



U.S. Department
of Transportation
**Pipeline and
Hazardous Materials Safety
Administration**

SENT TO COMPLIANCE REGISTRY
Hardcopy Electronically
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12300 W. Dakota Ave., Suite 110
Lakewood, CO 80228

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED CIVIL PENALTY**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

July 2, 2009

Mr. Gene Cotton
Vice President of Refinery
Big West of California, LLC
6451 Rosedale Highway
Bakersfield, CA 93302-1132

CPF 5-2009-0019

Dear Mr. Cotton:

On March 24 and 25, 2009, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, inspected your Bakersfield Gas Line located in the State of California.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. **§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:

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

| Class location of line | Maximum interval between patrols | |
|------------------------|--|--|
| | At highway and railroad crossings | At all other places |
| 1, 2 | 7 1/2 months; but at least twice each calendar year | 15 months; but at least once each calendar year |
| 3 | 4 1/2 months; but at least four times each calendar year | 7 1/2 months; but at least twice each calendar year |
| 4 | 4 1/2 months; but at least four times each calendar year | 4 1/2 months; but at least four times each calendar year |

Under 49 C.F.R. §192.705(c), an operator must patrol their pipeline in Class 3 locations at least four (4) times per calendar year and at intervals not exceeding 4 ½ months. During the inspection, Big West personnel confirmed that they did not conduct the required patrols of its pipeline in Class 3 locations at highway and railroad crossings from May 17, 2006, the date of the last PHSMA inspection, through December 19, 2008. Big West also failed to provide the inspector with any of the required pipeline patrolling records for that 31-month period.

2. §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 1/2 months, but at least twice each calendar year; and

(b) In Class 4 locations, at intervals not exceeding 4 1/2 months, but at least four times each calendar year.

Under 49 C.F.R. §192.706(a), an operator must conduct natural gas leak surveys of their pipeline in Class 3 locations at least twice each calendar year and at intervals not exceeding 7 ½ months. During the inspection, Big West personnel confirmed that they did not conduct the required leak survey of its pipeline in Class 3 locations from May 17, 2006, the date of the last PHSMA inspection, through December 19, 2008. Big West also failed to provide the inspector with any of the required pipeline leak surveys records for that 31-month period.

3. §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.

Under 49 C.F.R. §192.739, an operator must inspect and test their primary relief device at least once each calendar year and at intervals not to exceed 15 months. During the inspection, Big West staff stated that they did not inspect and test the relief device for its pipeline for 2006, 2007, and 2008. Big West also failed to provide the inspector with any of the required relief device inspection records for that three (3) year period.

4. §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.

Under 49 C.F.R. §192.743, an operator must test or review and calculate the relief device capacity at least once each calendar year and at intervals not to exceed 15 months. During the inspection, Big West staff admitted that they did not test or review and calculate the required relief device capacity of its pipeline for 2006, 2007, and 2008. Big West also failed to provide the inspector with any of the required capacity inspection records for the previous three (3) years.

5. **§192.465 External corrosion control: Monitoring.**

(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 1/2 months, to insure that it is operating.

Under 49 C.F.R. §192.465(b), an operator must inspect each rectifier at least six (6) times each calendar year and at intervals not exceeding 2 ½ months. Between April 28, 2008 and September 19, 2008, Big West failed to comply with the inspection of their rectifier, exceeding the maximum rectifier inspection interval by 68 days.

6. **§192.465 External corrosion control: Monitoring.**

(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 1/2 months. Each other interference bond must be checked at least once each calendar year, but with intervals not exceeding 15 months.

Under 49 C.F.R. §192.465(c), an operator must inspect each critical interference bond at least six (6) times each calendar year and at intervals not exceeding 2 ½ months. Between April 28, 2008 and September 19, 2008, Big West did not inspect their critical interference bond at the proper frequency, exceeding the maximum inspection interval by 68 days.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$122,600.00 as follows:

| <u>Item number</u> | <u>PENALTY</u> |
|--------------------|----------------|
| 1 | \$22,500.00 |
| 2 | \$22,500.00 |
| 3 | \$22,500.00 |
| 4 | \$22,500.00 |
| 5 | \$16,300.00 |
| 6 | \$16,300.00 |

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to CPF 5-2009-0019 and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



Chris Hoidal
Director, Western Region
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Compliance Proceedings*

cc: PHP-60 Compliance Registry
PHP-500 H. Nguyen (#123242)

Response Options for Pipeline Operators in Compliance Proceedings

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

a. When the Notice contains a proposed CIVIL PENALTY* --

1. If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to issue an order making findings of violation and upon confirmation that the payment has been received PHMSA will close the case with prejudice to the respondent. Payment terms are outlined below;
2. If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order assessing a penalty amount up to the amount proposed in the Notice. Refer to 49 C.F.R. § 190.225 for assessment considerations, which include the respondent's ability to pay and the effect on the respondent's ability to stay in business, upon which civil penalties are based;
3. If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination or mitigation of the proposed civil penalty; or
4. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

b. When the Notice contains a proposed COMPLIANCE ORDER* --

1. If you are not contesting the compliance order, notify the Regional Director that you intend to take the steps in the proposed compliance order;
2. If you are not contesting the compliance order but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and issue a compliance order;
3. If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part; or
4. Request a hearing as described below to contest the allegations and/or proposed compliance order items.

c. When the Notice contains a WARNING ITEM --

No written response is required. The 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 of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. Procedures for Responding to a NOTICE OF AMENDMENT*--

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. If you are not contesting the Notice, notify the Regional Director of your plans to address the inadequacies identified in the Notice;
- b. If you are not contesting the Notice but wish to submit written explanations, information, or other materials you believe warrant modification of the Notice of Amendment in whole or in part, or you seek clarification of the terms of the

Notice of Amendment, you may submit such materials. This authorizes PHMSA to make findings and issue an Order Directing Amendment;

- c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or
- d. Request a hearing as described below to contest the allegations in the Notice.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

III. Procedure for Requesting a Hearing

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

IV. Extensions of Time

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

V. Freedom of Information Act

Any material provided to PHMSA by the respondent, and materials prepared by PHMSA including the Notice and any order issued in this case, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If you believe the information you are providing is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption

provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to http://www.sba.gov/ombudsman/dsp_faq.html.

VII. **Payment Instructions**

Civil Penalty Payments of Less Than \$10,000

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration
Mike Monroney Aeronautical Center
Financial Operations Division (AMZ-341) P.O. Box 269039
Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

Civil Penalty Payments of \$10,000 or more

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

| | |
|---|--|
| (1) <u>RECEIVER ABA NO.</u> 021030004 | (2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank) |
| (3) <u>SENDING BANK ABA NO.</u> (Provided by sending bank) | (4) <u>SENDING BANK REF NO.</u> (Provided by sending bank) |
| (5) <u>AMOUNT</u> | (6) <u>SENDING BANK NAME</u> (Provided by sending bank) |
| (7) <u>RECEIVER NAME</u> TREAS NYC | (8) <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank) |
| (9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> BNF = /ALC-69-14-0001 | (10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number |

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

Block #7 - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/ALC-69-14-0001". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - "AC-payment for PHMSA Case # / To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

NOTE: A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

February 2009