

**DEC 30 2010**

Ms. Crystal Maggalet  
President  
Big West of California, LLC  
c/o Flying J, Inc.  
1104 Country Hills Drive  
Ogden, UT 84403

**Re: CPF No. 5-2009-0019**

Dear Ms. Maggalet:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a reduced civil penalty of \$122,600. 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 deemed effective upon the date of mailing, or as otherwise 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. Chris Hoidal, Director, Western Region, PHMSA

Mr. Steven Peyton, Manager, Pipeline Operations,  
Paramount Petroleum Corporation  
14700 Downey Avenue  
Paramount, CA 90723

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 1160 0001 0041 0855]**

**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>Big West of California, LLC,</b>	)	<b>CPF No. 5-2009-0019</b>
	)	
<b>Respondent.</b>	)	
_____	)	

**FINAL ORDER**

On March 24-25, 2009, pursuant to 49 U.S.C. § 60117, a representative of 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 Big West of California, LLC (Big West or Respondent), in Bakersfield, California. At the time, Big West owned and operated a two-mile pipeline carrying fuel gas to its refinery in Bakersfield.<sup>1</sup>

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated July 2, 2009, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Big West had committed various violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$122,600 for the alleged violations.

Big West responded to the Notice by letter dated July 28, 2009. The company did not contest the allegations of violation but requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

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<sup>1</sup> On December 22, 2008, Big West of California, LLC, and several affiliates, including Flying J, Inc., and Big West Oil, LLC, filed voluntary petitions in federal court seeking protection under Chapter 11 of the United States Bankruptcy Code. *See In re Flying J, Inc. et al*, Case No. 08-13384, U.S. Bankruptcy Court, District of Delaware. Notwithstanding those filings, the issuance of this Final Order is permitted under 11 U.S.C. § 362(b)(4) (2006) (“The filing of a petition [in bankruptcy] . . . does not operate as a stay . . . of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit’s or organization’s police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit’s or organization’s police or regulatory power. . .”). As part of the court-approved reorganization, Big West Oil, LLC sold the assets at issue in this case to Alon USA Energy, Inc. (Alon), in 2010. The sale was consummated on June 1, 2010, and the pipeline is now operated by Paramount Petroleum Corporation, a subsidiary of Alon.

## FINDINGS OF VIOLATION

In its Response, Big West did not contest the allegations in the Notice that it violated 49 C.F.R. Part 192, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 192.705, 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	7 ½ months; but at least twice each calendar year	15 months; but at least once each calendar year.
3	4 ½ months; but at least four times each calendar year	7 ½ months; but at least twice each calendar year.
4	4 ½ months; but at least four times each calendar year	4 ½ 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 49 C.F.R. § 192.705 by failing to conduct required patrols to observe surface conditions on and adjacent to its pipeline's right-of-way. Respondent's entire pipeline is in a Class 3 location, and therefore patrols at highway and railroad crossings must be conducted at least every 4 ½ months, but at least four times each calendar year. The Notice alleged that Big West failed to patrol such crossings between May 17, 2006 and December 19, 2008. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.705 by failing to conduct required patrols of its pipeline's right-of-way.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 192.706, which states:

**§ 192.706 Transmission lines: Leakage surveys.**

Leakage surveys of a transmission line must be conducted at intervals not exceeding 15 months, but at least once each calendar year. However, in the case of a transmission line which transports gas in conformity with §192.625 without an odor or odorant, leakage surveys using leak detector equipment must be conducted—

- (a) In Class 3 locations, at intervals not exceeding 7 ½ months, but at least twice each calendar year; and
- (b) In Class 4 locations, at intervals not exceeding 4 ½ months, but at least four times each calendar year.

The Notice alleged that Respondent violated 49 C.F.R. § 192.706 by failing to conduct required leakage surveys of its pipeline. Big West’s pipeline is “a transmission line which transports gas in conformity with §192.625 without an odor or odorant,” and the entire pipeline is in a Class 3 location. Therefore, the company is required to conduct leakage surveys at intervals not exceeding 7 ½ months, but at least twice each calendar year. The Notice alleged that Big West failed to conduct any such leakage surveys between May 17, 2006 and December 19, 2008. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.706 by failing to conduct required leakage surveys.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 192.739(a), which states:

**§ 192.739 Pressure limiting and regulating stations: Inspection and testing.**

(a) Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is—

- (1) In good mechanical condition;
- (2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;
- (3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of §192.201(a); and
- (4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

The Notice alleged that Respondent violated 49 C.F.R. § 192.739(a) by failing to subject its pipeline’s primary relief device to inspections and tests at least every 15 months, but at least once each calendar year. Specifically, the Notice alleged that Big West failed to conduct required inspections and tests in 2006, 2007, or 2008. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.739(a) by failing to conduct required tests and inspections of its pipeline’s primary relief device.

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 192.743, which states:

**§ 192.743 Pressure limiting and regulating stations: Capacity of relief devices.**

(a) Pressure relief devices at pressure limiting stations and pressure regulating stations must have sufficient capacity to protect the facilities to which they are connected. Except as provided in §192.739(b), the capacity must be consistent with the pressure limits of §192.201(a). This capacity must be determined at intervals not exceeding 15 months, but at least once each calendar year, by testing the devices in place or by review and calculations.

(b) If review and calculations are used to determine if a device has sufficient capacity, the calculated capacity must be compared with the rated or experimentally determined relieving capacity of the device for the conditions under which it operates. After the initial calculations, subsequent calculations need not be made if the annual review documents that parameters have not changed to cause the rated or experimentally determined relieving capacity to be insufficient.

(c) If a relief device is of insufficient capacity, a new or additional device must be installed to provide the capacity required by paragraph (a) of this section.

The Notice alleged that Respondent violated 49 C.F.R. § 192.743 by failing to determine the capacity of its pipeline's pressure relief devices at least every 15 months, but at least once each calendar year. Specifically, the Notice alleged that Big West did not determine its pipeline's relief capacity, either by testing the devices in place or by review and calculations, in 2006, 2007, or 2008. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.743 by failing to determine its pipeline's pressure relief capacity with the required frequency.

**Item 5:** The Notice alleged that Respondent violated 49 C.F.R. § 192.465(b), which states:

**§ 192.465 External corrosion control: Monitoring.**

(a) . . . .

(b) Each cathodic protection rectifier or other impressed current power source must be inspected six times each calendar year, but with intervals not exceeding 2 ½ months, to insure that it is operating.

The Notice alleged that Respondent violated 49 C.F.R. § 192.465(b) by failing to inspect each cathodic protection rectifier on its pipeline at least every 2 ½ months. Specifically, the Notice alleged that Big West did not inspect its pipeline's rectifier between April 28, 2008 and September 19, 2008. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.465(b) by failing to inspect its pipeline's rectifier with the required frequency.

**Item 6:** The Notice alleged that Respondent violated 49 C.F.R. § 192.465(c), which states:

**§ 192.465 External corrosion control: Monitoring.**

(a) . . . .

(c) Each reverse current switch, each diode, and each interference bond whose failure would jeopardize structure protection must be

electrically checked for proper performance six times each calendar year, but with intervals not exceeding 2 ½ months. Each other interference bond must be checked at least once each calendar year, but with intervals not exceeding 15 months.

The Notice alleged that Respondent violated 49 C.F.R. § 192.465(c) by failing to electrically check each critical interference bond at least every 2 ½ months. Specifically, the Notice alleged that Big West failed to inspect its pipeline's critical interference bond between April 28, 2008 and September 19, 2008. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.465(c) by failing to inspect its pipeline's critical interference bond with the required frequency.

### **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. 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; Respondent's ability to pay the penalty and any effect that the penalty may have on its 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. The Notice proposed a total civil penalty of \$122,600 for the violations cited above.

In its Response, Big West requested that the proposed civil penalty be reduced. The company made several arguments in support of this request.

First, Big West stated that PHMSA had never issued a civil penalty against the company before, and that the proposed penalty was "excessive for a first time fine." PHMSA takes into account a company's history of prior offenses in calculating proposed civil penalties. Thus, Big West's enforcement history has already been incorporated into the proposed civil penalty. If PHMSA had previously issued fines against Big West, the proposed penalty could have been substantially higher. Accordingly, the information submitted by the company does not provide a basis for reducing the civil penalty.

Second, Big West stated that it had hired a contractor, Dick Brown Technical Services (DBTS), to improve the operations and maintenance of the pipeline at issue in this case. The company stated that DBTS took over operation of the pipeline in September 2008, and since that time Big West had been in compliance with all operations and maintenance requirements. Although PHMSA commends the company for taking steps to ensure its future compliance with the regulations, such steps do not provide a basis for a civil penalty reduction. Operators are required to comply with the pipeline safety regulations at all times, and improvements in compliance do not justify a reduction in civil penalties for previous violations.

Third, Big West stated that it had approved \$200,000 in funding to make the pipeline at issue “piggable” in an effort to improve its integrity and safety. Although PHMSA supports investments to improve pipeline safety, such expenditures do not provide a basis for a civil penalty reduction.

Fourth, Big West stated that it had filed for bankruptcy but had remained committed to the improvements described above. Again, all operators are required to comply with the pipeline safety regulations, regardless of their financial circumstances. Accordingly, the fact that Big West has taken steps to improve the safety of its pipeline notwithstanding its bankruptcy proceeding does not provide a basis for a civil penalty reduction.

**Item 1:** The Notice proposed a civil penalty of \$22,500 for Respondent’s violation of 49 C.F.R. § 192.705, for failing to conduct required patrols of its pipeline right-of-way. Failure to conduct required patrols increases the chance that a gas leak or third-party encroachment could go undiscovered. Respondent failed to conduct any patrols for more than two and a half years, and thus failed to conduct approximately ten required patrols. I find that the nature, circumstances, and gravity of the violation justify the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$22,500 for violation of 49 C.F.R. § 192.705.

**Item 2:** The Notice proposed a civil penalty of \$22,500 for Respondent’s violation of 49 C.F.R. § 192.706, for failing to conduct leakage surveys of its pipeline at the required intervals. Failure to conduct required leak surveys increases the chance that a gas leak could go undiscovered. Respondent failed to conduct any leak surveys for more than two and a half years, and thus failed to conduct approximately five surveys. I find that the nature, circumstances, and gravity of the violation justify the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$22,500 for violation of 49 C.F.R. § 192.706.

**Item 3:** The Notice proposed a civil penalty of \$22,500 for Respondent’s violation of 49 C.F.R. § 192.739(a), for failing to subject its pipeline’s primary relief device to inspections and tests with the required frequency. Failure to conduct such inspections and tests increases the chance that a relief device could develop a problem, which could threaten pipeline safety under certain conditions. Respondent failed to conduct any relief device inspections for a three-year period, and thus failed to conduct approximately three inspections. I find that the nature, circumstances, and gravity of the violation justify the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$22,500 for violation of 49 C.F.R. § 192.739(a).

**Item 4:** The Notice proposed a civil penalty of \$22,500 for Respondent’s violation of 49 C.F.R. § 192.743, for failing to determine the capacity of its pipeline’s pressure relief devices with the required frequency. Failure to make such capacity determinations increases the chance that a relief device could lack sufficient protective capacity. Respondent failed to make any capacity determinations for a three-year period, and thus failed to make approximately three determinations. I find that the nature, circumstances, and gravity of the violation justify the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$22,500 for violation of 49 C.F.R. § 192.743.

**Item 5:** The Notice proposed a civil penalty of \$16,300 for Respondent's violation of 49 C.F.R. § 192.465(b), for failing to inspect each cathodic protection rectifier on its pipeline at least every 2 ½ months. Failure to conduct rectifier inspections increases the chance that an out-of-service rectifier could go undiscovered, which would weaken the pipeline's cathodic protection system. Respondent failed to inspect its pipeline's rectifier between April 28, 2008 and September 19, 2008, a period of approximately four and a half months. Thus, Respondent exceeded the maximum inspection interval by 68 days, missing one inspection. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$16,300 for violation of 49 C.F.R. § 192.465(b).

**Item 6:** The Notice proposed a civil penalty of \$16,300 for Respondent's violation of 49 C.F.R. § 192.465(c), for failing to electrically check each critical interference bond at least every 2 ½ months. Failure to conduct such checks increases the chance that a shorted bond could go undiscovered, which could create a pipeline integrity problem. Respondent failed to inspect its critical interference bond between April 28, 2008 and September 19, 2008, a period of approximately four and a half months. Thus, Respondent exceeded the maximum inspection interval by 68 days, missing one inspection. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$16,300 for violation of 49 C.F.R. § 192.465(c).

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of **\$ 122,600**.

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.

Respondent voluntarily filed a petition for chapter 11 bankruptcy on December 22, 2008, *In re Flying J, Inc. et al*, Case No. 08-13384, U.S. Bankruptcy Court, District of Delaware. To PHMSA's knowledge, Respondent is conducting normal operations and is expected to do so following reorganization. PHMSA has no evidence that payment of the penalty will adversely affect Respondent's operations.

To the extent allowable, failure to pay the \$122,600 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717 and 49 C.F.R. Part 89, and may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

Under 49 C.F.R. § 190.215, Respondent has the right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of the Final Order by the Respondent, provided they contain a brief 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 but does not stay any other provisions of the Final Order, including any required corrective actions. 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