

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

VIA ELECTRONIC MAIL

January 25, 2023

David Sheppard
Senior Vice President - Operations
Denbury Green Pipeline - Montana, LLC
5851 Legacy Circle, Ste 1200
Plano, TX 75024

CPF 4-2023-015-NOPV

Dear Mr. Sheppard:

On various 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 Green Pipeline Montana, LLC's (Denbury) Cedar Creek Anticline (CCA) CO2 pipeline construction project at various field locations in Powder River County and Fallon County in Montana and Bowman County, North Dakota.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and probable violations are:

1. § 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.

Denbury failed to construct its Cedar Creek Anticline pipeline project in accordance with comprehensive written specifications or standards that are consistent with the requirements of Part 195. Specifically, Denbury failed to properly install below grade coating according to its written procedure, *Construction Standards, C1080 Below Grade Pipe Coatings*, (Rev 2013-08-01). Section 2.3 of this procedure states that the “[c]ontractor shall be responsible for application of coating in conformance with the Manufacturer’s specifications and requirements of the Company Representative.” The manufacturer’s specification, RD-6 coating system application, contains certain requirements to be followed during the application of the RD-6 polyguard on the girth welds. Section 5.5 of this specification states that the installer should “[w]rap enough ½ inch-1 inch (13-25mm) wide fiber-reinforced packing tape around each end of the applied SP-6 Outerwrap to hold it in place during cradling and backfilling.”

During PHMSA’s inspection of Spread-1 of the pipeline construction project on August 26, 2021, Denbury failed to install the SP-6 outerwrap as recommended by the manufacturer’s RD-6 coating system application specification. However, Denbury installed the SP-6 outerwrap on Spread-2 and Spread-3. Therefore, Denbury failed to consistently follow its procedures by not installing the SP-6 outerwrap on Spread-1. After PHMSA notified Denbury of this issue, Denbury proceeded to install field joint coatings without the SP-6 outerwrap on Spread-1.

Therefore, Denbury failed to construct its Cedar Creek Anticline pipeline project in accordance with comprehensive written specifications or standards that are consistent with the requirements of Part 195 in accordance with § 195.202.

2. § 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.

Denbury failed to construct its Cedar Creek Anticline pipeline project in accordance with comprehensive written specifications or standards that are consistent with the requirements of Part 195. Specifically, Denbury failed to properly calibrate its welding equipment in accordance with its written procedure, *Construction Standards, CIM1060A Senior Welding Inspector* (Rev 2015-11-01). Section 2.3.1 of this procedure states that Denbury 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.”

During PHMSA’s inspection on August 11, 2021, at the Coral Creek site (Spread-2), the operator did not produce a record or a register of approved welding equipment that was used at the time of

the inspection. Denbury failed to provide records or a register or approved welding equipment demonstrating the required calibration of its welding equipment.

Therefore, Denbury failed to construct its Cedar Creek Anticline pipeline project in accordance with comprehensive written specifications or standards that are consistent with the requirements of Part 195 in accordance with § 195.202.

3. § 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.

Denbury failed to construct its Cedar Creek Anticline 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 written procedure requires Denbury to hydrostatically test the prefabricated pipe sections for at least four (4) hours prior to pull-back. In addition, Denbury's approved contractor HDD execution plan (CTI Trenchless, Inc., HDD Execution Plan, Section 1) also requires prefabricated pipe sections to be hydrostatically tested prior to pull-back operation.

During PHMSA's inspection on August 12, 2021, at the Coral Creek site (Spread-2), Denbury performed HDD pull-back operations without hydrostatically testing the prefabricated pipe sections.

Therefore, Denbury failed to construct its Cedar Creek Anticline pipeline project in accordance with comprehensive written specifications or standards that are consistent with the requirements of Part 195 in accordance with § 195.202.

4. § 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.

Denbury failed to construct its Cedar Creek Anticline pipeline project in accordance with comprehensive written specifications or standards that are consistent with the requirements of Part 195. Specifically, Denbury failed to properly document the hydrostatic test plan as required by its written procedure, *Construction Standard, Pressure Testing, C1130* (Revision 2013-08-01). Section 3.2 of Denbury's written procedure states that "[t]he Test Plan shall outline specific procedures for cleaning, filling, testing, dewatering, drying, and tying-in test sections and include the names of contractor personnel conducting the test."

During the inspection on September 16, 2021, at the Coral Creek site (Spread-2) PHMSA identified that the hydrostatic test plan did not document the names of contractor personnel

conducting the tests as required by Denbury's written procedure. After PHMSA notified Denbury of this deficiency, Denbury submitted updated hydrostatic test plan documentation on November 24, 2021, with the names of the contractor personnel conducting the test. The hydrostatic test plan documentation is a permanent record required by § 195.310.

Therefore, Denbury failed to construct its Cedar Creek Anticline pipeline project in accordance with comprehensive written specifications or standards that are consistent with the requirements of Part 195 in accordance with § 195.202.

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 \$2,391,142 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.

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 \$151,900 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$37,600
2	\$29,300
3	\$85,000

Warning Item

With respect to **Item 4**, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct this item. Failure to do so may result in additional enforcement action.

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 4-2023-015-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Bryan 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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