

DECEMBER 31, 2012

Mr. John Traeger
President
Cenex Pipeline, LLC
803 Highway 212 South
P.O. Box 909
Laurel, MT 59044-0909

Re: CPF No. 5-2012-5013

Dear Mr. Traeger:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$41,500, and specifies actions that need to be taken by Cenex Pipeline, LLC, 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. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided 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
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

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)	
)	
Cenex Pipeline, LLC,)	CPF No. 5-2012-5013
)	
Respondent.)	
_____)	

FINAL ORDER

Between August 16 and October 29, 2010, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Cenex Pipeline, LLC (Cenex or Respondent), in Montana and North Dakota. Cenex operates approximately 1200 miles of hazardous liquid pipelines and associated terminals in the U.S.¹ The Cenex Products pipeline system that was inspected by PHMSA extends approximately 671 miles from the CHS refinery in Laurel, Montana, to storage facilities in Billings and Glendive, Montana, and ends in Fargo, North Dakota.²

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated May 18, 2012, 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 Cenex had committed various violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$76,500 for two of the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Cenex responded to the Notice by letter dated June 19, 2012 (Response). The company contested three of the allegations of violation, provided an explanation of its actions, and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

¹ <https://www.cenex.com/portal/server.pt/community/1fuels/318> (last accessed December 13, 2012).

² Pipeline Safety Violation Report (Violation Report), (April 18, 2012) (on file with PHMSA), at 1.

FINDINGS OF VIOLATION

Uncontested Items

In its Response, at the hearing, Cenex did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.214(b), which states:

§ 195.214 Welding procedures.

- (a) ...
- (b) Each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.

The Notice alleged that Respondent violated 49 C.F.R. § 195.214(b) by failing to record in detail the results of the qualifying tests for its in-service welding procedure 110504-1. Specifically, the Notice alleged that Cenex did not record the qualifying tests in a manner that differentiated between the tests done for the groove weld and tests done for the sleeve (fillet) weld in accordance with API 1104 Table B-1.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.214(b) by failing to record in detail the results of the qualifying tests for its in-service welding procedure 110504-1.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(1)(vii), 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) ...
 - (vii) Safety devices to which § 195.428 applies.

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(1)(vii) by failing to maintain maps and records that included current information on certain safety devices to which § 195.428 applies.³ Specifically, the Notice alleged that Cenex did not include the pressure safety valve tag numbers in its Piping and Instrument Diagrams (P&IDs) for the North Dakota section of its pipeline.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(a)(1)(vii) by failing to maintain maps and records that included current information on certain safety devices to which § 195.428 applies.

³ Section 195.428 requires the inspection and testing of overpressure safety devices and overfill protection systems.

Item 4: The Notice alleged that Respondent 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 Notice alleged that Respondent violated 49 C.F.R. § 195.404(a) by failing to maintain current maps and records of its pipeline systems including current information showing the location and identification of certain pipeline features and appurtenances required under the regulation. Specifically, the Notice alleged that Cenex did not update the alignment sheets for the pipeline during the 10-year period preceding the inspection, despite significant urban development, oil field activity, pipeline repair and replacement projects, and pump station modifications that occurred during this time.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(a) by failing to maintain current maps and records of its pipeline systems including current information showing the location and identification of certain pipeline features and appurtenances required under the regulation.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(b)(1), which states in relevant part:

§ 195.404 Maps and records.

- (a) ...
- (b) Each operator shall maintain for at least 3 years daily operating records that indicate—
 - (1) The discharge pressure at each pump station;

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(b)(1) by failing to maintain daily operating records for at least three years that indicated the discharge pressure at one of its pump stations. Specifically, the Notice alleged that Cenex did not have a pressure-recording device for discharge pressures at the Billings Tank Farm pump station and therefore did not have three years of required records.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(b)(1) by failing to maintain daily operating records for at least three years that indicated the discharge pressure at one of its pump stations.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), which states:

§ 195.432 Inspection of in-service breakout tanks.

(a) ...

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to [American Petroleum Institute] API Standard 653 (incorporated by reference, *see* § 195.3). However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3).

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to perform external tank inspections for eight of its breakout tanks within the maximum five-year interval, in accordance with Section 6.3.2.1 of API 653, from: (1) the date of the previous external tank inspection; or (2) May 3, 1999, the effective date of the regulation, whichever is later. Specifically, the Notice alleged that Cenex exceeded the interval for the API 653 external inspections on the eight specified tanks by time periods ranging from 16 months to 51 months.

In its Response, Cenex acknowledged the deficiency and did not contest this allegation of violation, but provided information and explanations that it believed would warrant a reduction in the amount of the civil penalty proposed in the Notice for this item. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.432(b) by failing to perform external tank inspections for eight of its breakout tanks within the maximum five-year interval, in accordance with Section 6.3.2.1 of API 653. To the extent the information and explanations in Cenex's Response are relevant to the amount of the penalty proposed in the Notice for this violation, they will be addressed below in the Assessment of Penalty section.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h), which states in relevant part:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) ...

(h) *What actions must an operator take to address integrity issues?* —

(1) *General requirements* . An operator must take prompt action to address all anomalous conditions the operator discovers through the integrity assessment or information analysis. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure the condition is unlikely to pose a threat to the long-term integrity of the pipeline. An operator must comply with § 195.422 when making a repair.

(2) ...

(4) *Special requirements for scheduling remediation* —(i) *Immediate repair conditions*. An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure or shut down the pipeline until the operator completes the repair of these conditions. An operator must calculate the temporary reduction in operating pressure using the formula in Section 451.6.2.2 (b) of ANSI/ASME B31.4 (incorporated by reference, see § 195.3). An operator must treat the following conditions as immediate repair conditions:

(A) Metal loss greater than 80% of nominal wall regardless of dimensions.

(B) A calculation of the remaining strength of the pipe shows a predicted burst pressure less than the established maximum operating pressure at the location of the anomaly. Suitable remaining strength calculation methods include, but are not limited to, ASME/ANSI B31G (“Manual for Determining the Remaining Strength of Corroded Pipelines” (1991) or AGA Pipeline Research Committee Project PR-3-805 (“A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe” (December 1989)). These documents are incorporated by reference and are available at the addresses listed in § 195.3.

(C) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) that has any indication of metal loss, cracking or a stress riser.

(D) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) with a depth greater than 6% of the nominal pipe diameter.

(E) An anomaly that in the judgment of the person designated by the operator to evaluate the assessment results requires immediate action.

(ii) *60-day conditions*. Except for conditions listed in paragraph (h)(4)(i) of this section, an operator must schedule evaluation and remediation of the following conditions within 60 days of discovery of condition.

(A) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) with a depth greater than 3% of the pipeline diameter (greater than 0.250 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12).

(B) A dent located on the bottom of the pipeline that has any indication of metal loss, cracking or a stress riser.

(iii) *180-day conditions*. Except for conditions listed in paragraph (h)(4)(i) or (ii) of this section, an operator must schedule evaluation and remediation of the following within 180 days of discovery of the condition:

(A) A dent with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or a longitudinal seam weld.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h) by failing to evaluate all dent anomalies found within high consequence areas (HCAs). Specifically, the Notice alleged

that Cenex did not evaluate 16 dent anomalies having a depth greater than 0.25-inches because it did not account for the accuracy tolerance of the in-line inspection tool its vendor used to perform the in-line inspection.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(h) by failing to evaluate all dent anomalies within HCAs.

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h), which states in relevant part:

§ 195.452 Pipeline integrity management in high consequence areas.

(h) *What actions must an operator take to address integrity issues?* —

(1) *General requirements* . An operator must take prompt action to address all anomalous conditions the operator discovers through the integrity assessment or information analysis. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure the condition is unlikely to pose a threat to the long-term integrity of the pipeline. An operator must comply with § 195.422 when making a repair.

(2) ...

(4) *Special requirements for scheduling remediation* —(i) *Immediate repair conditions*. An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure or shut down the pipeline until the operator completes the repair of these conditions. An operator must calculate the temporary reduction in operating pressure using the formula in Section 451.6.2.2 (b) of ANSI/ASME B31.4 (incorporated by reference, *see* § 195.3). An operator must treat the following conditions as immediate repair conditions:

(A) ...

(ii) *60-day conditions*. Except for conditions listed in paragraph (h)(4)(i) of this section, an operator must schedule evaluation and remediation of the following conditions within 60 days of discovery of condition.

(A) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) with a depth greater than 3% of the pipeline diameter (greater than 0.250 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12).

(B) A dent located on the bottom of the pipeline that has any indication of metal loss, cracking or a stress riser.

(iii) *180-day conditions*. Except for conditions listed in paragraph (h)(4)(i) or (ii) of this section, an operator must schedule evaluation and remediation of the following within 180 days of discovery of the condition:

(A) A dent with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or a longitudinal seam weld.

(B) A dent located on the top of the pipeline (above 4 and 8 o'clock position) with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12).

(C) A dent located on the bottom of the pipeline with a depth greater than 6% of the pipeline's diameter.

(D) A calculation of the remaining strength of the pipe shows an operating pressure that is less than the current established maximum operating pressure at the location of the anomaly. Suitable remaining strength calculation methods include, but are not limited to, ASME/ANSI B31G ("Manual for Determining the Remaining Strength of Corroded Pipelines" (1991)) or AGA Pipeline Research Committee Project PR-3-805 ("A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 1989)). These documents are incorporated by reference and are available at the addresses listed in § 195.3.

(E) An area of general corrosion with a predicted metal loss greater than 50% of nominal wall.

(F) Predicted metal loss greater than 50% of nominal wall that is located at a crossing of another pipeline, or is in an area with widespread circumferential corrosion, or is in an area that could affect a girth weld.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h) by failing to evaluate all metal loss anomalies found within HCAs. Specifically, the Notice alleged that Cenex did not evaluate at least four metal loss anomalies having a depth greater than 16 percent of nominal wall thickness because it did not account for the accuracy tolerance of the in-line inspection tool its vendor used to perform the in-line inspection (ILI).

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(h) by failing to evaluate all metal loss anomalies found within HCAs.

Item 10: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(c), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) . . .

(c) *Rectifiers and other devices.* You must electrically check for proper performance each device in the first column at the frequency stated in the second column.

Device	Check frequency
Rectifier.....	At least six times each calendar year, but with intervals not exceeding 2½ months
Reverse current switch	
Diode	

Interference bond whose failure would jeopardize structural protection.	
Other interference bond.....	At least once each calendar year, but with intervals not exceeding 15 months.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(c) by failing to electrically check for proper performance certain reverse current switches used to protect against external corrosion. Specifically, the Notice alleged that Cenex failed to check devices known as polarization cell replacements (PCRs) at least six times each calendar year but with intervals not exceeding 2½ months. According to the Notice, Respondent allegedly installed the PCRs at a location where the Cenex pipeline parallels a wind farm electric transmission line between Fargo and Minot, North Dakota but monitored them annually instead of at the specified 2½ month interval.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(c) by failing to electrically check certain PCRs at least six times each calendar year but with intervals not exceeding 2½ months.

Item 11: The Notice alleged that Respondent violated 49 C.F.R. § 195.575(e), which states:

§ 195.575 Which facilities must I electrically isolate and what inspections, tests, and safeguards are required?

(a) ...

(e) If a pipeline is in close proximity to electrical transmission tower footings, ground cables, or counterpoise, or in other areas where it is reasonable to foresee fault currents or an unusual risk of lightning, you must protect the pipeline against damage from fault currents or lightning and take protective measures at insulating devices.

The Notice alleged that Respondent violated 49 C.F.R. § 195.575(e) by failing to protect its pipeline against damage from reasonably foreseeable fault currents or lightning. Specifically, the Notice alleged that no fault-current protection was installed on the Laurel-to-Billings section of the Cenex pipeline that was in close proximity to a fence around an electrical substation located downstream from the Laurel Refinery.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.575(e) by failing to protect its pipeline against damage from reasonably foreseeable fault currents or lightning.

Item 13: The Notice alleged that Respondent violated 49 C.F.R. § 195.583(b), which states:

§ 195.583 What must I do to monitor atmospheric corrosion control?

(a) ...

(b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

The Notice alleged that Respondent violated 49 C.F.R. § 195.583(b) by failing to give particular attention during atmospheric corrosion inspections to several aboveground pipe supports located at the Billings station, Rosebud station, Glendive station, Mile Post (MP) 98, MP 193B (Powder River DS block valve), MP 211B (Yellowstone River DS block valve), and MP 222. Areas in the vicinity of the pipe supports had rust on the pipe at the interface between the pipe and the pipe supports that may indicate on-going atmospheric corrosion. The supports are either made from concrete or are of a type that cannot be easily lowered to conduct the monitoring.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.583(b) by failing to give particular attention during atmospheric corrosion inspections to several aboveground pipe supports located at the Billings station, Rosebud station, Glendive station, MP 98, MP 193B (Powder River DS block valve), MP 211B (Yellowstone River DS block valve), and MP 222.

Contested Items

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.401(b)(1), which states:

§ 195.401 General requirements.

- (a) ...
- (b) An operator must make repairs on its pipeline system according to the following requirements:
 - (1) *Non Integrity management repairs.* Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.

The Notice alleged that Respondent violated 49 C.F.R. § 195.401(b)(1) by failing to correct within a reasonable time a discovered condition that could adversely affect the safe operation of its Minot Tanks 201 and 202. Specifically, the Notice alleged that during the 2007 external inspections of these tanks, Cenex discovered that they would only be suitable for service if safe-fill height recommendations were established and adhered to. However, during the 2010 inspection, neither of the inspection reports specified the safe-fill height for either tank.

In its Response, Cenex explained that while the 2007 inspection report recommended a safe-fill height of 47' 6" for tanks 201 and 202, Cenex had established a lower height of 41' 11" for tank 201 and 42' 5" for tank 202 and was able to document this process. As these safe-fill heights were more conservative than those recommended in the 2007 report, there was no need to change them.

I agree. Accordingly, after considering all of the evidence, I find that Cenex complied with § 195.401(b)(1) with regard to tanks 201 and 202. Based upon the foregoing, I hereby order that Item 2 of the Notice be withdrawn.

Item 9: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (a) ...
- (b) Ensure through evaluation that individuals performing covered tasks are qualified;

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified. Specifically, the Notice alleged that Cenex employees were only evaluated for their ability to recognize and react to task-specific abnormal operating conditions (AOCs) when they were initially qualified, but not when they were subsequently re-qualified.

In its Response, Cenex explained that its written qualification program did not require evaluations for task-specific AOCs as part of routine re-qualifications unless there was reason to believe an individual was no longer qualified. Cenex also noted that making evaluations for task-specific AOCs part of routine re-qualifications was not expressly required by § 195.505.

Respondent is correct. Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent complied with § 195.505 with regard to evaluating employees on task specific AOCs. Based upon the foregoing, I hereby order that Item 9 of the Notice be withdrawn.

Item 12: The Notice alleged that Respondent violated 49 C.F.R. § 195.581, which states in relevant part:

§ 195.581 Which pipelines must I protect against atmospheric corrosion and what coating material may I use?

(a) You must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section. . .

(c) Except portions of pipelines in offshore splash zones or soil-to-air interfaces, you need not protect against atmospheric corrosion any pipeline for which you demonstrate by test, investigation, or experience appropriate to the environment of the pipeline that corrosion will—

- (1) Only be a light surface oxide; or
- (2) Not affect the safe operation of the pipeline before the next scheduled inspection.

The Notice alleged that Respondent violated 49 C.F.R. § 195.581 by failing to clean and coat

each pipeline or portion of pipeline that is exposed to the atmosphere. Specifically, the Notice alleged that on June 21, 2005, Cenex found that the soil-to-air interface at the Minot station mainline piping spool (piping item FRS-1000) needed protective coating. The Notice alleged that on June 21, 2008, Cenex records show that this same soil-to-air interface still needed protective coating and that Cenex could not provide evidence that this soil-to-air interface had been coated as of the time of the 2010 OPS inspection.

In its Response, Cenex explained that piping item FRS-1000 and the 2005 and 2008 inspection dates cited in the Notice related to the Fargo Station soil-to-air interface, not the Minot Station. Respondent further explained that in 2009 UV tape coating had been installed over a paint coating and that no corrosion was present in the pipe spool as confirmed by in-line inspection.

Upon considering all of the evidence, I find that Cenex was in compliance with § 195.581 with regard to piping item FRS-1000 at the Fargo Station. Accordingly, I hereby order that Item 12 of the Notice be withdrawn.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative 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 \$76,500 for the violations cited above, \$35,000 of which was for Item 12, which has now been withdrawn.

Item 6: The Notice proposed a civil penalty of \$41,500 for Respondent's violation of 49 C.F.R. § 195.432(b), for failing to perform external tank inspections for eight of its breakout tanks within the maximum five-year interval, in accordance with Section 6.3.2.1 of API 653. In its Response, Cenex explained that external inspections involving some aspects of API 653 had been conducted, albeit by individuals who were not certified API 653 inspectors. Respondent also explained that all deficient API 653 external inspections at the Minot terminal were completed in 2007 and those at the Billings Tank Farm were completed in 2008 and 2009.

With respect to the nature, circumstances, and gravity of this violation, any missed inspection has the potential to impact safety. Tank inspections in particular are a key part of safety and environmental protection because a tank failure can result in a significant spill incident. Respondent is culpable for the violation, as pipeline operators are obligated to perform full API 653 inspections of the tanks they operate. I acknowledge the actions taken by Respondent following discovery of the deficiencies that should ensure future inspections are scheduled in a

timeframe that meets the regulatory requirement, but this does not constitute a good-faith effort to comply with the regulatory requirement prior to the missed inspections.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of **\$41,500** for violation of 49 C.F.R. § 195.432(b).

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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$41,500 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 district court of the United States.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to Items 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, and 13 in the Notice for violations of 49 C.F.R. §§ 195.214(b), 195.401(b)(1), 195.404(a)(1)(vii), 195.404(a), 195.404(b)(1), 195.452(h), 195.452(h), 195.505(b), 195.573(c), 195.575(e), 195.581, and 195.583(b), respectively. As noted above, Items 2, 9, and 12 have now been withdrawn and compliance terms for those items are not included in this Order. 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 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 § 195.214(b) (**Item 1**), Respondent must ensure the weld qualification report for weld procedure 110504-1 includes: (1) the groove qualifying test results, including the weld tensile strength coupon sizes and the breaking stress that each tensile strength coupon experienced during testing, nick-break test results, root bend test results, and face bend test results; and (2) the sleeve weld qualifying test results, including the nick-break test results, the face bend test results, and the macro test results. Cenex must submit the corrected record of the weld qualification report for weld procedure 110504-1 to OPS Western Region (Director).
2. With respect to the violation of § 195.404(a)(1)(vii) (**Item 3**), Respondent must

ensure that its P&IDs for the North Dakota section of the Cenex Products pipeline include both the pressure safety valve tag numbers and the pressure set points associated with those devices. Cenex must provide those updated P&IDs to the Director.

