



U.S. Department  
of Transportation

Pipeline and Hazardous  
Materials Safety  
Administration

DEC 18 2012

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Mr. Jeff A. Stevens  
President & CEO  
Western Refining, Inc.  
123 W. Mills Avenue  
El Paso, TX 79901

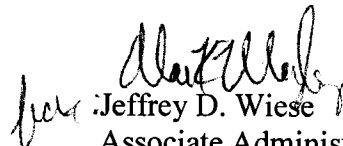
**Re: CPF No. 4-2012-5017**

Dear Mr. Stevens:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$37,600 against Western Refining Southwest, Inc. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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,

  
for Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Emmett Reagan, Senior Vice President – SW Region, Western Refining Southwest, Inc. - 123 W. Mills Avenue, El Paso, TX 79901  
Mr. R. M. Seeley, Director, Southwest Region, OPS  
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**



proceedings.<sup>2</sup>

### **FINDINGS OF VIOLATION**

The company did not respond to the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), which states:

**§ 195.432 Inspection of in-service breakout tanks.**

(a) . . . .

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to [American Petroleum Institute (API)] Standard 653 (incorporated by reference, *see* § 195.3). However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3).

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to timely inspect the physical integrity of an in-service atmospheric and low-pressure steel aboveground breakout tank in accordance with Section 6 of API Standard 653. Specifically, the Notice alleged that WRS failed to inspect the physical integrity of its in-service Breakout Tank #960 within the frequency required by the standard.<sup>3</sup>

According to the Notice, Section 6.4.2.2 of API 653 requires that “[w]hen corrosion rates are not known and similar service experience is not available to estimate the bottom plate minimum thickness at the next inspection, the internal inspection interval shall not exceed 10 years.” A review of Respondent’s *Annual Above Ground Storage Tank Visual Inspection Reports* for Tank ID #960 revealed that an inspection of the tank had not been performed within the 10-year period required by Section 6 of API 653. Respondent’s Breakout Tank #960 was constructed in 1996 and, as of the date of the inspection, WRS had not taken the tank out of service for an internal inspection.

Respondent did not respond to this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of an in-service aboveground breakout tank in accordance with API

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<sup>2</sup> In accord, *In the Matter of Tampa Pipeline Corporation*, Final Order (CPF No. 2-2008-6002) (April 26, 2010), 2010 WL 6531627, (D.O.T.), August 27, 2010; *In the Matter of Tampa Bay Pipeline Corporation*, Final Order (CPF No. 2-2005-6012) (Dec. 1, 2006), 2008 WL 902910 (D.O.T.), March 31, 2008. PHMSA final orders are generally accessible on the agency’s website, available at <http://primis.phmsa.dot.gov/comm/reports/enforce/Actions>.

<sup>3</sup> Violation Report at Exhibit B.

Standard 653 and 49 C.F.R. § 195.432(d).<sup>4</sup>

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 195.589(c), which states:

**§ 195.589 What corrosion control information do I have to maintain?**

(a) ....

(c) You must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. You must retain these records for at least 5 years, except that records related to §§195.569, 195.573(a) and (b), and 195.579(b)(3) and (c) must be retained for as long as the pipeline remains in service.

The Notice alleged that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by [Subpart H – Corrosion Control] in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures did not exist. Specifically, the Notice alleged that there were no records produced at the September 2011 PHMSA inspection to demonstrate that WRS had completed its 2007 and 2010 atmospheric corrosion inspections at least once every three calendar years, but at intervals not exceeding 39 months for the following locations: Smith Lake Valve (East Line), Valve 9A (West Line), Hospah Station (East Line) and Standing Rock Station (West Line). Although Respondent later provided its 2010 atmospheric corrosion inspection records, WRS did not provide its 2007 atmospheric corrosion control inspection records for the above-referenced locations.

Respondent did not respond to this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain atmospheric corrosion inspection records for at least five years to demonstrate that it had conducted atmospheric corrosion inspections at least once every three calendar years, but at intervals not exceeding 39 months in accordance with 49 C.F.R. § 195.583(a).<sup>5</sup>

These findings of violation will be considered prior offenses 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

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<sup>4</sup> Section 49 C.F.R. § 195.432(d) requires the inspection of in-service breakout tanks at certain intervals, beginning on May 3, 1999, or on the operator's last recorded date of the inspection, whichever is earlier.

<sup>5</sup> Section 49 C.F.R. § 195.583 requires operators to conduct atmospheric corrosion inspections on each pipeline or portion of pipeline that is exposed to the atmosphere at least once every three calendar years, but at intervals not exceeding 39 months.

\$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 \$37,600 for the violations cited above.

**Item 2:** The Notice proposed a civil penalty of \$28,700 for Respondent's violation of 49 C.F.R. § 195.432(b), for failing to inspect its in-service Breakout Tank #960 in accordance with section 6 of API Standard 653. Inspections of breakout tanks and documentation of any areas of non-compliance are important to prevent corrosion, settlement, or other threats to the integrity of these facilities. Such threats can lead to failure of the tank shell and threaten public safety. WRS failed to respond to the Notice, which constitutes a waiver of its right to contest the allegations in the Notice and authorizes the Associate Administrator to impose the proposed penalties. I have considered the penalty assessment criteria, including but not limited to, the gravity, the circumstances of the violation, and the prior history of Respondent. Accordingly, I assess Respondent a civil penalty of \$28,700 for violating 49 C.F.R. § 195.432(b).

**Item 3:** The Notice proposed a civil penalty of \$8,900 for Respondent's violation of 49 C.F.R. § 195.589(c), for failing to maintain records demonstrating that WRS had completed its 2007 atmospheric corrosion control inspections at least once every three calendar years, but at intervals not exceeding 39 months, for the four locations described above. WRS failed to respond to the Notice, which constitutes a waiver of its right to contest the allegations in the Notice and authorizes the Associate Administrator to impose the proposed penalties. WRS was well aware of its obligation to conduct atmospheric corrosion inspections at intervals not exceeding 39 months, as stated in the company's own Operations and Maintenance Manual.<sup>6</sup>

It is essential that operators conduct timely inspections because atmospheric corrosion can result in a release of hazardous liquids, thus posing a risk to life, property and the environment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$8,900 for violation of 49 C.F.R. § 195.589(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 **\$37,600**. 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

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<sup>6</sup> WRS' Operations & Maintenance Manual, Section 9 Subpart H - Corrosion Control Procedures, Section 9.7.3 Atmospheric Corrosion Monitoring and Inspection Frequency states: "The Maintenance Manager shall be responsible for the inspection program of all aboveground pressure piping and structural components for atmospheric corrosion at least once every 36 months but not to exceed 39 months using the OM-301 Atmospheric Corrosion Inspection Report, Refer to CFR 49 Part 195.583." Section 9.7.5 Documentation of the WRS O&M Manual further states: "Retain records in the local office as long as the facility remains in service or for 5 years; whichever is greater." See Violation Report, Exhibit C.

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.

Failure to pay the \$37,600 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 district court of the United States.

### **WARNING ITEM**

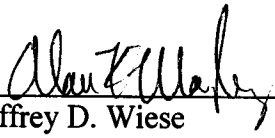
With respect to Item 1, the Notice alleged a probable violation of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 195.410(c) **(Item 1)** — Respondent's alleged failure to provide line marking at locations where the line is above ground in areas that are accessible to the public. PHMSA found several facilities that were in need of signage: Block Valve 9A, Smith Lake Block Valve 3, and Standing Rock Thermoelectric Generator.

If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

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, 2<sup>nd</sup> 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 [CPF No.: 4-2012-5017] are effective upon service in accordance with 49 C.F.R. § 190.5.

*for*   
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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

**DEC 18 2012**  
\_\_\_\_\_  
Date Issued

## **Payment Instructions**

### ***Civil Penalty Payments of Less Than \$10,000***

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration  
Mike Monroney Aeronautical Center  
Financial Operations Division (AMZ-341) P.O. Box 269039  
Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

### ***Civil Penalty Payments of \$10,000 or more***

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.



## INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) <u>RECEIVER ABA NO.</u> 021030004	(2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank)
(3) <u>SENDING BANK ABA NO.</u> (Provided by sending bank)	(4) <u>SENDING BANK REF NO.</u> (Provided by sending bank)
(5) <u>AMOUNT</u>	(6) <u>SENDING BANK NAME</u> (Provided by sending bank)
(7) <u>RECEIVER NAME</u> TREAS NYC	(8) <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)
(9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> BNF = /ALC-69-14-0001	(10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number

**INSTRUCTIONS:** You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

**Block #1** - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

**Block #5** - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

**Block #7** - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

**Block #9** - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/ALC-69-14-0001". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

**Block #10** - REASON FOR PAYMENT - "AC-payment for PHMSA Case # / To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

**NOTE:** A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.