

CJL 3/8/06



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

MAR - 3 2006

03-05-06P01:41 RCVD

Mr. John Traeger  
Manager, Pipelines and Terminals  
Cenex Harvest States Cooperatives, Inc.  
803 Highway 212 South  
Laurel, MT 59044

RE: CPF No. 5-2004-5023

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, assesses a civil penalty of \$43,000, makes a finding of inadequate procedures and requires amendment of certain integrity management program procedures. The Final Order also specifies actions to be taken to comply with the pipeline safety regulations and revision of certain integrity management program procedures. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the compliance order and amendment of procedures are completed, as determined by the Director, Western Region, this enforcement action will be closed. 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

cc: Chris Hoidal, Director, Western Region, OPS

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

**In the Matter of** )

**CENEX HARVEST STATES  
COOPERATIVES, INC.** )

**Respondent.** )

**CPF No. 5-2004-5023**

**FINAL ORDER**

Between July 28 and 31, 2003, pursuant to 49 U.S.C. § 60117, representatives of the Office of Pipeline Safety (OPS) Central and Western Regions, conducted an Integrity Management (IM) inspection of Respondent's pipeline system in Laurel, Montana. As a result of the inspection, the Director, Western Region, OPS, issued to Respondent, by letter dated July 30, 2004, a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Notice of Amendment (Notice)<sup>1</sup>. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. Part 195, proposed assessing a civil penalty of \$43,000 for the alleged violations and proposed that Respondent take certain measures to correct the alleged violations. The Notice alleged inadequacies in Respondent's integrity management program and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. §195.452.

Respondent requested a 60-day extension of time on August 18, 2004 to respond to the Notice. On August 27, 2004, Respondent was granted a 60-day extension to respond to the Notice. Respondent responded to the Notice by letter dated, November 1, 2004 (Response). Respondent contested five of the alleged violations, offered information to explain the allegations, provided information concerning the corrective actions it has taken, and requested additional time to complete the provisions of the Proposed Compliance Order and Proposed Notice of Amendment. Respondent also requested a hearing.

The hearing was held on February 22, 2005. After the hearing, Respondent submitted a supplemental response dated March 15, 2005, in support of the position that its integrity management plan and procedures meet the requirements of §§195.452(f)(1) and 195.452(f)(5).

---

<sup>1</sup>This case, however, is no longer before RSPA for decision. Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) was created to further the highest degree of safety in pipeline transportation and hazardous materials transportation. See, section 108 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). See also, 70 Fed. Reg. 8299 (February 18, 2005) re delegating the pipeline safety functions to the Administrator, PHMSA.

## **FINDINGS OF VIOLATION**

### ***Uncontested***

Respondent did not contest the alleged violation of §§195.452 in Items 1(b, d-e, h-j), 2, 3 (a-f), 4, 5(a-c), 6(a-b), and 7(b), 8, and 9(a-b) of the Notice. Accordingly, I find that Respondent violated 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. §195.452(f)(1) – failure to perform segment identification on its 10" BV211 to Glendive pipeline prior to placing it into service.

49 C.F.R. §195.452(f)(8) – failure to include any process description, or reference any procedures for performing reviews of integrity assessment results; failure to include a process for ensuring that personnel performing integrity assessment result reviews are qualified to perform these reviews; failure to include a process for validating and calibrating data received from third party in-line inspection (ILI) vendors; failure to include a process for integration of other information with assessment results in making repair decisions.

49 C.F.R. §195.452(e)(1)(i-viii) – failure to adequately describe in sufficient detail the performance of additional risk assessments after the BAP has been completed.

49 C.F.R. §195.452(f)(5) – failure to adequately describe in sufficient detail a methodology for choosing integrity re-assessment methods.

49 C.F.R. §195.452(f)(7) – failure to adequately describe in sufficient detail its process for applying the performance metrics in its IMP to evaluate program effectiveness, as it relates to identifying the type and frequency of audits to be performed, developing a process for communicating goals and results of the IMP to managers and others in the organization and developing a process for analyzing actual events, e.g., near misses as well as incorporating lessons learned.

