



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

November 19, 2021

VIA ELECTRONIC MAIL TO: m.prince@lotusmidstream.com

Mr. Michael Prince
President and Chief Executive Officer
Lotus Midstream, LLC
2150 Town Square Place, Suite 395
Sugar Land, Texas 77479

Re: CPF No. 4-2021-005-NOPV

Dear Mr. Prince:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$72,000, and specifies actions that need to be taken by Centurion Pipeline, LP, 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 e-mail is effective upon the date of transmission as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

ALAN KRAMER
MAYBERRY

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KRAMER MAYBERRY
Date: 2021.11.19
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Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Michael Morgan, Vice President of Operations & Engineering, Centurion Pipeline, LP,
michael_morgan@centurionpl.com
Mr. Cutty Cunningham, Director of Integrity Management, Centurion Pipeline, LP,
cutty_cunningham@centurionpl.com

CONFIRMATION OF RECEIPT REQUESTED

In the Matter of

CPF No. 4-2021-005-NOPV

² Centurion requested an extension of time to respond to the Notice on March 5, 2021. The Southwest Region Director granted the extension through April 4, 2021.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(f)(3) which states, in relevant part:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) ...

(f) *What are the elements of an integrity management program?* An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program:

(1) ...

(3) An analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure (see paragraph (g) of this section);

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(f)(3) by failing to include in its integrity management program (IMP) an analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure. Specifically, the Notice alleged that Centurion's risk analysis process, outlined in its IMP, considers the consequences of a failure on the line pipe in Centurion's system, but fails to consider the consequences of a failure of any facility components in the system. The Notice also alleged Centurion's Pipeline and Facility Integrity Manager (PFIM), which Centurion uses to determine the risk rankings of pipeline segments and assess the benefits of preventative and mitigative measures on the risk of the pipeline segments, does not consider facility components like breakout tanks and pumps in the algorithm used to calculate risk.

In its Response, Centurion argues it does consider the risks of releases from facilities in its system in its Spill Prevention, Control and Countermeasure (SPCC) plans for its facilities. Centurion argues the SPCC plans contain risk mitigation counter measures and control measures to minimize the possibility of a release of oil from facility boundaries. Centurion also states that its risk analysis program uses information from different sources and integrates all available information in the risk algorithm.

Section 195.452(f) includes the required elements of every integrity management plan. Of those elements is a complete analysis of all information available to each operator about all components of its system that could affect an HCA and the consequences of failures on its

system.³ Centurion does not contest that Section 4 of its Integrity Management Program Manual titled, Risk Analysis, fails to incorporate information regarding consequences of facility failures on Centurion's system in its analysis process. Rather, Centurion states that facility failures are considered in its SPCC plans. Section 4 of the Manual makes no reference to the incorporation of information from the SPCC in conducting analyses of consequences of failures on Centurion's system. Further, Centurion did not provide any evidence showing one complete analysis of both line pipe and facilities was performed in accordance with the regulation, which requires one analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(f)(3) by failing to include in its IMP an analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e) which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) ...

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by § 195.401(b). However, if the deficiency involves a pipeline in an integrity management program under §195.452, you must correct the deficiency as required by § 195.452(h).

The regulation references § 195.401(b), which states:

§ 195.401 What must I do to monitor external corrosion control?

(a) ...

(b) An operator must make repairs on its pipeline system according to the following requirements:

(1) *Non Integrity management repairs.* Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e) by failing to correct any identified deficiency in corrosion control as required by § 195.401(b). Specifically, the Notice alleged that Centurion identified 22 test points that did not meet cathodic protection (CP) criteria

³ Part 195 defines "pipeline" as all parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. Section 195.452(f)(1) requires an identification of all pipeline segments that could affect a high consequence area. Section 195.452(f)(3), therefore, requires an operator to integrate all available information concerning the entire pipeline, including non linear facilities, such as pump stations and breakout tanks. *See* In the Matter of Rocky Mountain Pipeline System, CPF No. 5-2004-2006, 2006 WL 4488857, at *2 (Dec. 11, 2006).

on its 12-inch Cedar Canyon to JAL pipeline segment, a non-HCA segment, in 2018, 2019, and 2020. The Notice alleged that Centurion failed to correct the deficiencies in accordance with § 195.401(b), which requires that any condition that could adversely affect the safe operation of a pipeline system be corrected within a reasonable time. Finally, the Notice alleged Centurion also failed to follow its own Corrosion Control Manual by not applying the 100 millivolt shift criteria after the negative 0.85-volt criteria was not achieved, until corrective actions were planned to remediate the corrosion control deficiency.

In its Response, Centurion does not contest that numerous test points did not meet corrosion control criteria from 2018 to 2020, but argues Centurion did not fail “to meet any discrete regulatory requirement.” Centurion provided a detailed timeline of activities related to the corrosion control deficiencies on the Cedar Canyon to JAL segment beginning in August 2017 and ending in March 2021. Centurion argues the actions outlined in its timeline show it took actions to install CP systems that were “progressive and reasonable.”

In Centurion’s timeline of events in the Response, Centurion explains the actions it took to address the test points that did not meet the required criteria beginning on the segment’s in-service date of August 20, 2017. Centurion states it first discovered that 42 out of 48 test points were below the required criteria in January 2018. Centurion states that “system rectifiers were adjusted at this time to provide more output,” but does not report the results of that action.⁴ In September 2018, Centurion states it installed a new ground bed on the JAL station end of the segment to improve CP coverage, but reported the next survey conducted in January 2019 showed that 48 of 48 test points were deficient. The next action Centurion took was in November 2019 when it conducted a close interval survey (CIS) and the results were used to select locations for two new rectifiers and ground beds along the segment. Centurion states that permits were required from the New Mexico Bureau of Land Management (BLM) and that Excel Energy, the electric contractor, reported to Centurion an initial denial of the permit applications. Next, in January 2020, Centurion’s third survey showed 22 of 48 test points were deficient. Centurion reports it ran an in-line inspection (ILI) tool in October 2020 that showed no significant external corrosion anomalies along the 22 deficient test points. In November 2020, Centurion installed the new ground beds and rectifiers and states they could not be energized due to electric power and COVID-19 restrictions. Centurion reports that “negotiations between the electric company and BLM broke down in late 2020,” but the permits were ultimately granted in “early 2021.” The new rectifiers and ground beds were fully energized in March 2021 and the test points all showed criteria was met on March 18, 2021.

While Respondent contends the phrase “reasonable period of time” in § 195.401(b) is not a discrete regulatory requirement, previous PHMSA final orders have interpreted the phrase to mean that a deficiency must be remediated before the next required survey, which is generally no longer than 15 months from the time of discovery, the maximum time allowed between annual

⁴ Centurion Pipeline, LP’s Response to the Notice (April 1, 2021), at 3. Respondent contended the low readings were “only 5 months after the in-service date of the pipeline, so the low readings at this time were acceptable under the regulations.” To the contrary, § 195.563(a) requires each pipeline to have cathodic protection in operation not later than one year after the pipeline is “constructed, relocated, replaced, or otherwise changed, as applicable.” It is not based on the much later in-service date as Respondent contended.

cathodic protection surveys under § 195.573(a)(1).⁵ Centurion first discovered corrosion control deficiencies on the Cedar Canyon to JAL segment in January of 2018 and did not remediate the deficiency until March 18, 2021, over three years later. Centurion installed a new ground bed on one end of the pipeline after discovering the issue, but failed to ensure that such actions actually remediated the CP deficiencies. By the time of the following annual survey, all 48 test points along the pipeline were deficient, so this action did not resolve the CP deficiencies that were occurring at all of the test points along the entire segment. At that point, Respondent had failed to comply with § 195.573(e). Moreover, in November 2019, approximately 22 months after initially discovering the CP deficiencies, Centurion conducted a CIS to determine a workable solution to the known problems. The delays in the permitting process after coming up with the plan to install and energize ground beds and rectifiers that were capable to resolving the deficient CP further lengthened the delay in remediation. Centurion's actions to correct identified corrosion control deficiencies were not reasonable because it failed to correct the deficiencies by the next annual survey and, thereafter, did not take steps to develop a plan for correcting the deficiencies until approximately 22 months after discovery. I note, however, that Centurion's efforts to remediate the deficiencies, even though untimely, are considered below with regard to the penalty.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(e) by failing to correct any identified deficiency a corrosion control as required by § 195.401(b).

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c), which states:

§ 195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* §195.3).

(b) ...

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c) by failing to follow the general program recommendations, including the baseline and supplemental requirements, of API RP 1162 in measuring the effectiveness of Centurion's public awareness program. Specifically, the Notice alleged that Centurion failed to measure the bottom-line results of the program by tracking third-party incidents and consequences, including near misses, excavation damage resulting in pipeline failures, and excavation damages that do not result in pipeline

⁵ *E.g.*, In the Matter of Sunoco Pipeline, LP, CPF 1-2014-5005, 2016 WL 770393, at *3 (Jan. 13, 2016); *See also*, In the Matter of Colonial Pipeline Company, CPF 2-2008-5005, 2010 WL 6518285, at *4 (July 12, 2010) ("PHMSA has generally considered a 'reasonable time' to be the maximum time allowed between required annual cathodic protection surveys (15 months maximum from the discovery of a deficient survey reading).").

failures.

In its Response, Centurion argues that it had conducted a four-year effectiveness review of its public awareness program that included bottom-line results. Centurion states its Public Awareness Manual, Section 11, “Four-Year Effectiveness Evaluation,” Measure 4, “Bottom Line Results,” requires an annual survey to be conducted. Centurion states these annual reviews include tracking of One-Call tickets requiring action and third-party line strikes. Centurion argues this procedure requires consideration of bottom-line results, and therefore, complies with API RP 1162.

Section 8 of API RP 1162 provides the recommendations that must be followed by operators for periodically evaluating the effectiveness of their public awareness programs. The RP states that an evaluation of the effectiveness of public awareness program implementation should occur no more than four years apart and lays out four measures that should be used to determine effectiveness. Measure 4, “Achieving Bottom-Line Results,” states:

As a baseline, the operator should track the number of incidents and consequences caused by third-party excavators. This should include reported near misses; reported pipeline damage occurrences that did not result in a release; and third-party excavation damage events that resulted in pipeline failures.

Centurion’s public awareness program includes a process for evaluating the effectiveness of its program, including a four-year review. The process requires that the four-year review include an analysis of whether the program provides bottom-line results. The process, however, states that to evaluate bottom-line results, Centurion will conduct a survey consisting of questions related to stakeholder perception of the company’s public awareness program. A survey of stakeholders’ perceptions of the company does not inform Centurion regarding the change in the number or the consequences of third-party incidents. While the process also states that the four-year review may also include “damage to ticket ratio,” it does not require Centurion to track the number of incidents and consequences caused by third-party excavators, including reported near misses; reported pipeline damage occurrences that did not result in a release; and third-party excavation damage events that resulted in pipeline failures. Further, while Centurion hired a contractor to conduct a four-year effectiveness review, the resulting report does not include any analysis of data related to incidents and consequences caused by third-party excavators or provide any evidence that the contractor considered the “bottom-line results,” as defined in API RP 1162, in evaluating the effectiveness of Centurion’s public awareness program.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.440(c) by failing to follow the general program recommendations, including the baseline and supplemental requirements, of API RP 1162 in measuring the effectiveness of Centurion’s public awareness program.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.⁶

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; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 \$96,200 for the violations cited above.

Item 3: The Notice proposed a civil penalty of \$96,200 for Respondent's violation of 49 C.F.R. § 195.573(e), for failing to correct any identified deficiency in corrosion control as required by § 195.401(b). Centurion argues the gravity criterion should consider that pipeline safety was minimally affected and the culpability criterion should recognize the additional actions Centurion took, such as conducting a CIS and an ILI, to monitor for corrosion. Centurion also argues the overall penalty should consider the difficulty that Centurion's electric contractor had in receiving the state permits necessary to complete Centurion's plan for rectifying the CP deficiencies.

Inadequate cathodic protection may lead to external corrosion, which can result in pipeline leaks or failures. The proposed penalty took this risk into account, as well as the fact that no pipeline failures or spills were associated with the violation. Accordingly, no adjustment in the gravity criterion is appropriate.

Centurion's Response shows the company took action to address the cause of non-compliance with § 195.573(e) and was in the process of correcting the non-compliance before PHMSA learned of the violation, including conducting a CIS and planning for the installation of additional ground beds and rectifiers to correct the corrosion control deficiencies. Such actions were not taken into account in the proposed civil penalty and therefore warrant assessing a credit under the culpability penalty assessment criterion.

Finally, as discussed in detail above, the permitting issues Centurion may have experienced has been considered in the determination regarding whether there was a violation of the regulations. Those permitting issues occurred after Centurion had already failed to act in a reasonable amount of time and committed the violation. The permitting issues, therefore, do not justify the company's non-compliance. Accordingly, no good faith credit is warranted.

In summary, having reviewed the record and considered the assessment criteria for each of the

⁶ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

Items cited above, I assess Respondent a reduced total civil penalty of **\$72,000** for violation of 49 C.F.R. § 195.573(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 such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$72,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 3, and 4 in the Notice for violations of 49 C.F.R. §§ 195.452(f)(3), 195.573(e), and 195.440(c), 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.

Respondent argues the proposed violations in Items 1, 3, and 4 should be withdrawn because they were not violations, but did not present other arguments supporting modification or withdrawal of any of the proposed compliance actions. For the reasons described above, these Items are issued as findings of violation, and therefore, the corresponding Compliance Order actions are not withdrawn.

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 § 195.452(f)(3) (**Item 1**), Respondent must develop and perform a risk analysis to identify and evaluate the risks of facilities that could affect HCAs and submit documentation to the Director within 30 days of receipt of the Final Order.
2. With respect to the violation of § 195.573(e) (**Item 3**), Respondent must take corrective action to address identified deficiencies in corrosion control and submit documentation to the Director within 90 days of receipt of the Final Order.

3. With respect to the violation of § 195.440(c) (**Item 4**), Respondent must conduct an effectiveness review of its public awareness program and follow the general recommendations, including baseline and supplemental requirements, of API RP 1162 and submit documentation to the Director within 30 days of receipt of the Final Order.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), 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.

WARNING ITEM

With respect to Item 2, the Notice alleged a probable violation of Part 195, but identified it as a warning item pursuant to § 190.205. The warning was for:

49 C.F.R. § 195.64(c)(1)(ii) (**Item 2**) — Respondent's alleged failure to notify PHMSA electronically through the National Registry of Operators of construction of 10 or more miles of a new or replacement hazardous liquid or carbon dioxide pipeline, not later than 60 days before the event occurs.

Centurion requested withdrawal of Item 2 because the pipeline project referenced in the Notice actually consisted of a 9.8-mile pipeline and the addition of piping, pumps, and meters at three existing facilities and, therefore, did not require notice in accordance with § 195.64(c). Under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective

action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

ALAN KRAMER
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Alan K. Mayberry
Associate Administrator
for Pipeline Safety

November 19, 2021

Date Issued