3. With respect to the violation of § 195.404(a) (**Item 4**), Respondent must update its Cenex Products pipeline alignment sheets to ensure that they show current pipeline information, including, but not limited to, all crossings of public roads, railroads, rivers, buried utilities, foreign pipeline crossings and other pipeline changes as required under 195.404(a). Cenex must provide these updated alignment sheets to the Director.
4. With respect to the violation of § 195.404(b)(1) (**Item 5**), Respondent must provide a pressure recording device at its Billings Tank Farm pump station that will allow it to record the daily discharge pressures of the Billings Tank Farm pump station and must continuously retain at least three years of those records. Cenex must provide evidence of the installation of the above pressure recording device and documentation that ensures Cenex will retain pressure discharge records for this site for at least three years to the Director.
5. With respect to the violation of § 195.452(h) (**Item 7**), Respondent must evaluate the following dent ID numbers found during the Glendive Station to Minot Station in-line inspection: 14000022, 14000048, 14000027, 14000034, 14000051, 14000012, 14000013, 14000023, 14000069, 14000019, 14000076, 14000068, 14000058, and 14000060 and must evaluate the following dent ID numbers found during the Laurel Station to Billings Station in-line inspection: 14000003 and 14000004. If any of these dents are found to be located on the top of the pipeline or found to affect pipe curvature at a girth weld or a longitudinal seam weld, then Cenex must then repair those dents. Cenex must submit records of the above evaluations and investigations and any subsequent repairs to the Director.
6. With respect to the violation of § 195.452(h) (**Item 8**), Respondent must re-review its ILI metal loss logs, taking known data from the 2008 MFL ILI run and adding the in-line tool accuracy determined by previous 2008 anomaly investigations. Cenex must then investigate any anomalies that have a potential to meet the repair criteria under §195.452(h) and if anomalies are found to meet that criteria, Cenex must make appropriate repairs to the pipeline. Cenex must submit records of the above evaluations and investigations and any subsequent repairs to the Director.
7. With respect to the violation of § 195.573(c) (**Item 10**), Respondent must ensure that it electrically inspects each of their PCRs recently installed where the Cenex pipeline parallels a wind farm electrical power transmission line between Fargo and Minot, North Dakota, six times each calendar year, but at intervals not exceeding 2½ months. Cenex must provide documentation insuring that these PCRs are electrically inspected six times each calendar year, but at intervals not

exceeding 2½ months to the Director.

8. With respect to the violation of § 195.575(e) (**Item 11**), Respondent must install ground fault protection at the electrical substation downstream from the Laurel Refinery between MP 0.5 and 0.8. Cenex must provide evidence that ground fault protection has been provided at this location to the Director.
9. With respect to the violation of § 195.583(b) (**Item 13**), Respondent must inspect between the aboveground pipe and its associated supports at Billings station, Rosebud station, Glendive station, MP 98, MP 193B Powder River DS block valve, MP 211B Yellowstone River DS block valve, and MP 222. Cenex must take actions to ensure that future inspections will allow inspection for atmospheric corrosion between aboveground pipe and their associated supports at Billings station, Rosebud station, Glendive station, MP 98, MP 193B Powder River DS block valve, MP 211B Yellowstone River DS block valve, and MP 222. Cenex must repair any corrosion that is found during the required atmospheric corrosion inspections at these aboveground pipe support locations. Cenex must provide evidence that measures have been taken to allow for future atmospheric corrosion inspections between aboveground pipe and associated supports at the above locations and must provide documentation of atmospheric corrosion inspections and associated repairs at the above locations to the Director.
10. It is requested that Cenex maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total 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 and demonstrating good cause for an extension.

Failure to comply with this Order may result in the 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. Should Respondent elect to do so, the petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are

effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued