

February 8, 2024

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

David Sheppard
Executive Vice President & Chief Operating Officer
Denbury Green Pipeline – Montana, LLC
5851 Legacy Circle, Suite 1200
Plano, Texas 75024

Re: CPF No. 4-2023-015-NOPV

Dear Mr. Sheppard:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$151,900. 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 certified mail is effective upon the date of mailing as provided under 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: Mr. Bryan Lethcoe, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Randy Robichaux, Vice President – Health, Safety and Environmental, Denbury
Green Pipeline – Montana, LLC, randy.robichaux@denbury.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 Green Pipeline – Montana, LLC,)	CPF No. 4-2023-015-NOPV
)	
Respondent.)	
)	

FINAL ORDER

From June 14 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), inspected Denbury Green Pipeline – Montana, LLC’s (“Denbury” or “Respondent”) Cedar Creek Anticline (“CCA”) carbon dioxide (“CO2”) construction project at various filed locations in Powder River County and Fallon County, Montana, and Bowman County, North Dakota. Denbury owns or operates over 1,300 miles of CO2 pipelines located in the Gulf Coast and Rocky Mountain regions.¹

As a result of the inspection, the Director, Southwest Region, OPS (“Director”), issued to Respondent, by letter dated January 25, 2023, 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 committed three violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$151,900 for the alleged violations. The Notice also included an additional warning item pursuant to 49 C.F.R. § 190.205, which warned the operator to correct the probable violations or face possible future enforcement action

Denbury responded to the Notice by letter dated February 23, 2023 (“Response”). Respondent contested all the allegations and offered additional information in response to the Notice. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

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

¹ *Operations - Pipeline Network*, DENBURY, <https://www.denbury.com/operations/pipeline-network/> (last accessed August 29, 2023).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.202, which states:

§ 195.202 Compliance with specifications or standards.

Each pipeline system must be constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of this part.

The Notice alleged that Denbury violated 49 C.F.R. § 195.202 by failing to construct its CCA pipeline project in accordance with comprehensive written specifications or standards that are consistent with the requirements of Part 195. Specifically, the Notice and the associated Violation Report alleged that Respondent did not follow its written procedure, *Construction Standards, C1080, Below Grade Pipe Coatings* (Rev. 2013-08-01), when it did not install SP-6 outerwrap on Spread-1 of its 16-inch pipeline construction project at mileposts 7.5 and 12.

Section 4.1 of Denbury’s *Construction Standards, C1080, Below Grade Pipe Coatings* (Rev. 2013-08-01), stated: “Contractor *shall* coat all field welds, valves, and fittings for un-coated fabrications with specific coating in conformance with Manufacturer’s *recommendations*” (emphasis added).² The word “shall” denotes a required action.³

The manufacturer’s RD-6 Coating System Application Specification, section 5.1, stated: “SP-6 OUTERWRAP is *recommended* over the RD-6 for pipe diameters 4 inches or greater” (emphasis added).⁴ Because the manufacturer recommended use of SP-6 outerwrap for pipe with diameters 4 inches or greater, and because the pipeline construction project at issue had a diameter greater than 4 inches,⁵ Denbury’s procedures required installation of SP-6 outerwrap. Respondent failed to do so, and consequently it violated its own written procedure.

In its Response, Denbury argued that section 5 of the RD-6 Coating System Application Specification was not applicable, because the manufacturer’s RD-6 Coating System Application Specification merely recommended SP-6 outerwrap. Denbury also noted that its construction contractor contacted the manufacturer of the RD-6 coating system, and that the manufacturer stated application of the SP-6 outerwrap is a recommendation, not a requirement. However, these arguments ignore the fact that Respondent’s own written procedures explicitly require following the manufacturer’s recommendations.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.202 by failing to follow its written procedure, *Construction Standards, C1080, Below*

² Pipeline Safety Violation Report, CPF 4-2023-015-NOPV, January 25, 2023 (hereinafter “Violation Report”), Exhibit A1 (on file with PHMSA).

³ *See Shall*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/shall> (last accessed August 30, 2023) (“used in laws, regulations, or directives to express what is mandatory”); *see also Association of Civilian Technicians v. FLRA*, 22 F.3d 1150, 1154 (D.C. Cir. 1994) (“The word ‘shall’ generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive.”).

⁴ Violation Report, Exhibit A2.

⁵ *Id.*, at 1.

Grade Pipe Coatings (Rev. 2013-08-01), when it did not install SP-6 outerwrap on Spread-1 of its 16-inch pipeline construction project at mileposts 7.5 and 12.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.202, which states:

§ 195.202 Compliance with specifications or standards.

Each pipeline system must be constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.202 by failing to construct its CCA pipeline project, Coral Creek site (Spread-2), in accordance with comprehensive written specification or standards that are consistent with the requirements of Part 195. Specifically, the Notice alleged that Denbury failed to properly calibrate the welding equipment used at the time of the inspection (multimeter, serial number S94900584) in accordance with its written procedure, *Construction Standards, CIM1060A Senior Welding Inspector* (Rev 2015-11-01).⁶ Section 2.3.1 of this procedure stated that Respondent must “[c]alibrate all welding equipment that will be used on the project to confirm it is capable of operating according to the applicable welding procedures. Prepare a register of approved welding equipment.”

In its Response, Respondent stated that it “ensured [its] Contractor calibrated all of their welding equipment used on the CCA pipeline project to confirm that said equipment was capable of operating according to the applicable welding procedures.” Denbury further argued that the PHMSA inspector never requested a record or register, and that if the inspector had done so it “would have provided the daily *Welding Inspector Tie-In Report* for August 11, 2021.”

Respondent did not provide any record showing it or its contractor calibrated welding equipment used on Spread-2 of the CCA pipeline project. On August 11, 2021, at a verbal briefing, PHMSA’s inspector notified Denbury’s on-site welding inspector of the deficiency of not providing calibration records for the approved welding equipment used at the time of the inspection.⁷ This deficiency was again conveyed to Respondent in the written inspection closing summary, dated August 13, 2021.⁸ On both of those dates, calibration records were not provided to PHMSA inspectors, despite Respondent’s procedures requiring the Senior Welding Inspector to ensure all welding documentation complied with “the project, regulatory, and applicable code/standards requirements.”⁹ Further, the post-inspection documentation provided by Respondent, *Welding Inspector Tie-In Report*, for August 11, 2021, does not provide evidence of calibration efforts for the welding equipment at issue (multimeter, serial number S94900584).¹⁰

⁶ Violation Report, Exhibit B1.

⁷ *Id.*, at 20.

⁸ *Id.*, Exhibit B4.

⁹ *Id.*, Exhibit B1.

¹⁰ Response, CPF 4-2023-015-NOPV, February 23, 2023, Attachment 3.

The document included observations from that day, welding parameter checks, and visual weld inspection report. It did not include any calibration records. Further, the *Welding Inspector Tie In Report* was authored by a different welding inspector than the inspector who observed the project. Respondent did not explain how a different inspector could ensure that the welding equipment used at the time of the inspection (multimeter, serial number S94900584) was properly calibrated.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.202 by failing to properly calibrate the welding equipment used at the time of the inspection (multimeter, serial number S94900584) in accordance with its written procedure, *Construction Standards, CIM1060A Senior Welding Inspector* (Rev 2015-11-01).

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.202, which states:

§ 195.202 Compliance with specifications or standards.

Each pipeline system must be constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.202 by failing to construct its CCA pipeline project in accordance with comprehensive written specifications or standards that are consistent with the requirements of Part 195. Specifically, Denbury failed to perform the required hydrostatic test prior to installation of the pipe in horizontal directional drilling (HDD) according to its written procedure, *Construction Standards, Horizontal Directional Drilling, C1160* (Rev 2013-08-01). Sections 4.2 and 8.3 of this procedure required Denbury to hydrostatically test the prefabricated pipe section for at least four hours prior to pull-back.

The Notice alleged that during PHMSA's inspection on August 12, 2021, at the Coral Creek site (Spread-2), Denbury performed an HDD operation and performed pull-back without hydrostatically pre-testing the prefabricated pipe sections. In support of the allegation that an HDD operation occurred, the Notice stated that Respondent's contractor used HDD-specific equipment and HDD procedures.¹¹ The Notice further stated that the HDD site execution plan, HDD profile, and equipment specifications from the contractor indicated that an HDD operation was performed.¹²

In its Response, Denbury argued that while its contractor termed this procedure HDD and used HDD equipment and techniques, it was actually a road bore; therefore it fell under Respondent's construction standard *Railway, Highway, and Road Crossings, C1140* (Rev 2013-08-01),¹³ which does not require hydrostatic pre-testing prior to pullback. Respondent explained that the typical HDD is "long and deep" and used to avoid environmentally sensitive areas or difficult terrain. Denbury stated that the pipeline at issue was "relatively short (5 joints)," installed at a

¹¹ Violation Report, at 23.

¹² *Id.*, at 23-24.

¹³ Response, CPF 4-2023-015-NOPV, February 23, 2023, Attachment 3.

“shallow depth (20.2 ft max),” and was not installed in an environmentally sensitive or difficult to access area. Therefore, Denbury asserted, it was not HDD, and thus did not require hydrostatic testing.

Despite Respondent’s argument, the procedures employed during the installation indicate that HDD was performed. At the Coral Creek site (Spread-2), Respondent used a contractor “specializing in the installation of pipelines by [HDD].”¹⁴ Section 3.2 of Denbury’s *Construction Standards, Horizontal Directional Drilling, C1160*, required its contractor to submit an execution plan with the scope of the work and detailed procedures to Respondent for approval prior to commencing the work.¹⁵ Respondent’s contractor submitted this plan and these procedures, which clearly stated that HDD would be performed.¹⁶ The contractor used HDD equipment and employed an HDD technique to install the pipeline.¹⁷ While Respondent may have intended a non-HDD installation (i.e., boring), the process used was HDD. Therefore, Denbury’s *Construction Standards, Horizontal Directional Drilling, C1160*, needed to be followed, which included a hydrostatic pre-test. Such testing is necessary because removal of the pipe from HDD installation can be exceptionally difficult given the profile and method of installation, particularly after the drilling mud used to stabilize the hole, facilitate the installation, and fill the annular space around the pipe has set. Drilling mud was observed at the site during pull back.¹⁸

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.202 by failing to perform the required hydrostatic test prior to installation of the pipe in HDD according to its written procedure, *Construction Standards, Horizontal Directional Drilling, C1160* (Rev 2013-08-01).

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.¹⁹

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I

¹⁴ Violation Report, Exhibit C2.

¹⁵ *Id.*, at Exhibit C1.

¹⁶ *Id.*, at Exhibit C2.

¹⁷ *Id.*, at 23-24.

¹⁸ *Id.*, at 23.

¹⁹ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223 for adjusted amounts.

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 \$151,900 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$37,600 for Respondent's violation of 49 C.F.R. § 195.202, for failing to follow its written procedure, *Construction Standards, C1080, Below Grade Pipe Coatings* (Rev. 2013-08-01), where it did not install SP-6 outerwrap on Spread-1 of its 16-inch pipeline construction project at mileposts 7.5 and 12. Denbury argued for withdrawal of the underlying allegation. It did not advance separate argument for a reduction or withdrawal of the civil penalty. For the reasons stated above, the underlying allegation is not withdrawn. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$37,600 for violation of 49 C.F.R. § 195.202.

Item 2: The Notice proposed a civil penalty of \$ 29,300 for Respondent's violation of 49 C.F.R. § 195.202, for failing to properly calibrate the welding equipment used at the time of the inspection (multimeter, serial number S94900584) in accordance with its written procedure, *Construction Standards, CIM1060A Senior Welding Inspector* (Rev 2015-11-01). Denbury argued for withdrawal of the underlying allegation. It did not advance separate argument for a reduction or withdrawal of the civil penalty. For the reasons stated above, the underlying allegation is not withdrawn. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$29,300 for violation of 49 C.F.R. § 195.202.

Item 3: The Notice proposed a civil penalty of \$85,000 for Respondent's violation of 49 C.F.R. § 195.202, for failing to perform the required hydrostatic test prior to installation of the pipe in HDD according to its written procedure, *Construction Standards, Horizontal Directional Drilling, C1160* (Rev 2013-08-01). Denbury argued for withdrawal of the underlying allegation. It did not advance separate argument for a reduction or withdrawal of the civil penalty. For the reasons stated above, the underlying allegation is not withdrawn. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$85,000 for violation of 49 C.F.R. § 195.202.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$151,900**.

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,

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.

WARNING ITEM

With respect to Item 4, the Notice alleged probable violation of Part 195, but identified it as a warning item pursuant to § 190.205. The warning was for:

49 C.F.R. § 195.202 (**Item 4**) — Respondent’s alleged failure to properly document the hydrostatic test plan as required by its written procedure, *Construction Standard, Pressure Testing, C1130* (Rev 2013-08-01).

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. 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.

February 8, 2024

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued