

DEC 28 2009

Mr. John Moore
Vice President
Pipelines and Terminals
Tesoro Refining and Marketing Co.
300 Concord Drive Plaza
San Antonio, TX 78216

Re: CPF No. 5-2007-5031

Dear Mr. Moore:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and assesses a reduced civil penalty of \$30,000. 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.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, Director, Western Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7009 1410 0000 2464 5706]

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

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In the Matter of)		
)		
Tesoro Refining and Marketing Company,)	CPF No. 5-2007-5031	
)		
Respondent.)		
)		

FINAL ORDER

On February 26 through March 2, 2007, 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 inspection of the Integrity Management Program (IMP) of the Tesoro Refining and Marketing Company (Tesoro or Respondent), at its offices in Denver, Colorado. The Tesoro IMP applied to numerous pipeline systems, including ones in Alaska and Hawaii. As a result of the inspection, the Director, Western Region, PHMSA (Director), issued to Respondent, by letter dated August 13, 2007, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed certain violations of 49 C.F.R. § 195.452 and proposed assessing a civil penalty of \$40,000 for the alleged violations.

Respondent responded to the Notice by letter dated September 14, 2007, requesting an extension. PHMSA Western Region granted an extension and Respondent subsequently submitted correspondence dated October 25, 2007 (Response). On November 13, 2007, Respondent clarified that it was not contesting the allegations of violation, but indicated that its Response was intended to offer information in support of a reduction or mitigation of the associated penalties. Respondent did not request a hearing, and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1A: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h)(4), which states, in relevant part:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(h) *What actions must an operator take to address integrity issues?*

(1) . . .

(4) *Special requirements for scheduling remediation- (i) Immediate repair conditions.* An operator's evaluation and remediation schedule must provide for immediate repair conditions.... An operator must treat the following conditions as immediate repair conditions:

(A) ...

(C) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) that has any indication of metal loss, cracking or stress riser.

The Notice alleged that Respondent violated § 195.452(h)(4) by failing to act immediately to investigate and repair an "immediate repair condition" under its IMP. Specifically, the Notice alleged that Tesoro failed to properly identify and repair an anomaly, known as Item 626, that had been discovered on its 10-inch Hawaii products pipeline. The Notice alleged that Respondent incorrectly identified Item 626 as a bottom-side dent with metal loss, rather than a top-side dent with metal loss. Bottom-side dents with metal loss must be investigated and repaired within 60 days, as opposed to top-side dents, which are more serious and must be investigated and repaired immediately. In its Response, Tesoro admitted that it had not properly investigated and repaired the anomaly until more than a month after its discovery.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.452(h)(4) by failing to act immediately to investigate and repair an immediate repair condition on its 10-inch Hawaii products pipeline.

Item 2A: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h)(2), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(h) *What actions must an operator take to address integrity issues? – (1) General requirements.* An operator must take prompt action to address all anomalous conditions the operator discovers through the integrity assessment or information analysis.

. . .

(2) *Discovery of condition.* Discovery of a condition occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after an integrity assessment, obtain sufficient information about a condition to make that determination unless the operator can demonstrate that the 180-day period is impracticable.

The Notice alleged that Respondent violated § 195.452(h)(2) and its own procedures by failing to identify the correct date that it “discovered” an anomalous condition on its pipeline, even though the company had adequate information about the condition to determine that it presented a potential threat to the integrity of the pipeline. Specifically, the Notice alleged that Tesoro should have deemed “discovery” of the conditions to have taken place on the Refinery to Sand Island and the Sand Island to Shell Terminal pipelines upon receipt of the in-line inspection (ILI) vendor’s final reports for such pipelines. It further alleged that Respondent’s IMP Procedure, “IM007 In-Line Inspection,” provided that discovery of a condition took place on the date the company received the ILI vendor’s final report. Instead, Tesoro allegedly declared that it had discovered the conditions 30 or more days *after* delivery of the vendor’s final reports.

Regarding the Refinery to Sand Island pipeline, Respondent’s ILI Results and Repair Verification document indicates that the ILI vendor’s *final* report was received on October 24, 2005. However, the document further indicates that the “discovery” of the condition did not occur until November 1, 2005, the date Respondent received a dig list. Regarding the Sand Island to Shell Terminal pipeline, Respondent’s ILI Results and Repair Verification document indicates that the ILI vendor’s *final* report was received on September 7, 2004. However, the document indicated that the discovery of the anomalous condition did not occur until October 7, 2004, the date Respondent received a dig list.

Tesoro did not contest these allegations of violation. Accordingly, I find that Respondent violated § 195.452(h)(2) by failing to identify the correct date that it “discovered” anomalous conditions on its pipeline.

Item 3A: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h)(1, 3 and 4), which state, in relevant part:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(h) *What actions must an operator take to address integrity issues?*

(1) . . .

(i) *Temporary pressure reduction.* An operator must notify PHMSA, in accordance with paragraph (m) of this section, if the operator cannot meet the schedule for evaluation and remediation required under paragraph (h)(3) of this section and cannot provide safety through a temporary reduction in operating pressure. . . .

(3) *Schedule for evaluation and remediation.* . . . If an operator cannot meet the schedule for any condition, the operator must explain the reasons why it cannot meet the schedule and how the changed schedule will not jeopardize public safety or environmental protection.

(4) *Special requirements for scheduling remediation.*-. . .

(i) *Immediate repair conditions.* . . . An operator must treat the following conditions as immediate repair conditions: . . .

(ii) *60-day conditions.* Except for conditions listed in paragraph (h)(4)(i) of this section, an operator must schedule evaluation and remediation of the following conditions within 60 days of discovery of condition.

(A) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) with a depth greater than 3% of the pipeline diameter (greater than 0.250 inches in depth of a pipeline diameter less than Nominal Pipe Size (NPS) 12).

(B) A dent located on the bottom of the pipeline that has any indication of metal loss, cracking or a stress riser.

The Notice alleged that Respondent violated § 195.452(h)(4) by failing to schedule evaluation and remediation of pipeline anomalies that required repair within 60 days from the date of discovery. Specifically, the Notice alleged that Tesoro failed to complete Digs 26 and 28 on the Tesoro Alaska Pipe Line (TAPL) within 60 days of discovery of the anomalous conditions. The Violation Report alleged that there were a total of three anomalies at Digs 26 and 28.

Regarding Dig 26, Tesoro's Response included information confirming that, at the time of the inspection, Tesoro had properly classified the anomaly at the dig location (Item 8775) as an "other condition," rather than a "60-day condition," as alleged. Upon review of the evidence, I agree and hereby withdraw that portion of the allegation relating to Dig 26.

Regarding Dig 28, Respondent asserted that it had discovered two anomalies that resulted in the dig. In its Response, Tesoro admitted that it had erroneously classified one anomaly (Item 9507) as a 180-day repair condition, whereas it should have been classified as a 60-day condition. Respondent admits that this anomaly was repaired 89 days after discovery.

In its Response, Tesoro also submitted information showing that the other anomaly at the Dig 28 location (Item 9508) was not a 60-day repair condition and had actually been repaired in 2004. Upon review of the evidence, I agree and hereby withdraw that portion of the allegation relating to the Item 9508 anomaly at Dig 28.

Finally, the Notice alleged that Tesoro neither made a pressure reduction nor notified PHMSA, as required by 49 C.F.R. § 195.452(h)(1)(i) if it were unable to meet the schedule for evaluation and remediation. Respondent did not contest this allegation of violation.

Accordingly, after considering all the evidence, I find that Respondent violated 49 C.F.R. § 195.452(h)(4) by failing to schedule evaluation and remediation of the Item 9507 pipeline anomaly at Dig 28 within 60 days from the date of discovery. I also find that Respondent violated 49 C.F.R. § 195.452(h)(1) and (h)(3) by failing to provide notice or justification to PHMSA for failing to meet a schedule for evaluation and remediation. Finally, based upon information Respondent provided regarding the other two anomalies, Item 9508 at Dig 28 and Item 8775 at Dig 26, I hereby withdraw the portions of the allegation related to such anomalies.

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 \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

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 \$40,000 for the violations.

Item 1A proposed a civil penalty of \$10,000 for violation of C.F.R. § 195.452 (h)(4) for Respondent's failure to act immediately to investigate and repair an immediate repair condition on its 10-inch Hawaii products pipeline. In its Response, Tesoro offered information in support of mitigation or elimination of the proposed penalty. Respondent indicated that its ILI tool vendor had incorrectly characterized an anomaly known as Item 626 as a 60-day condition, rather than an immediate repair condition. Respondent explained that it erroneously carried this error over to its dig list. Information about the actions of Respondent's ILI vendor are immaterial to the assessment of a civil penalty for this violation. Respondent is responsible for the correct characterization and repair of anomalies on its pipeline, whether it performs the work or contracts with outside vendors. The Hawaii products pipeline could affect HCAs, the generally sensitive ecology of Oahu and surrounding ocean, and the Honolulu high-population area. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for Item 1A.

Item 2A proposed a civil penalty of \$10,000 for violation of 49 C.F.R. § 195.452(f)(4), for Respondent's failure to deem discovery of a condition to have taken place on the Refinery to Sand Island and Sand Island to Shell Terminal pipelines upon receipt of the ILI vendor's final reports for such pipelines. In its Response, Tesoro argued that it had correctly documented the dates of discovery for both pipelines. However, as discussed more fully above, Respondent's IMP documentation indicates otherwise. Both pipelines could affect HCAs, the generally sensitive ecology of Oahu and surrounding ocean, and the Honolulu high-population area. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for Notice Item 2A.

Item 3A proposed a civil penalty of \$20,000 for violation of 49 C.F.R. § 195.452(h)(4), for Respondent's failure to complete Digs 26 and 28 on the TAPL within 60 days of discovery of a condition, and for violation of 49 C.F.R. § 195.452(h)(3), for Respondent's failure to provide notice or justification to OPS for not meeting its schedule for evaluation and remediation. The TAPL could affect HCAs, the Anchorage high-population area, and the sensitive ecology of Cook Inlet. As discussed above, Respondent provided information showing that the company properly classified two (Items 8775 and 9508) of the three anomalies at Dig 26 and 28 locations.

As a result, the portions of the allegation in Item 3A pertaining to the Items 8775 and 9508 anomalies have been withdrawn. The withdrawal of these portions of Item 3A warrants a reduction in the civil penalty. However, Respondent has provided no information in support of any additional reduction of the civil penalty associated with the allegations regarding the Item 9507 anomaly and the failure to provide notice to OPS.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$10,000

In summary, having reviewed the record and considered the assessment criteria for all of the above Items, I assess Respondent a reduced total civil penalty of \$30,000. Respondent has provided no information that payment of this penalty would adversely affect its ability to continue in business.

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.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. However, if Respondent submits payment for 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 are effective on receipt.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued