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

1200 New Jersey Avenue, SE
Washington, DC 20590

December 30, 2022

VIA ELECTRONIC MAIL TO: david.sheppard@denbury.com

Mr. David Sheppard
Executive Vice President and Chief Operating Officer
Denbury Inc.
5851 Legacy Circle, Suite 1200
Plano, Texas 75024

Re: CPF No. 4-2022-048-NOPV

Dear Mr. Sheppard:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of $19,000 to Denbury Onshore, LLC, a subsidiary of Denbury Inc. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

ALAN KRAMER MAYBERRY
Digitally signed by ALAN KRAMER MAYBERRY
Date: 2022.12.30 11:12:17 -05'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Bryan Lethcoe, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Steven Bevers, Manager, CO2 Pipeline Services, Denbury Onshore, LLC, steven.bevers@denbury.com
Mr. George C. Hopkins, outside counsel for Denbury Onshore, LLC, Vinson & Elkins, ghopkins@velaw.com

CONFIRMATION OF 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	)	
Denbury Onshore, LLC,	)	**CPF No. 4-2022-048-NOPV**
a subsidiary of Denbury Inc.,	)	
Respondent.	)	

FINAL ORDER

On several dates between June 14, 2021, through May 26, 2022, 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's (Denbury or Respondent) Cedar Creek Anticline (CCA) carbon dioxide (CO2) pipeline construction project at various field locations in Montana and North Dakota.

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated September 14, 2022, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Denbury had violated 49 C.F.R. § 195.64(c)(1)(ii) and proposed assessing a civil penalty of $19,000 for the alleged violation.

Denbury responded to the Notice by letter dated, October 28, 2022 (Response). Respondent contested the allegation in part and requested that the civil penalty be withdrawn, subject to the final finding. Respondent did not request a hearing and therefore has waived its right to one.

FINDING 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. § 195.64(c)(1)(ii), which states:

> **§ 195.564 National Registry of Pipeline and LNG Operators.**
> (a) ….
> (c) Changes. Each operator must notify PHMSA electronically

> through the National Registry of Operators at *https://portal.phmsa.dot.gov*, of certain events.
>
> (1) An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs:
>
> (ii) Construction of 10 or more miles of a new or replacement hazardous liquid or carbon dioxide pipeline;

The Notice alleged Respondent violated 49 C.F.R. § 195.64(c)(1)(ii) by failing to notify PHMSA of construction of the CCA project 60 days prior to the event. Specifically, the Notice alleged that Denbury notified PHMSA of the project on May 14, 2021, with an anticipated construction start date of July 13, 2021. The Notice stated PHMSA observed pipes being transported by truck to the CCA project right-of-way on July 7, 2021. The Notice alleged Denbury violated § 195.64(c)(1)(ii) by notifying PHMSA of the construction only 54 days before the pipe was moved to the right-of-way.

In its Response, Denbury stated it "is willing to accept that it failed to provide the 60 day notice before moving construction materials to the construction site on July 7 as referenced in the NOPV."[1] Denbury, however, objected to language within the Notice regarding PHMSA's review of pipe purchase orders and other documents regarding construction activities dated before the anticipated start date of construction of July 13, 2021.[2] Specifically, Denbury objected to the language in the Notice that references the September 2014 Advisory Bulletin titled, "Pipeline Safety: Construction Notification" (Advisory Bulletin),[3] which provides guidance on construction-related activities that may trigger the 60-day notice period. Denbury argued that the Advisory Bulletin interprets "construction-related activities" too broadly, that the Advisory Bulletin is guidance and is not binding, and, therefore, the dates of Denbury's construction documents should not have triggered a violation of § 195.64(c)(1)(ii).

The Notice states, "*based on the construction activity observed on July 7, 2021*, the notification should have been made no later than May 8, 2021," (emphasis added).[4] While the Notice discussed the above-referenced construction project documentation that was reviewed during the inspection, the Notice is clear that the alleged violation is based on the movement of pipe to the right-of-way by truck on July 7, 2021, rather than on OPS' review of the project documentation dated before July 13, 2021. Further, Denbury does not question that the movement of pipe to the construction site triggered the notification requirement. Denbury's notification was dated May 14, 2021, less than 60 days before the movement of pipe by truck to the right-of-way occurred. I find, therefore, Denbury failed to notify PHMSA of construction of 10 or more miles of new or replacement hazardous liquid pipelines 60 days before the construction occurred.

Based on the foregoing, further discussion of the referenced construction project documents and

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[1] Response, at 1.

[2] *Id*., at 1.

[3] Pipeline Safety: Construction Notification, Advisory Bulletin, 79 Fed. Reg. 54,777 (Sept 12, 2014).

[4] Notice, at 2.

what constitutes "construction" and "construction-related activities," as described in the Advisory Bulletin, is outside the scope of this enforcement action.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.64(c)(1)(ii) by failing to notify PHMSA 60 days prior to construction on the CCA project.

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 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.[5]

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 $19,000 for the violation cited above.

Item 1: The Notice proposed a civil penalty of $19,000 for Respondent's violation of 49 C.F.R. § 195.64(c)(1)(ii), for failing to inform PHMSA 60 days prior to construction of the CCA project. In its Response, Denbury stated that it "is prepared to pay the proposed civil penalty for failing to provide 60-days' notice prior to moving construction materials to the construction site," but is opposed to any relief that is based on the use of "construction related activities" as the trigger for the 60 day notice.[6] As stated above, the finding of violation is based on the movement of pipe to the right-of-way by truck on July 7, 2021, and the civil penalty is a result of that finding. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $19,000 for violation of 49 C.F.R. § 195.64(c)(1)(ii).

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. 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,

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[5] These amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223 for adjusted amounts.

[6] Response, at 3.

Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the 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.

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. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a brief 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 any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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

ALAN KRAMER MAYBERRY
Digitally signed by ALAN KRAMER MAYBERRY
Date: 2022.12.30 11:11:43 -05'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

December 30, 2022
Date Issued