

Mr. David C. Waddell
Director, Pipelines and Terminals
CENEX, Inc.
P.O. Box 909
803 Highway, 212 South
Laurel, Montana 59044

RE: CPF No. 54514

Dear Mr. Waddell:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation, withdraws a portion of a violation, assesses a civil penalty of \$29,500, and requires certain corrective action and revision of certain anti-drug manual procedures. The penalty payment terms are set forth in the Final Order. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

In the Matter of)
)
CENEX, Inc.,) CPF No. 54514
)
Respondent.)
_____)

FINAL ORDER

On August 29 - October 1, 1994, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Laurel, Billings, and Miles City, Montana. As a result of the inspection, the Director, Western Region, OPS, issued to Respondent, by letter dated December 23, 1994, a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, Notice of Amendment and Warning (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 195.401(b), 195.402, and 195.428, proposed assessing civil penalties totaling \$39,000 for the alleged violations of Items 1 and 4, and proposed that Respondent take certain measures to correct the alleged violation in Item 2. The Notice proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its procedures for its anti-drug plan. The Notice also warned Respondent to take appropriate corrective action, with respect to Item 3.

Respondent responded to the Notice by letter dated January 24, 1995 (Response). Respondent contested the allegations for Items 1, 2 and 5, and offered information to explain the allegations.

Respondent also proposed a compromise offer of \$1,600 for Item 4. Respondent has not requested a hearing and therefore, has waived its right to one.

FINDINGS OF VIOLATION

Item 1

The Notice alleged as Item 1 that Respondent violated 49 C.F.R. § 195.401(b) for failing to correct an adverse safety condition within a reasonable time. The Notice alleged three safety conditions: (a) 15 low pipe-to-soil readings; (b) 7 shorted casings; and (c) 3 anomalies identified in 1985 and 1990 smart pig runs.

(a) Low pipe-to-soil readings

Respondent's pipe-to-soil readings on its Laurel to Glendive line:

<u>Cathodic Stations</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>
CP 71	-.770	-.880	-.789	-.783*
CP 79	-.796	-.988	-.781	-.746*
CP 80	-.743	-.998	-.762	-.752*
CP 81	----	-.983	-.801	-.775*
CP 82	-.750	-.965	-.775	-.775*
CP 155 BV	-.650	-.800*	-.724*	-.700*
CP 158	-.417	Disbonded*	-.494*	-1.104
CP 159	-.521	Disbonded*	-.576*	-1.262
CP 175	-.738	-.947	-.830	-.627*
CP 177	----	----	-.827	-.849*
CP 187	-.414	Disbonded*	-1.397	-1.447

* indicates a violation for not correcting low pipe-to-soil potentials within an inspection cycle.

Respondent stated in its Response that it had taken appropriate and timely corrective action with respect to the above low pipe-to-soil readings, and explained those actions taken. Respondent further stated that it had received no guidance from OPS on appropriate time frames for correction, and with the exception of CP 155 BV, "adequate remedy has been, or will have been provided at all of the listed areas within one inspection cycle following the confirmation cycle." Respondent then proposed no civil penalty be assessed due to the "inherent uncertainty and variability of the test method" and the arbitrary criteria of $-.85$ mv for judging adequate cathodic protection. (Response, p.2)

Adverse conditions should be corrected as soon as possible, and no later than the next inspection cycle. In this case, the inspection cycle is one year. Respondent took anywhere from two to four inspection cycles to correct the aforementioned adverse safety conditions. This is an unacceptable length of time for corrective action. Furthermore, the -0.85 mv criterion is widely accepted in the pipeline industry as an indication of adequate cathodic protection, as are the standard testing methodologies. A finding of a low pipe-to-soil reading is serious in nature. Left in this condition, the integrity of the pipeline is in question and could pose a serious threat to persons, property and/or the environment. Accordingly, I find respondent in violation of 49 C.F.R. § 195.401(b).

(b) Casings shorted to the carrier pipe

Respondent's shorted casings:

- Billings Tank Farm
- Pompeys @ Hwy. Exit
- Pompeys @ Hwy. (old)
- E. BV-52 @ RR Xsng
- M.P. 54.5 @ RR
- M.P. 77
- M.P. 233 @ Freeway

Respondent stated in its Response that each of the problems associated with the above casings dealt primarily with their inaccessibility. Respondent further stated that it has used the line-a-log as a monitoring tool in 1990, which did not reveal corrosion at the above casing locations. Respondent asserted that its monitoring has been adequate in the past and proposed no violation or civil penalty associated with the shorted casings. (Response, pp. 2-3)

Although OPS' guidelines on shorted casings were not issued until shortly before the OPS inspection of Respondent's facility, Respondent should have known that four years was too long to allow the condition to persist. Shorted casings are clearly a condition that could adversely affect the safe operation of the pipeline system. Respondent's Cathodic Protection Surveys for the years 1990, 1991, 1992 and 1993, indicate that the above casings were shorted. The lack of corrosion in 1990 does not guarantee that no corrosion will develop in the years to follow. The uncertainty associated with shorted casings poses too great a risk when dealing with areas that are traversed daily by the public. Accordingly, I find Respondent in violation of 49 C.F.R. § 195.401(b).

(c) Anomalies identified by smart pig runs in 1985 and 1990

Respondent stated in its Response that the 1990 test results have been "shown to substantially exaggerate the magnitude of wall thickness losses" and thus cannot be relied on. Respondent also indicated that it outlined its position and intended actions in letters dated October 31, 1994 and December 5, 1994.

Respondent first found the anomalies during its 1985 smart pig run. As stated above (see (a)), these conditions should have been corrected within the next inspection cycle. However, it took Respondent 9 years to outline its intended course of action with respect to these anomalies. Nine years is too long to correct a condition that could adversely affect the safe operation of a pipeline system.

With respect to the third anomaly, #1244932, Respondent indicated to the OPS inspector that it designated the anomaly as a tap in 1985 which appeared unchanged in 1990. Based on the form of the indication and Respondent's visual experiences with the logs, Respondent concluded that the anomaly was a tap.

It is not the purpose of OPS to direct how an operator interprets data, as long as the data is interpreted in a safety conscious, conservative manner. The evidence in this case does not suggest an improper interpretation. However, Respondent is reminded that it should make its interpretations in a conservative manner, always keeping the safety of the public, property and the environment, in mind. Therefore, this sub-portion, related to the third anomaly, will be withdrawn.

Accordingly, based on the above analysis, I find that Respondent violated 49 C.F.R. § 195.401(b). This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

Item 2

The Notice alleged as Item 2, that Respondent violated 49 C.F.R. § 195.402 by failing to maintain adequate procedures for operations, maintenance and emergencies. The Notice alleged that Respondent did not have procedures for: (a) remedial action to correct cathodic protection deficiencies; (b) monitoring pipeline casings for electrical isolation; and (c) inspecting thermal relief devices.

With respect to (a) and (b) above, Respondent stated that although it did not include written procedures in its manual, it has taken a systematic approach toward correcting deficiencies/monitoring, which it believes has been effective. With respect to (c) above, Respondent stated that its manual does contain procedures for inspecting and testing pressure limiting devices however, it was not previously aware that low-pressure pop-off valves for thermal pressure on shut-in low-pressure lines were considered pressure limiting devices. Furthermore, with respect to (a), (b) and (c), Respondent stated that written procedures for each of these items is not specifically called for in the regulations. (Response, p.4)

Section 195.402 states that "each operator shall prepare and follow . . . a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies." Clearly, Respondent has acknowledged, the above mentioned items are items that are conducted during normal operations and maintenance activities or in handling abnormal conditions. Therefore, section 195.402 requires written procedures for each of these items.

The failure to maintain complete and accurate written procedures increases the likelihood of not adequately maintaining the pipeline or improperly handling conditions that occur. Accordingly, based on the above discussion, I find that Respondent violated 49 C.F.R. § 195.402. This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

Item 4

The Notice alleged as Item 4, that Respondent violated 49 C.F.R. § 195.428(a) because it could not provide records of overpressure protection inspection for the years of 1992 and 1993 for 25 devices. Respondent stated that "its policy is to inspect/test these devices within the schedules identified in the regulations." However, Respondent added that it could not find any documentation for these inspections. Respondent further stated that 14 of the 25 devices are not exposed to pressures over 300 psi, therefore, it did not believe that these devices were subject to this regulatory provision. (Response, pp. 4-5)

Regardless of the pressure the device is exposed to, 49 C.F.R. § 195.416 requires all overpressure safety devices to be inspected. Low-pressure pop-off valves relieve thermal pressure build-up on shut-in pipelines and therefore function as pressure limiting/overpressure safety devices. Inspection

of these safety devices provides the operator with the necessary information to determine if the device is performing correctly. Failure to do so could adversely affect the safety of the pipeline. Accordingly, based on the above discussion, I find that Respondent violated 49 C.F.R. § 195.428(a). 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 a civil penalty not to exceed \$25,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations.

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

The Notice proposed assessing a civil penalty of \$14,000¹ for Item 1, violation of 49 C.F.R. § 195.401(b). Respondent's failure to correct adverse safety conditions within a reasonable amount of time has caused the integrity of the pipeline to be in question and could pose a serious threat to persons, property or the environment. However, based on the prior discussion of Item 1, part (c), one of the three items identified is being withdrawn. Therefore, the penalty for Item 1 will be reduced by \$1,000. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$13,000 for Item 1.

The Notice proposed assessing a civil penalty of \$25,000 for Item 4, violation of 49 C.F.R. § 195.428. This violation is very serious. Overpressure safety devices are designed to

¹The \$14,000 proposed violation was determined in the following manner:

- \$7,500, \$500 for each of the 15 low pipe-to-soil readings;
- \$3,500, \$500 for each of the 7 shorted casings; and
- \$3,000, \$1,000 for each of the 3 anomalies.

maintain the pipeline in a safe condition when overpressurization occurs that could pose a threat to the integrity of the pipeline. Respondent's failure to inspect those safety devices could adversely affect the safe operation of the pipeline system, and could have resulted in a pipeline failure, endangering persons, property and/or the environment.

The Notice identified 25 locations where Respondent failed to inspect its overpressure safety devices for two years, thus missing 50 overpressure safety inspections. Respondent stated that 14 of the 25 devices, corresponding to 34 inspections, are not exposed to pressures over 300 psi. Due to the reduced pressures associated with 14 of the devices, the gravity of the missed inspections is less than that for the remaining 11 devices. The Notice proposed assessing a \$500 penalty for each of the 50 missed inspections. Based on the the circumstances and gravity of the violation, I assess Respondent a civil penalty of \$8,500 (\$250 per missed inspection) for those 14 devices/34 missed inspections and \$8,000 (\$500 per missed inspection) for the remaining 11 devices/16 missed inspections. Thus, the civil penalty for Item 4 has been reduced from \$25,000 to \$16,500. The total assessment for both violations (Items 1 and 4) is now \$29,500.

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.** After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel** (DCC-1), Research and Special Programs Administration, Room 8405, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590-0001.

Questions concerning wire transfers should be directed to: **Valeria Dungee**, Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125; **(405) 954-4719**.

Failure to pay the \$29,500 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of

six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in an United States District Court.

COMPLIANCE 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 hereby ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations.

1. Establish procedures as required by 49 C.F.R. § 195.402(a) for remedial action, in accordance with 49 C.F.R. § 195.401(b).
2. Establish procedures as required by 49 C.F.R. § 195.402(a) with regards to shorted casings, in accordance with 49 C.F.R. § 195.416(a), including the following:
 - a. for the monitoring of casing potentials to detect the presence of shorts (monitor on a calendar year basis, not to exceed 15 months);
 - b. for the determination of a course of action to correct or negate the effects of casing shorts within six months of discovery;
 - c. for verifying that a casing short exists;
 - d. for clearing of the short, if practicable (this must be considered before alternative measures may be used);
 - e. for filling the casing/pipe interstice with high dielectric casing filler or other material which provides a corrosion inhibiting environment, if it is impractical to clear the short;
 - f. providing that if d and e above are determined to be impractical, monitoring the casing with leak detection equipment for leakage at intervals not exceeding 7.5 months, but at least twice each calendar year;

- g. providing that if a leak is found by monitoring casings with leak detection equipment, immediate corrective action to eliminate the leak and further corrosion; and
 - h. providing that in lieu of other corrective actions, monitoring the condition of the carrier pipe using an internal inspection device at specified intervals.
3. Establish procedures as required by 49 C.F.R. § 195.402(a), for consideration of "IR drop" in determining the adequacy of a cathodically protected system, in accordance with 49 C.F.R. § 195.416(a).
 4. Establish procedures as required by 49 C.F.R. § 195.402(a), for inspection of thermal relief devices, in accordance with 49 C.F.R. § 195.428(a).
 5. Submit the appropriate procedures to: Director, Western Region, Office of Pipeline Safety, Research and Special Programs Administration, 12600 West Colfax Avenue, Suite A250, Lakewood, Colorado 80215.
 6. Accomplish these actions within 45 days following receipt of this Final Order. The Regional Director may grant an extension of time for completion of the required action upon receipt of a written request stating the reasons for the extension.

AMENDMENT OF PROCEDURES

The Notice alleged inadequacies in Respondent's anti-drug program manual and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. § 199.7.

After having reviewed the record, I find that Respondent's procedures are inadequate to ensure safe operation of its pipeline system. Pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.237, Respondent is hereby ordered to make the following changes to its procedures.

1. As related to § 199.3, the definition of an accident in your anti-drug program does not provide an adequate definition. Your definition should specify what constitutes an "accident" in accordance with § 195.50.

2. As related to § 199.11(b), (requirements for post-accident testing) your anti-drug program, Drug Testing (4) does not provide an adequate procedure for stating the maximum time limit for testing an "employee" whose performance either contributed to an accident or could not be completely discounted as a contributing factor to an accident. Your procedure should specify 32 hours is the maximum time limit for testing an "employee" in conjunction with post-accident testing.
3. As related to § 199.11(e), requirements for return-to-duty testing, your anti-drug program, Disqualification/Rehabilitation/Discipline of Employees (1) does not specify the maximum length of time which an employee may be tested. Your procedure should specify that an employee is subject to up to 60 months of return-to-duty drug testing.
4. As related to § 199.17(d), requirements for retention of samples and retesting, you anti-drug program, Retesting, does not specify retest detection limits criteria. Your procedure should specify that when retesting a sample, since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT procedures, but equal to or greater than the established sensitivity of the assay, must be reported and considered corroborative of the original positive results.
5. Submit the appropriate procedures to: Director, Western Region, Office of Pipeline Safety, Research and Special Programs Administration, 12600 West Colfax Avenue, Suite A250, Lakewood, Colorado 80215.
6. Accomplish these actions within 45 days following receipt of this Final Order. The Regional Director may grant an extension of time for completion of the required action upon receipt of a written request stating the reasons for the extension.

WARNING ITEMS

The Notice did not propose any penalty for Item 3; therefore, Respondent is warned that should it not take appropriate corrective action and a violation should come to the attention of OPS in a subsequent inspection, enforcement action will be taken.

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

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

/s/Richard B. Felder

Richard B. Felder
Associate Administrator for Pipeline Safety

Date issued: 10/20/98