

Mr. David Carroll
Vice President and General Counsel
Hunt Crude Oil Supply Company
100 Town Center Blvd., Suite 300
Tuscaloosa, AL 35406-1829

RE: CPF No. 2-2004-5015

Dear Mr. Carroll:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$5,000. It further finds that you have completed the actions specified in the Notice that were needed to bring Hunt Crude Oil Supply Company into compliance with the pipeline safety regulations. I also acknowledge receipt of, and accept, your payment of August 24, 2004, in the amount of \$5,000 in satisfaction of the civil penalty assessed in the Final Order. This case is now closed. Your receipt of the Final Order constitutes service of that document 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: Caroll D. Pellegrin, Environmental & Safety Representative, Hunt Crude Oil Supply Co.
Linda Daugherty, Director, Southern Region, PHMSA

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)	
)	
Hunt Crude Oil Supply Company,)	CPF No. 2-2004-5015
)	
Respondent.)	
)	

FINAL ORDER

On June 8 and 9, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Research and Special Programs Administration (RSPA),¹ Office of Pipeline Safety (OPS), conducted an inspection of the Operator Qualification (OQ) Plan of Hunt Crude Oil Supply Company (Hunt or Respondent) at the company's offices in Melvin, Alabama. Hunt, a petroleum refining and marketing company, owns and operates storage and transportation facilities in Mobile, Alabama, Western and Eastern Mississippi, and Central New Jersey. As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated July 22, 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 Hunt committed certain violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$5,000 for the alleged violations. The Notice also proposed a compliance order directing Respondent to take certain measures to correct the alleged violations.

By letter dated August 25, 2004, Respondent responded to Items 1, 2, and 4 in the Notice and requested an extension of time to respond to Items 3 and 5 (Response). The company was granted an extension until December 1, 2004, to respond to Item 3 and until March 1, 2005, to respond to Item 5. Respondent did not contest the allegations of violation but provided information concerning the corrective actions it had taken. Respondent did not request a hearing, and therefore has waived its right to one.

¹ Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) was created to administer the federal hazardous materials and pipeline safety program in the U. S. Department of 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 from RSPA to the Administrator, PHMSA.

FINDINGS OF VIOLATION

In its Response, Hunt did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. §195.503, which states, in relevant part:

§ 195.503 Definitions.

....

Qualified means that an individual has been evaluated and can:

- (a) Perform assigned covered tasks and
- (b) Recognize and react to abnormal operating conditions.

The Notice alleged that Hunt failed to ensure through evaluation that individuals performing covered tasks on its pipeline facilities were qualified to recognize and react to all abnormal operating conditions (AOCs). Specifically, the Notice alleged that Respondent had identified only a limited list of task-specific AOCs and had not developed a comprehensive or generic list of AOCs for individuals working on its facilities.

Respondent did not contest this allegation. In response to the Notice, Hunt submitted its generic AOC list and its training roster to show the individuals who had been trained and properly examined on August 19-20 and 23-25, 2004, approximately one month after the company had received the Notice. After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.503 by failing to ensure through evaluation that individuals performing covered tasks on its pipeline facilities were qualified to recognize and react to all AOCs.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. §195.505, which states, in relevant part:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (a) Identify covered tasks;
- (b) Ensure through evaluation that individuals performing covered tasks are qualified;
- (c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified;

...

- (g) Identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed;

The Notice alleged that Respondent's Operator OQ Plan did not list all covered tasks that its

personnel would perform and that it lacked a systematic approach for generating or identifying all covered tasks that should be part of its OQ program. Respondent did not contest this allegation. In response to the Notice, Hunt submitted the record of a meeting that the company conducted on August 11, 2004, following receipt of the Notice, to show that it had conducted a review of possible covered tasks. Respondent also submitted a completed list of covered tasks generated from the August 11, 2004, meeting.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505, by failing to identify all covered tasks that its personnel would perform on its pipeline facilities and the intervals at which those persons' qualifications would need to be evaluated.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. §195.505(b), as quoted above, by failing to ensure through evaluation that all individuals performing covered tasks on its pipeline were qualified. Specifically, the Notice alleged that Respondent had developed evaluation methods for its six original covered tasks but not for its new ones. Respondent did not contest this allegation, but indicated that it had begun the development of training and evaluation methods for the other covered tasks. After considering all the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that all individuals performing covered tasks on its pipeline were qualified.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. §195.505(c), as quoted above, by failing to have and follow an OQ program that allowed individuals who were not qualified to perform covered tasks to do so, provided they were directed and observed by individuals who were qualified. Specifically, the Notice alleged that Hunt had not defined under what conditions a qualified person could direct and observe one or more unqualified persons. For example, Respondent had not identified welding tasks as ones that could *not* be directed and observed by a qualified individual.

Respondent did not contest this allegation, but submitted a copy of the company's "Covered Task List" that had been compiled after the inspection. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. §195.505(c) by failing to have and follow a written OQ program containing provisions that allowed individuals who were not qualified to perform covered tasks to do so, provided they were directed and observed by individuals who were properly qualified.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. §195.509(b) and (c), which state:

§ 195.509 General.

(a)

(b) Operators must complete the qualification of individuals performing covered tasks by October 28, 2002.

(c) Work performance history review may be used as a sole evaluation method for individuals who were performing a covered task prior to October 26, 1999.

The Notice alleged that Respondent violated § 195.509(c) by failing to properly qualify certain Hunt employees prior to the October 28, 2002, deadline. Specifically, the Notice alleged that Respondent failed to train its employees to recognize and react to abnormal operating conditions, which is one of the prerequisites for being “qualified” under § 195.503. The Notice further alleged that Respondent failed to properly qualify one particular employee, because the company used work performance history review as the sole evaluation method to qualify the employee but such method was not permitted under the regulation. Subsection (c) of § 195.509 provides that such method may only be used for employees who were performing the covered task prior to October 26, 1999. This employee, however, did not begin on-the-job training to perform the covered task for Respondent until after the 1999 cut-off date.

Respondent did not contest this allegation, but in its Response indicated that it had begun to qualify all employees per its new OQ Plan. Without the required records and history, it is difficult for an operator to demonstrate that its employees are properly qualified to perform specific covered tasks or that they performed such tasks on a regular basis prior to the effective date of the regulation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. §195.509(b) and (c) by failing to demonstrate compliance with the transitional OQ requirements prior to the October 28, 2002 deadline.²

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 \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 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, including adverse impact on the environment; 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 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 \$5,000 civil penalty for violations of 49 C.F.R. Part 195.

Item 5 of the Notice proposed a civil penalty of \$5,000 for violation of 49 C.F.R. §195.509(c), as Respondent failed to use an appropriate evaluation method to qualify one particular employee to

² Final Rule, Pipeline Safety: Qualification of Pipeline Personnel, 64 FR 46853, August 27, 1999.

perform covered tasks. As discussed above, Hunt used the employee's work performance history review as the sole evaluation method to qualify the individual, but that employee did not start on-the-job training for the covered task until after the October 26, 1999, cut-off date. Respondent has not shown any circumstances that would have prevented or justified it from failing to use an appropriate evaluation method to qualify the employee. Having a complete OQ program in place to ensure that individuals performing covered tasks are properly qualified is an important part of pipeline safety. When an operator fails to conduct and ensure proper OQ methods, it runs the risk that a task essential in the day-to-day operation of the pipeline may be incorrectly performed on its facility, thereby increasing 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 \$5,000, which amount has already been paid by Respondent.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with regards to Items 1- 5 in the Notice for violations of 49 C.F.R. Part 195.

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 Director indicates that Respondent has taken the following actions specified in the proposed Compliance Order:

1. 49 C.F.R. §195.503(b) -- Respondent has provided evidence that it has developed a generic AOC list and qualified each employee who performs covered tasks to recognize and react to each AOC on the list. (Item 1)
2. 49 C.F.R. §195.505(a) and (g)-- Respondent has provided evidence that it has determined all covered tasks that should be part of its OQ program. (Item 2)
3. 49 C.F.R. §195.505(b)-- Respondent has provided evidence that it has developed evaluation methods for each covered task, including test knowledge, skills and abilities that are needed to perform each task. (Item 3)
4. 49 C.F.R. §195.505(c)-- Respondent has provided evidence that it has defined the number of non-qualified persons (span of control) that a qualified individual can direct and observe at one time for each covered task, including definitions for covered tasks that cannot be directed and observed. (Item 4)
5. 49 C.F.R. §195.509(b) and (c) -- Respondent has provided evidence that it has qualified its employees in conformity with its new OQ plan. (Item 5)

Accordingly, since compliance has been achieved with respect to these violations, the compliance terms are not included in this Order.

The terms and conditions of this Final Order shall be effective upon receipt.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued