

February 4, 2016

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

Re: CPF No. 5-2015-5013

Dear Mr. Traeger:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation, assesses a civil penalty of \$43,200, 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: Director, Western Region, PHMSA OPS
Mr. Richard Petersen, V.P. Pipelines and Terminals, Cenex Pipeline, LLC

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. 5-2015-5013
)	
Respondent.)	
)	

FINAL ORDER

Between December 17, 2013, and June 26, 2014, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Cenex Pipeline, LLC (Cenex or Respondent) in Laurel, Montana. Cenex operates two hazardous liquid pipeline systems from its control center in Laurel, Montana.¹ The Cenex Products Pipeline, which transports gasoline and diesel fuel, consists of approximately 671 miles of pipeline with 24 breakout tanks.² The Front Range Pipeline transports crude oil through approximately 295 miles of pipeline, including 10 breakout tanks.³

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated June 30, 2015, 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 violated 49 C.F.R. § 195.446, and proposed assessing a civil penalty of \$43,200 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

Cenex responded to the Notice by letter dated July 20, 2015 (Response). The company did not contest the allegations of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

¹ Pipeline Safety Violation Report (Violation Report), (June 30, 2015) (on file with PHMSA), at 1.

² *Id.*

³ *Id.*

FINDING OF VIOLATION

In its Response, Cenex did not contest the allegation 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. § 195.446, which states in part:

§ 195.446 Control room management.

(a) . . . The training procedures required by paragraph (h) must be implemented no later than August 1, 2012 . . .

(h) *Training.* Each operator must establish a controller training program and review the training program content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months. An operator's program must provide for training each controller to carry out the roles and responsibilities defined by the operator. In addition, the training program must include the following elements:

(1) Responding to abnormal operating conditions likely to occur simultaneously or in sequence;

(2) Use of a computerized simulator or non-computerized (tabletop) method for training controllers to recognize abnormal operating conditions;

(3) Training controllers on their responsibilities for communication under the operator's emergency response procedures;

(4) Training that will provide a controller a working knowledge of the pipeline system, especially during the development of abnormal operating conditions; and

(5) For pipeline operating setups that are periodically, but infrequently used, providing an opportunity for controllers to review relevant procedures in advance of their application.

The Notice alleged that Respondent violated 49 C.F.R. § 195.446(h) by failing to establish a controller training program in accordance with Section 195.446(h). Specifically, the Notice alleged that Cenex's controller training program did not clearly define controller roles and responsibilities, and did not include training for responding to abnormal operating conditions (AOC) likely to occur simultaneously or in sequence. The training program did not identify setups that are periodically - but infrequently - used, and did not indicate how the controllers were trained on the procedures used for such setups.

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. § 195.446(h) by failing to establish a controller training program in accordance with Section 195.446(h).

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.⁴ In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$43,200 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$43,200 for Respondent's violation of 49 C.F.R. § 195.446(h), for failing to establish a controller training program in accordance with Section 195.446(h). Respondent submitted a response letter which stated that Respondent has been working with a vendor since late 2011 to develop a Supervisory Control and Data Acquisition simulator that will be used to train pipeline controllers on operating procedures and AOC response; and the simulator will be used to evaluate controller performance. Respondent further stated that it has invested over \$590,000 in development of the simulator and has scheduled a Simulator Site Acceptance Test. Because it began improving the Controller Training Program before the PHMSA inspection, and because it has invested significant resources in development of the simulator, Respondent argues the proposed civil penalty should be mitigated or eliminated. With respect to the nature, circumstances, and gravity of this violation, the failure to establish a controller training program in accordance with Section 195.446(h) is a serious violation that could threaten the proper operation of the pipeline. The pipeline contains high consequence area segments, and the lack of a controller training program established in accordance with Section 195.446(h) could seriously affect pipeline safety and integrity.

I acknowledge Respondent's attempt to develop a SCADA simulator in order to meet the training requirements. However, during the several years of Respondent's inability to procure the simulator, Respondent relied on standard Operator Qualification modules that did not fully meet the control room management training requirements of Section 195.446(h). Respondent was fully aware of the training program requirements, but failed to institute an adequate controller training program. Based on the gravity of the violation and Respondent's culpability, I do not see any basis for reducing or eliminating the penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$43,200 for violation of 49 C.F.R. § 195.446(h).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$43,200**.

⁴ The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904, January 3, 2012, increased the civil penalty liability for violating a pipeline safety standard to \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$43,200 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 Item 1 in the Notice for violation of 49 C.F.R. § 195.446(h). 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 § 195.446(h) (**Item 1**), Respondent must:
 - A. Develop and implement a Controller Training Program that meets each of the requirements of § 195.446(h) within 60 days of receipt of the Final Order.

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.

In addition, pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is requested (not mandated) to take the following action:

Cenex should maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Director, Western Region, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety. 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 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. § 190.243, Respondent has a right to submit a Petition for Reconsideration of this Final Order. 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. § 190.243. 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