

DEC 16 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5197]

Mr. Jack A. Fusco
President and CEO
Calpine Corporation
CPN Pipeline Company
717 Texas Avenue, Suite 1000
Houston, TX 77002

Re: CPF No. 5-2007-1006

Dear Mr. Fusco:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$17,500, and specifies actions that need to be taken by CPN Pipeline Company to comply with the pipeline safety regulations. 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, 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.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, Director, Western Region, OPS

Scott Vickers
Compliance Manager
CPN Pipeline Company
60 River Road
Rio Vista, CA 94571

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

_____)	
In the Matter of)	
)	
CPN Pipeline Company,)	CPF No. 5-2007-1006
)	
Respondent.)	
_____)	

FINAL ORDER

On January 30 – February 1 and February 13 – 14, 2007, 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 on-site pipeline safety inspection of the integrity management program of CPN Pipeline Company (CPN or Respondent) in Rio Vista, California. CPN, a subsidiary of Calpine Corporation, operates approximately 250 miles of natural gas pipelines primarily in California.

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated June 11, 2007, 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 Respondent had committed violations of the integrity management regulations in 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$40,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

CPN responded to the Notice by letter dated July 9, 2007 (Response). Respondent contested the allegations of violation, objected to the civil penalty, and requested a hearing. In accordance with 49 C.F.R. § 190.211, a hearing was held via telephone conference on April 10, 2008, with an attorney from the Office of Chief Counsel, PHMSA, presiding. Respondent had counsel present during the hearing. After the hearing, CPN provided additional information by letter dated April 22, 2008 (Brief).

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

Item 1A: The Notice alleged that Respondent violated 49 C.F.R. § 192.947(d), which states:

§ 192.947 What records must an operator keep?

An operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of this subpart. At minimum, an operator must maintain the following records for review during an inspection.

(a)

(d) Documents to support any decision, analysis and process developed and used to implement and evaluate each element of the baseline assessment plan and integrity management program. Documents include those developed and used in support of any identification, calculation, amendment, modification, justification, deviation and determination made, and any action taken to implement and evaluate any of the program elements

The Notice alleged Respondent violated § 192.947(d) by failing to maintain records that demonstrate compliance with the requirement to identify high consequence areas (HCAs).¹ Specifically, the Notice alleged that Respondent failed to maintain documentation validating its use of instrumentation to establish pipeline locations and identify HCAs. The instrumentation Respondent used, such as a Global Positioning System (GPS), allegedly had tolerances and potential inaccuracies that Respondent had not documented and accounted for to ensure the accurate identification of HCAs.

In its Response and at the hearing, CPN explained that it used equipment such as alignment sheets, aerial photography, mapping, and field measurement devices such as laser range finders, measuring wheels, and GPS equipment.² Respondent also explained that the accuracy of these methods ranged from plus or minus (\pm) 22 feet, for the least accurate, to \pm 1 foot, for the most accurate. While Respondent acknowledged its integrity management program (IMP) did not explicitly describe how the company accounted for those inaccuracies, the company argued that even if the measurements had been off by \pm 50 to 100 feet, the company would not have misidentified any actual HCAs. Notwithstanding such objections, Respondent committed to documenting the specifications and tolerances of its locating equipment in the future.

Section 192.947(d) requires Respondent to maintain records for review during an OPS inspection that demonstrate compliance with the requirements of Subpart O (§§ 192.901–192.951), including the requirement in § 192.905(a) to identify HCAs. “At minimum, an operator must maintain . . . [d]ocuments to support any decision, analysis and process developed and used to implement . . . each element of the . . . integrity management program[, including] those developed and used in support of any identification”³ Respondent acknowledged that it did

¹ Section 192.905(a) requires each operator to identify high consequence areas to determine which pipeline segments are covered by the integrity management regulations. A “high consequence area” is an area defined by § 192.903, which typically includes areas of concentrated population.

² At the hearing, CPN made different statements regarding its use of GPS equipment. The operator initially stated that GPS was used to plot lines on maps (prescreen) to determine where field tests should be conducted; however, the company stated later that it believed GPS instruments may not have been used to locate HCAs or pipelines.

³ § 192.947(d).

not have documentation at the time of the OPS inspection to validate its use of certain instrumentation for accurately identifying HCAs. The company's determination in retrospect that no HCAs were misidentified may reduce the gravity of the violation, but does not negate the evidence that Respondent failed to have documentation required by the regulation.

Accordingly, after considering all of the evidence, I find that Respondent violated § 192.947(d) by failing to maintain records that demonstrate the accurate use of instrumentation to identify HCAs.

Item 1B: The Notice alleged Respondent violated § 192.947(d), as quoted above, by failing to maintain records that demonstrate compliance with the requirement to develop and follow a written IMP no later than December 17, 2004.⁴ The Notice also alleged that Respondent did not have documentation of decisions, processes, and results for various other integrity management processes.⁵

In its Response and at the hearing, Respondent explained that its IMP, including its baseline assessment plan (BAP), had been completed prior to December 17, 2004, but the plan had been maintained as an electronic spreadsheet and the file had since been overwritten. For this reason, the company had been unable to retrieve a copy of the original baseline assessment plan that was in place as of December 17, 2004. Respondent did offer, in the alternative, to produce documentation of other elements of its IMP that had been completed prior to December 17, 2004, for the purpose of demonstrating that it had completed its IMP by the deadline. Respondent also stated that it has implemented improvements to its document control system to avoid this type of oversight in the future.

Respondent submitted information that included several emails and two documents entitled "Data Collection and Analysis" and "Integrity Assessment." With regard to the emails, some of which were dated after the deadline, it appears that CPN was still adding pipeline segments to its BAP on December 22, 2004.⁶ With regard to the information contained in the other two documents, I find only a few relevant pages dated prior to December 17, 2004 (e.g., certain pages labeled "HCA Segment Data" and "Risk Analysis for Ranking HCA Pipeline Segment"). The bulk of the documentation submitted by Respondent is either dated after December 17, 2004 (e.g., data collections, procedures, and integrity assessments dated 2006 through 2008), or seemingly not part of Respondent's IMP at all (e.g., a data book from 1977 and a test report from 2001).

Section 192.947(d) requires Respondent to maintain records for review during an OPS inspection that demonstrate compliance with the requirement in § 192.907(a) to develop and follow a

⁴ Section 192.907(a) requires each operator of a covered pipeline segment to develop and follow a written integrity management program that contains all the elements described in § 192.911 no later than December 17, 2004. A "covered pipeline segment" is a segment of gas transmission pipeline located in an HCA, as defined in § 192.903.

⁵ Notice at 2. At the hearing, the Presiding Official asked OPS representatives what the phrase "various" referred to in the Notice. They explained it referred to several processes discussed with the operator during the inspection for which documentation had been missing. Such other processes, however, were not included in the Notice nor in the supporting evidence produced by OPS, i.e., the Pipeline Safety Violation Report (Violation Report), dated June 16, 2007. Since the record does not contain a sufficient basis for these other "various" processes, I limit my review of the record only to the single specific example provide in the Notice.

⁶ Response, Exhibit 1A2.

written integrity management program no later than December 17, 2004. A written integrity management program must contain all the elements described in § 192.911, such as HCA identification, a BAP, identification of threats to each covered pipeline segment, provisions for remediating conditions found during an integrity assessment, a process for continual evaluation and assessment, and provisions for adding preventive and mitigative measures, among others. After considering the evidence submitted by Respondent, I find it does not demonstrate the company had developed a written integrity management program that contained all the elements described in § 192.911 no later than December 17, 2004.

Accordingly, after considering all of the evidence, I find Respondent violated § 192.947(d) by failing to maintain records that demonstrate Respondent's IMP was developed by December 17, 2004.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.907(a), which states:

§ 192.907 What must an operator do to implement this subpart?

(a) *General.* No later than December 17, 2004, an operator of a covered pipeline segment must develop and follow a written integrity management program that contains all the elements described in § 192.911 and that addresses the risks on each covered transmission pipeline segment. The initial integrity management program must consist, at a minimum, of a framework that describes the process for implementing each program element, how relevant decisions will be made and by whom, a time line for completing the work to implement the program element, and how information gained from experience will be continuously incorporated into the program. The framework will evolve into a more detailed and comprehensive program. An operator must make continual improvements to the program.

The Notice alleged that Respondent failed to develop a written integrity management program that contained all the elements described in § 192.911 no later than December 17, 2004. Specifically, the Notice alleged that Respondent's IMP did not contain the identification of all HCAs.⁷ Two specific locations, namely, the eastern segment of the Sutter Pipeline system, which is near a government administration building, and the Black Mountain–Robbins Pipeline segment, which is near a high school, were allegedly not identified in Respondent's IMP.

Sutter Pipeline

In its Response and at the hearing, Respondent explained that the Sutter Pipeline location was never an HCA, but had been mistakenly identified as such in 2006. CPN explained the location was not an HCA because the administration building located near the pipeline was not occupied by 20 or more persons on at least five days a week for ten weeks a year.⁸ Respondent further explained the location had been mistakenly identified as an HCA in 2006 when the company

⁷ Section 192.911(a) requires each operator's integrity management program to contain an identification of all HCAs.

⁸ See § 192.903.

received inaccurate data from the plant manager of the administration building. The plant manager reported data regarding the occupation of the building by all personnel, even though some individuals worked four days per week and others may have been shift workers. This inaccurate data led the company to temporarily include the location in its IMP in 2006 until the company gathered more accurate data.

After reviewing all of the evidence, I find, with regard to the segment of the Sutter Pipeline near the administrative building, Respondent has demonstrated the area was not an HCA. Accordingly, I withdraw the allegation of violation with respect to the Sutter Pipeline.

Black Mountain-Robbins Pipeline

Respondent explained that it had not initially identified the Black Mountain-Robbins Pipeline segment to be within an HCA because the nearby school building and playground were not inside the pipeline's potential impact radius (PIR). Upon further consideration in February 2005, CPN determined that while the building and playground were not in the PIR, the perimeter fencing surrounding the school's property fell within the PIR. Respondent updated its IMP to include the Black Mountain-Robbins Pipeline segment as soon as this information was discovered, approximately two months after the deadline in the regulation. Subsequently, at the hearing and in its Brief, Respondent declared that the Black Mountain-Robbins Pipeline now meets the definition of a gathering line under § 192.8, and therefore the pipeline is no longer covered by the company's IMP.⁹

While the Black Mountain-Robbins Pipeline may now meet the definition of a gathering line, in 2004 Respondent considered the Black Mountain-Robbins Pipeline to be a transmission line. The evidence demonstrates that Respondent had not recognized the school's property was within the transmission pipeline's PIR, resulting in the company's failure to identify an HCA.

Accordingly, after reviewing all of the evidence, I find Respondent violated § 192.907(a) with regard to the Black Mountain-Robbins Pipeline by failing to identify an HCA by December 17, 2004.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.937(b), which states:

§ 192.937 What is a continual process of evaluation and assessment to maintain a pipeline's integrity?

(a) *General.* After completing the baseline integrity assessment of a covered segment, an operator must continue to assess the line pipe of that segment at the intervals specified in § 192.939 and periodically evaluate the integrity of each covered pipeline segment as provided in paragraph (b) of this section

⁹ Respondent points this out because the regulations in Subpart O, "Gas Transmission Pipeline Integrity Management," (§§ 192.901–192.951) apply only to gas transmission pipelines covered under Part 192. A pipeline that is not a transmission line under § 192.3 (e.g., a gathering line) is not required to be included in the operator's IMP. See also § 192.9, "What requirements apply to gathering lines?"

(b) *Evaluation.* An operator must conduct a periodic evaluation as frequently as needed to assure the integrity of each covered segment. The periodic evaluation must be based on a data integration and risk assessment of the entire pipeline as specified in § 192.917. For plastic transmission pipelines, the periodic evaluation is based on the threat analysis specified in [§] 192.917(d). For all other transmission pipelines, the evaluation must consider the past and present integrity assessment results, data integration and risk assessment information (§ 192.917), and decisions about remediation (§ 192.933) and additional preventive and mitigative actions (§ 192.935). An operator must use the results from this evaluation to identify the threats specific to each covered segment and the risk represented by these threats.

The Notice alleged that Respondent violated § 192.937(b) by failing to conduct periodic evaluations of covered pipeline segments as frequently as needed to assure the integrity of each covered segment. Specifically, the Notice alleged that CPN had failed to define an appropriate interval to ensure periodic integrity evaluations would be conducted as frequently as needed to assure pipeline integrity.

In its Response and at the hearing, Respondent contended that Section 6.3 of its IMP provided that the company will conduct periodic evaluations and that the evaluations will consider the necessary factors. Respondent's procedure also stated that an "appropriate interval will be established . . . following completion of the baseline assessment."¹⁰ CPN explained that it had not interpreted § 192.937(b) to require the establishment of periodic evaluation intervals prior to completion of the baseline assessments. Notwithstanding such objections, Respondent stated in its Brief that it had revised its procedures to specify annual evaluations.

Section 192.937 requires an operator to conduct periodic integrity evaluations of covered pipeline segments "[a]fter completing the baseline integrity assessment of a covered segment" The regulation does not establish a specific interval for conducting periodic evaluations, but, rather, requires the operator to conduct them "as frequently as needed" to assure pipeline integrity. An operator must therefore define an appropriate interval based on the individual factors of its pipeline segments. It is important to note, however, that operators are not required to actually perform periodic integrity evaluations until after the baseline integrity assessments have been completed.

The OPS inspection of Respondent's IMP occurred in January and February 2007, approximately 10 months prior to the first regulatory deadline for completing baseline assessments.¹¹ Since Respondent was not then required to have completed baseline assessments, I find the record does not contain a sufficient basis for finding CPN was required to already have established intervals for performing periodic evaluations. Therefore, this item is withdrawn.

¹⁰ Violation Report, Exhibit A, Item # 3A.

¹¹ Section 192.921(d) requires each operator to assess at least 50% of the covered segments beginning with the highest risk segments by December 17, 2007, and to complete the baseline assessment of all covered segments by December 17, 2012.

Item 4A: The Notice alleged that Respondent violated 49 C.F.R. § 192.911(k), which states:

§ 192.911 What are the elements of an integrity management program?

An operator's initial integrity management program begins with a framework (*see* § 192.907) and evolves into a more detailed and comprehensive integrity management program, as information is gained and incorporated into the program. An operator must make continual improvements to its program. The initial program framework and subsequent program must, at minimum, contain the following elements. (When indicated, refer to ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7) for more detailed information on the listed element.)

(k) A management of change process as outlined in ASME/ANSI B31.8S, section 11.

The Notice alleged that Respondent violated § 192.911(k) by failing to include in its IMP a management of change (MOC) process as outlined in ASME International (ASME) B31.8S, section 11.¹² Specifically, the Notice alleged that Respondent's IMP process for MOC did not require interface with Respondent's written operations and maintenance (O&M) procedures pertaining to MOC.¹³

In its Response, Respondent indicated that Section 11.3 of its IMP stated: "The Company will use existing MOC procedures to document changes to the Integrity Management Program."¹⁴ Respondent explained that all CPN personnel who use or refer to the IMP know that the phrase "existing MOC procedures" refers to the company's O&M Procedures, Section #40, which is the only MOC process Respondent has. Notwithstanding this objection, Respondent committed to revising Section 11.3 of its IMP to include an explicit reference to the O&M procedures.

Section 192.911(k) requires that an operator establish an MOC process for its IMP as outlined in ASME B31.8S, section 11. If an operator *relies* on its O&M procedures to constitute compliance with the integrity management MOC requirements, the operator must provide sufficient detail in the IMP or a cross-reference to such procedures in order to comply with that requirement. While Respondent asserted in its Brief that a generic reference to "existing MOC procedures" was sufficient for CPN employees, I find such reference is not sufficient for purposes of compliance with § 192.911(k), in part, because OPS cannot readily determine what those procedures are or where they might be located. I also question whether such a generic reference would ever be sufficient for employees, particularly new ones, and contractors who may not be familiar with Respondent's O&M Manual.

¹² Section 11 of ASME B31.8S provides, in part, "Formal management of change procedures shall be developed in order to identify and consider the impact of changes to pipeline systems and their integrity"

¹³ Notice at 4. In this context, "interface" refers to the interaction between separate written procedures developed by an operator, which may define the same or similar function.

¹⁴ Response at 3.

Accordingly, I find that Respondent violated § 192.911(k) by failing to include in its IMP an MOC process as outlined in ASME B31.8S, section 11.

Item 4B: The Notice alleged that Respondent violated § 192.911(k) by failing to include in its IMP an MOC process as outlined in ASME B31.8S, section 11. Specifically, the Notice alleged that Respondent's MOC process failed to require the company to evaluate procedural changes that could impact or interface with the IMP.¹⁵

In its Response and Brief, CPN contended that its personnel understood any changes potentially affecting the IMP or integrity of a pipeline system must be evaluated through the MOC process. Respondent acknowledged, however, that this process was not specifically stated in its written procedures. CPN committed to revising its MOC process to include evaluation of changes to procedures that potentially impact or interface with the IMP.

After considering all the evidence, I find that Respondent violated § 192.911(k) by failing to have a written MOC process that required the evaluation of procedural changes that could potentially impact or interface with the IMP.

Item 4C: The Notice alleged that Respondent violated § 192.911(k) by failing to have and follow an MOC process as outlined in ASME B31.8S, section 11. Specifically, the Notice alleged Respondent failed to follow its MOC process for the installation of a low pressure switch on the Road 17 Line Break Valve. The Notice alleged the applicable MOC process required Respondent to update its "piping and instrumentation diagram" to reflect installation of the low pressure switch, but the company had documented the job was complete on its designated MOC form without updating the diagram. In addition, the Notice alleged Respondent's MOC procedure required the diagram to be updated to reflect the installation by February 28, 2007, but CPN personnel indicated during the OPS inspection that updates only occurred on a semi-annual basis.

In its Response and at the hearing, Respondent explained that it followed its MOC procedures by making manual updates to the diagram by February 27, 2007, even though the designated MOC form did not require the company to record that the diagram had been updated. CPN also explained that it regularly makes manual changes to these types of diagrams within a short period after a physical change occurs. The company has different, large wall-size overall system maps and schematics (e.g., "engineered drawings"), which are updated by an outside engineering firm on a semi-annual basis. According to Respondent, it is impractical to update the large system-wide maps as often as physical changes are made; therefore, manual updates to diagrams are completed usually within a month of the system change. CPN committed to clarifying this distinction by revising its MOC process.

Upon consideration of the evidence presented by Respondent that it manually documented the installation of a low pressure switch on the instrumentation diagram, I find the record does not contain a sufficient basis to find Respondent violated § 192.911(k) by failing to follow applicable MOC procedures. Therefore, the allegation of violation is withdrawn.

¹⁵ Section 11(b) of ASME B31.8S states, in part, "The operator shall recognize that system changes can require changes in the integrity management program and, conversely, results from the program can cause system changes."

Nevertheless, the facts presented necessitate that I issue a warning.¹⁶ Pursuant to 49 C.F.R. § 190.205, Respondent is hereby advised to correct its MOC process to ensure compliance with § 192.911(k) by clarifying the types of drawings required to be updated as part of the MOC process. Respondent should also improve its MOC form to require documentation of those updates. CPN is hereby advised to ensure compliance with respect to this item. In the event OPS finds a violation of this item in a subsequent inspection, Respondent may be subject to future enforcement action.

The findings of violation in Items 1A, 1B, 2, 4A, and 4B 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 a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 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; the Respondent's ability to pay the penalty 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 \$40,000 for the violations of 49 C.F.R. §§ 192.947(d) (Item 1B), 192.907(a) (Item 2), and 192.911(k) (Item 4C).

In its Response and Brief, Respondent objected to the proposed civil penalties for several reasons. Respondent contended the gravity of the violations were minimal in that they did not jeopardize the safety of the public; the company made a good faith effort to comply with the regulations, despite considerable ambiguities and subjectivity in the IMP regulations; CPN has no prior violations or civil penalties; and CPN did not realize any economic benefit. Respondent also argued that the proposed civil penalties were based, at least in part, on erroneous and incomplete information contained in the Violation Report.

I address gravity and good faith below for each specific Item. With regard to history of prior offenses, a civil penalty may be higher if an operator has a significant history of prior violations (the increase will be reflected in the proposed amount). In this case, there is an absence of prior violations, but I do not find it warrants reducing the civil penalty where the other assessment criteria, particularly nature, circumstances, and gravity, support the penalty amount.

¹⁶ A "warning" is an allegation of a probable violation for which no civil penalty or compliance order has been issued. Pursuant to § 190.205, I may issue a warning to notify an operator of a probable violation and advise the operator to correct the condition or be subject to future enforcement action.

I did not consider economic benefit in this case. With regard to Respondent's argument that erroneous information contained in the Violation Report factored into the proposed civil penalties, Respondent refers to Item 2 in the report, where there is reference to a pipeline operator that is not CPN. I acknowledge this error, but it appears to be nothing more than a typographical error. There is no indication in the record that this error had any impact on the amount of the proposed civil penalty for Item 2.

Item 1B: The Notice proposed a civil penalty of \$10,000 for the violation of 49 C.F.R. § 192.947(d). As discussed above, I found that Respondent violated § 192.947(d) by failing to maintain records that demonstrated Respondent's IMP had been completed by December 17, 2004.

At the hearing, and in its Brief, Respondent asserted that it had made a good faith effort to comply with the regulation, despite a statement in the Violation Report that the company made no such effort. Respondent explained that it believed it had completed its IMP by December 17, 2004, but the company simply did not understand that the regulation required so much documentation. Respondent also contended the gravity of the violation was minimal because it did not jeopardize public safety.

Maintaining documentation of compliance with the integrity management regulations is important to enable OPS to determine if a company is in compliance. Without such documentation, it is often difficult, if not impossible, for the Agency to identify issues of noncompliance and order remediation to ensure public safety. Congress has recognized the importance of maintaining proper documentation by explicitly requiring that every pipeline operator maintain and make available to OPS records and information "[t]o enable the Secretary to decide whether [the operator] is complying with this chapter and standards prescribed or orders issued under this chapter"¹⁷

Even though Respondent's failure to maintain documentation, per se, may not have directly resulted in an increased risk to the operational integrity of its pipeline, the failure to comply with a regulatory requirement is a violation for which the company is liable. While Respondent indicated the company made a good faith effort to comply with the regulation by completing the IMP before the deadline, the evidence provided by Respondent does not lead me to believe the IMP was actually completed by the deadline. That does present a safety risk. Accordingly, I find mitigation of the civil penalty is not warranted.

Having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for the violation of 49 C.F.R. § 192.947.

Item 2: The Notice proposed a civil penalty of \$20,000 for two separate violations of 49 C.F.R. § 192.907(a). I have withdrawn the first allegation of violation regarding the Sutter Pipeline, but found that Respondent violated § 192.907(a) with regard to the second allegation by failing to identify an HCA in which the Black Mountain-Robbins Pipeline was located by December 17, 2004.

¹⁷ 49 U.S.C. § 60117(b).

In its Response, at the hearing, and in its Brief, CPN explained that it had discovered this error through its own internal verification process and updated its IMP with the correct HCA identification as soon as the error was discovered, all within two months of the deadline. Respondent also self-disclosed this issue during the OPS inspection of Respondent.

Given that one of the alleged violations upon which the proposed penalty was based has been withdrawn, and having reviewed the record and considered the assessment criteria for the remaining violation, including Respondent's good faith effort to self-correct an error shortly after the regulatory deadline, I reduce the civil penalty to \$7,500.

Item 4C: The Notice proposed a civil penalty of \$10,000 for the alleged violation of 49 C.F.R. § 192.911(k) pertaining to an alleged failure to document system changes on diagrams. Since this allegation of violation has been withdrawn, the proposed civil penalty associated with this item is not included.

In summary, having reviewed the record and considered the assessment criteria for all of the Items discussed above, I assess Respondent a total civil penalty of **\$17,500**.

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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$17,500 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1A, 4A, and 4B in the Notice for violations of 49 C.F.R. §§ 192.947(d) and 192.911(k), respectively. The Notice also proposed a compliance order with respect to Item 3 for the alleged violation § 192.937(b), but since that allegation has been withdrawn, the associated compliance terms are also withdrawn.

In its Response, Respondent stated that it had no objection to the proposed compliance terms, except with respect to the proposed requirement in Item 1A that CPN resurvey its pipelines. Respondent contended that it had used a conservative approach to ensure no covered pipeline segments would be excluded, and the tolerances inherent in the equipment would not have resulted in the misidentification of any HCAs.

I recognize the possibility that no HCAs were misidentified, but I find nothing in the record that shows conclusively that none were misidentified given the fact that the locating equipment had tolerances and inherent inaccuracies for which Respondent had not explicitly accounted for. Given the work CPN has already done to locate its pipelines and populated areas, a complete resurvey may not be necessary in some areas; however, CPN must verify the correct identification of all HCAs along its pipeline system given the tolerances of any equipment used. Therefore, the requirement to resurvey remains, except that Respondent may demonstrate compliance with §§ 192.947(d) and 192.905 through alternative means, if such means are acceptable to the Director.

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas by pipeline or who owns or operates a gas 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 ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations. Respondent must—

1. Identify the tolerances and inherent inaccuracies for each mapping and electronic instrument used to locate and identify high consequence areas (HCAs) in accordance with §§ 192.947(d) and 192.905(a) (Item 1A). Demonstrate the accurate identification of all HCAs by resurveying the CPN pipeline system, or through alternative means subject to prior approval by the Director, using a factor that takes into account the identified tolerances and inherent inaccuracies. Develop a report that documents these actions and that indicates any changes to HCA mileage as a result of the addition of the tolerance factors.
2. Develop management of change (MOC) procedures for CPN's integrity management program (IMP) in accordance with § 192.911(k) and ASME B31.8S, section 11 (Item 4A). CPN may explicitly integrate its operation and maintenance (O&M) MOC procedures (e.g., O&M Procedure Number 40) with its IMP to comply with this requirement.
3. Develop an element to be contained within CPN's IMP that requires the evaluation of all procedural changes that could potentially impact or interface with the IMP in accordance with § 192.911(k) (Item 4B).
4. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and report the total cost as follows: (a) total cost associated with preparation and revision of plans and procedures, and performance of studies and analyses; and (b) total cost associated with physical changes, if any, to the pipeline infrastructure, including replacements and additions.
5. Complete each of the above items and submit documentation of compliance within 60 days of receipt of this Final Order. Documentation shall be submitted to the Director, Western Region, Office of Pipeline Safety, 12300 W. Dakota Ave. #110, Lakewood, CO 80228.

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 \$100,000 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. § 190.215, Respondent has a right to submit a 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 force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order will be effective upon receipt.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued