

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY**

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<b>In the Matter of</b>	)	
	)	
<b>Cenex Pipeline, LLC,</b>	)	<b>CPF No. 5-2015-5020S</b>
	)	
<b>Respondent.</b>	)	
	)	

**CONSENT AGREEMENT**

On September 15, 2015, the Regional Director for the Western Region (the Region) of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS or the Agency), issued a Notice of Proposed Safety Order (Notice) to Cenex Pipeline, LLC (Cenex or Respondent). The Notice alleged that a condition exists on a portion of Respondent’s Cenex Products Pipeline that poses a pipeline integrity risk to public safety, property, or the environment. The Notice also proposed that Cenex take certain corrective measures to remedy the alleged conditions and ensure that the public, property, and the environment are protected from the potential risk.

On September 24, 2015, Cenex responded to the Notice by timely submitting a letter requesting informal consultation and removal of the Notice’s 20% pressure restriction in light of the corrective actions it has taken to address integrity concerns on the pipeline. In that letter, Cenex also advised PHMSA of its plan to replace the pipe segment at issue. The Region responded on September 25, 2015, by letter confirming informal consultation and approving removal of the pressure restriction. An informal consultation was held on October 13, 2015.

During the informal consultation, PHMSA and Cenex agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry into this Consent Agreement is the most appropriate means of resolving issues raised in the Notice and in the public interest. Therefore, pursuant to 49 C.F.R. Part 190, and without adjudication of any issue of fact or law, and upon consent and agreement of Respondent and PHMSA (Parties), the Parties agree as follows:

**I. General Provisions**

1. Respondent acknowledges that as operator of the Cenex Products Pipeline, Respondent and its pipeline system are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Consent Agreement, Respondent acknowledges that it received proper notice of PHMSA’s action in this proceeding and that the Notice states claims upon which relief

may be granted pursuant to 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder.

2. Respondent does not admit or deny any allegation or conclusion in the Notice but agrees, for purposes of this Consent Agreement, to address the integrity risks identified in the Notice by completing the actions specified in Section III of this agreement (Corrective Measures) and to abide by the terms of this Consent Agreement. These actions, including any work plans and schedules, shall automatically be incorporated into this Consent Agreement. This Consent Agreement does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil or administrative proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Consent Agreement.

3. After Respondent returns this signed agreement, PHMSA's representative will present it to the Associate Administrator for Pipeline Safety recommending that the Associate Administrator adopt the terms of this agreement by issuing an administrative order (Consent Order) incorporating the terms of this Consent Agreement. The terms of this agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of the agreement.

4. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Consent Agreement, including all rights to administrative or judicial hearings or appeals. Upon issuance of a Consent Order for this matter, Respondent's Request for Hearing will be deemed withdrawn.

5. This Consent Agreement shall apply to and be binding upon PHMSA, and upon Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Consent Agreement and any incorporated work plans and schedules to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this Consent Agreement.

6. For all transfers of ownership or operating responsibility of Cenex or the Cenex Products Pipeline, Respondent shall provide a copy of this Consent Agreement to the prospective transferee at least 30 days prior to such transfer and simultaneously provide written notice of the prospective transfer to the PHMSA Western Region Director (Director) who issued the Notice.

7. This Consent Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Agreement, and the Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Agreement, except that the terms of this Consent Agreement may be construed by reference to the Notice.

8. Nothing in this Consent Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Consent Agreement alters the PHMSA's right of access, entry, inspection, and information gathering or the PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

9. This Consent Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Consent Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

10. This Consent Agreement does not create rights in, or grant any cause of action to, any third party not a party to this Consent Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Consent Agreement. Respondent agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Consent Agreement.

## **II. Completed Corrective Measures**

### 11. Definitions:

The term "Affected Segment," as referenced in Sections II and III of this Consent Agreement, means the segment of Respondent's Cenex Products Pipeline that runs from the Glendive Pump Station in Montana to the Minot Pump Station in North Dakota.

The term "Safety-Related Condition" as referenced in Section II, means the condition identified in Respondent's safety-related condition report, #20150009, that was submitted to PHMSA on January 23, 2015.

12. In response to the Safety-Related Condition, to date, Cenex has completed the following corrective measures:

- (A) Implemented a voluntary 20% pressure restriction.
- (B) From February to April 2015, Respondent assessed the Affected Segment by inline inspection (ILI), using an ultrasonic tool (UT) to verify the December 10, 2013 magnetic flux leakage (MFL) ILI results. A final report was received on June 30, 2015.
- (C) Respondent repaired all of the UT ILI metal loss features that exceeded 40%. In addition, Respondent applied a 29% tolerance to all 2013 MFL

metal loss callouts and re-analyzed the data to determine if any anomalies met its repair criteria (all of the metal loss feature field measurements were found to be within the newly-established 29% tolerance). In total, from January through September 2015, Respondent performed 42 additional metal-loss inspections and completed 41 repairs, two of which were made following the 2015 ILI (following application of 10% tolerance to the UT ILI data).

- (D) Based on the 2015 ILI data, the worst-case depth of any metal loss feature remaining in the Affected Segment is a 38% external metal loss feature. Pursuant to 49 C.F.R. Part 195, Respondent has repaired all defects within the Affected Segment meeting Cenex's repair criteria using a 29% tolerance for the MFL ILI metal loss features and all UT ILI metal loss features that exceed 40%.
- (E) On September 14, 2015, Respondent retained the contract services of a NACE Cathodic Protection Specialist (NACE CP Specialist) to analyze the cathodic protection on the Affected Segment and to make recommendations to address any cathodic protection issues that may be discovered.
- (F) In response to cathodic protection deficiencies, Respondent isolated the Glendive Terminal piping and tankage from the Affected Segment, which resulted in the improvement of pipe-to-soil readings on the Affected Segment.
- (G) The NACE CP Specialist analyzed current requirement information on a portion of the first 57 miles of the Affected Segment and based on that study, Respondent plans to install four additional rectifiers on that portion.
- (H) Respondent commissioned the NACE CP Specialist to perform an On-Off-Static close interval survey on the first 50 miles of the Affected Segment, which was completed on October 5, 2015. The NACE CP Specialist's report was delivered to Respondent on October 12, 2015.
- (I) On September 24, 2015, Respondent submitted a report summarizing the actions referenced above to the PHMSA Western Region Director and requesting removal of the 20% pressure restriction set forth in the NOPSO. In response, PHMSA issued a letter on September 25, 2015, approving the removal of the pressure restriction.

### III. Corrective Measures

13. Upon issuance of the Consent Order, Respondent agrees to perform the additional Corrective Measures set forth below.

14. Within 60 days after the Consent Order is issued, develop and submit to the Director for approval a written remedial work plan that includes corrective measures. The work plan must include:

- (A) The implementation of recommendations received from the NACE CP Specialist, including the installation of additional rectifiers within the first 13 miles of the Affected Segment;
- (B) Review of the most current ILI data available for the Affected Segment in an effort to establish an average anomaly growth rate. Make the growth rate analysis results available for review by PHMSA.
- (C) Perform a static close interval survey of the Affected Segment to be used in conjunction with the 2013 close interval survey to determine whether and to what extent the conditions described in the Notice are present elsewhere on the Affected Segment. Make the results of the static close interval survey and field examination reports available for review by PHMSA.
- (D) Perform a review of corrosion mitigation procedures that may have contributed to the current conditions;
- (E) Update Cenex's integrity management program to include a requirement that Respondent provide field measurement data to ILI vendors to allow them to assess the accuracy of their algorithms and make adjustments if necessary;
- (F) The performance of repairs or other corrective measures that fully remediate the identified risk conditions. Include provisions for pipe replacement and continuing long-term periodic testing and integrity verification measures to ensure the ongoing safe operation of the pipeline, considering the results of the analyses, inspections, and corrective measures undertaken;
- (G) A proposed schedule for completion of the actions required by paragraphs 14(A) - (F) of this Consent Agreement.

15. Revise the remedial work plan as necessary to incorporate new information obtained during the evaluations and associated remedial activities. Submit any such plan revisions to the Director for prior approval. The Director may approve plan elements incrementally. The remedial work plan shall become incorporated into the Consent Order.

16. Implement the remedial work plan as it is approved by the Director, including any revisions to the plan.

17. Submit quarterly reports to the Director that: (1) include available data and results of the testing and evaluations required by the Consent Order; and (2) describe the progress of the

repairs and other remedial actions being undertaken. The first quarterly report will be due 90 days after the Consent Order is issued, with subsequent reports due every 90 days thereafter until this Consent Agreement is terminated.

18. The Director may grant an extension of time for compliance with any of the terms of the Consent Agreement upon a written request timely submitted demonstrating good cause for an extension.

19. Respondent may appeal any decision of the Director to the Associate Administrator for Pipeline Safety. Decisions of the Associate Administrator shall be final.

20. PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling the Consent Order and submit the total to the Director. PHMSA requests 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.

#### **IV. Review and Approval Process**

21. With respect to any submission under Section III of this Consent Agreement that requires the approval of the Region Director, the Director may: (a) approve, in whole or in part, the submission; (b) approve the submission on specified conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the foregoing. If the Region Director approves, approves in part, or approves with conditions, Respondent will take all action as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures in Section V with respect to any conditions the Director identifies. If the Director disapproves all or any portion of the submission, the Director will provide Respondent with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval.

#### **V. Dispute Resolution**

22. The Region Director and Respondent will informally attempt to resolve any disputes arising under this Consent Agreement. If Respondent and the Region Director are unable to informally resolve the dispute within 15 days, Respondent may request in writing, within 10 days, a written determination resolving the dispute from the Associate Administrator for Pipeline Safety providing all information that Respondent believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a final determination in writing. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this agreement during the pendency of the dispute resolution process except as agreed by the Region Director or the Associate Administrator in writing.

#### **VI. Enforcement**

23. This Consent Agreement, as adopted by the Consent Order, is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R.

Part 190. All work plans and associated schedules set forth or referenced in Section II will be automatically incorporated into this Consent Agreement and are enforceable in the same manner.

**VII. Recordkeeping and Information Disclosure**

24. Unless otherwise required in this Consent Agreement, Respondent agrees to maintain records demonstrating compliance with all requirements of this Consent Agreement for a period of at least five years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to the PHMSA pursuant to this Consent Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. In accordance with applicable law, PHMSA will notify Respondent of any requests for public disclosure of information marked confidential before disclosure, and allow Respondent to substantiate its claim of protected status.

**VIII. Effective Date**

25. The “Effective Date” as used herein is the date on which the Consent Order is issued by the Associate Administrator incorporating the terms of this Agreement. Unless specified to the contrary, all deadlines for actions required by this Consent Agreement run from the Effective Date of this Order.

**IX. Modification**

26. The terms of this Consent Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

**X. Termination**

27. This Consent Agreement terminates upon completion of all terms set forth in Section II (Corrective Measures) as determined by the Director, Western Region. Respondent may request written confirmation from PHMSA when this Consent Agreement is terminated. To the extent ongoing monitoring is required, PHMSA may terminate this Consent Agreement with respect to all other requirements with the exception of such monitoring. Nothing in this Consent Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement.

**XI. Ratification**

28. The Parties’ undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind such party to this document.

29. The Parties hereby agree to all conditions and terms of this Consent Agreement:

**For Respondent:**

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**Richard S. Petersen**  
**President**  
**Cenex Pipeline, LLC**

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**Date**

**For PHMSA:**

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**Chris Hoidal**  
**Director, Office of Pipeline Safety**  
**PHMSA Western Region**  
**U.S. Department of Transportation**

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**Date**