



U.S. Department
of Transportation
Research and
Special Programs
Administration

400 Seventh St. S.W.
Washington D.C. 20590

FEB - 2 2004

Mr. John Traeger
Vice President, Operations
Cenex, Inc.
P.O. Box 909, 803 Hwy 212 S
Laurel, Montana 59044

Re: CPF No. 36529

Dear Mr. Traeger:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$5,000. The Final Order also finds that you have addressed the inadequacies in your procedures that were cited in the Notice of Amendment. When the civil penalty is paid, this enforcement action will be closed. The penalty payment terms are set forth in the Final Order. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of

Cenex, Inc.,

Respondent

CPF No. 36529

FINAL ORDER

On August 6, 7 and 15, 1996, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Respondent's facilities in North Dakota and its records in Laurel, Montana. As a result of the inspection, the Director, Central Region, OPS, issued to Respondent, by letter dated December 13, 1996, a Notice of Probable Violation, Proposed Civil Penalty, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 195.401(a) and 195.414(a), proposed assessing a civil penalty of \$5,000 for the alleged violation, and warned Respondent to take appropriate corrective action.¹ The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its procedures for operation and maintenance.

Respondent responded to the Notice by letter dated January 14, 1997 (Response). Respondent contested the allegation of violation, offered information in explanation of the allegation, provided information concerning the corrective actions it has taken, and requested that the proposed civil penalty be eliminated. Respondent did not request a hearing, and therefore has waived its right to one.

FINDING OF VIOLATION

Item 3-A in the Notice alleged that Respondent had violated 49 C.F.R. §§ 195.401(a) and 195.563. Section 195.401(a) requires that Respondent operate and maintain its pipeline system at a level of safety no lower than that required by subpart F (§§ 195.400-195.452) and the procedures Respondent is required to establish under § 195.402(a). Section 195.563 further requires that Respondent cathodically protect its pipeline to control corrosion. The Notice alleged that Respondent established the -0.85v criterion to determine the adequacy of its cathodic protection system, but failed to operate

¹ The cathodic protection requirements previously imposed by § 195.414(a) can now be found at § 195.563.

the cathodic protection system pursuant to that criterion. Cathodic protection readings for test lead locations from Mile Post (MP) 122 to MP 131 on the Glendive to Minot segment were less than -0.85v, as recorded on the annual surveys for the calendar years 1994, 1995, and 1996. The OPS field inspection also indicated that the readings were low at these locations.

In its Response, Respondent admitted the readings were less than -0.85v, but asserted that it nevertheless complied with the -0.85v criterion. Respondent contended that uncertainty and variability are inherent to the criterion, making it unreasonable to require that all test leads continuously exhibit readings in excess of -0.85v. Respondent also asserted there must be “flexibility” for it to evaluate and respond to the situation.

With respect to Respondent’s first contention, I find that the low readings in this case were not the result of uncertainty or variability. Consistent low cathodic protection readings indicate that a pipeline is not receiving adequate protection. In this case, Respondent recorded the low readings during three consecutive annual cathodic protection surveys. The field inspector also verified the levels were below -0.85v. The consistent low readings in this case indicate the subject line was not receiving adequate cathodic protection.

With respect to Respondent’s second contention, I find Respondent has not sufficiently explained the applicability of the “flexibility” as it pertains to Respondent’s conduct. Section 195.401(a) requires that Respondent follow its procedures. Respondent did not follow the procedures it established for cathodic protection. I do not find that Respondent has demonstrated any justifications for its failure to operate its cathodic protection system pursuant to the procedures it established.

Accordingly, I find that Respondent has violated §§ 195.401(a) and 195.563 by failing to operate its cathodic protection system in accordance with its cathodic protection criterion.

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 a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent’s culpability, history of Respondent’s prior offenses, Respondent’s ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent’s ability to continue in business, and such other matters as justice may require.

The Notice proposed assessing a civil penalty of \$5,000 for Item 3-A of the Notice.

Respondent violated § 195.401(a) by failing to operate its cathodic protection system according to the -0.85v criterion. The consequences of low level pipe-to-soil readings include pitting of the pipe wall and external corrosion. These conditions can lead to pipe failure, which threatens the safety of the public and can cause environmental damage. The segment of pipeline in which the low readings occurred is located in areas accessible to the public, such as a casino, a restaurant, and office buildings. The segment is also located adjacent to Lake Sakakawea, an environmentally sensitive area.

In its Response, Respondent contended that the civil penalty is not warranted, since it is unreasonable to require all test leads to continuously exhibit readings in excess of -0.85v. As previously explained, the consistent low level readings indicate Respondent's failure to maintain adequate cathodic protection on the subject line.

Respondent also contended that a penalty is not justified in light of its good faith efforts to achieve compliance. In 1995, in an attempt to improve the cathodic protection on the line, Respondent insulated washers and replaced sleeves on flanges that insulate the pipeline. Respondent also sandblasted and painted portions of the pipe. These measures resulted in some improvement to the readings, but did not fully correct the inadequate levels. Subsequently, another operator installed a cathodically protected pipeline adjacent to Respondent's line, causing interference and requiring additional remedial efforts by Respondent. In August, 1996, after the inspection by OPS, Respondent installed interference bonds that corrected the inadequate levels.

Despite Respondent's efforts to achieve compliance, I find Respondent has not demonstrated any circumstance that would have prevented or justified it not providing adequate cathodic protection to the subject line during 1994, 1995, and 1996. Furthermore, Respondent has previously been cited for not correcting low cathodic protection readings (CPF No. 54514, CPF No. 5-2001-5002, and CPF No. 5-2001-5003).

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$5,000 for the violation of §§ 195.401(a) and 195.563.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this 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 (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$5,000 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 United States District Court.

AMENDMENT OF PROCEDURES

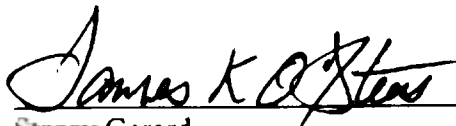
The Notice alleged inadequacies in Respondent's written procedures for operations, maintenance and emergencies, as well as its anti-drug plan. The Notice proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. §§ 195.402(a) and 199.101(a), cited in Items 1 and 4 of the Notice respectively.²

Respondent submitted copies of its amended procedures, which the Director, Central Region, OPS, reviewed. Accordingly, based on the results of this review, I find that Respondent's original procedures as described in the Notice were inadequate to ensure safe operation of its pipeline system, but that Respondent has corrected the identified inadequacies. No need exists to issue an order directing amendment.

WARNING ITEMS

The Notice did not propose a civil penalty or corrective action for: failing to provide adequate line markers to identify pipeline located in a public marina (Item 2); and failing to clean and coat aboveground block valves (Item 3-B). The Notice warned Respondent that it should take appropriate corrective action to correct the items. Respondent presented information in its response showing that it is addressing the cited items. Respondent is again warned that if OPS finds a violation for any of these items in a subsequent inspection, enforcement action will be taken.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for 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 on receipt.



Stacey Gerard
Associate Administrator
for Pipeline Safety

FEB - 2 | 2004

Date Issued

² The anti-drug plan and drug and alcohol testing requirements cited in the Notice can now be found in subparts B and C (§§ 199.100-199.245) of Part 199.