

JUNE 17, 2013

Mr. J.L. Davis
President
West Texas Gas, Inc.
211 N. Colorado
Midland, TX 79701

Re: CPF No. 4-2012-1008

Dear Mr. Davis:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$53,000, and specifies actions that need to be taken by West Texas Gas, Inc. to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, 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. Richard Hatchett, Vice President of Operations, West Texas Gas, Inc.
 211 N. Colorado, Midland, TX 79701
 Mr. R.M. Seeley, Director, Southwest Region, OPS
 Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

CERTIFIED MAIL - RETURN 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)
West Texas Gas, Inc.,) **CPF No. 4-2012-1008**
Respondent.)

)

FINAL ORDER

From July 6 and 7, 2011, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted on-site pipeline safety inspections of the Public Awareness Program (PAP) of West Texas Gas, Inc. (WTG or Respondent) in Plainview, Texas. Respondent owns and operates approximately 7,200 miles of pipeline, including natural gas distribution, natural gas transmission, gathering, and hazardous liquids transmission pipelines within the states of Kansas, Louisiana, New Mexico, Oklahoma, and Texas.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated May 16, 2012, 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 WTG committed three violations of 49 C.F.R. §192.616(c) and proposed assessing a civil penalty of \$53,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

WTG responded to the Notice by letter dated June 14, 2012 (Response). The company did not contest the allegations of violation but provided information concerning the corrective actions it had taken. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, WTG did not contest the allegation in the Notice that it violated 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.616(c), which states:

¹ See http://www.westtexasgas.com/?page_id=12 (last accessed February 20, 2013)

§ 192.616 Public awareness.

(a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 192.7)

(b) ...

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

The Notice alleged that Respondent violated 49 C.F.R. § 192.616(c) by failing to develop and implement a written public education program that followed the general program recommendations, including baseline and supplemental requirements, provided in American Petroleum Institute's (API) Recommended Practice (RP) 1162. Specifically, the Notice alleged WTG's Public Awareness Program (PAP) had been developed by copying API RP 1162 and revising the text to substitute the phrase "WTG/WGI" for "the operator", adding the phrase "WTG/WGI" throughout the text of its PAP, and deleting all language not specifically related to natural gas transmission operators.² PHMSA's audit also revealed that WTG's PAP did not take into account the unique attributes of Respondent's pipeline system. Each pipeline is unique and has its own specific attributes such as its geographical location, design, operating environment, the commodity being transported, and other factors. Operators are required to develop and implement a public education program that takes into consideration the unique attributes of the operator's pipeline system.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.616(c) by failing to develop and implement a written public education program that followed the guidance provided in API RP 1162.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.616(c), which states:

§ 192.616 Public awareness.

(a) ...

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

The Notice alleged that Respondent violated 49 C.F.R. § 192.616(c) by failing to follow and implement a public education program meeting the general program recommendations set forth

² Pipeline Safety Violation Report (Violation Report) (May 16, 2012) (on file with PHMSA), Exhibit A.

in API RP 1162, including baseline and supplemental requirements. Specifically, the Notice alleged that WTG failed to conduct an annual audit to determine whether its PAP had been developed and implemented in accordance with WTG's PAP, *Section 8.3*, and *Table 8-1* of API RP 1162.³

In its Response, WTG contended that it had conducted an audit to determine whether its PAP had been developed and implemented in accordance with the regulatory requirements.

However, the company did not provide any documentation to support its claim that an audit had been performed. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.616(c) by failing to conduct an annual audit to determine whether its PAP had been developed to follow general program recommendations set forth in API RP 1162 and the company's procedures.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.616(c), which states:

§ 192.616 Public awareness.

- (a) ...
- (c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

The Notice alleged that Respondent violated 49 C.F.R. § 192.616(c) by failing to follow and implement a public education program meeting the program recommendations of API RP 1162, including baseline and supplemental requirements and its company's procedures. Specifically, the Notice alleged that WTG did not evaluate the effectiveness of its PAP every four years, in accordance with WTG PAP, *Section 8.4.2*. and *Table 8-1* of API RP 1162.⁴ Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.616(c) by failing to evaluate the effectiveness of its PAP in accordance with company procedures and the general program recommendations set forth in API RP 1162.

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

³ WTG's PAP, *Section 8.3* reads: "WTG/WGI shall complete an annual audit or review of whether the program has been developed and implemented according to the guidelines in API RP 1162. The purpose of the audit is to answer the following two questions: (1) Has the Public Awareness Program been developed and written to address the objectives, elements and baseline schedule as described [in] Section 2 and the remainder of this API RP 1162? and (2) Has the Public Awareness Program been implemented and documented according to the written program?" See Violation Report, Exhibit A.

⁴ WTG's PAP, *Section 8.4.2* reads: "Once validated in this initial manner, a program effectiveness survey is only required about every four years. However, when the operator introduces major design changes in its Public Awareness Program a survey to validate the new approaches may be warranted". In addition, *Table -8.1* of API RP 1162 recommends an effectiveness evaluation no more than four years apart. *Id.*

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. The Notice proposed a total civil penalty of \$53,000 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$26,800 for Respondent's violation of 49 C.F.R. § 192.616(c), for failing to conduct an annual audit to determine whether its PAP had been developed and implemented in accordance with WTG's PAP, *Section 8.3*, and *Table 8-1* and guidance in API RP 1162. WTG did not present any evidence or argument justifying a reduction in or elimination of the proposed penalty. WTG is fully culpable for the violation. Respondent was cognizant of the requirement to follow the program recommendations of API RP 1162, and the company's requirements to conduct an annual audit of its PAP. Furthermore, Respondent's prior enforcement history was taken into account. The operator had fourteen violations in the five years that preceded the issuance of the Notice.⁵ Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$26,800, for violation of 49 C.F.R. § 192.616(c).

Item 3: The Notice proposed a civil penalty of \$26,200 for Respondent's violation of 49 C.F.R. § 192.616(c), for failing to evaluate the effectiveness of its PAP every four years, in accordance with company procedures and the general program recommendations set forth in API RP 1162. WTG neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty. WTG is fully culpable for the violation. Respondent was cognizant of the requirement to follow API RP 1162 and to evaluate the effectiveness of its PAP every four years. Furthermore, Respondent's prior enforcement history was taken into account.⁶ The operator had fourteen violations in the five years that preceded the issuance of the Notice. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$26,200 for violation of 49 C.F.R. § 192.616(c).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$53,000**.

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

⁵ Violation Report at 21.

⁶ *Id.*

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.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to **Item 1** in the Notice for violation of 49 C.F.R. § 192.616(c). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. 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 § 192.616(c) (**Item 1**), Respondent must revise its Public Awareness Program to reflect the unique characteristics of WTG's pipeline system.
2. West Texas must submit a copy of the entire revised West Texas Gas Public Awareness Program to the Director, Southwest Region, PHMSA within 180 days of receipt of the Final Order.
3. It is requested, but not required, that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to R.M. Seeley, Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration. 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.

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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 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.

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