

December 1, 2016

Mr. Jeff A. Stevens  
Chief Executive Officer  
Western Refining Pipelines, LLC  
1250 W. Washington Street  
Tempe, Arizona 87413

**Re: CPF No. 4-2016-5003**

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 \$106,500. 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,

Alan K. Mayberry  
Acting Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. R. M. Seeley, Director, Southwest Region, OPS  
Mr. Leonard Bloom, Director of Pipelines, Western Refining Pipeline, LLC, 111 County  
Road 4990, Bloomfield, NM 87413

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

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<b>In the Matter of</b>	)	
	)	
<b>Western Refining Pipeline, LLC, a subsidiary of Western Refining Inc.</b>	)	<b>CPF No. 4-2016-5003</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

On April 15, 2015, Western Refining Pipeline, LLC (Western or Respondent) experienced a crude oil release in Eddy County, New Mexico. As a result of the release, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to 49 U.S.C. § 60117, conducted an accident investigation of Western’s facilities and records. Western, a wholly owned subsidiary of Western Refining, Inc., operates approximately 260 miles of onshore crude oil and highly volatile liquid pipelines in Texas and New Mexico.<sup>1</sup>

As a result of the investigation, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated March 14, 2016, a Notice of Probable Violation and Proposed Civil Penalty (Notice), which also included a warning item pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Western had violated 49 C.F.R. §195.402(a) and proposed assessing a civil penalty of \$106,500 for the alleged violation. The warning item required no further action, but warned the operator to correct another probable violation or face possible enforcement action.

Western responded to the Notice by letter dated April 14, 2016 (Response). Western did not contest the allegation of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. 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. Part 195, as follows:

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<sup>1</sup> Pipeline Safety Violation Report (Violation Report), (Mar. 14, 2016) (on file with PHMSA), at 1.

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402, which states in relevant part:

**§ 195.402 Procedural Manual for Operations and Maintenance, and Emergencies.**

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintain activities and handling abnormal operations and emergencies.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its *16" and 12" Tex New Mex X Crude Oil Fill Plan*, which was prepared as a requirement of Sections 7.3.1 through 7.3.1.3.9 of its written Operations and Maintenance Procedures. Specifically, the plan required all pumping of oil and filling of the pipeline to take place only during daylight hours. However, Western failed to follow its plan by allowing the pumping of oil and filling of the pipeline to take place at all hours of the day. Western disclosed during a conference call with OPS on July 15, 2015, that the line fill process was ongoing for 24 hours of the day, comprising of 12 hour shifts.<sup>2</sup> In addition, Western's control room communication logs and the extended control room logs showed that line fill operation continued on during daylight and nighttime hours.<sup>3</sup>

Western's failure to follow its plan eventually contributed to the crude oil release on April 15, 2015, in which its pipeline was overfilled and product was released from a frac tank in the Tee Station in Eddy County, New Mexico.

In its Response, Western did not contest the facts of the alleged violation as set forth in the Notice. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its *16" and 12" Tex New Mex X Crude Oil Fill Plan*, which required all pumping of oil and filling of the pipeline to take place only during daylight hours.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.<sup>4</sup> In determining the amount of a civil penalty under 49 U.S.C.

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<sup>2</sup> Violation Report at 4.

<sup>3</sup> *Id.*

<sup>4</sup> On June 30, 2016, PHMSA adjusted the maximum penalties for inflation (81 Fed. Reg. 42564). Pursuant to § 190.223, any person found to have committed a violation on or after August 1, 2016, is subject to an

§ 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; 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 \$106,500 for the violation cited above.

**Item 1:** The Notice proposed a civil penalty of \$106,500 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its *16" and 12" Tex New Mex X Crude Oil Fill Plan*, which required all pumping of oil and filling of the pipeline to take place only during daylight hours. Although Western did not contest the facts surrounding the alleged violation in the Notice, it did assert that the proposed civil penalty was excessive. In its Response, Western presented the following six mitigating arguments: (1) federal pipeline safety regulations do not prohibit pipeline filling activities from occurring during nighttime hours; (2) the April 15, 2015 overfill would have occurred even if the filling of the pipeline occurred during daylight hours consistent with Western's fill procedures; (3) Western revamped its training procedures and retrained its personnel to ensure compliance with all its written procedures; (4) Western has only had one prior violation within the past five years and this is not a repeat violation; (5) the overfill occurred due to the fault of a contractor, not a Western employee; and (6) the crude oil release occurred on the last day of a three-month filling project and at no other time during the three-month period did an overfill occur. In light of these mitigating factors, Western requested a reduction in civil penalty from \$106,500 to \$45,000.

While I acknowledge and appreciate Western's willingness to take corrective measures following the crude oil release and the issuance of the Notice, I do not find these actions nor Western's mitigating arguments to be sufficiently compelling to negate Western's failure to comply with § 195.402(a), a requirement that was clearly violated. Furthermore, I find Western's failure to follow its written pipeline filling procedures only increased the severity of the crude oil release on April 15, 2015. In particular, Western personnel, who were onsite at the time of the release, were not able to see the overflow on the frac tank in the dark, which inevitably contributed to the amount of oil that was released.<sup>5</sup> Additionally, I concur with Western that it has only had one prior violation of the federal pipeline safety regulations in the past five years. The finding of violation in this Final Order has not been categorized as a repeat violation. This information has already been factored into the proposed penalty.<sup>6</sup> Finally, Western argues the overfill and subsequent crude oil release was the fault of a contractor, however, I note that the contractor was performing operation duties on the pipeline and the

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administrative civil penalty not to exceed \$205,638 for each violation for each day the violation continues, with the maximum administrative civil penalty not to exceed \$2,056,380 for any related series of violations.

<sup>5</sup> Violation Report at 8.

<sup>6</sup> *Id.* at 2, 5.

incident occurred on a pipeline facility owned and operated by Western.<sup>7</sup>

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$106,500 for violation of 49 C.F.R. § 195.402(a).

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 **\$106,500**.

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 (AMK-325), Federal Aviation Administration, 6500 S MacArthur Blvd., Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$106,500 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 2, 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. § 195.402(a) (**Item 2**) — Respondent's alleged failure to follow its written Operations and Maintenance Manual Section 3.2.5 and report an accident that occurred on its facility within one hour of discovery.

In its Response, Western stated that it had retrained its personnel to follow all written procedures, including procedures that require reporting of an accident within one hour of discovery. Western considers this step to retrain personnel will ensure that such a failure to follow procedures does not occur again.

If OPS finds a violation of this item following a subsequent accident or incident, Respondent may be subject to future enforcement action.

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<sup>7</sup> See 49 C.F.R. 195.10 (stating that "An operator may make arrangements with another person for the performance of any action required by this part. However, the operator is not thereby relieved from the responsibility for compliance with any requirement of this part.")

Under 49 C.F.R. § 190.243, Respondent may submit a petition for reconsideration of this Final Order to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, D.C. 20590, no later than 20 days after receipt of the Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

December 1, 2016

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Alan K. Mayberry  
Acting Associate Administrator  
for Pipeline Safety

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Date Issued