agricultural activity, making it difficult and impracticable to maintain markers.

An unmarked pipeline increases the risk of unintentional damage to a pipeline because the public is not alerted to the presence of a buried pipeline. Line markers must be in place and maintained to alert the public to the presence and location of the pipeline to prevent contact with them. Respondent did not demonstrate that the placement of markers in the hayfield is impractical and would not serve their intended purpose. Agricultural activities that occur in hayfields, such as mowing and cultivating the ground, could result in a person unintentionally coming into contact with a buried pipeline. Respondent is expected to place and maintain line markers in the appropriate fence rows of the fields. Accordingly, I find Respondent violated 49 C.F.R. §195.410.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 7-10. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is hereby ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations.

1. Within 60 days of the issuance of this Final Order, Respondent must:

    A. Clean and coat the aboveground portions of the Muscleshell River crossing pipeline including the upstream MLV pressure sensing fitting, downstream MLV evacuation/injection riser and the pipe at the pipe-to-soil interface with a material suitable for the prevention of atmospheric corrosion.

    B. Equip each valve at the upstream Muscleshell River crossing, Dutton MLV, downstream MLV near AM 94 and the Teton River crossing, with a means for clearly indicating the position of the valve (for example, open, closed).

    C. Repair the fan at the Raynesford pump station or demonstrate adequate ventilation.

    D. Install and maintain a sufficient number of pipeline markers along the right-of-way of each buried line northwest of the MLV upstream of the Missouri River crossing and at milepost 0.3 near the Canadian border so that the pipeline location is accurately known.

2. The Director, Western Region may grant an extension of time for compliance with any of the terms of this order for good cause. A request for an extension must be in writing.

3. Submit documentation of the procedures and actions taken to Director, Western Region, 12600 W. Colfax Avenue, Suite A-250 Lakewood, CO 80215-736.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed $25,000 per violation for each day of the violation up to a maximum of $500,000 for any related series of violations. The Notice proposed a total penalty assessment of $177,000 for Items 3, 4, 5, and 11.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

The proposed penalty for Item 3 is $158,000 for violation of 49 C.F.R. §195.420. Respondent argues that the penalty should be reduced because it did not missed 158 mainline valves inspections. Respondent concedes that it missed no more than 49 MLV inspections. After a hearing on the matter and a post hearing review, the determination was made that there were in fact 48 missed mainline valve inspections. The primary objective of the Federal pipeline safety standards is safe operation of pipeline systems. Failure to conduct inspections and test equipment at the specified intervals to find and to correct any deficiencies could adversely affect public safety. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $48,000.

The proposed penalty for Item 4 is $2,000 for violation of 49 C.F.R. §195.416. Respondent did not present any mitigating information. Inspection and testing at the required intervals are essential to knowing that the pipeline equipment is being maintained, will function properly and that the integrity of the pipeline system is not compromised. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $2,000.

The proposed penalty for Item 5 is $6,000 for violation of 49 C.F.R. §195.428. Respondent advises that it has revised its operating procedures. Nevertheless, Respondent has not shown any circumstance that would have prevented or justified it not testing each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment and not having adequate procedures to ensure compliance with §195.428. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $6,000.

The proposed penalty for Item 11 is $11,000 for violation of 49 C.F.R. §195.402. Respondent did not present any mitigating information. Consistent low cathodic protection readings indicate that a pipeline is not receiving adequate protection. Inadequate pipe-to-soil potentials over an extended period increase the risk of corrosion and can result in a pipeline failure. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $11,000.

Accordingly, having reviewed the record and considered the assessment criteria, I assessed Respondent a total civil penalty of $67,000. A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue business.

Payment of the civil penalty **must be made within 20 days of service**. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this **payment 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**. After completing the wire transfer, send a copy of the

electronic funds transfer receipt to the **Office of the Chief Counsel** (DCC-1), Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001.

Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the $67,000 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 an United States District Court.

AMENDMENT OF PROCEDURES

Items 1 - 1d of the Notice alleged inadequacies in Respondent's Operations, Maintenance and Emergencies Manual and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. §§195.402 (c)(3), 195.444, 195.416, 195.432 and 195.428. In its Response, Respondent submitted copies of its amended procedures, which the Director, Western Region, OPS has reviewed. I find these amended procedures address the inadequacies cited in the Notice. Accordingly, no need exists to issue an Order directing amendment.

WARNING ITEMS

The Notice did not propose any civil penalties or compliance actions with respect to the following items; therefore, Respondent is warned that if it does not take appropriate corrective action to address these items and OPS finds a violation in a subsequent inspection, enforcement action will be taken.

Item 2a in the Notice alleged that during a pipeline replacement project and hydrotest on the 6-inch Santa Rita to Cut Bank line, Respondent failed to maintain complete inspection records and conduct an analysis of remaining wall thickness of adjacent pipe.

Item 2b in the Notice alleged that Respondent failed to maintain records for at least 3 years that indicate actions taken for abnormal operations.

Item 2c in the Notice alleged that Respondent failed to maintain records of monthly routine in-service inspections of 6 breakout tanks from May 3, 1999 to September 8, 2000, as required by §195.432(d) and API 653, section 4.3.1.

Item 6 in the Notice alleged that Respondent failed to install insulators between the aboveground pipe and pipeline supports to prevent corrosion, as required by §195.416.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, shall remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.

Failure to comply with any aspect of this Final Order may result in the assessment of civil penalties of up to $25,000 per violation per day, or in the referral of the case for judicial enforcement.

James K. O'Steen

Stacey Gerard
for Associate Administrator
for Pipeline Safety

FEB 10 2003

Date

Date: March 10 , 2003

TO: Jacqueline Murphy
FAA Accounting

Gail Mayhew

FROM: Gail Mayhew
Paralegal Specialist
Office of the Chief Counsel
Research & Special Programs Administration

SUBJ: CPF 5-2001-5003
Cenex Harvest States Cooperatives

This office received notification that the $67,000 civil penalty assessed in the above named case has been paid in full. For accounting purposes the Office of Chief Counsel considers this matter closed.