

April 30, 2020

VIA ELECTRONIC MAIL TO: joe.gorder@valero.com

Mr. Joe Gorder
Chairman and Chief Executive Officer
Valero Energy Corporation
One Valero Way
San Antonio, Texas 78249

Re: CPF No. 2-2019-7001

Dear Mr. Gorder:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions that need to be taken by your subsidiary, Valero Partners Operating Company, LLC, to comply with the pipeline safety regulations. When the terms of the modified compliance order have been completed, as determined by the Director, Southern Region, this enforcement action will be closed. Service of the Final Order by electronic mail is effective upon the date of transmission as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. James Urisko, Director, Southern Region, Office of Pipeline Safety, PHMSA
Mr. Fred Hampton, Vice President, Valero Partners Operating Company, LLC,
fred.hampton@valero.com
Mr. James Trevino, Manager – Regulatory Programs and Permitting, Valero Partners
Operating Company, LLC, james.trevino@valero.com

CONFIRMATION OF 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)

Valero Partners Operating Company, LLC,)
a subsidiary of Valero Energy Corporation,)

Respondent.)

CPF No. 2-2019-7001

FINAL ORDER

From March through August 2018, pursuant to 49 U.S.C. § 60117, representatives 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 Valero Partners Operating Company, LLC (Valero or Respondent), a subsidiary of Valero Energy Corporation, in San Antonio, Texas. Valero Energy Corporation, through its subsidiaries, owns 15 petroleum refineries in the United States, Canada, and the United Kingdom, with a capacity of approximately 3.1 million barrels per day.¹

As a result of the inspection, the Director, Southern Region, Office of Pipeline Safety (Director), issued to Respondent, by letter dated January 31, 2019, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Valero had committed four violations of 49 C.F.R. Part 195 and proposed ordering Respondent to take certain measures to correct the alleged violations.

Valero responded to the Notice by letter dated March 1, 2019 (Response). Valero contested one of the allegations and requested a hearing. Representatives of Valero and OPS held an informal meeting on April 11, 2019. Subsequently, by letter dated October 1, 2019 (October Letter), Respondent withdrew its request for a hearing and thereby authorized the entry of this Final Order without further notice.

¹ Valero Energy Corporation website, *available at* <https://www.valero.com/en-us/AboutValero/refining-segment> (last accessed April 21, 2020).

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(a), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program.
The program shall include provisions to:
(a) Identify covered tasks;

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(a) by failing to identify covered tasks in its written qualification program. Specifically, the Notice alleged that the “Covered Task List” included in Appendix B of Valero’s Operator Qualification Program did not include several covered tasks meeting the regulatory definition set forth in 49 C.F.R. § 195.501. The Notice also alleged Valero’s Operator Qualification Program did not adequately address all covered tasks performed by Valero.

In its Response, Valero did not contest this alleged violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(a) by failing to identify covered tasks in its written qualification program.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program.
The program shall include provisions to:
(a) ...
(b) Ensure through evaluation that individuals performing covered tasks are qualified;

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks are qualified. Specifically, the Notice alleged that Valero’s records did not demonstrate that contract employees maintained qualifications in accordance with Valero’s Operator Qualification Program. The Notice explained that Valero’s Program required all first re-qualifications to include either a knowledge or skill assessment while all second re-qualifications were required to include both knowledge and skill assessments. The Notice alleged that Valero had documentation showing compliance with its Program for employees, but did not have documentation to show that contract employees had completed first and second re-qualifications in accordance with the Program. The Notice alleged Valero’s documentation did not distinguish between first and second qualifications for contract employees so there was no evidence showing contractors performed knowledge and skill assessments as prescribed in Valero’s Program.

In its Response, Valero stated it had amended its Operator Qualification Program in January 2018 and notified PHMSA of the changes in April 2018. Valero stated that the revised Operator

Qualification Program no longer distinguished between first and second re-qualifications. Valero argued, therefore, there was no violation of the regulations because the documentation did not need to distinguish between first and second re-qualifications for contractors in order to show compliance with its Program.

A review of Valero's Operator Qualification Program shows the last revision to the Program was made in December 2017, which was the version evaluated by OPS during the inspection. Appendix C of the 2017 Program, titled, "Qualification Methods and Span of Control," specifies that both employees and contractors may complete a knowledge or skills assessment when initially re-qualifying, but must complete both a knowledge and skills assessment when performing a second re-qualification. Valero did not submit a newly revised version of its Program with its Response and did not submit documentation that a revised Program was transmitted to OPS. Valero also did not submit supplementary documentation showing that contractors performed first and second re-qualifications in accordance with their 2017 Program.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks are qualified.

Item 3: 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 Notice alleged that Respondent violated 49 C.F.R. § 195.505 by failing to follow a written qualification program. Specifically, the Notice alleged that Appendix C, titled, "Qualification Methods and Span of Control," of Valero's Operator Qualification Program referenced several industry certifications as acceptable evaluation methods for covered tasks that were not relevant to the given covered task or did not contain a knowledge or performance assessment that could be used as qualification method.

In its Response, Valero did not contest this alleged violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505 by failing to follow a written qualification program.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program.

The program shall include provisions to:

- (a) ...
- (b) Ensure through evaluation that individuals performing covered tasks are qualified;

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks are qualified. Specifically, the Notice

alleged that Valero failed to ensure that individuals were qualified to material relevant to each covered task. The Notice also alleged several performance assessments did not require performance of all the required steps of some covered tasks. The Notice also alleged that some performance assessments were conducted orally with no actual performance of task at all. In its Response, Valero did not contest this alleged violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks are qualified.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, 3, and 4 in the Notice for violations of 49 C.F.R. § 195.505. 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.

With regard to the violations of § 195.505 (Items 1, 2, 3, and 4), Respondent argued in its Response and October Letter that the terms should be modified to allow Valero to complete the remedial requirements within 15 months of the issuance of the Final Order. Respondent proposed to provide periodic updates to OPS every four months. OPS issued a Region Recommendation on October 10, 2019 (Recommendation). The Recommendation did not object to the Respondent's proposed timeframes for completing the compliance terms or for providing periodic updates to OPS.

For the above reasons, the Compliance Order is modified as set forth below.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.505(a) (**Item 1**), Respondent must, within 15 months of the issuance of the Final Order, complete the following:
 - a. Review and update Appendix B of Valero's Operator Qualification Program, titled "Valero Covered Task List," to ensure that all covered tasks performed on Valero's pipeline facilities are included and accurately listed.
 - b. Ensure the review of Valero's Covered Task List includes the development of a list of covered tasks specific to breakout tank inspections and maintenance activities.
 - c. Provide OPS with periodic updates regarding the compliance of this Item every four months.

2. With respect to the violation of § 195.505(b) (**Item 2**), Respondent must, within 15 months of the issuance of the Final Order, complete the following:
 - a. Develop the capability to distinguish between the initial evaluation and all subsequent re-evaluations for contractor personnel or revise the requirements of Valero's Operator Qualification Program to comply with the capabilities of the referenced third-party operator qualification database.
 - b. Provide OPS with periodic updates regarding the compliance of this Item every four months.

3. With respect to the violation of § 195.505 (**Item 3**), Respondent must, within 15 months of the issuance of the Final Order, complete the following:
 - a. Review the evaluation requirements for all accepted industry and third-party certifications to ensure compliance with the requirements of Valero's Operator Qualification Program and their validity as acceptable evaluation methods for their respective covered tasks.
 - b. Review and update Appendix C of Valero's Operator Qualification Program to ensure all certifications listed are appropriate for each respective covered task and contain a knowledge evaluation and a performance evaluation that complies with the requirements of Valero's Operator Qualification Program for initial certification, as well as subsequent re-certifications.
 - c. Provide OPS with periodic updates regarding the compliance of this Item every four months.

4. With respect to the violation of § 195.505(b) (**Item 4**), Respondent must, within 15 months of the issuance of the Final Order, complete the following:
 - a. Review all evaluation material referenced by both Valero and its operator qualification service providers to ensure compliance with Valero's Operator Qualification Program.
 - b. Review and update Appendix C of Valero's Operator Qualification Program to ensure all Valero and operator qualification service provider evaluation materials are appropriate for the given covered task and contain a knowledge and performance evaluation that complies with the requirements of Valero's Operator Qualification Program.
 - c. Provide OPS with periodic updates regarding the compliance of this Item every four months.

5. Within 15 months of the issuance of the Final Order, Valero must submit documentation to the Director demonstrating completion of Items 1, 2, 3, and 4, including revised versions of Appendices B and C of Valero's Operator Qualification Program, and a list of all changes made to the Program.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent has a 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, 2nd 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 service of this 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. § 190.243. The terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

April 30, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued