



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

SENT TO COMPLIANCE REGISTRY

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12300 W. Dakota Ave., Suite 110
Lakewood, CO 80228

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 20, 2010

Mr. Peter Sametz
Executive Vice President and Chief Operating Officer
Montana Refining Company, Inc.
Suite 2600, Watermark Tower
530 8th Avenue, SW
Calgary, Alberta T2P3S8
Canada

CPF 5-2010-5008

Dear Mr. Sametz:

From June 30 to July 2, 2009, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, inspected your Bootlegger Pipeline in Great Falls, Montana.

As a result of the inspection, it appears that Montana Refining Company (MRC) has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. §195.420 Valve Maintenance

(b) Each operator shall, at intervals not exceeding 7 ½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

Under 49 C.F.R. §195.420 (b), an operator must, at intervals not exceeding seven and one-half (7 ½) months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly. During the inspection, MRC was unable to provide documentation of any mainline valve inspections for the Bootlegger Pipeline. In addition, MRC personnel could not definitively confirm that the mainline valves on the Bootlegger Pipeline had been inspected at the required frequency. MRC indicated that they assumed Front Range Pipeline personnel were inspecting the three (3) mainline valves at the beginning of the pipeline in the Great Falls Station and that MRC Refinery personnel were inspecting the three (3) mainline valves at the end of the pipeline in the MRC Refinery. As a result, MRC has not met federal pipeline safety requirements because they can not verify that the valves have in fact been inspected and they have not retained documentation of each mainline valve inspection for at least (2) two years per §195.404(c)(3).

2. §195.428 Overpressure safety devices and overfill protection systems

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7 ½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

Under 49 C.F.R. §195.428 (a), an operator must, at intervals not exceeding fifteen (15) months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed seven and one-half (7 ½) months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used. During the inspection, MRC was unable to provide any documentation that the overpressure safety device inspections were conducted on the Bootlegger Pipeline. In addition, MRC personnel could not definitively confirm that the overpressure safety devices on the Bootlegger Pipeline had been inspected and tested at the required frequency. MRC indicated that they rely on Front Range Pipeline to inspect and maintain the control valve at the Great Falls Station which regulates flow into the Bootlegger Pipeline. MRC also indicated that they assumed refinery personnel were periodically inspecting the rupture disc on the end of the pipeline at the refinery. As a result, MRC has not met federal pipeline safety requirements because they can not verify that the overpressure safety devices have in fact been inspected and they have not retained

documentation of each overpressure safety device inspection for at least two (2) years per §195.404(c)(3).

3. §195.428 Overpressure safety devices and overfill protection systems

(d) After October 2, 2000, the requirements of paragraphs (a) and (b) of this section for inspection and testing of pressure control equipment apply to the inspection and testing of overfill protection systems.

Under 49 C.F.R. §195.428 (d), an operator must at intervals not exceeding fifteen (15) months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed seven and one-half (7 ½) months, but at least twice each calendar year, inspect and test each overfill protection system to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of reliability of operation for the service in which it is used. During the inspection, MRC was unable to provide documentation of the inspection and testing of the overfill protection systems on Tank 124. In addition, MRC personnel could not definitively confirm that the overfill protection systems on the breakout tank (Tank 124) associated with the Bootlegger Pipeline had been inspected and tested at the required frequency. MRC indicated that they assumed refinery personnel were performing this task. As a result, MRC has not met federal pipeline safety requirements because they can not verify that the breakout tank overfill protection systems have in fact been inspected and they have not retained documentation of each breakout tank overfill protection system inspection for at least two (2) years per §195.404(c)(3).

Proposed Compliance Order

With respect to items 1, 2, and 3 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Montana Refining Company, Inc. Please refer to the *Proposed Compliance Order* that is enclosed and made a part of this Notice.

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 5-2010-5008** 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

cc: Ms. Maureen Krum
Environmental Engineer
Montana Refining Company, Inc
1900 10th Street NE
Great Falls, MT 59404

PHP-60 Compliance Registry
PHP-500 M. Petronis (#123972)

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Montana Refining Company, Inc. a Compliance Order incorporating the following remedial requirements to ensure the compliance of Montana Refining Company, Inc. with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to valve inspections, Montana Refining Company, Inc. must:
 - a. Maintain and retain the valve inspection records from the last two (2) years for the six (6) mainline valves installed on the Bootlegger Pipeline.
 - b. Ensure that each mainline valve is inspected twice each calendar year by qualified personnel at intervals not exceeding seven and one-half (7 ½) months to determine that it is functioning properly.
 - c. Ensure that each valve inspection is documented and that the documentation is retained for at least two (2) years.

2. In regard to Item Number 2 of the Notice pertaining to overpressure safety device inspections, MRC must:
 - a. Maintain and retain the inspection records from the last two (2) years for the pressure control valve that controls the delivery pressure into the Bootlegger Pipeline.
 - b. Maintain and retain the inspection records from the last two (2) years of the rupture disc on the Bootlegger Pipeline installed at the MRC refinery that protects piping and equipment downstream of the relief line.
 - c. Ensure that each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment installed on, or affecting, the Bootlegger Pipeline is inspected and tested each calendar year, at intervals not exceeding 15 months, to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.
 - d. Ensure that each overpressure safety device inspection is documented and that the documentation is retained for at least two (2) years.

3. In regard to Item Number 3 of the Notice pertaining to overfill protection system inspections, MRC must:
 - a. Maintain and retain the inspection records from the last two (2) years of the overfill protection systems for Tank 124.
 - b. Ensure that each breakout tank overfill protection system is inspected and tested each calendar year, at intervals not exceeding 15 months, to determine that it is functioning properly, is in good mechanical condition and is adequate from the standpoint of reliability of operation for the service in which it is used.

- c. Ensure that each tank overfill protection system inspection is documented and that the documentation is retained for at least two (2) years.
4. MRC must complete items 1, 2, and 3 within 90 days of receipt of a Final Order.
5. MRC shall maintain documentation of the safety improvement costs associated with fulfilling this compliance Order and submit the total to Christopher Hoidal, Director, Western Region, Pipeline and Hazardous Materials Safety Administration. Costs shall be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

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