



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

OCT 16 2006

W.M. Hulse
President
Murphy Oil USA, Inc.
200 Peach Street
El Dorado, AR 71731

RE: CPF No. 3-2006-5026

Dear Mr. Hulse:

Enclosed is the Final Order issued by the Acting Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation, assesses a civil penalty of \$5,000 and specifies actions to be taken to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

cc: Mr. David J. Podratz, Manager, Superior Refinery
Mr. Ivan Huntoon, Director, Central Region, OPS

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)	
)	
Murphy Oil USA, Inc.,)	CPF No. 3-2006-5026
)	
Respondent.)	

FINAL ORDER

On October 12-13, 2005, pursuant to 49 § U.S.C. 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), Central Region, conducted an on-site pipeline safety inspection of Respondent's Operator Qualification records and procedures in Superior, Wisconsin. As a result of the inspection, the Director, Central Region, issued to Respondent, by letter dated March 6, 2006, 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 Respondent had violated 49 C.F.R. §195.505(b) and proposed assessing a civil penalty of \$5,000 for the alleged violation. The Notice also proposed that Respondent take certain measures to correct the alleged violation.

Respondent responded to the Notice by letter dated April 21, 2006 (Response). Respondent did not contest the allegation but offered information to explain the allegation and requested that the proposed civil penalty be eliminated. Respondent also requested a hearing. Respondent submitted a supplemental response dated July 14, 2006 withdrawing its request for a hearing.

FINDINGS OF VIOLATION

Uncontested

Respondent did not contest the alleged violation of 49 C.F.R. §195.505 in the Notice. Accordingly, I find that Respondent violated 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. §192.505(b) - failure to ensure through evaluations that individuals performing covered tasks are qualified.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

Item 1 of the Notice alleged that Respondent violated 49 C.F.R. §195.505(b), when Respondent did not provide records to demonstrate that all contract employees were qualified to perform covered

tasks on its jurisdictional pipeline facilities under Respondent's Operator Qualification (OQ) program. Respondent's records also contained no evidence of evaluations or documentation that the individuals in question were qualified to performed two covered task, line locating and relief valve inspection. From October 2002 to July 2005, these covered tasks were performed multiple times with no evidence that the individuals were "qualified" to perform these covered tasks.

In response to Item 1, Respondent advised that it requested and received a documented work performance history review worksheet for each contract employee in question. Respondent submitted qualification records for the two contract employees, which included a Work History Performance Review Field Worksheet on each applicable employee and a National Board of Boiler and Pressure Vessel "Certification of Authorization" or "VR Stamp". Respondent advised that this submission also qualified the two contract employees to repair relief valves. Respondent further stated that its locator was qualified through a third party trainer the day after the OPS inspection and submitted that record.

Respondent is required to demonstrate compliance with an applicable regulation during a PHMSA inspection. The violation report clearly indicates that the PHMSA inspection team inquired about compliance with 49 C.F.R. §195.505(b) and the inspector discussed Respondent's deficiencies during the exit interview. Thus, Respondent was well aware of the lack of sufficient documentation and the requirement to provide relevant OQ records to demonstrate compliance before the conclusion of the inspection. During a pipeline safety inspection operators must provide the documentation and records, as required by federal pipeline safety laws and regulations, to demonstrate compliance.

Operators are responsible for compliance with the pipeline safety regulations, which includes sound record keeping. Without the required records and history, it is difficult for an operator to demonstrate that individuals are properly qualified to perform specific covered tasks. Respondent submitted records to demonstrate compliance after issuance of the Notice. However, no records were provided by Respondent during the inspection nor during the post inspection exit interview to demonstrate that the two contract employees were properly qualified to perform the covered tasks. Accordingly, I find that Respondent violated 49 C.F.R. §195.505(b).

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, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require. The Notice proposed a total civil penalty of \$5,000 for violations of 49 C.F.R. Part 195.

The proposed civil penalty for **Item 1** is \$5,000 for violation of 49 C.F.R. §195.505(b), as Respondent failed to provide records to demonstrate that two of its contract employees were properly qualified to perform the covered task under Respondent's Operator Qualification (OQ) program. Respondent also failed to ensure through evaluations that individuals performing covered tasks are qualified. The determination was made in the "Findings" section of this Order that Respondent violated 49 C.F.R. §195.505(b). No records were provided by Respondent during the inspection, the during the post inspection exit interview or prior to issuance of the Notice to demonstrate compliance to adequately show that the two contract employees were properly qualified to perform the covered tasks. Respondent has not provided any explanation or justification why the records and documentation were not provided during the inspection.

The regulatory conditions for the conduct of inspections to determine compliance and that gives OPS the general authority to inspect pipelines and related records for compliance with applicable regulations is set forth in 49 C.F.R. §190.203. An operator is required to maintain records in accordance with the requirements of 49 CFR 195 for all individuals performing covered tasks. Respondent is under an affirmative duty to achieve and maintain compliance. Respondent failed to meet its duty. Respondent did not contest the allegation of violation but offered an explanation.

The primary objective of the Federal pipeline safety standards is safe operation of pipeline systems. When an operator fails to conduct and ensure proper operator qualification, the operator risks that a task essential in the day to day operation of the pipeline may be incorrectly performed on its facility and thereby increases the risk of harm to the public and the environment.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$5,000 for violation of 49 C.F.R. §195.505(b).

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-300), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this payment to be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$5,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. §195.505(b). 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 Regional Director has indicated that Respondent has taken the following actions specified in the proposed compliance order:

Respondent submitted adequate records or data that carefully and thoroughly document and support the evaluation or qualification of the contract employees to perform specific covered tasks under Respondent's OQ program.

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

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.

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Theodore L. Willke
Acting Associate Administrator
for Pipeline Safety

Date Issued: OCT 16 2006