



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

8701 S. Gessner, Suite 630
Houston TX 77074

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED CIVIL PENALTY**

ELECTRONIC MAIL - RETURN RECEIPT REQUESTED

September 14, 2022

David Sheppard
Senior Vice President - Operations
Denbury Onshore, LLC
5851 Legacy Circle, Suite 1200
Plano, Texas 75024

CPF 4-2022-048-NOPV

Dear Mr. Sheppard:

On several dates between June 14, 2021, through May 26, 2022, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected Denbury Onshore, LLC's (Denbury) 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, it is alleged that you have committed a probable violation of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The item inspected and probable violation is:

1. **§ 195.64 National Registry of 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;

Denbury failed to notify PHMSA of the construction of the Cedar Creek Anticline (CCA) project 60 days before the event occurred as required by § 195.64(c)(1)(ii). Denbury notified PHMSA (Notification # F-20210514-25823) of its construction project on May 14, 2021, through the National Registry of Operators. The notification specified the anticipated start date of construction was July 13, 2021.

However, PHMSA observed construction on July 7, 2021 at the pipe storage yard in Alzada, Montana, where pipes were being transported by trucks to the CCA project right-of-way. In addition, PHMSA conducted a review of project documents regarding construction activities including pipeline purchase orders, pipeline material test records, induction bend purchase orders, valve purchase orders, and welder qualification records and other construction documents.¹ Many of these records are dated before the anticipated start date of construction of July 13, 2021.

Based on the construction activity observed on July 7, 2021, the notification should have been made no later than May 8, 2021. Denbury notified PHMSA 54 days prior to the start of construction rather than the required minimum of 60 days. Therefore, Denbury failed to notify PHMSA of the construction of the CCA project 60 days before the event occurred as required by § 195.64(c)(1)(ii).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

¹ PHMSA provided notice to pipeline operators through an Advisory Bulletin (Pipeline Safety: Construction Notification, ADB-2014-03, 79 Fed. Reg. 54,777 (Sept. 12, 2014)) that clarified the types of activities that constitute the start of construction, such as material purchasing and manufacturing; right-of-way acquisition; construction equipment move-in activities; onsite or offsite fabrications; or right-of-way clearing, grading and ditching.”

We have reviewed the circumstances and supporting documentation involved for the above probable violation(s) and recommend that you be preliminarily assessed a civil penalty of \$19,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$19,000

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. § 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. § 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 4-2022-048-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Byran Lethcoe
Director, Southwest Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Response Options for Pipeline Operators in Enforcement Proceedings*

cc: David Sheppard, Senior Vice President-Operations, david.sheppard@denbury.com
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