

April 14, 2016

VIA OVERNIGHT DELIVERY & EMAIL

Pipeline and Hazardous Materials Safety Administration
ATTN: Rod Seeley, Director – Southwest Region
8701 S. Gessner, Suite 630
Houston, TX 77074

**RE: CPF 4-2016-5003
NOTICE OF PROBABLE VIOLATION & PROPOSED CIVIL PENALTY**

Dear Mr. Seeley:

Pursuant to 49 C.F.R. § 190.209(a)(2), Western Refining Pipeline, LLC (“Western”) respectfully submits this letter in response to the above-referenced Notice of Probable Violation & Proposed Civil Penalty (the “Notice”), in which the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) asserts certain violations of the Pipeline Safety Regulations, Title 49 of the Code of Federal Regulations (“CFR”).

By this letter, Western provides additional information that justifies the mitigation of the \$106,500 civil penalty that PHMSA has proposed in the Notice. Western fully understands its responsibilities under the federal pipeline safety laws and remains committed to full compliance with those laws and to the safe operation of its pipelines. Western further understands the nature of the violations alleged in the Notice. However, for the reasons set forth below, it takes issue with the proposed civil penalty amount and requests that the final penalty amount be reduced accordingly.

Item #1

Item #1 in the Notice alleges that Western did not follow its written “February/March, 2015, 16” and 12” TexNewMexX Crude Oil Fill Plan for the San Ysidro to Placitas to Pecan to Tee Station” (the “Fill Procedure”) because it allowed pumping of oil and filling of its pipeline at night. Western admits that the filling of its pipeline did occur at night based on operational conditions. Western thus does not contest the facts of the overfill as they are set forth in the Notice. Western, however, believes that the proposed civil penalty associated with Item #1 is excessive in light of the following mitigating factors.

First, PHMSA’s pipeline safety regulations do not prohibit pipeline filling activities from occurring at night. Nonetheless, Western’s Fill Procedure goes above and beyond applicable regulatory requirements to require the filling of its pipeline during daylight hours. Western acted in good faith in including this requirement in its Fill Procedure. Had Western not included this restriction in its Fill Procedure, and had it proceeded to fill the pipeline at night when the overfill occurred, Western’s actions would be fully compliant with federal pipeline safety requirements and no violation would have resulted. Western thus does not believe

that it should be penalized for voluntarily implementing procedures that exceed applicable regulatory requirements, particularly where non-compliance with that procedure did not lead to the overfill event.

Second, had the filling of the pipeline occurred in daylight hours consistent with the Fill Procedure, Western believes that the overfill still would have occurred. Specifically, Western believes that the overfill occurred because a contractor (not a Western employee) was failing to attend to their job duties that required the contractor to adequately monitor the frac tank. That failure to adequately monitor the frac tank would have resulted in the same overfill whether the fill activities occurred at night or during daylight hours. Thus, the overfill was not caused by a failure to comply with Western's Fill Procedure.

Third, Western has revamped its training procedures and it is re-training personnel to ensure compliance with all written procedures, including but not limited to the Fill Procedure. This enhanced training also includes measures to ensure that Western employees will verify that contractors are informed of, and compliant with, Western's operating procedures, including the Fill Procedure. Western believes that this step will help to ensure that a similar incident will not occur in the future.

Fourth, Western believes that the penalty should be reduced because this is not a repeat violation. Western has only had one prior PHMSA violation in the last five (5) years. That prior violation was un-related to compliance with internal operating procedures, as is the issue here.

Fifth, as noted above, the overfill occurred due to the fault of a contractor, and not a Western employee. Western intends to closely monitor contractor work in the future to ensure compliance with internal operating procedures. Also, because Western believes that the contractor failed to perform their job duties in accordance with Western's standards, Western does not intend to utilize that contractor in the future for line fill operations.

Finally, Western notes that the filling of the pipeline that is the subject of the Notice was approximately a three-month project and the spill at issue here occurred on the last day of filling activity. At no other time over that three-month period did an overfill occur.

For the foregoing reasons, Western respectfully requests that the proposed civil penalty associated with Item #1 be reduced to \$45,000.

Item #2

Item #2 in the Notice states that Western did not follow its Operations & Maintenance Manual ("O&M Manual") because it made telephonic notification to the National Response Center 2 hours and 27 minutes after discovery of the event, instead of within 1 hour of

discovery, as was required in its O&M Manual. Item #2 is a "Warning Item," for which no response is required. However, Western hereby advises PHMSA that consistent with the statements in Item #1 above, it has re-trained its personnel to emphasize that all written procedures, including procedures regarding timing required for reporting incidents, need to be stringently followed and Western believes that this step will ensure that an incident such as this does not occur again.

Western appreciates this opportunity to respond to PHMSA's Notice. Please feel free to contact me at 602.286.1559 should you have any questions. I look forward to receiving your response.

Sincerely,

WESTERN REFINING

By:



Leonard Bloom
Manager - Pipelines