



U S Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Ave S E
Washington DC 20590

NOV 21 2008

Mr. Peter Sametz
Executive Vice President and Chief Operating Officer
Montana Refining Company, Inc.
Suite 2600, Watermark Tower
530 8th Avenue, S.W.
Calgary, Alberta T2P3S8
Canada

Re: CPF No. 5-2006-5027

Dear Mr. Sametz:

Enclosed is the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$10,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document 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. Chris Hoidal, Director, Western Region, OPS

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

In the Matter of)	
Montana Refining Company, Inc.,)	CPF No. 5-2006-5027
Respondent.)	

FINAL ORDER

From November 28, 2005, to December 2, 2005, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected the operator qualification (OQ) program of Montana Refining Company, Inc. (Montana Refining or Respondent), the operator of a three-mile-long crude oil pipeline and refinery in Great Falls, Montana.¹ Following that inspection, the Director, Western Region, OPS (Director), issued to Montana Refining, by letter dated June 15, 2006, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice alleged that Respondent had violated 49 C.F.R. § 195.509(b) and proposed assessing a civil penalty of \$10,000.

Montana Refining responded to the Notice by letters dated December 13, 2006, and January 11, 2008 (collectively, Response) Therein, Respondent denied the allegation of violation and objected to the assessment of a civil penalty. Montana Refining also initially requested a hearing, but later withdrew that request through counsel. By its withdrawal, Respondent waived its right to a hearing and authorized entry of this Final Order.

FINDING OF VIOLATION

Item 1 of the Notice alleged that Montana Refining had violated 49 C.F.R. § 195.509(b), which states:

§ 195.509 General.

(a) Operators must have a written qualification program by April 27, 2001. The program must be available for review by the Administrator or by

¹ In March 2006, Connacher Oil and Gas Limited, a Canadian energy company, purchased and currently owns Montana Refining

a state agency participating under 49 U.S.C. Chapter 601 if the program is under the authority of that state agency.

(b) Operators must complete the qualification of individuals performing covered tasks by October 28, 2002.

According to the Notice, Montana Refining violated § 195.509(b) by not qualifying any of the individuals who performed covered tasks on its pipeline from October 28, 2002, until the date of the 2005 OPS inspection. While not refuting that allegation, Respondent nevertheless argues that the OQ requirements prescribed in § 195.509 “are relatively new, and are not written in a manner that a one person pipeline operation can readily comply.”

I find this argument unpersuasive. Simply stated, each operator of a hazardous liquid pipeline must comply with § 195.509. *See* 49 U.S.C. § 60102(a)(3) (“*The operator of a pipeline facility shall ensure that employees who operate and maintain the facility are qualified to operate and maintain the pipeline facilities.*”); 49 C.F.R. § 195.2 (generally defining operator, person, pipeline system, and pipeline facility); 49 C.F.R. § 195.501 (prescribing the scope of OQ requirements), 49 C.F.R. § 195.505 (“*Each operator shall have and follow a written qualification program.*”); 49 C.F.R. § 195.507 (“*Each operator shall maintain records that demonstrate compliance with this subpart.*”) (italics added).

Indeed, the text of § 195.509 does not include an exception for any particular class of operators, and the regulatory history confirms that § 195.509 is intended to apply to all operators, regardless of size.² Thus, an operator of a three-mile-long crude oil pipeline, even if managed by a single employee, is bound by the requirements of § 195.509 to the same extent as an operator of a multistate crude oil pipeline operated by hundreds of employees. For that reason, Montana Refining’s argument that a “one person pipeline operation” cannot “readily comply” with the OQ requirements of § 195.509 must be rejected. Accordingly, I find that Respondent violated 49 C.F.R. § 195.509(b) by failing to qualify all of the individuals who were performing covered tasks on its pipeline no later than October 28, 2002.

² The final rule promulgating § 195.509 specifically noted that small operators would be covered, stating, in part

One commenter was concerned with the effect of the proposed rule on small operators, and suggested that [the agency] provide guidance on compliance with the rule to assist small operators, and state pipeline safety inspection personnel *The [Negotiated Rulemaking] Committee discussed the issue of the effects of the rule on small operators . . . , and agreed that special provisions would not be appropriate because the qualification of workers at both large and small pipeline operators can impact safety* Federal guidance documents such as the “Guidance Manual for Operators of Small Gas Systems” will be revised to help small operators achieve compliance. In addition, many training programs are currently under development by government organizations and members of the pipeline industry

64 Fed. Reg. 46853, 46856 (August 27, 1999) (italics added).

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

ASSESSMENT OF PENALTY

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I 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 \$10,000 for Respondent's violation of 49 C.F.R. § 195.509(b).

Respondent argues that a civil penalty should not be assessed for three reasons. First, Montana Refining has "show[n] good faith in achieving compliance" with 49 C.F.R. § 195.509, a "relatively new" regulation that is "not written in a manner that a one person pipeline operation can readily comply." Second, Montana Refining has no prior history of violating the OQ regulations. Third, the "nature, circumstances and gravity" of the alleged violation do not merit a \$10,000 penalty, particularly given the prompt action taken by Montana Refining to correct the situation upon receipt of the Notice.

I will address each of Respondent's arguments in turn. As for Respondent's good faith argument, PHMSA *does* consider an operator's good faith efforts to achieve compliance when calculating a civil penalty amount. For example, if an operator has taken reasonable steps to comply with a particular regulation but those efforts are subsequently deemed insufficient as the result of an inspection, PHMSA will consider such actions as a mitigating factor in calculating a civil penalty. Similarly, if an operator acts on the basis of an incorrect, but otherwise reasonable, interpretation of a regulation, the agency may propose a lower penalty than would otherwise be assessed.

In this case, however, Respondent did not make a good faith effort to achieve compliance. Indeed, nothing indicates that Montana Refining even considered qualifying the individuals who performed covered tasks from October 28, 2002, until the date of the 2005 inspection. Furthermore, § 195.509(b) is not a "relatively new" regulation. It was issued in August 1999, six years before the OPS inspector discovered the pending violation.

As for Respondent's second argument, it is true that Montana Refining has no prior history of violating the OQ regulations. However, this may simply be due to the fact that the 2005 OQ inspection was the first and only one that Montana Refining has undergone since the issuance of those regulations in 1999. More importantly, PHMSA did, in fact, consider Respondent's lack of prior offenses in calculating the pending civil penalty; otherwise, the proposed penalty amount would have been substantially larger.

As for Respondent's argument that the nature, circumstances, and gravity of the violation do not justify the proposed civil penalty, the facts prove just the opposite. Montana Refining operated its crude oil pipeline for years without taking steps to ensure that its employees and contractors were properly trained and qualified to perform all of their covered tasks. The need for Montana Refining's personnel to receive proper training and evaluation is particularly acute in this case since a failure could affect a populated High Consequence Area or contaminate the Missouri River. Respondent's efforts to comply with 49 C.F.R. § 195.509(b) after the discovery of the violation cannot justify a penalty reduction.

Having reviewed the entire record and considered Respondent's arguments in light of the statutory assessment criteria, I find that Respondent has failed to present any evidence or legal grounds to justify a reduction in the proposed civil penalty. Accordingly, I assess Respondent a total civil penalty of \$10,000

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to comply with this Order may result in 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 shall be effective upon receipt.

William H. Hubs
for

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

NOV 21 2008
Date Issued