49 C.F.R. §195.452(l)(1)(i)(ii) – failure to have a written integrity management program, as Respondent failed to meet the 3/31/02 deadline for the development of two (2) of the processes required to be in the initial framework, and failure to have sufficient documents to support the decisions and analyses, including any modifications, justification, variances, deviations and determinations made, and actions taken, to implement and evaluate each element of the integrity management program in accordance with 49 C.F.R. §§195.452(f)(6 -7) and (b)(4)(ii).

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

*Contested*

**Item 1a** of the Notice alleged that Respondent violated 49 C.F.R. §195.452 (f)(1) and (3) by not identifying pipeline facilities that could affect High Consequence Areas in its Integrity Management Plan (IMP). OPS noted that Respondent did not mention pipeline facilities other than line pipe.

In its Response and during the hearing, Respondent argued that it did not exclude pipeline facilities from its segment identification analysis but did not address them specifically. Respondent explained that it took a conservative approach that did not include the use of any specific leak volumes. Respondent further explained that it picked “conservative buffer distances,” i.e. 20 mile overland transport corridor and 50-mile water transport. Respondent posed that since no leak volumes were calculated and that pipeline facilities other than mainline pipe, such as breakout tanks and pump stations, were treated exactly like mainline pipe.

OPS countered that a determination on the conservative nature of the buffer zone distances presented cannot be made without Respondent performing an analysis. OPS explained that Respondent must conduct a quantitative analysis of the overland spread and water transport differences for the differences in spill volumes between line pipe and other pipeline facilities which usually have greater potential release volumes. In furtherance, OPS argued that Respondent must provide justification for why they chose a 20 mile overland transport corridor and a 50-mile water transport distance as opposed to any other distance. OPS maintained that each operator must consider every aspect of their pipeline system and have documents to support the decisions and analyses, including any modifications, justifications, variances, deviations, and determinations made, and actions taken, to implement and evaluate each element of the integrity management program listed in 49 C.F.R. §195.452(f).

Respondent’s revised IMP does not address pipeline facilities other than the line pipe. Respondent’s IMP does not provide a comprehensive risk assessment. Respondent provided a list of facilities within a “could affect” pipeline segment after segment identification has been completed. The information is insufficient. This is not what the rule intended nor does it allow for a comprehensive risk assessment. There is a lack of sufficient detail to explain the process, to support Respondent’s “conservative approach” or to justify the use of its approach. Accordingly, I find that Respondent violated 49 C.F.R. §195.452 (f)(1) and(3) by failing to adequately identify in its Integrity Management Plan pipeline facilities that could affect High Consequence Areas.

**Item 1c** of the Notice alleged that Respondent violated 49 C.F.R. §195.452(f)(1), by not providing sufficient detailed procedures in its IMP to identify all pipeline segments that “could affect” an HCA. OPS posed that Respondent’s revised process description covering segment identification lacks adequate specificity to understand the process and to ensure that all pipeline segments that “could affect” an HCA were identified and covered in Respondent’s IMP program, in accordance with 49 C.F.R. §195.452(l)(1)(ii).

During the hearing and in its Responses, Respondent argued that its segment identification procedures are adequate and effective because of the conservative nature of their buffer zone. Respondent advised that based upon the hearing, it understands that OPS would like to see additional details included in the procedures to ensure that it contains adequate specificity and is repeatable. To that end, Respondent advised that it modified Sections 2.3, 2.4, and 2.5 of its IMP to achieve those results. Respondent submitted the modified sections into the record.

A review and comparison of Respondent's original procedures and the modified version revealed that Respondent did not actually modify its procedures but made grammatical changes. Respondent moved original language between section numbers, summarized original wording and changed the tense of words from future to present. For example, the original Section 2.3 entitled "Identifying potential HCAs that could be affected" is now labeled Section 2.4 and a new Section 2.3 entitled, "Geographic Information System (GIS)" has been inserted. This section is one sentence long and merely states, "CHS utilized GIS data that is available on the NPMS website in conjunction with DeLorme TopoUSA, mapping software and Microsoft Access to analyze and manage the HCA and Risk data." This language is a summary of the last paragraph in Respondent's original IM Section 2.4.

The new Section 2.4 entitled, "Identifying potential HCAs that could be affected" and its subsections are nearly identical to the CHS IM original Section 2.3 and its subsections. Again, the differences noted are the changes of tense from future to present or past, e.g., The original document discussed positions that normally would complete a task—the new language states more definitively, "This process was completed by the DOT Compliance Coordinator, the Manager, EH&S and Manager, Pipelines and Terminals." Also, while the original subsection 2.3.3 asks the new question, "Does the HCA intersect the pipeline?" There are a few other minor modifications to the procedures which do not change the substance of the information presented from the original documents reviewed. It is not necessary to enumerate all of the minor word changes.

Respondent has not changed its segment identification process to provide sufficient detailed procedures in its IMP to identify all pipeline segments that "could affect" an HCA. Respondent's revised process description covering segment identification failed to provide adequate specificity to understand the process and to ensure that all pipeline segments that "could affect" an HCA were identified and covered in Respondent's IMP program, in accordance with 49 C.F.R. §195.452(l)(1)(ii). Accordingly, I find that Respondent violated 49 C.F.R. §195.452 (f)(1).

**Item 1f** of the Notice alleged that Respondent violated 49 C.F.R. §195.452(f)(1), by not including in its IMP the justification for the twenty (20) mile overland buffer zone or the fifty (50) mile water transport distance. For example, there was no discussion on what constitutes a "body of water" for the purpose of transportation.

During the hearing and in its Response, Respondent explained that it chose the 20 mile overland transport corridor and the 50-mile water transport corridor because they were conservative distances

used to ensure that no potentially impacted HCA's were excluded from its pipeline segment identification analysis. Respondent acknowledged that during an OPS IMP inspection in July 2003, it was notified by OPS that justification to support this conservative approach was necessary and that justification must be included in the IMP. Respondent advised that it responded with the initiation of an engineering study by a consultant to evaluate the conservative nature of its buffer approach to the segment identification process.

Although Respondent submitted documentation of the engineering calculations concerning release volumes, there are no result summaries or assumptions for the calculations made. While the report reflects what the consultant did, it failed to include the process or conclusions. Without a sufficient detailed explanation of the process used, the assumptions made and the conclusions drawn, a determination on the adequacy of the analysis cannot be made. Accordingly, I find that Respondent violated 49 C.F.R. §195.452 (f)(1).

**Item 1g** of the Notice alleged that Respondent violated 49 C.F.R. §195.452(f)(1), by not providing justification for the exclusion of pipeline segments that directly intersect HCAs.

During the hearing and in its Response, Respondent contended that it did include in its IMP the rationale for each case that a pipeline segment, which intersects an HCA, was determined to be unable to affect that HCA. Respondent further contended that the specific information was contained in Appendix A of the IMP. In response to the discussion on this topic at the hearing, Respondent advised that Section 2.4.4 was modified to clarify its procedures for handling HCA's that are intersected by its pipeline.

Further review of the modifications submitted by Respondent revealed no substantive changes to its IMP, as there was no justification for determining that pipeline segments that directly intersect a HCA cannot affect that HCA. Respondent failed to provide technical justification for excluding pipeline segments that directly intersect HCAs, in accordance with 49 C.F.R. §195.452 (b)(6)(ii). Accordingly, I find that Respondent violated 49 C.F.R. §195.452 (f)(1).

**Item 7a** of the Notice alleged that Respondent violated 49 C.F.R. §195.452(f)(5), by not providing a sufficiently detailed description for continual process of evaluation and assessment in its IMP. Respondent did not document the methods and information required for integration for determining re-assessment intervals, as required by §195.452(e). Respondent's IMP program states that 5-year re-assessment intervals will be used. However, the justification for using this re-assessment was not provided in accordance with §195.452(j).

During the hearing and in its Response, Respondent took the position that IMP regulations require that the information from the baseline assessments be used in developing the re-assessment intervals, and as a result it had not set the reassessment intervals for "could affect" pipeline segments at the time of the OPS inspection. Respondent contended that at the time of the July 2003 inspection, no baseline assessments had been completed and it did not set a 5-year re-assessment interval. Respondent argued that reassessment intervals would not be set until

after the completion of baseline assessments, and that when the reassessment interval was determined, it would not exceed 5 years.

After further review of Section 7 of Respondent's IMP, Respondent is correct in its position that it did not set a 5-year re-assessment interval. Nevertheless, Respondent also failed to provide the process or procedures for determining reassessment intervals as required by §195.452(e). General statements concerning appropriate assessment methods for each "could affect" pipeline segment without including process steps and the timing for making this determination is insufficient. The modifications submitted by Respondent failed to include sufficient technical justification for determining reassessment intervals. Accordingly, I find that Respondent violated 49 C.F.R. §195.452(f)(5) by failing to provide a sufficiently detailed description for continual process of evaluation and assessment in its IMP, as required by §195.452(e).

### 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. The Notice proposed a \$43,000 civil penalty for violations of 49 C.F.R. Part 195.

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.

**Item 1a** of the Notice proposed a civil penalty of \$5,000 for violation of 49 C.F.R. §195.452(f)(1), as Respondent failed to identify pipeline facilities that could affect high consequence areas in its Integrity Management Plan (IMP). Respondent did not mention pipeline facilities other than line pipe. Respondent did not provide a comprehensive risk assessment. It is essential that an operator's approach clearly identifies the major threats to HCAs for a given pipeline segment or facility, identifies how those threats rank in relation to each other, and how the segments and facilities compare to each other based on the risk to HCAs. Respondent has not shown any circumstance that would have prevented or justified it not including sufficient details about the processes and procedures to support its "conservative approach" or to justify the use of its approach. Respondent failed to provide an analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure, as required by 49 C.F.R. § 195.452(f)(3). Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000, for violation of 49 C.F.R. § 195.452(f)(1).

**Item 1c** of the Notice proposed a civil penalty of \$1,000 for violation of 49 C.F.R. §195.452(f)(1), as Respondent failed to provide sufficient detailed procedures in its IMP to identify all pipeline segments that "could affect" an HCA. A review and comparison of Respondent's original procedures and the modified version revealed that Respondent did not actually modify its procedures

but made grammatical changes. Respondent's revised process description covering segment identification lacked adequate specificity to make the process clear and to ensure that all pipeline segments that "could affect" an HCA were identified and covered in Respondent's IMP program, in accordance with 49 C.F.R. §195.452(l)(1)(ii). An operator's failure to identify pipeline facilities that could affect high consequence areas along the pipeline will leave it ill-prepared to address the severity and extent of the consequences that ensue following a failure. A release or failure under such circumstances increases the risk of harm to the public and the environment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$1,000, for violation of 49 C.F.R. § 195.452(f)(1).

**Item 1f** of the Notice proposed a civil penalty of \$2,000 for violation of 49 C.F.R. §195.452(f)(1), as Respondent failed to include in its IMP justification to support the use of its approach for a twenty (20) mile overland buffer zone and a fifty (50) mile water transport distance. For instance, Respondent failed to discuss what constitutes a "body of water" for the purpose of transportation. Respondent acknowledged that it was notified by OPS that justification to support this conservative approach was necessary and that justification must be included in the IMP. Nevertheless, Respondent failed to do so with a sufficiently detailed explanation of the process used, the assumptions made and the conclusions reached. Therefore, a determination on the adequacy of the analysis cannot be made. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$2,000, for violation of 49 C.F.R. § 195.452(f)(1).

**Item 1g** of the Notice proposed a civil penalty of \$2,000 for violation of 49 C.F.R. §195.452(f)(1), as Respondent failed to provide justification for the exclusion of pipeline segments that directly intersect HCAs. Respondent contended that Appendix A of its IMP contained the specific information and rationale for each case that a pipeline segment, which intersects an HCA, was determined to be unable to affect that HCA. A subsequent review of the modifications submitted by Respondent revealed no substantive changes and failed to provide technical justification for excluding pipeline segments that directly intersect HCAs, in accordance 49 C.F.R. §195.452 (b)(6)(ii). Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$2,000, for violation of 49 C.F.R. § 195.452(f)(1).

**Item 1i** of the Notice proposed a civil penalty of \$2,000 for violation of 49 C.F.R. §195.452(f)(1), as Respondent failed to perform segment identification on its 10" BV211 to Glendive pipeline prior to placing it into service. Respondent treated this new line as if it could affect only the HCAs that were identified for the line that it replaced. Respondent failed to have a process to ensure that all new pipelines that could affect an HCA are identified and incorporated in its IMP, in accordance with 49 C.F.R. §195.452(b)(2). Respondent did not contest the violation or show any circumstance that would have prevented or justified its failure to perform segment identification on its 10" BV211 to Glendive pipeline prior to placing it into service. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$2,000, for violation of 49 C.F.R. §195.452(f)(1).

**Item 2** of the Notice proposed a civil penalty of \$2,000 for violation of 49 C.F.R. §195.452(b)(3), Respondent did not contest the violation or show any circumstance that would have prevented or



justified its failure to document in sufficient detail the process for revising the baseline assessment plan (BAP). Respondent's IMP did not include processes and procedures for the inclusion of new segments that could affect an HCA in its BAP within one (1) year and for assessing the integrity of new segments within five (5) years. A release or failure under such circumstances increases the risk of harm to the public and the environment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$2,000, for violation of 49 C.F.R. §195.452(b)(3).

**Item 5c** of the Notice proposed a civil penalty of \$2,000 for violation of 49 C.F.R. §195.452(e)(1)(i-viii) An operator's failure to sufficiently document its risk analysis process and analyze the potential effects of pipeline failures on high consequence areas at specific locations along the pipeline will leave it ill-prepared to address the severity and extent of the consequences that ensue following a failure. Respondent did not contest the violation or show any circumstance that would have prevented or justified it not including sufficient details about the processes and procedures used to risk rank its HCA segments and the segments listed in Respondent's BAP. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$2,000, for violation of 49 C.F.R. §195.452(e)(1).

**Item 6a** of the Notice proposed a civil penalty of \$10,000 for violation of 49 C.F.R. §195.452(i)(1), as Respondent failed to provide sufficient detail on the methods to be used to evaluate preventive and mitigative measures. Respondent also failed to provide sufficient descriptions for its steps to choose candidate measures, assess risks and how it determines whether to implement the candidate measures. Respondent did not contest the violation or show any circumstance that would have prevented or justified it not including sufficient details about its preventive and mitigative measures. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for violation of 49 C.F.R. §195.452(i)(1).

**Item 7a** of the Notice proposed a civil penalty of \$5,000 for violation of 49 C.F.R. §195.452(f)(5), as Respondent failed to provide the process or procedures for determining reassessment intervals as required by §195.452(e). An evaluation of pipeline integrity is performed periodically to update the operator's understanding of pipe conditions and the location-specific integrity threats for segments that can affect HCAs. The results of this evaluation are use to establish the intervals for future integrity assessments and the assessment methods to be used. Respondent argued that reassessment intervals would not be set until after the completion of baseline assessments, and that when the re-assessment interval was determined, it would not exceed 5 years. The re-assessment intervals are based on all risk factors associated with the pipeline. The operator must include, but is not limited to, the factors detailed in §195.452(e). Respondent must have a continual process of evaluation and assessment. Respondent failed to provide a sufficiently detailed description for continual process of evaluation and assessment in its IMP, as required by §195.452(e). Respondent failed to determine any re-assessment intervals at the time of the inspection. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for violation of 49 C.F.R. §195.452(f)(5).

**Item 7b** of the Notice proposed a civil penalty of \$2,000 for violation of 49 C.F.R. §195.452(f)(5), as Respondent failed to describe a methodology for choosing integrity re-assessment methods in its IMP. The operator must assess the integrity of the line pipe by any of the methods detailed in §195.452(j)(5). Respondent did not contest the violation or show any circumstance that would have prevented or justified its failure to describe a methodology for assessing the integrity of the line pipe in accordance with 49 C.F.R. §195.452(j)(5). Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$2,000 for violation of 49 C.F.R. §195.452(f)(5).

**Item 9a** of the Notice proposed a civil penalty of \$10,000 for violation of 49 C.F.R. §195.452(l)(1)(i-ii), as Respondent failed to maintain for review, during an inspection, a written integrity management program in accordance with 49 C.F.R. §195.452(b)(4)(i-ii). Respondent did not contest the violation or show any circumstance that would have prevented or justified its failure to comply. Respondent's IMP failed to include two (2) of the processes required to be in the initial framework by March 31, 2002 and failed to indicate how decisions will be made to implement each element of the IM program. Respondent failed to have in place an IM program that includes a framework that addresses each element of the IM program. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for violation of 49 C.F.R. §195.452(l)(1)(i-ii).

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$43,000. A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue business.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$43,000 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.

### **COMPLIANCE ORDER**

The Notice proposed a Compliance Order with regards to Item 1(i), 3(a-d), 8, and 9(b), violation of 49 C.F.R. § 195.452(f)(1), 195.452(f)(8), 195.452(f)(7) and 195.452(l)(1).

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or

- a. Clearly articulate the necessary steps to perform each program element and ensure repeatability;
  - b. Describe the key input information sources;
  - c. Define the process output products, their documentation (including the justification for decisions), and document retention requirements; and
  - d. Specify organizational responsibilities for performing key process steps.
2. With regard to Item 1(i), establish processes and procedures that comply with 49 C.F.R. §195.452 in its entirety as it relates to Category 3 “new” pipelines.
    - a. Processes and procedures that comply with 49 C.F.R. §195.452 in its entirety with regard to performing integrity assessment results reviews.
    - b. Processes and procedures that comply with 49 C.F.R. §195.452 in its entirety with regard to only utilizing qualified individuals to perform the integrity assessment results review.
    - c. Processes and procedures for validating and calibrating data received from third party in-line-inspection (ILI) vendors.
    - d. Processes and procedures for the integration of other information with assessment results in making repair decisions.
  4. With regard to Item 8, establish processes and procedures that comply with 49 C.F.R. §195.452 in its entirety with regard to evaluating Cenex’s IM Program effectiveness, including sufficient details on the application of appropriate performance metrics.
  5. Within 60 days of receipt of this Order, submit proof, records and notice of completed actions for Items 1-4 to Mr. Chris Hoidal, Director, Office of Pipeline Safety, Western Region, 12300 W. Dakota Avenue, Ste. #110, Lakewood, CO 80228.

6. Cenex Harvest States Cooperatives, Inc. must maintain documentation of the costs associated with fulfilling this Compliance order and submit the total to the Director, Office of Pipeline Safety, Western Region.

The Regional Director may extend the period for complying with the required items if the Respondent requests an extension and adequately justifies the reasons for the extension.

### **AMENDMENT OF PROCEDURES**

Items 1b-g, 2, 3e-f, 4, 5a-b, and 6a of the Notice alleged inadequacies in Respondent's integrity management program and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. §§ 195.452(f)(1), 195.452(b)(3), 195.452 (f)(8), 195.452(f)(4), 195.452(e)(1)(i-viii), and 195.452(i)(1).

Respondent requested addition time to implement the provisions the proposed Notice of Amendment. Although Respondent submitted amended procedures with its post-hearing submission on March 16, 2005 to the Western Region, OPS, these procedures do not address all of the inadequacies described in the Notice. Accordingly, I find that Respondent's integrity management procedures are inadequate to ensure safe operation of its pipeline system. Pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.237, Respondent is ordered to make the following revisions to its integrity management program and procedures. Respondent must:

1. Amend your procedures to include which company personnel are to provide feedback from field activities that could result in the identification of new or extended segments that could affect HCAs, include how the information is to be recorded and how it will be communicated to your IM team, in accordance with 49 C.F.R. § 195.452(d)(3).
2. Amend your procedures to include appropriate details and specificity about the process description in your integrity management plan document covering segment identification. Ensure that all pipeline segments that "could affect" an HCA are identified.
3. Amend your procedures to describe the process for how your pipelines were located with your software program in relation to HCAs, include how this was accomplished to ensure repeatability.
4. Amend your procedures to provide sufficient details that clearly describe "ground truthing" as a method to verify that all pipeline segments that could affect an HCA have in fact been identified, include a description of how this process is to be implemented.
5. Amend your procedures to include justification for your ten (10) mile overland buffer zone and fifty (50) mile water transport distance, including

a description of what constitutes a “body of water” for the purpose of transportation.

6. Amend your procedures to include technical justification for excluding pipeline segments that directly intersect HCAs.
7. Amend your procedures to include in sufficient detail the process for revising your baseline assessment plan (BAP), including the processes and procedures for the inclusion of new segments that could affect an HCA in your BAP within one (1) year and for assessing the integrity of new segments within five (5) years.
8. Amend your procedures to include a process for the development of hydrotest procedures and acceptance criteria where you plan to utilize hydrotesting as a method of integrity assessment.
9. Amend your procedures to include a process description that limits a pressure reduction taken to ensure the integrity of a line segment until repairs can be completed to a maximum of 365 days.
10. Amend your procedures to describe in detail to ensure repeatability how the Subject-Matter-Expert (SME) risk analysis process was performed, including, but not limited to, the use of appropriate inputs, considerations of the inputs as well as technical justifications of determinations made.
11. Amend your procedures to expand your risk analysis process description and provide additional process descriptions, including, but not limited to, a definition of the Probability and Consequences risk categories, a definition of the terms Susceptibility and Severity, qualitative description for the Probability and Consequence quantitative (1-10) rankings and consideration of the use of weighing factors for risk categories used.
12. Amend your procedures to describe in sufficient detail the process for identifying preventive and mitigative measures and the methods to be used to evaluate preventive and mitigative measures. The description should include steps for choosing a candidate measures, assessing risk, and deciding on whether to implement the candidate measures. Your procedures should also include, but is not limited to, identification of the most significant drivers of high risk; identification of the preventive and mitigative measures that address the high risk drivers; measurement of the effectiveness of preventive and mitigative measures; determine which preventive and mitigative measures are implemented; and evaluate the effectiveness of installing additional leak detection and/or emergency flow restriction devices (valves).

- 13. Submit the amended procedures within 30 days following receipt of this Order to Director, Office of Pipeline Safety Western Region, 12300 W. Dakota Avenue, Suite 110, Lakewood, CO 80228.

The Regional Director may extend the period for complying with the required items if the Respondent requests an extension and adequately justifies the reasons for the extension.

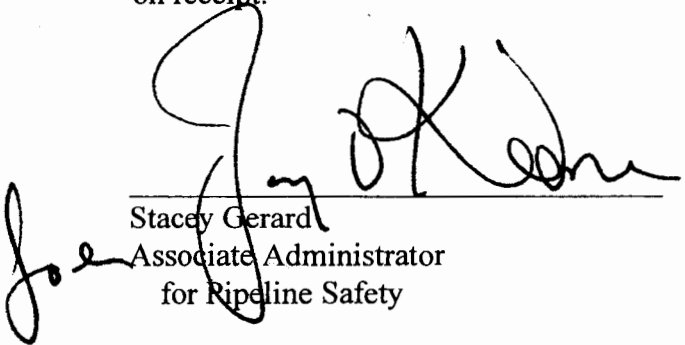
Failure to comply with this Amendment may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

**WARNING ITEM**

The Notice did not propose a civil penalty or corrective action for Items 1(h), 1(j) and 6(b) in the Notice; therefore, these are considered warning items. Respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

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. All other terms of the order, including any required corrective action and amendment of procedures, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective on receipt.



Stacey Gerard  
Associate Administrator  
for Pipeline Safety

MAR -13 2006

---

Date Issued