

DECEMBER 18, 2012

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,

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

**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 Southwest, Inc.,)	CPF No. 4-2012-5017
)	
Respondent.)	
)	

FINAL ORDER

Between July 11-15 and September 12-15, 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 an on-site pipeline safety inspection of the facilities and records of Western Refining Southwest, Inc. (WRS or Respondent) in Bloomfield, New Mexico. A subsidiary of Western Refining, Inc., WRS operates intrastate and interstate crude oil and HVL pipelines in New Mexico.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated May 2, 2012, a Notice of Probable Violation and Proposed Civil Penalty (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that WRS had violated 49 C.F.R. §§ 195.432(b) and (d) and 195.598(c) and proposed assessing a civil penalty of \$37,600 for the alleged violations. The warning item required no further action but warned the operator to correct the probable violation or face possible enforcement action.

Respondent failed to respond within 30 days of receipt of service of the Notice. Under 49 C.F.R. § 190.209(c), such failure to respond constitutes a waiver of Western Refining Southwest, Inc.'s right to contest the allegations in the Notice and authorizes the Associate Administrator, without further notice, to find facts as alleged in the Notice and to issue this Final Order under § 190.213. In this case, the Notice was mailed to Respondent by certified mail (USPS Article No. 7007 0710 0002 1372 1572) on May 2, 2012, and was received by Respondent on May 7, 2012, as shown by the return receipt on file with PHMSA.

To date, Respondent has never acknowledged or responded to the Notice. Under such circumstances, I find it reasonable and appropriate to enter this Final Order without further

¹ Pipeline Safety Violation Report (Violation Report) (May 3, 2012) (on file with PHMSA), at 1.

proceedings.²

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.³

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

² 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>.

³ Violation Report at Exhibit B.

Standard 653 and 49 C.F.R. § 195.432(d).⁴

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).⁵

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

⁴ 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.

⁵ 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.⁶

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

⁶ 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, 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 [CPF No.: 4-2012-5017] are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued