U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

JUN 27 2019

Mr. Mike Prince
Chief Executive Officer
Lotus Midstream, LLC
2150 Town Square Place, Ste 395
Sugar Land, Texas 77479

Re: CPF No. 4-2014-5028

Dear Mr. Prince:

Enclosed please find the Decision on the Petition for Reconsideration filed by your subsidiary, Centurion Pipeline, LP, in the above-referenced case. For the reasons explained therein, the Decision affirms the violations in the Final Order but reduces the total civil penalty to $122,700. When the civil penalty has been paid, this enforcement action will be closed. The Decision constitutes the final administrative action in this proceeding. Service of the Decision is made pursuant to 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Scott Janoe, Esq., Baker Botts, LLP, 910 Louisiana Street, Houston, Texas 77002
Mr. Mike Morgan, General Manager – Operations, Centurion Pipeline, LP, 5 Greenway Plaza, Suite 110, Houston, Texas 77046

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	)	
Centurion Pipeline, LP, **a subsidiary of Lotus Midstream, LLC,**	)	**CPF No. 4-2014-5028**
Petitioner.	)	

DECISION ON PETITION FOR RECONSIDERATION

Between April 2013 and February 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 Centurion Pipeline, LP (Centurion or Petitioner),[1] in Texas, New Mexico, and Oklahoma. Centurion operates approximately 2,500 miles of pipeline transporting crude oil in Texas, Oklahoma, and New Mexico.[2]

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Petitioner, by letter dated November 10, 2014, 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 Centurion had committed six violations of 49 C.F.R. Part 195 and proposed a civil penalty of $165,900 for the alleged violations. The Notice also proposed ordering certain compliance measures to correct one of the alleged violations.

Centurion responded to the Notice by letter dated December 17, 2014 (Response), contested the allegations, and requested a hearing. Centurion submitted additional materials on April 20, 2015 (Supplemental Response). An informal hearing was held on April 30, 2015, in Houston, Texas, before a Presiding Official from the Office of Chief Counsel, PHMSA. After the hearing, Petitioner provided post-hearing statements for the record, dated June 26, 2015 (Closing), and September 4, 2015 (Supplemental Closing). Pursuant to § 190.209(b)(7), the Director submitted a written evaluation of Petitioner's response material on July 28, 2015 (Recommendation).

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[1] Centurion is a subsidiary of Lotus Midstream LLC. Lotus Midstream, LLC website, *available at* http://www.lotusmidstream.com/about-us (last accessed May 10, 2019). At the time of the inspection, Centurion was a subsidiary of Occidental Petroleum Corporation.

[2] This information is reported by Centurion for 2015 pursuant to 49 C.F.R. § 195.49.

On March 30, 2017, pursuant to 49 C.F.R. § 190.213, PHMSA issued a Final Order in this proceeding, finding that Centurion had committed violations of §§ 195.432(b) (Items 1, 2, and 3), 195.202 and 195.264 (Item 4), 195.452(h)(2) (Item 5), and 195.452(h)(4) (Item 6), as alleged in the Notice. The Final Order assessed a reduced civil penalty of $137,100, and ordered corrective action with respect to Item 4, as set forth in the Compliance Order.[3]

In accordance with 49 C.F.R. § 190.243, Centurion filed a timely Petition for Reconsideration (Petition) of the Final Order on April 24, 2017, seeking reconsideration of Items 1-3, 5 and 6 and the civil penalties associated with them.[4] Centurion did not seek reconsideration of Item 4 or the associated Compliance Order. The filing of the Petition automatically stayed payment of the assessed civil penalties pursuant to § 190.243(c), but did not stay the corrective actions required under the Compliance Order. The Compliance Order for Item 4 has been completed, so is not included in this Decision.

Pursuant to 49 C.F.R. § 190.243, an operator may petition the Associate Administrator for reconsideration of a final order issued under § 190.213. A petition must be received no later than 20 days after receipt of the order by the respondent, and must contain a statement of the complaint and an explanation as to why the order should be reconsidered. If the operator requests consideration of additional facts or arguments that were not presented prior to issuance of the final order, the operator must submit the reasons why they were not previously presented. Reconsideration is not a right to appeal or to seek a de novo review of the record. A decision on a petition for reconsideration may be issued without further proceedings. Once issued, that decision becomes the final administrative action in the enforcement proceeding.

In its Petition, Centurion continued to argue against PHMSA's interpretations of 49 C.F.R. §§ 195.432 and 195.452 in Items 1-3, 5 and 6, repeating many of the same arguments and citing the same information contained in Petitioner's previous submissions and addressed in the Final Order. Centurion also presented certain new information and new arguments, but failed to present a valid rationale for why this new information and arguments should be considered. PHMSA is not obliged to consider them and may dismiss those portions of the Petition without further consideration. However, despite these procedural grounds for dismissal, I have considered the substance of the Petition as discussed in greater detail below and still find it lacking. Finally, Centurion characterized the Petition as an attempt to clarify certain of its previous statements, which Petitioner asserted PHMSA "may have misinterpreted and/or misapplied."[5]

Discussion

A. Inspection of In-Service Breakout Tanks (49 C.F.R. 195.432)

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[3] Centurion Pipeline, LP CPF No. 4-2014-5028 (March 30, 2017), *available at* https://primis.phmsa.dot.gov/comm/reports/enforce/FOCPEvent_opid_0.html?nocache=7530#_TP_1_tab_3.

[4] Petition, at 1.

[5] Petition, at 2.

Item 1 in the Final Order found that Centurion 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 above-ground breakout tanks according to API Std 653 (except section 6.4.3, Alternative Internal Inspection Interval) (incorporated by reference, *see* § 195.3). However, if structural conditions prevent access to the tank bottom, its integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3)...[6]

The Final Order found that Petitioner violated 49 C.F.R. § 195.432(b) by failing to conduct monthly Routine In-Service Inspections of breakout Tanks 6832 and 6833 according to American Petroleum Institute Standard 653 (API 653) and assessed a civil penalty of $20,800 for the violation.[7] At the time of its inspection, PHMSA requested tank-inspection reports for Petitioner's breakout tanks for years 2010 through 2013; however, Centurion could not provide monthly inspection reports for breakout Tanks 6832 and 6833 for calendar year 2010, January 2011, February 2011, March 2011, April 2011, and August 2011. PHMSA found that the absence of records supported the finding of violation, particularly since Centurion was required to keep records of monthly breakout-tank inspections pursuant to § 195.404(c)(3).[8]

In the Petition, Centurion contended that Item 1 of the Final Order should be withdrawn for lack of sufficient evidence. Centurion acknowledged "in retrospect" that it may not have provided a sufficiently detailed explanation of the evidence it had provided at the hearing to show that the company had complied with the requirement to conduct monthly visual inspection of the tanks and that it did not have records for 37 of the 1,248 required inspections for the five tanks at the company's Wasson Facility. Centurion presented four objections to the finding of violation: (1) that "standing alone, evidence of missing records is not proof that an inspection was not performed – only that a record was not kept;"[9] (2) that the company had a robust pipeline inspection program, as well as other compliance inspection programs that looked for similar issues, and therefore it was "less likely" that a violation had occurred; (3) that Centurion's breakout Tanks 6832 and 6833 were co-located with other tanks for which Centurion had records of the same Routine In-Service Inspections during the relevant time period; and (4) that Centurion had performed and documented visual inspections for breakout Tanks 6832 and 6833

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[6] API 653, Section 6.3.1.2, states that the length of time between Routine In-Service Inspections shall not exceed one month.

[7] The Notice originally proposed civil penalty of $42,400 for Item 1, however, the penalty was reduced to $20,800 for the reasons set forth in the Final Order (at page 12).

[8] Section 195.404(c)(3) requires operators to maintain a record for each required inspection.

[9] Petition, at 11.

that "were essentially identical" to those that were required under API 653.[10] Based on these assertions, Centurion contended that the preponderance of the evidence supported the conclusion that the company had conducted all of the required monthly Routine In-Service Inspections but had simply failed to maintain adequate records of those inspections.[11]

I disagree. Centurion previously raised argument (1) in response to the Notice and PHMSA rejected it in the Final Order. Specifically, PHMSA found that Petitioner's failure to have any records of performing the required inspections constituted credible evidence that Centurion did not perform the inspections as required. As noted in the Final Order, the company "presented no evidence that the inspections actually took place." If there had been affidavits or other evidence presented at the hearing that supported Centurion's claim that the inspections had actually taken place, then perhaps there would be a closer question of whether PHMSA had met its burden of proving the violation. However, in the absence of such evidence, PHMSA was justified in relying upon a lack of records that Centurion was separately obliged to keep under § 195.404(c)(3) and Centurion's own procedures.[12]

With regard to arguments (2), (3) and (4), Petitioner attempts to demonstrate compliance with § 195.432(b) and the API 653 inspection requirements by presenting evidence that is either unsubstantiated or not determinative of compliance. For example, the fact that Petitioner has procedures for the performance of tank inspections does not demonstrate the procedures were followed or that the tank inspections took place as required by the regulation. Just because an operator has procedures to perform a certain task is immaterial to whether such tasks were actually performed or performed properly. Similarly, the location of breakout Tanks 6832 and 6833 near other tanks for which Centurion conducted monthly Routine In-Service Inspections in January 2010 through April 2011 and August 2011 also does not demonstrate that the requisite API 653 inspection was performed on Tanks 6832 and 6833 during the period at issue. Having a "robust, systematic approach" to inspections also does not demonstrate that the required inspections were performed.

Finally, with regard to Centurion's argument that it performed and documented other visual inspections that were "essentially identical" to those required by API 653, I note that Section 6.3.1.3 of API 653 reads:

> This routine in-service inspection shall include a visual inspection of the tank's exterior surfaces. Evidence of leaks; shell distortions; signs of settlement; corrosion; and condition of the foundation, paint

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[10] When a civil penalty is assessed for more than one instance of a violation (e.g., 37 tanks with missed inspections), each additional instance beyond the first typically elevates the total penalty by less than the amount assessed for the first instance, with each additional instance representing a smaller increase in proportion to the total. *See, e.g.*, Plains Pipeline, LP, CPF No. 4-2013-5007, n.61, 2015 WL 4397455, at *17 (May 22, 2015) (explaining that each additional tank out of compliance elevated the civil penalty by less than the amount assessed for the first).

[11] Petition, at 11.

[12] Pipeline Safety Violation Report (Violation Report), (October 23, 2014) (on file with PHMSA), at 4.

> coatings, insulation systems, and appurtenances should be documented for follow-up action by an authorized inspector.

I have reviewed the Wasson Tank Inspection Records for Tanks 6832 and 6833 that have been provided by Petitioner and attached as Exhibit L to the Petition.[13] These records, however, do not address the requirements of API 653, nor do they specify that an inspection was actually performed. The records also do not document the additional inspections such as environmental, health and safety reviews, monthly tank gauging, and mixer and thief-hatch checks that Centurion contends took place.

In summary, the record supports, by a preponderance of the evidence, the finding that Petitioner failed to comply with § 195.432(b) and the API 653 Routine In-Service Inspection requirements.

Petitioner also asked that the civil penalty of $20,000 for this Item either be eliminated or reduced. Centurion did not make any explicit argument in its Petition as to why the penalty should be reduced under PHMSA's penalty assessment criteria, but I have nevertheless reviewed both the penalty criteria and how they were applied for this Item. Finally, I have reviewed the Final Order, which already reduced the civil penalty from the proposed amount of $42,400 down to $20,800 on the ground that the company "discovered the non-compliance and took documented action to address the issue" prior to the PHMSA inspection.[14] Finding no reason to modify the findings or to reduce further the penalty assessed in the Final Order, PHMSA affirms the violation of § 195.432(b) and the reduced civil penalty of $20,800.

Item 2 in the Final Order found that Centurion violated 49 C.F.R. § 195.432(b), as quoted above, by failing to conduct "External Inspections"[15] of four breakout tanks (Tanks 6688, 6965, 6948, and 2722) within the required five-year interval, in accordance with API 653, and assessed a civil penalty of $23,600 for the violation. Specifically, it found that with respect to Tank 6688, Centurion had performed an External Inspection on February 5, 2008, but not again until March 7, 2014, exceeding the five-year interval by 394 days. With respect to Tank 6965, the Final Order found that Centurion had performed an External Inspection on August 7, 2008, but not again until October 10, 2013, exceeding the five-year interval by 63 days. With respect to Tank 6948, the Final Order found that Centurion had performed an External Inspection on June 10, 2008, but not

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[13] Exhibit L to the Petition. This new evidence was presented for the first time with the Petition. Under 49 C.F.R. § 190.243(b), if the Petitioner seeks consideration of additional facts or arguments, "the respondent must submit the reasons why they were not presented prior to issuance of the final order." The Petitioner failed to present any plausible reason why this evidence was not presented earlier, except that "Centurion did not anticipate PHMSA's interpretations on certain legal and factual issues." Response, at 2. Such a rationale, of course, could be made for virtually any new evidence that an operator may seek to present for the first time in a petition. Nevertheless, this new evidence has been considered and is found to be irrelevant.

[14] Final Order, at 12.

[15] Section 6.3.2.1 of API 653 states: "All tanks shall be given a visual external inspection by an authorized inspector. This inspection shall be called the external inspection and must be conducted at least every 5 years or RCA/4N years (where RCA is the difference between the measured shell thickness and the minimum required thickness in mils, and N is the shell corrosion rate in mils per year) whichever is less. Tanks may be in operation during this inspection."

again until March 7, 2014, exceeding the five-year interval by 258 days. Finally, with respect to Tank 2722, the Final Order found that Centurion had performed an External Inspection on October 23, 2007, but not again until June 21, 2013, exceeding the five-year interval by 240 days.

In its Petition, Centurion stated that it did not seek reconsideration of the finding of violation for three of the four tanks (Tanks 6688, 6948, and 2722), but only for Tank 6965, on the basis that it had complied with § 195.432(b) and API 653 because the required External Inspection was performed within five "calendar years." Petitioner argued: (1) that API 653 uses the colloquial term "year;" (2) that commentary from the API Committee (Committee) and legal precedent support the proposition that the term "year" may be understood to mean "calendar year" for compliance purposes; and (3) that PHMSA improperly interpreted API 653 as cited in a previously-issued administrative final order.[16]

Centurion previously raised arguments (1) and (2) in response to the Notice and PHMSA rejected them in the Final Order. Specifically, PHMSA found that in a 2010 enforcement action, the agency had determined that the five-year inspection period required by § 195.432(b) meant five periods of 365 days each. In that case, PHMSA found that a pipeline operator had violated § 195.432(b) when the company exceeded an inspection interval of five consecutive 365-day periods, even though the operator had performed an inspection within five calendar years.[17]

Petitioner's contention regarding development of the API 653 consensus standard was also rejected. Petitioner had argued that a Committee-member representative from a pipeline operator had proposed changing the language in API 653 to make "years" effectively be "calendar years."[18] However, this proposed change from "years" to "calendar years" was not adopted, as seen by the plain language of Section 6.3.2.1 of API 653. Therefore, Centurion's argument that API 653 should be read to mean "calendar years" fails because the proposal to make such a change was not accepted by the Committee. Moreover, a proposal by an API committee member in the development of a standard is not persuasive or controlling on PHMSA's interpretation of its own regulations.

Furthermore, I find Petitioner's reliance on two federal cases in support of its argument for Centurion's interpretation of the term "year" to be unpersuasive and irrelevant. Specifically, Petitioner argues that courts permit the construction of a term to its natural or ordinary meaning absence a statutory definition.[19] While neither the Federal Pipeline Safety Laws nor 49 C.F.R. Parts 190-199 defines the term "year," PHMSA has previously interpreted it to be 365 days in its adjudication of enforcement matters. Additionally, Black's Law Dictionary defines "year" as "a consecutive 365-day period beginning at any point" or "a span of twelve months."[20] Similarly,

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[16] Enbridge Pipelines (Ozark), L.L.C., CPF No. 4-2010-5008, 2010 WL 65316*38 (Aug. 17, 2010).

[17] *Id.* (finding violations of the five-year inspection interval for a number of tanks that were inspected within five calendar years, but not within five periods of 365 days).

[18] Petition, at Exhibit C. See also Supplemental Response, at 8-9 and Appx. B.

[19] Petition, at 10.

[20] Black's Law Dictionary (10th ed. 2014), which notably provides a separate definition for "calendar year."

Merriam-Webster's definition of "year" indicates that it is a period "required for one revolution of the earth around the sun."[21]

Finally, with regard to argument (3), Petitioner argued that PHMSA should not rely on the 2010 Final Order because the operator in that case did not contest the violation and agreed to correct the noncompliance. Again, I disagree. I find no reason why an uncontested finding of violation in a published final order should somehow be discounted or dismissed as precedent just because an operator chose not to challenge the facts or law underlying an allegation of violation. Further, I find that even were PHMSA to conclude that the 2010 final order is merely informative, the earlier enforcement action still provided fair notice to Centurion and the regulated community that PHMSA has interpreted § 195.432(b) and API 653 to mean that the visual external-inspection interval must not exceed five consecutive periods of 365 days each, rather than five *calendar* years.

Accordingly, finding no reason to modify the findings in the Final Order, PHMSA affirms the finding of violation of § 195.432(b) and the civil penalty of $23,600.

Item 3 in the Final Order found that Centurion violated 49 C.F.R. § 195.432(b), as quoted above, by failing to make Ultrasonic Thickness (UT) measurements of breakout tanks at intervals not to exceed five years, in accordance with API 653, and assessed a civil penalty of $23,600 for the violation. As discussed above, with respect to Tank 6688, it found that Centurion had performed an External Inspection on February 5, 2008, but not again until March 7, 2014, exceeding the five-year interval by 394 days. With respect to Tank 6965, it found that Centurion had performed an External Inspection on August 7, 2008, but not again until October 10, 2013, exceeding the five-year interval by 63 days. With respect to Tank 6948, it found that Centurion had performed an External Inspection on June 10, 2008, but not again until March 7, 2014, exceeding the five-year interval by 258 days. Finally, with respect to Tank 2722, it found that Centurion had performed an External Inspection on October 23, 2007, but not again until June 21, 2013, exceeding the five-year internal by 240 days.

In the Petition, Centurion argued that the finding of violation in Item 3 should be withdrawn because the company knew the corrosion rates for its tanks, therefore making them subject to the longer interval for UT testing found in Section 6.3.3.2.b of API 653, and not the five-year interval for tanks with unknown corrosions rates under Section 6.3.3.2.a.[22] Specifically, Centurion contended that it had calculated the corrosion rates for the tanks at issue in accordance with API 653 by comparing the actual wall-thickness data for each tank with past and historical tank records. Centurion argued that its calculation method was consistent with API 653 Section 6.3.3.1, which states, in relevant part: "External, ultrasonic thickness measurements of the shell

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[21] Merriam Webster Dictionary website, *available at* https://www.merriam-webster.com/dictionary/year (last accessed on May 10, 2019).

[22] Section 6.3.2.2(a) of API 653 states: "When used, the ultrasonic thickness measurements shall be made at intervals not to exceed the following: (a) When the corrosion rate is not known, the maximum interval shall be 5 years. Corrosion rates may be estimated from tanks in similar service based on thickness measurements taken at an interval not exceeding 5 years."

can be a means of determining a rate of uniform general corrosion while the tank is in service." Finally, Centurion contended that PHMSA had not cited to any evidence to show that Centurion's methodology was inconsistent with API 653.

With its Petition, Centurion supplemented the evidentiary record with an API 653 Internal Inspection Report for Tank 6688; the remaining records had been previously provided and considered by PHMSA in making its determination in the Final Order. Nevertheless, I have carefully reviewed all of the evidence and find that Centurion has again fallen short of providing PHMSA with evidence demonstrating that it had actually calculated the corrosion rates, and therefore knew the corrosion rates of the tanks at issue at the time of the PHMSA inspection. The records provided by Centurion show that Petitioner did not calculate the corrosion rates in 2007 and 2008 when it conducted those External Inspections. The records with calculated corrosion rates are from 2013 and 2014, and are only for Tanks 6965 and 2722.[23] As a matter of fact, the API 653 In-Service Inspection Report with the calculated corrosion rate for Tank 6865 was dated March 7, 2014, which was *after* the PHMSA inspection. Additionally, these records show that Centurion did not calculate the corrosion rate for all the "courses" of the tank, even though the company had the necessary data to perform said calculations. Finally, Centurion conceded in its Petition that it does not have records of calculated corrosion rates.[24] Therefore, since Centurion did not know the corrosion rates for Tanks 6688, 6968, 6948, and 2722 when it performed the External Inspections, those tanks were subject to the five-year interval of API 653 Section 6.3.3.2.a.

Finding no reason to modify the findings in the Final Order, PHMSA affirms the violation of § 195.432(b) and the civil penalty of $23,600.

B. Pipeline Integrity Management in High Consequence Areas (49 C.F.R. 195.452)

Item 5 in the Final Order found that Centurion violated 49 C.F.R. § 195.452(h)(2), which states:

> **§ 195.452 Pipeline integrity management in high consequence areas.**
> (a) ....
> (h) *What actions must an operator take to address integrity issues?...*
> (2) *Discovery of condition.* Discovery of a condition occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator can demonstrate that the 180-day period is impracticable.

The Final Order determined that Petitioner violated 49 C.F.R. § 195.452(h)(2) by failing to obtain sufficient information about an anomalous condition to determine, no later than 180 days after an integrity assessment, if the condition presented a potential threat to the integrity

[23] Pre-Hearing Brief, at Appendix A.

[24] Petition, at 9, FN 4.

of the pipeline and assessed a reduced civil penalty of $28,800. The record shows that on December 3, 2011, Petitioner completed an integrity assessment using a T.D. Williamson, Inc. (TDW) SpirALL Magnetic Flux Leakage Multi Data Set tool (SMFL MDS tool or the tool) as part of its continual reassessment of the 16-inch Bretch to Cushing #2 system. The 180-day deadline to obtain sufficient information was therefore May 31, 2012. Although Petitioner experienced a 40-day period prior to the 180-day deadline during which it believed the data might be unusable, the Final Order determined that such delay did not excuse it from compliance with § 195.452(h)(2).

In the Petition, Centurion argued that the finding of violation for Item 5 should be withdrawn because (1) the data issues, overall complexity, and novelty of the tool run made it impracticable to discover the condition within 180 days, and (2) relevant PHMSA precedent supported Centurion's position.

With regard to argument (1), § 190.243 requires a petitioner to submit the reasons why any new facts or arguments were not presented prior to issuance of the final order. Centurion has offered no explanation as to why it failed to raise this impracticability argument previously, and, in fact, now expressly contradicts its earlier statements at the hearing and in its Post-Hearing Brief, which dismissed impracticability. For example, Centurion previously stated:

> This case does not turn on the "impracticability" provision in § 195.452(h)(2). At the time the 16-inch SMFL MDS was launched, no one at Centurion believed it would be impracticable to meet the 180-day deadline. At the time the pig was retrieved in a damaged condition leading to TDW's declaration of a "Failed Run," impracticability was not an issue because at that time the 180-day clock effectively reset, and Centurion had to consider a new run. When Centurion shared with TDW its approach to potentially utilize the data from the damaged tool and TDW determined there was "usable data" on January 27, 2012, impracticability ceased to be an issue because Centurion met the 180-day discovery timeframe. Thus, there was no point in this admittedly rare set of circumstances where Centurion believed that completing the discovery process within 180 days after the integrity assessment was impracticable. [25]

Based on this prior representation, I find that Centurion has waived its right to raise the argument of impracticability. Notwithstanding this finding, I have reviewed and carefully considered Centurion's new impracticability claim. PHMSA has previously held that "generally it is not an impracticability where the vendor delay could have been anticipated ahead of time."[26] Centurion states that the "impracticability of meeting the 180-day deadline stems from Centurion's use of state of the art technology in its pipeline integrity program."[27] Centurion claims that it could not

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[25] Post-Hearing Brief, at 20; Hearing Transcript, at 107: 16-18.

[26] *ExxonMobil Pipeline Co.*, CPF 4-2013-5027, 2015 WL 7175715, at *20 (October 1, 2015).

[27] Petition, at 7.

have foreseen the length of time it would take to gather and analyze the data from the in-line inspection (ILI) run. Centurion emphasized in the record that it used (1) a complex, newly-commercialized ILI technology tool;[28] (2) the tool collected "the largest data set ever amassed in a single run by TDW;"[29] and (3) the run was the longest in TDW's history.[30]

PHMSA has previously concluded that while a "delay by a tool vendor might render discovery within 180 days impracticable, an operator's claim of impracticability requires considering all the relevant facts of the delay. Where an operator's own actions contributed to the delay, as in the present case, PHMSA does not consider that the operator is excused from compliance due to an impracticability."[31] Here, I find that Centurion could have predicted that the 180-day deadline would be problematic. Factors such as a new tool that had never been run before, the large amount of data to be collected by the vendor, and the longest run in the vendor's history, on their face, contain enough uncertainty and the possibility of difficulties to persuade me that Centurion could have anticipated a delay ahead of time and taken appropriate measures in advance of the inspection to ensure timely discovery, as required by the regulation.

Further, Centurion claims that the Final Order "misquotes and misapplies relevant precedent." Petitioner cites to a lengthier quote from *In the Matter of BP Pipelines (North America) Inc.*, which it alleges changes the application of PHMSA precedent.[32] On the contrary, I find that the complete quote in *BP Pipeline* supports PHMSA's reasoning that Centurion had useable data collected on the date of the tool run. Furthermore, PHMSA precedent has established that it is the operator's responsibility to obtain sufficient information under § 195.452(h)(2), except where impracticable; in this case, however, Centurion fell short of doing so within the 180-day timeframe.[33] Therefore, I reject this argument that PHMSA's established precedent supports Centurion's position.

Finding no reason to modify the findings in the Final Order, PHMSA affirms the violation of § 195.452(h)(2). As for the civil penalty, I have reviewed the assessment criteria cited in the Violation Report, along with the evidence and arguments presented, and find that a reduction in

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[28] Post-Hearing Brief, at 20; Petition, at 6-7; Hearing Transcript, at 33:9-13

[29] Post-Hearing Brief, at 20; Petition, at 6; Hearing Transcript, at 35:11-12, 47:12-21, 54:12-20.

[30] Post-Hearing Brief, at 20; Petition, at 6; Hearing Transcript, at 46:5-12, 55:7-8.

[31] *ExxonMobil Pipeline Co.*, CPF 4-2013-5027 (Decision on Petition for Reconsideration), 2016 WL 2753318, at *9 (April 1, 2016).

[32] "[D]iscovery is not tied solely to the date of the tool run but to the fact that at the completion of a tool run there are assessment results from which an operator can obtain sufficient information." *BP Pipelines (North America), Inc.*, CPF No. 3- 2005-5030, 2006 WL 7129217, at *6 (Sept. 6, 2006)).

[33] "Even though § 195.452(h)(2) did not require Respondent to receive a final report within 180 days, it did require Respondent to obtain 'sufficient information,' which means enough information to allow an operator to accurately and reliably identify, locate, validate, and evaluate pipeline anomalies detected by the integrity assessment and to properly classify them for repair, if necessary, under § 195.452(h)." *Alyeska Pipeline Service Company*, CPF No. 5-2006-5018, Final Order, at 4-5 (issued Jan. 13, 2010)

the penalty for *good faith* is warranted for this Item. Specifically, while Centurion's use of new and innovative ILI technology does not excuse the company from failing to comply with § 195.452(h)(2), it does provide a reasonable rationale for Centurion's delay in meeting the 180-day deadline for discovery. Accordingly, a reduced civil penalty of $14,400 is assessed for the violation.

Item 6 in the Final Order found that Centurion violated 49 C.F.R. § 195.452(h)(4), which states:

> **§ 195.452 Pipeline integrity management in high consequence areas.**
> (a) ....
> (h) *What actions must an operator take to address integrity issues?...*
> (4) *Special requirements for scheduling remediation* -- (i) *Immediate repair conditions.* An operators' evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce the 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 formulas referenced in paragraph (h)(4)(i)(B) of this section. If no suitable remaining strength calculation method can be identified, an operator must implement a minimum 20 percent or greater operating pressure reduction, based on actual operating pressure for two months prior to the date of inspection, until the anomaly is repaired. 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 (incorporated by reference, see § 195.3) and PRCI PR-3-805 (R-STRENG) (incorporated by reference, *see* § 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.

The Final Order found that Petitioner violated 49 C.F.R. § 195.452(h)(4) by failing to lower the operating pressure or shutting down the pipeline upon discovering six immediate-repair conditions and assessed a civil penalty of $40,300 for the violation. Specifically, PHMSA found that upon discovering six immediate-repair conditions on July 11, 2012, Centurion failed to reduce the operating pressure or shut down the pipeline until it completed the repairs on August 3, 2012. The conditions were classified as immediate-repair conditions, which prompted Petitioner to schedule excavations to validate the conditions. However, the company failed either "to reduce operating pressure or shut down the pipeline" until the company could

complete the repair.[34] Furthermore, Centurion had enough information to classify the conditions prior to excavation and did in fact classify them as immediate repairs, thereby obligating the company to reduce operating pressure or shut down the pipeline even if the classification turned out to be a conservative estimate.

In the Petition, Centurion argued that the finding of violation in Item 6 should be withdrawn for the following reasons: (1) Centurion's ANSI / ASME Standard B31.4 (Std B31.4) calculations yielded a safe operating pressure that was higher than the operating pressure in use at the time; and (2) the allegation of violation runs contrary to PHMSA's own guidance contained in the preamble of the 2002 final rule amending 49 C.F.R. § 195.452(h)(4), which indicated that "pressure reductions should be based on an engineering evaluation..... Centurion performed that calculation and operated its pipeline at a safe operating pressure below the operating pressure yielded by the required calculation."[35]

With regard to argument (1), Centurion now contends that it provided evidence of its Std B31.4 calculations for the record and that this evidence was not properly considered by PHMSA in the Final Order.[36] But this argument was not presented prior to issuance of the final order.[37] Despite being provided ample opportunity to raise this argument of its Std B31.4 calculations yielding a safe operating pressure prior to the Final Order, such as in its pre- and post-hearing submissions or at the hearing, Centurion failed to do so and is now raising this argument for the first time without explaining why it was not presented previously. Nevertheless, I find that Petitioner's argument falls short of demonstrating compliance with § 195.452(h)(4).

Section 195.452(h)(4)(i) requires an operator to temporarily reduce pressure or shut down the pipeline upon discovery of an immediate-repair condition, until the condition is repaired. The Final Order determined that Centurion should have reduced the operating pressure or shut down the affected pipeline when it identified six conditions as immediate-repair conditions on July 11, 2012. The records produced by Centurion fail to demonstrate that it took such action in accordance with § 195.452(h)(4). Centurion was required to reduce the operating pressure to a minimum pressure not less than twenty percent of the highest operating pressure occurring at the anomaly's locations during the preceding sixty days.[38] Pursuant to Centurion's pressure-reading charts from the preceding two months, the highest discharge pressure occurred on June 5, 2012 at approximately 700 psi, which means Centurion was required to reduce pressure to 140 psi. However, the discharge operating pressure for the affected immediate-repair conditions from July 12, 2012, to August 3, 2012, ranged from approximately 480 psi to 620 psi, higher than the

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[34] Final Order, at 11.

[35] Petition, at 3-4.

[36] *See* Petitioner's Exhibit F. I note that these records were previously attached to OPS' Violation Report in support of Item 6. (*See also* PHMSA Violation Report, dated October 23, 2014, at 310-319.)

[37] 49 C.F.R. § 190.243(b).

[38] Section 7.1.2, Action Required Upon Discovery of an Immediate Repair Condition, Centurion's Integrity Management Plan (IMP).

safe pressure permitted by the regulation.[39] Therefore, Centurion failed to reduce the operating pressure to a minimum pressure not less than twenty percent of the highest operating pressure occurring in the preceding sixty days in accordance with its IMP procedures or § 195.452(h)(4).

With regard to argument (2), Centurion is again raising a new argument without indicating why it failed to previously raise it prior to issuance of the Final Order. Specifically, Centurion contends that PHMSA is acting contrary to its own guidance from the 2002 final rule that amended § 195.452(h)(4).[40] Specifically, Petitioner relies on a limited statement within the preamble, without providing the full context of PHMSA's statement, which reads as follows:

> [PHMSA] agree[s] that pressure reductions should be based on an engineering evaluation, and changed the final rule accordingly. Although it is appropriate to base the pressure reduction on the remaining wall thickness for corrosion, this may not be the best method on which to base a pressure reduction for dents and gouges. We modified the requirement so that an operator must calculate the temporary reduction in the operating pressure using the formula in section 451.7 of ASME/ANSI B31.4.[41]

As previously discussed, Petitioner does not demonstrate how the determination in the Final Order or the above analysis runs contrary to the preamble language, which dealt with the issue of the proper amount of a pressure reduction. The allegation of violation here does not involve the *amount* of a pressure reduction but whether one was taken at all. The evidence is clear in this case that Centurion neither took a pressure reduction nor shut down the pipeline in the face of a potentially serious safety risk. The language of the regulation is clear: the operator must take one action or the other. Additionally, Petitioner's argument is contrary to the clear language in its own IMP procedures and the plain language of the code. Therefore, I conclude Centurion's argument is without merit.

Finding no reason to modify the findings in the Final Order or the amount of the assessed penalty, PHMSA affirms the violation of § 195.432(h)(4) and the civil penalty of $40,300.

Conclusion

Based on a review of the record and the information provided in the Petition, I hereby deny the Petition in part and grant it in part, for the reasons set forth above.

Payment of the reduced civil penalty of $122,700 for Items 1, 2, 3, 5 and 6 is now due and must be made within 20 days of service of this Decision. The payment instructions were set forth in detail in the Final Order. Failure to pay the $122,700 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

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[39] *Id.*

[40] 67 FR 1650, 1654-1655.

[41] *Id.*

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 United States District Court.

This Decision constitutes final agency action taken by PHMSA in the enforcement proceeding. The terms and conditions of this Decision are effective upon service in accordance with 49 C.F.R. § 190.5.

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

JUN 2 7 2019
Date Issued