



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

FEB 16 1998

Mr. Edward Jacoby
Vice President, Wholesale Marketing & Distribution
The Premcor Refining Group, Inc.
1700 East Putnam Avenue
Old Greenwich, CT 06870

Re: CPF No. 3-2004-5008

Dear Mr. Jacoby:

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 \$22,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. 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: Mr. Ivan Huntoon
Director, Central 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)

The Premcor Refining Group, Inc.,)

Respondent.)

CPF No. 3-2004-5008

FINAL ORDER

On October 6-9, 2003, pursuant to 49 U S C § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), conducted an on-site pipeline safety inspection of Respondent's facilities and records in Illinois and Indiana. As a result of the inspection, the Director, Central Region, PHMSA, issued to Respondent, by letter dated March 23, 2004, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C F R § 190.207, the Notice proposed finding that Respondent had committed violations of 49 C F R Part 195 and proposed assessing a civil penalty of \$22,000 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated April 27, 2004, as supplemented by letter dated March 7, 2005 (Response). In its response, Respondent offered information to explain the allegations, provided information concerning the corrective actions it has taken, stated its intent to pay the proposed civil penalty for three of the alleged violations, and requested that the proposed civil penalty amount be reduced for one of the alleged violations and that another be withdrawn.

FINDINGS OF VIOLATION

Item 1 in the Notice alleged that Respondent violated 49 C F R § 195.310(b)(2) by failing to maintain records documenting the calibration of its hydrostatic test instruments. In its response, Respondent acknowledged that it had failed to locate the specified records. Accordingly, I find that Respondent violated § 195.310(b)(2) failing to maintain records documenting the calibration of its hydrostatic test instruments.

Item 2 in the Notice alleged that Respondent violated 49 C F R § 195 402(a) by failing to follow the procedures for maintaining liaison with fire, police and other public officials that it established pursuant to § 195 402(c)(12) during calendar year 2002. In its response, Respondent acknowledged that it had failed to locate any records demonstrating liaison activities for 2002. Accordingly, I find that Respondent violated § 195 402(a) by failing to follow its procedures for maintaining liaison with fire, police and other public officials during 2002.

Item 3 in the Notice alleged that Respondent violated 49 C F R § 195 404(a)(2) by failing to maintain up-to-date maps of foreign utilities crossing its pipeline. Respondent did not provide any information contesting this allegation in its response. Accordingly, I find that Respondent violated § 195 404(a)(2) by failing to maintain maps of foreign utilities crossing its pipeline.

Item 4a in the Notice alleged that Respondent violated 49 C F R § 195 404(c)(3) by failing to maintain inspection records for the over-fill protection for the break-out tanks at its refinery for the two years preceding the inspection. Respondent did not provide any information contesting this allegation in its response. Accordingly, I find that Respondent violated § 195 404(c)(3) by failing to maintain the specified inspection records during the relevant period.

Item 5 in the Notice alleged that Respondent violated 49 C F R § 195 420(b) by failing to demonstrate that the main line valve north of the Cal Sag Channel was inspected between 2001 and 2003. Respondent did not provide any information contesting this allegation in its response. Accordingly, I find that Respondent violated § 195 420(b) by failing to demonstrate that the specified valve was inspected during the relevant period.

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 a civil penalty not to exceed \$25,000 per violation for each day of the violation up to a maximum of \$500,000 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.

With respect to Item 1, the Notice proposed a civil penalty of \$5,000 for Respondent's failure to maintain records documenting the calibration of its hydrostatic test instruments. Maintaining complete and accurate records of test equipment calibrations is an important part of pipeline safety because this information facilitates the validation of the results of tests used to evaluate the integrity of a pipeline and make appropriate operating decisions. In its response, Respondent

explained that it believed that the calibration of its hydrostatic test instruments had been documented but that the records had been misplaced. Respondent, however, has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, I assess Respondent a civil penalty of \$5,000 for violating 49 C.F.R. § 195.310(b)(2).

With respect to Item 2, the Notice proposed a civil penalty of \$5,000 for Respondent's failure to follow the procedures for maintaining liaison with fire, police and other public officials that it established pursuant to § 195.402(c)(12) during calendar year 2002. Maintaining liaison with response officials on an ongoing basis is an important part of pipeline safety because it ensures that the responsible officials are kept up-to-date on the operational status of pipelines in their area and facilitates emergency response planning and the ability to rapidly establish communications in the event of an incident. In its response, Respondent explained that it believed that some liaison activity did occur during the relevant period. Respondent, however, failed to provide any documents or other evidence demonstrating that liaison was adequately conducted during 2002. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, I assess Respondent a civil penalty of \$5,000 for violating 49 C.F.R. § 195.402(a).

With respect to Item 4a, the Notice proposed a civil penalty of \$5,000 for Respondent's failure to maintain inspection records for the over-fill protection for the break-out tanks at its refinery for the two years preceding the inspection. Maintaining complete and accurate records of facility inspections is an important part of pipeline safety because it facilitates oversight and monitoring of maintenance and other activities required to operate a pipeline in a safe manner and in compliance with the applicable regulations. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, I assess Respondent a civil penalty of \$5,000 for violating 49 C.F.R. § 195.404(c)(3).

With respect to Item 5, the Notice proposed a civil penalty of \$7,000 for Respondent's failure to demonstrate that the main line valve north of the Cal Sag Channel was inspected between 2001 and 2003. The inspection of main line valves within the required time intervals is an important part of pipeline safety because, among other reasons, proper operation of these valves is a key part of mitigating a release in the event of a failure. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, I assess Respondent a civil penalty of \$7,000 for violating 49 C.F.R. § 195.420(b).

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$22,000.

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-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P O Box 25082, Oklahoma City, OK 73125, (405) 954-4719

Failure to pay the \$22,000 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

With respect to Item 3, the Notice proposed a Compliance Order for violating 49 C F R § 195.404(a)(2) by failing to maintain maps of foreign utilities crossing its pipeline. Under 49 U S C § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under Chapter 601. The Regional Director has indicated that Respondent has now provided revised maps showing all utility crossings in accordance with the terms of the Proposed Compliance Order. Accordingly, since compliance has been achieved with respect to this violation, it is unnecessary to include the compliance terms in this Order.

WARNING ITEMS

The Notice did not propose a civil penalty or compliance order for Items 4b, 6, and 7 in the Notice. Therefore, these are considered to be warning items. The warnings were for Respondent's failure to document the actions taken in response to concerns identified during patrols conducted in 2001 in accordance with § 195.404(c)(3), failure to provide notification of its damage prevention program to excavators during 2001 and 2003 in accordance with § 195.442(c)(2), and failure to provide protection against atmospheric corrosion at the inlet piping to Tank 44 in accordance with § 195.583(c). Respondent provided information in its response indicating that it has initiated actions to address these items. Respondent is warned that if these items are not fully addressed, enforcement action will be taken if a subsequent inspection reveals a violation.

Under 49 C F R § 190 215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, 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 a 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.



for
Stacey Gerard
Associate Administrator
for Pipeline Safety

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Date Issued