

APR 22 2010

Mr. Robert Cornelius
Senior Vice President, Operations
Denbury Onshore, LLC
5100 Tennyson Parkway, Suite 3000
Plano, TX 75024

Re: CPF No. 4-2009-5007

Dear Mr. Cornelius:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$46,300, and specifies actions that need to be taken by Denbury Onshore, 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, Southwest 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. R. M. Seeley, Director, Southwest Region, PHMSA

Mr. Vince Murchison, Esquire
Sonnenschein Nath & Rosenthal LLP
2000 McKinney Avenue, Suite 1900
Dallas, TX 75201-1858

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7009 1410 0000 2472 2506]

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

In the Matter of

**Denbury Onshore, LLC,
a Subsidiary of Denbury
Resources, Inc.,**

Respondent.

CPF No. 4-2009-5007

FINAL ORDER

From March 23 to 25 and April 14 to 15, 2009, 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 Denbury Onshore, LLC (Denbury or Respondent).¹ The inspection focused on the Green Pipeline, a 317.5-mile pipeline that originates in Donaldson, Louisiana, and terminates in Hastings, Texas, and the Delhi Pipeline, an 77.9-mile pipeline that originates in Tinsely, Mississippi, and terminates in Dunn, Louisiana. Though still under construction at the time of the inspection, both of these pipelines are designed to transport carbon dioxide for use in tertiary recovery operations in mature oil fields and for carbon sequestration.²

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated May 11, 2009, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 195.222(a) and 195.260 and proposed assessing a civil penalty of \$46,300 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

¹ Denbury Onshore, LLC is a subsidiary of Denbury Resources, Inc. See <http://www.denbury.com> (accessed on Apr. 9, 2010).

² Carbon dioxide, “[a]n inert, noncombustible, odorless gas at normal temperature and pressure conditions[,] . . . has become a valuable resource employed in tertiary oil recovery methods both as a pressurizer and as a solvent to enhance oil recovery.” MANUAL OF OIL AND GAS TERMS, 132 (10th ed. 1997) (citing *Aulston v United States*, 915 F.2d 584 (10th Cir. 1990)).

Denbury responded to the Notice by letters dated May 20, May 22, and June 19, 2009 (Response). Respondent contested the allegations and requested a hearing.³ However, by separate letters dated November 5, 2009 (Supplemental Response), Respondent presented new information on the steps it would take to satisfy the terms of the proposed compliance order and withdrew its request for a hearing, thereby authorizing the entry of this Final Order without further notice.⁴

FINDINGS OF VIOLATION

In its Supplemental Response, Denbury 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. § 195.222(a), which states:

§ 195.222 Welders: Qualification of welders.

(a) Each welder must be qualified in accordance with section 6 of API 1104 (incorporated by reference, see § 195.3) or section IX of the ASME Boiler and Pressure Vessel Code, (incorporated by reference, see § 195.3) except that a welder qualified under an earlier edition than listed in § 195.3 may weld but may not re-qualify under that earlier edition.

The Notice alleged that Denbury violated 49 C.F.R. § 195.222(a) by failing to qualify each welder in accordance with section 6 of API 1104. Specifically, the Notice alleged that 10 of Respondent's welder qualification reports did not indicate the actual values that those welders had achieved during the performance of certain tests. The Notice also alleged that two of those reports showed that Respondent's welders went outside of the acceptable parameters limits established by the company's procedures during their qualification tests. Respondent did not

³ In particular, Denbury argued that the Pipeline Safety Laws and Regulations did not apply to the Green and Delhi Pipelines, because neither was engaged in the transportation of hazardous liquids at the time of the OPS inspection. In the alternative, it further argued that the first allegation of probable violation lacked merit, and that the second allegation of probable violation was the subject of a pending petition for finding or approval. Although Respondent later abandoned these arguments, I note that PHMSA's authority to regulate the construction of natural gas and hazardous liquid pipeline systems is firmly established. 49 U.S.C. § 60102(a)(2)(B) ("The Secretary shall prescribe minimum safety standards for pipeline transportation and pipeline facilities. The standards . . . may apply to the . . . construction of pipeline facilities."); S. REP. NO. 96-182 (1979), *reprinted in* 1979 U.S.C.C.A.N. 1971, 1978 (noting that a modification to the definition of pipeline facility to clarify the agency's authority to regulate construction prior to operation, as proposed in a prior draft of the Pipeline Safety Act of 1979, Pub. L. No. 96-129, 93 Stat. 989 (1979), was not necessary, because "DOT and industry representatives agree that this authority is already implied by the terms of the [Natural Gas Pipeline Safety Act of 1968, Pub. L. No. 90-481, 82 Stat. 720 (1968)].") I also note that PHMSA denied Respondent's petition for finding or approval by letter dated October 9, 2009.

⁴ After submitting its Response, Denbury obtained new counsel, Mr. Vince Murchison, Esquire. Mr. Murchison filed its Supplemental Response.

contest these allegations in its Supplemental Response. Instead, Denbury introduced evidence showing that it had re-qualified seven of its welders after receiving the Notice. It also substantiated the integrity of the welds performed by two other welders who no longer work for the company. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.222(a) by failing to qualify each welder in accordance with section 6 of API 1104.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.260(e), which states:

§ 195.260 Valves: Location.

A valve must be installed at each of the following locations:

(a)

(e) On each side of a water crossing that is more than 100 feet (30 meters) wide from high-water mark to high-water mark unless the Administrator finds in a particular case that valves are not justified.

The Notice alleged that Denbury violated 49 C.F.R. § 195.260(e) by failing to install a valve on each side of a water crossing that is more than 100 feet wide from high-water mark to high-water mark. Specifically, the Notice alleged that the Green Pipeline had 21 water crossings over 100 feet in length, with as many as 26 locations in those areas requiring the installation of valves, and that the Delhi Pipeline had 13 water crossings over 100 feet in length, with as many as 25 locations in those areas requiring the installation of valves.

In its Supplemental Response, Denbury admitted that 19 water crossings on the Green Pipeline and 12 water crossings on the Delhi Pipeline met the criteria in § 195.260(e). Respondent also submitted a work plan for installing valves and taking other measures to ensure the safe operation of those lines. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.260(e) by failing to install a valve on each side of a water crossing that is more than 100 feet wide from high-water mark to high-water mark.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to 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 \$46,300 for the first violation cited above.

Item 2: The Notice proposed a civil penalty of \$46,300 for Respondent's failure to install a valve on each side of a water crossing that is more than 100 feet wide from high-water mark to high-water mark as required by 49 C.F.R. § 195.260(e). In terms of the assessment criteria, Respondent notes that the purpose of the regulation is to protect waterways from contamination, and that a release of carbon dioxide would not have the same adverse environmental impact as a release of petroleum products.

While I agree with that assertion in principle, I cannot ignore the other aggravating factors that are present in this case. Specifically, Denbury does not dispute the fact that it overlooked 31 different locations on the Green and Delhi Pipelines that met the criteria in § 195.260(e), thereby increasing the gravity of the violation. Respondent's history of prior offenses also includes a finding of violation for failing to perform valve inspections on another hazardous liquid pipeline system.⁵ Finally, there is also no indication that it cannot pay the proposed penalty amount, that doing so would impair its ability to stay in business, or that it sought in good faith to comply with the regulation.⁶ Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$46,300 for violation of 49 C.F.R. § 195.260(e).

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$46,300 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.

⁵ *In the Matter of Denbury Onshore, LLC*, C.P.F. 2-2005-2007 (finding that Respondent had violated 49 C.F.R. §§ 195.403(a)-(c) and 195.420(a)-(b)) (available at www.phmsa.dot.gov/pipeline/enforcement).

⁶ Department of Transportation, Part 195-Transportation of Liquids by Pipeline: Requirements for Design, Construction, Operation, and Maintenance, 34 Fed. Reg. 15475, 15480 (1969); *see also In the Matter of Sun Pipe Line Co.*, PHMSA Interpretation, #PI-72-058 (Aug. 22, 1972) (available at <http://www.phmsa.dot.gov/pipeline/regs/interps>).

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 2 in the Notice for violations of 49 C.F.R. §§195.222(a), 195.260(e), respectively. 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. The Director has indicated that Respondent has taken the following actions to address one of the cited violations:

1. With respect to the violation of § 195.222(a) (**Item 1**), Respondent has re-qualified the welders who remain on staff and submitted records verifying the integrity of the welds performed by two other welders who no longer work for the company.

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice for Item 1 are not included in this Order.

As for the remaining compliance terms, 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 § 195.260(e) (**Item 2**), Respondent must implement the two work plans, dated November 5, 2009, and titled Delta-Delhi Pipeline System Configuration Plan and the Green Pipeline System Configuration Plan, that were submitted with its Supplemental Response to ensure the safe operation of the Green and Delhi Pipelines.
2. Respondent must maintain documentation of the safety improvement costs associated with fulfilling the terms of this Compliance Order and submit the total to R. M. Seeley, Director, Southwest Region, PHMSA. Such costs shall 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 administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590. A copy of the petition should also be sent to: Assistant Chief Counsel for Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC

20590. The petition must be received no later than 20 days after service of this Final Order upon the Respondent and must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of the 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 receipt of service.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued