

Dec 19 2011

Mr. Jeff A. Stevens
President and CEO
Western Refining Pipeline Company
123 W. Mills Avenue, Suite 200
El Paso, Texas 79901

Re: CPF No. 4-2011-5008

Dear Mr. Stevens:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$13,500. When the civil penalty has been paid, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided 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: Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety, PHMSA
Mr. Rod Seeley, Director, Southwest Region, PHMSA
John S. Howell, Esq., Deputy General Counsel, Western Refining, Inc.

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164202979467]

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

_____)	
In the Matter of)	
)	
Western Refining Pipeline Company,)	CPF No. 4-2011-5008
)	
Respondent.)	
_____)	

FINAL ORDER

Between October 25 and November 17, 2010, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an inspection of the facilities and records of Western Refining Pipeline Company's Texas-New Mexico pipeline located in New Mexico. Western Refining Pipeline Company (Western) is a subsidiary of Western Refining, Inc., which operates refineries in El Paso, Texas, and Gallup, New Mexico.¹ The system OPS inspected is a 424-mile 16-inch transmission pipeline that transports crude oil.²

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated June 27, 2011, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Western had violated 49 C.F.R. § 195.420 and assessing a civil penalty of \$13,500 for the alleged violation.

Western responded to the Notice by letter dated July 25, 2011 (Response). Western did not contest the probable violation but offered additional information in support of its request to reduce the civil penalty. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

In its Response, Western did not contest the allegation in the Notice that it violated 49 C.F.R. § 195.420(b), as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b), which states:

§ 195.420 Valve maintenance.

(a) Each operator shall maintain each valve that is necessary for the safe operation of its pipeline systems in good working order at all times.

¹ SEC Form 10-K, Western Refining, Inc., March 7, 2011, at 3.

² OPS Pipeline Safety Violation Report (on or around June 27, 2011), page 1.

(b) Each operator shall, at intervals not exceeding 7½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect each mainline valve at least twice each calendar year at intervals not exceeding 7½ months to determine that it is functioning properly. During the inspection, PHMSA reviewed Western's OM-204 Valve Inspection Reports for 2007-2010. The documents confirmed that although Western did inspect each valve at 7½ month intervals, it did not inspect them twice each calendar year. Specifically, Western conducted inspections in December 2008, June 2009, and January 2010. Although Western complied with the 7½-month interval requirement, it did not conduct inspections of 27 mainline valves twice during the 2009 calendar year.

In its Response, Western acknowledged it did not inspect these valves twice during 2009 but stated that it had met the 7½-month interval which qualified the company for a civil penalty reduction. The civil penalty arguments will be discussed in the Assessment of Penalty section below. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.420 by failing to inspect each mainline valve twice during the 2009 calendar year.

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

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative 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. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the 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 the 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.

Item 1: The Notice proposed a civil penalty of \$13,500 for violation of 49 C.F.R. § 195.420(b), for failing to inspect Western's mainline valves twice during the 2009 calendar year. In response to the proposed civil penalty, Western argued that if either the December 2008 or the January 2010 inspection had occurred in 2009, the calendar year requirement would have been met. Western had already met the 7½-month interval requirement. Since Western only missed the calendar year requirement, Western proposed that PHMSA reduce the proposed civil penalty to \$8,100, amounting to a \$300 penalty for each of the 27 valves.

The proposed civil penalty of \$13,500 is based on the civil penalty assessment factors listed in 49 C.F.R. § 190.225. Proper valve inspection and maintenance are necessary for the safe operation of a pipeline. This is not a new requirement but rather has been part of the Pipeline

Safety Regulations since 1982.³ In calculating the proposed civil penalty amount, PHMSA took into account the fact that only eight of the 27 missed valves were currently in crude oil service. The remaining 19 valves were located on an idled portion of the pipeline and had been isolated with nitrogen gas since 2006.⁴

Therefore, the proposed penalty amount reflects the statement made in the Violation Report that the gravity of the violation is low because the safe operation of the pipeline was “minimally affected.”⁵ The proposed amount also reflects the fact that Western had not had any prior enforcement history in the past five years. Having reviewed the civil penalty assessment factors and the evidence presented in this case, I find that the proposed civil penalty of \$13,500 is appropriate. Accordingly, I assess Respondent a civil penalty of \$13,500 for violation of 49 C.F.R. § 195.420.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such 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-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Under 49 C.F.R. § 190.215, Respondent has the 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 the 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. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of 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 upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued

³ “*Transportation of Natural and Other Gas and Hazardous Liquids by Pipeline; Inspection and Test Intervals*”, 47 Fed. Reg. 46852 (October 21, 1982).

⁴ Violation Report, at 4.

⁵ *Id.*