



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

JUL 10

Mr. Richard Bluntzer
Vice President, Operations
Valero Logistics Operations, L.P.
One Valero Way
San Antonio, TX 78249

RE: CPF No. 4-2005-5010

Dear Mr. Bluntzer:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws one allegation of violation, makes findings of violation and assesses a civil penalty of \$9,000. It further finds that you have completed the actions specified in the Notice required to comply with the pipeline safety regulations. When the civil penalty is paid, this enforcement action will be closed. 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. Andrew Dalton, Counsel for Valero GP, Inc.
Mr. Rod Seeley, Director, Southwest 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)	
)	
Valero Logistics Operations, L.P.,)	CPF No. 4-2005-5010
)	
Respondent.)	

FINAL ORDER

On August 2-5, 2004, pursuant to 49 U.S.C. § 60117, a team of representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Southwest Region, Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the records and facilities for Respondent's Ardmore Pipeline System. As a result of the inspection, the Director, Southwest Region, issued to Respondent, by letter dated January 18, 2005, 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. Part 195 and proposed assessing a total civil penalty of \$17,000 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

Respondent requested an extension of time to respond on February 16, 2005. The request for an extension was granted by the Director, Southwest Region, OPS. Respondent responded to the Notice by letter dated March 17, 2005 (Response). Respondent contested some of the allegations of violation, provided information concerning the corrective actions it has taken and requested that the proposed civil penalty be mitigated. Respondent offered to explain the allegations, proposed entering a consent order and requested a hearing in the event a consent order was not granted. Respondent's request for a consent order was denied and the matter was set for a hearing.

The hearing was held in Houston, Texas via teleconference on September 20, 2005. Respondent was granted permission to submit a post-hearing Response. Respondent submitted a Post-Hearing Brief dated October 7, 2005. In support of its position, Respondent provided additional documents and a summary of the information it had presented at the hearing.

FINDINGS OF VIOLATION

Uncontested

Respondent did not contest the alleged violation of 49 C.F.R. §195.583 in **Item 1** of 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. §195.583(a) – failure to inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion as follows: If the pipeline is located onshore, then the frequency of inspection is at least once every 3 calendar years, but with intervals not exceeding 39 months. Respondent failed to produce records to verify that this inspection was performed on its 12-inch Ardmore to Wynnewood petroleum products pipeline.

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

Item 2 of the Notice alleged that Respondent violated 49 C.F.R. §195.579(b)(2), when Respondent did not provide records to demonstrate that corrosion coupons were examined at least twice each calendar year, but with intervals not exceeding 7 ½ months. Respondent uses corrosion inhibitor to mitigate internal corrosion in the 12-inch Ardmore to Wynnewood petroleum products pipeline. Although, Respondent uses corrosion coupons to determine the effectiveness of the inhibitor, Respondent did not produce records to show that a coupon inspection was performed on the Ardmore to Wynnewood pipeline since 2001.

In response to Item 2, Respondent contended that it timely examined all applicable corrosion coupons. In support of its position, Respondent submitted inspection records that it contended “inadvertently were not produced at the time of the OPS inspection.” Respondent further contended that the submission of the coupon analysis reports shows that no violation occurred.

OPS argued that the coupon inspection records submitted by Respondent showed nine pipeline locations, but the inspection was not on the Ardmore to Wynnewood petroleum products pipeline cited in the Notice. During the compliance inspection, Respondent was found to have incomplete records of inspections for coupon ID #74, labeled “ADWN 12 AD, Ardmore Outgoing.” This coupon was identified as the one in question for the Ardmore to Wynnewood petroleum products pipeline by Respondent’s personnel. The records showed only one inspection performed in 1998, and two in 2001. After 2001, the records do not have data on coupon ID #74. Records on this coupon were requested during the OPS inspection and subsequent requests were made by phone after the OPS inspection.

During the hearing, Respondent’s witness attested that there is not and never has been a coupon station No. 74 associated with the Ardmore to Wynnewood petroleum products pipeline. Respondent further attested that while earlier coupon records erroneously indicated three coupon inspection datasets relating to coupon station No. 74, one dataset in 1998 and two datasets in 2001,

those three datasets actually relate to other coupon station locations along the Ardmore to Wynnewood pipeline or to other pipeline systems. Respondent explained that the two (2) 2001 coupon datasets previously noted for coupon station No. 74 actually relate to coupon inspections at coupon station No. 75 on the pipeline. However, due to a typographical error, the coupon datasets were erroneously correlated to station No. 74. Respondent argued that because the data attributed to coupon station No. 74 was a typographical error no violation occurred.

Based upon the documentation, records and testimony presented during the hearing and in the post-hearing brief, a determination is made that an error occurred in the earlier record referencing dataset for coupon station No. 74. Therefore, a determination of compliance with the regulations is made and the allegation of violation is withdrawn.

Item 3 of the Notice alleged that Respondent violated 49 C.F.R. §195.402(c)(13), when Respondent did not provide records to show that it periodically reviewed the work done by operator personnel to determine the effectiveness of the procedures used in normal operations and maintenance and took corrective action where deficiencies were found.

In response to Item 3, Respondent contended that it conducted a 2004 annual review of its procedures manual with input from various supervisors. Along with its response, Respondent submitted documentation on the 2004 annual review of the pipeline procedures manual.

During the hearing, OPS argued that §195.402(c)(13) does not address an annual review of the manual, as the requirement for manual review is required by §195.402(a). OPS further argued that the review of the manual by several supervisors does not negate the necessity to comply with the requirements of §195.402(c)(13).

In its post-hearing brief, Respondent described a change to its procedures to incorporate periodic reviews of work done by operator personnel to determine the effectiveness of the procedures and how corrective actions are to be taken for deficiencies. The fact that Respondent had to change its procedure is an acknowledgment that such requirements were not in the procedures at the time of the inspection. Federal regulations require that Respondent periodically review the work done by its personnel to determine the effectiveness and adequacy of the procedures used in normal operations and maintenance, in accordance with 49 C.F.R §195.402 (c)(13). The requisite review is of the “work” done when following procedures to determine the “effectiveness of the procedures” and to take corrective action where deficiencies are found. Respondent’s 2004 annual review of the pipeline procedures manual failed to satisfy the regulatory requirements. Accordingly, I find that Respondent violated 49 C.F.R. §195.402(c)(13), as Respondent failed to provide records to show that it periodically reviewed the work done by its personnel to determine the effectiveness and adequacy of the procedures used in normal operations and maintenance.

Item 4 of the Notice alleged that Respondent violated 49 C.F.R. §195.432(b), when Respondent did not provide records or documentation to show that the required inspection was performed on Wasson Tank T-103 and Wynnewood Tanks T-101 and T-102.

In response to Item 4, Respondent argued that the April 2, 1999 amendment of the regulation¹ promulgated an inspection interval schedule for those inspections that are required by section 4 of API Standard 653. For breakout tanks, Standard 653 requires an external inspection once every 5 years. Read in conjunction with §195.432, external inspections must be performed by July 28, 2004, which is five years from the §195.432 effective date for operators who have not conducted testing on their tanks according to the Standard 653 requirements prior to July 1999. Respondent further argued that for those operators who had performed Standard 653 external inspections prior to July 1999, the external inspections are to occur within the five years of the prior 653 inspection. Respondent posed that because Tank T-103 was not inspected prior to the effective date of §195.432, Respondent was required to inspect the tank within five years of the effective date. Respondent contended that it timely conducted the required §195.432 inspection for Tank T-103 in 2003, well within the five-year period. Respondent further argued that it inspected and verified the integrity of Wynnewood Tanks T-101 and T-102 and adopted procedures to ensure compliance.

OPS posed that although Respondent stated during the audit that these tanks had been inspected, Respondent failed during the inspection, during the exit interview, and in response to subsequent telephone requests, to provide records to demonstrate compliance. In March 2005, Respondent submitted documents to demonstrate that Wasson Tank T-103 was inspected in 2003, well within the time limit set by §195.432(b).

Conversely, the documentation submitted by Respondent also confirmed that Wynnewood Tanks T-101 and T-102 were not in compliance at the time of the inspection. Although the inspection report for T-102 was submitted to OPS, the inspection date was well past the required 5 years, as required by §195.432(b). After the hearing, Respondent submitted, along with its post-hearing brief, documentation to demonstrate that Wynnewood Tanks T-101 and T-102 have now been inspected and their integrity verified.

Operators are required to maintain records regarding regular inspections of aboveground breakout tanks, in accordance with 49 C.F.R. Part 195. It is the operator that must provide proof of compliance. Operators have an affirmative duty to achieve and maintain compliance. During a pipeline safety inspection, operators must provide the documentation and records to demonstrate compliance, as required by federal pipeline safety laws and regulations. During the inspection, in response to the Notice, and after subsequent phone calls, Respondent failed to present adequate evidence to demonstrate that it conducted regular inspections of Wynnewood Tanks T-101 and Tank T-102, at the requisite interval. The records were not provided during the inspection, during the post inspection exit interview or in response to the Notice. Wynnewood Tanks T-101 and T-102 were not in compliance at the time of the inspection. Accordingly, I find that Respondent violated 49 C.F.R. §195.432(b), as Respondent failed to present adequate evidence to demonstrate that it conducted regular inspections of aboveground breakout tanks, Wynnewood Tank T-101 and Tank T-102, at the requisite interval.

¹ 64 FR 15926 (April 2, 1999).

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 \$17,000 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. §195.583(a), as Respondent failed to provide records to verify that it inspected its 12-inch Ardmore to Wynnewood petroleum products pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion. Respondent did not contest the allegation of violation. Respondent is responsible for compliance with the pipeline safety regulations, which includes sound record keeping. Without adequate records it is difficult to verify compliance with the regulations. The primary objective of the Federal pipeline safety standards is safe operation of pipeline systems. When an operator fails to conduct inspections, the operator will have difficulty in determining areas where there are problems that need to be addressed 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 civil penalty of \$5,000 for violation of 49 C.F.R. §195.583(a).

The proposed civil penalty for **Item 2** is \$6,000 for violation of 49 C.F.R. §195.579, as Respondent failed to provide records to demonstrate that corrosion coupons were examined at least twice each calendar year, but with intervals not exceeding 7 ½ months, on its 12-inch Ardmore to Wynnewood pipeline. At the hearing and in its post hearing response, Respondent submitted information demonstrating that an error occurred in the earlier record referencing dataset for coupon station No. 74, which led to the allegation of violation. Based on this information demonstrating compliance with the regulation, this allegation of violation was withdrawn. Therefore, the proposed civil penalty is also withdrawn.

The proposed civil penalty for **Item 4** is \$6,000 for violation of 49 C.F.R. §195.432(b), as Respondent failed to provide records to show that the required inspection was performed on Wynnewood Tanks T-101 and T-102. Initially, Respondent was also cited for Wasson Tank T-103. Respondent failed, during the inspection, during the exit interview, and in response to subsequent phone call requests, to provide records to demonstrate compliance. Respondent subsequently submitted documents to demonstrate that Wasson Tank T-103 was inspected in 2003, well within the time limit set by §195.432(b). Respondent contended that no violations occurred and no penalty is justified for Tank T-103.

However, the documentation submitted by Respondent confirmed that the Wynnewood Tank T-102 was not inspected until January 28, 2005. The date of the T-102 inspection report show that the inspection was well past the required 5 years required by §195.432(b). Respondent's submission showed that Wynnewood Tanks T-101 and T-102 were not in compliance and did not meet the required inspection schedule.

Although Respondent has now provided information to demonstrate that tanks T-101 and T-102 have been inspected and their integrity verified, Respondent failed to demonstrate compliance for tanks T-101 and T-102 during the inspection, during the exit interview when the inspection team alerted the Respondent to deficiencies or before the hearing.

Respondent is under an affirmative duty to achieve and maintain compliance. Respondent failed to meet its duty. Preventive maintenance is critical to the safety of the public, environment, and property. Only one tank of the original three cited in the Notice met the required inspection schedule, Wasson Tank T-103. Accordingly, a proportional reduction to the civil penalty is warranted. Having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$4,000 for violation of 49 C.F.R. §195.432(b).

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$9,000 for violation of 49 C.F.R. §195.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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 \$9,000 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

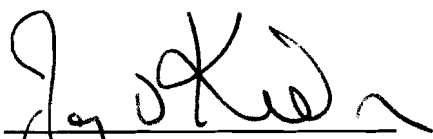
The Notice proposed a compliance order with respect to Items 1, 2, 3, and 4 in the Notice for violations of 49 C.F.R. Part 195. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Based on information submitted by Respondent demonstrating compliance, Item 2 was withdrawn. The Regional Director has

indicated that Respondent has taken the following actions specified in the proposed compliance order:

- Item 1 - Conducted the required atmospheric inspection of its 12-inch Ardmore to Wynnewood Petroleum products pipeline and established procedures to ensure continued future compliance as required by 49 C.F.R. §195.583(a).
- Item 3 - Changed its procedures to incorporate periodic reviews of work done by Respondent's personnel to determine procedures effectiveness and to take corrective actions, as required by 49 C.F.R. §195.402(c).
- Item 4- Submitted documentation to demonstrate that Tanks T-101 and T-102 have been inspected and their integrity verified, as required by 49 C.F.R. §195.432(b).

These actions comply with the requirements in Items 1, 3, and 4 of this Order. Accordingly, since compliance has been achieved with respect to these violations, 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.

for


Stacey Gerard
Associate Administrator
for Pipeline Safety

JUL 10 2006

Date Issued