

**JUNE 15, 2012**

Mr. Barry Cigich  
Vice President Operations and Engineering  
Central New York Oil and Gas Company, L.L.C.  
Inergy Midstream, L.P.  
Two Brush Creek Blvd., Suite 200  
Kansas City, MO 64112

**Re: CPF No. 1-2011-1010**

Dear Mr. Cigich:

Please find the enclosed Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$16,200. 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 complete upon mailing as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS  
Mr. Byron Coy, Director, Eastern Region, OPS

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

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<b>In the Matter of</b>	)	
	)	
<b>Central New York Oil and Gas Company, L.L.C.,</b>	)	<b>CPF No. 1-2011-1010</b>
<b>    a subsidiary of Inergy Midstream, L.P.,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	

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**FINAL ORDER**

On August 3–4, 2010, pursuant to 49 U.S.C. §§ 60106 and 60117, a representative of the New York State Department of Public Service (NYS-DPS), as agent for 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 Central New York Oil and Gas Company, L.L.C. (CNYOG or Respondent) in Owego, New York. CNYOG operates approximately 55 miles of gas transmission pipeline in New York and Pennsylvania.<sup>1</sup>

As a result of the inspection, NYS-DPS notified the Director, Eastern Region, OPS (Director), of certain probable violations of the gas pipeline safety regulations in 49 C.F.R. Part 192. After reviewing the notification, the Director issued to Respondent, by letter dated May 31, 2011, a Notice of Probable Violation and Proposed Civil Penalty. In accordance with 49 C.F.R. § 190.207, the Notice alleged that CNYOG committed a violation of § 192.705 and proposed a civil penalty of \$16,200 for the alleged violation. In accordance with § 190.205, the Notice also included a warning item, which advised Respondent to correct another probable violation.

CNYOG responded to the Notice by letter dated June 30, 2011 (Response), contesting the allegations and requesting a hearing. A hearing was held on February 2, 2012, in West Trenton, New Jersey, before the Presiding Official from the Office of Chief Counsel, PHMSA.

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<sup>1</sup> CNYOG has reported this information pursuant to 49 C.F.R. § 191.17.

## FINDING OF VIOLATION

**Item 1** in the Notice alleged that Respondent violated 49 C.F.R. § 192.705(b), which states:

**§ 192.705 Transmission lines: Patrolling.**

(a) Each operator shall have a patrol program to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation.

(b) The frequency of patrols is determined by the size of the line, the operating pressures, the class location, terrain, weather, and other relevant factors, but intervals between patrols may not be longer than prescribed in the following table:

Class location of line	Maximum interval between patrols	
	At highway and railroad crossings	At all other places
1, 2 .....	7½ months; but at least twice each calendar year.	15 months; but at least once each calendar year.
3 .....	4½ months; but at least four times each calendar year.	7½ months; but at least twice each calendar year.
4 .....	4½ months; but at least four times each calendar year.	4½ months; but at least four times each calendar year.

(c) Methods of patrolling include walking, driving, flying or other appropriate means of traversing the right-of-way.

The Notice alleged that Respondent violated § 192.705(b) by failing to conduct patrols to observe surface conditions on and adjacent to the transmission line right-of-way at the proper intervals. Specifically, the Notice alleged that in 2009 and 2010 CNYOG did not perform patrols at highway and railroad crossings in Class 1 and 2 areas at least twice each calendar year with a maximum interval of 7½ months.

The evidence in the record includes documentation by the NYS-DPS inspector who requested CNYOG's patrol records from 2009 and 2010. Based on the records that were provided, NYS-DPS concluded that patrols had been performed only once per calendar year in June 2009 and July 2010. Respondent's Operations Manager also allegedly stated during the inspection that the company patrolled highway and railroad crossings once per year during annual leakage surveys, and that he was not aware of the requirement to perform patrols twice per year.

In its Response, CNYOG contested the alleged violation and explained that the company performs patrols at highway and railroad crossings in Class 1 and 2 areas twice per year—during annual leakage surveys and at one other time during the year. The company submitted crossing inspection records that had not been examined during the NYS-DPS inspection. Regarding the alleged statements by its Operations Manager, Respondent explained that it may have been the result of a misunderstanding between the employee and the inspector.

At the hearing, OPS presented several charts that it had created to summarize the inspection records submitted by Respondent in response to the Notice. The charts included the dates when each pipeline crossing was patrolled in 2009 and 2010. They demonstrated that even if patrol inspections were performed on the dates indicated by Respondent's records, the operator exceeded the maximum interval permitted by the regulation on many occasions.

During the two calendar years of 2009 and 2010, approximately 92 highway or railroad crossing patrols would have been required using the maximum interval in the regulation. Company records indicated approximately 20 instances in which Respondent performed patrols at an interval exceeding 7½ months. Most of those instances exceeded the maximum interval by several weeks, although some exceeded the interval by several months. In addition, there were approximately five instances in which CYNOC could not produce any records to show that at least two patrols were performed in each of the two calendar years.

CYNOC did not dispute the accuracy of the information presented by OPS during the hearing. I find the evidence in the record establishes that Respondent patrolled most of its highway crossings at the correct intervals during 2009 and 2010, but on at least 25 occasions during that time period, the maximum interval was exceeded.

Accordingly, after considering all of the evidence, I find Respondent violated 49 C.F.R. § 192.705(b) by failing to conduct patrols to observe surface conditions at highway crossings in Class 1 and 2 areas at the requisite interval.

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 \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations.<sup>2</sup>

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 Respondent's ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. 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.

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<sup>2</sup> Subsequent to the actions that gave rise to this case, the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 increased the civil penalty liability for violations to \$200,000 per violation for each day of the violation up to a maximum of \$2,000,000 for any related series of violations. *See* Pub. L. No. 112-90, § 2(a), 125 Stat. 1905.

**Item 1:** The Notice proposed a civil penalty of \$16,200 for the violation of § 192.705(b). In its Response and at the hearing, CNYOG did not argue for a reduction of the civil penalty under the assessment criteria listed above.

Having considered those criteria, including the adverse risk to pipeline safety posed by failing to patrol transmission lines at highway crossings for indications of leaks, construction activity, and other factors affecting safety and operation, CNYOG is assessed the civil penalty of \$16,200 for the violation.

Payment of the civil penalty must be made within 20 days of service. 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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$16,200 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 2**, the Notice alleged a probable violation of Part 192 and specifically considered this to be a warning item. The warning was for:

49 C.F.R. § 192.455(a)(2) – Respondent’s alleged failure to protect a buried pipeline against external corrosion by installing a cathodic protection system within one year of its construction in 2008. Specifically, the Notice alleged that CNYOG installed a cathodic protection system for a new pipeline, but never performed a close interval survey (CIS) to determine whether the cathodic protection system was adequate to protect the entire length of the pipeline. The company only checked cathodic protection levels at approximately ten locations along the nine-mile pipeline.

In its Response and at the hearing, CNYOG maintained that the cathodic protection system met the -850 mV standard when it was placed in service. CNYOG also contested the assertion in the Notice that a CIS was required to verify the adequacy of cathodic protection.

At the hearing, OPS and CNYOG discussed the possibility of using an alternative method rather than CIS to demonstrate the adequacy of cathodic protection along the entire pipeline. One

alternative discussed by the parties was the installation of additional test stations to be strategically located based on the unique physical and environmental characteristics of the pipeline.

Since Item 2 is a warning item, there is no finding as to whether or not a violation of § 192.455(a)(2) occurred. Pursuant to 49 C.F.R. § 190.205, however, Respondent is advised that if OPS finds the same issue in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent may submit a petition for reconsideration of this Final Order to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, DC 20590, no later than 20 days after receipt of the Final Order by the Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. 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.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued