

MAR 21 2011

Mr. Halbert S. Washburn
Chief Executive Officer
Breitburn Energy Corporation L.P.
515 South Flower Street, Suite 4800
Los Angeles, CA 90071

Re: CPF No. 5-2009-0009

Dear Mr. Washburn:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$105,000. It further finds that Breitburn Energy Corporation L.P. has completed the actions specified in the Notice to comply with the pipeline safety regulations. When the civil penalty has been paid, this enforcement action will be closed. 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. Chris Hoidal, Director, Western Region, PHMSA

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 1160 0001 0073 9659]

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

In the Matter of)

Breitbart Energy Corporation L.P.,)

Respondent.)

CPF No. 5-2009-0009

FINAL ORDER

In June 2008, 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 Breitbart Energy Corporation L.P. (Breitbart Energy or Respondent) in Seal Beach, California. Breitbart Energy operates a 5-mile pipeline facility in that area on behalf of the Seal Beach Gas Processing Joint Venture.

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated January 8, 2009, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Breitbart Energy had violated 49 C.F.R. §§ 192.465, 192.609, 192.619, 192.739, and 192.745 and proposed assessing a civil penalty of \$105,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Breitbart Energy responded to the Notice by letter dated July 30, 2009 (Response). The company did not contest the allegations of violation, but offered explanations for 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.

FINDINGS OF VIOLATION

The Notice alleged that Respondent committed violations of 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.465, which states, in relevant part:

§ 192.465 External corrosion control: Monitoring.

- (a)
- (b) Each cathodic protection rectifier or other impressed current power source must be inspected six times each calendar year, but with intervals not exceeding 2 ½ months, to insure that it is operating.

The Notice alleged that Respondent violated 49 C.F.R. § 192.465 by failing to inspect a rectifier that provides impressed cathodic protection for its pipeline at least six times a year, with intervals not exceeding 2 ½ months. Specifically, the Notice alleged that, during the three years prior to the PHMSA inspection, Breitburn Energy only inspected that rectifier once a year, i.e., during the annual pipe-to-soil survey conducted by its third-party contractor.

In its Response, Breitburn Energy did not contest this allegation of violation, but explained that the employee responsible for maintaining its records had taken or destroyed all of those documents when he left the company. Respondent further stated that it was confident that the required inspection had occurred, even though it could not provide any of the required documentation.¹

Breitburn Energy has an obligation to retain a record of each rectifier inspection for at least 5 years.² Without any rectifier inspection records, Breitburn Energy cannot demonstrate that the inspections occurred. Moreover, Breitburn Energy acknowledges that the employee responsible for conducting the inspections and maintaining the records made false statements about the performance of his duties. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.465 by failing to inspect the rectifier at least six times per year, with intervals not exceeding 2 ½ months, for a period of three years.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.609, which states:

§ 192.609 Change in class location: Required study.

Whenever an increase in population density indicates a change in class location for a segment of an existing steel pipeline operating at hoop stress that is more than 40 percent of SMYS, or indicates that the hoop stress corresponding to the established maximum allowable operating pressure for a segment of existing pipeline is not commensurate with the present class location, the operator shall immediately make a study to determine:

- (a) The present class location for the segment involved.
- (b) The design, construction, and testing procedures followed in the original construction, and a comparison of these procedures with those required for the present class location by the applicable provisions of this part.
- (c) The physical condition of the segment to the extent it can be

¹ Response at 2.

² 49 C.F.R. § 192.491(c).

ascertained from available records;

- (d) The operating and maintenance history of the segment;
- (e) The maximum actual operating pressure and the corresponding operating hoop stress, taking pressure gradient into account, for the segment of pipeline involved; and
- (f) The actual area affected by the population density increase, and physical barriers or other factors which may limit further expansion of the more densely populated area.

The Notice alleged that Respondent violated 49 C.F.R. § 192.609 by failing to immediately make a study to determine the present class location for a portion of its pipeline. In particular, the Notice alleged that Breitburn Energy's records indicated the entire pipeline is in a Class 1 location, even though a short section of its pipeline is in a Class 3 location.

In its Response, Breitburn Energy explained that it has consistently maintained that a 0.97-mile portion of transmission line in its system is in a Class 3 location, and it included a copy of its 2008 Class Location Survey for its pipeline, which shows that this line is in a Class 3 location.³ Respondent also explained that it has prepared an additional Class Location Survey and included it in its pipeline manual as an addendum.

The Class Location Survey submitted by Breitburn Energy is dated June 24, 2008, several days after the OPS on-site safety inspection occurred in this case. Therefore, that report does not show that Respondent had conducted a class location study prior to the inspection. Breitburn Energy did not submit any other evidence demonstrating that it had previously performed such study. Accordingly, based upon a review of all of the evidence, I find that Respondent has violated 49 C.F.R. § 192.609 by failing to conduct a class location study.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.619, which states, in relevant part:

§ 192.619: Maximum allowable operating pressure: Steel or plastic pipelines.⁴

(a) Except as provided in paragraph (c) of this section, no person may operate a segment of steel or plastic pipeline at a pressure that exceeds the lowest of the following:

- (1)
- (2) The pressure obtained by dividing the pressure to which the segment was tested after construction as follows:
 - (i)
 - (ii) For steel pipe operated at 100 p.s.i. (689 kPa) gage or more, the test pressure is divided by a factor determined in accordance with the following table:

³ Class Location Survey, attached to Response.

⁴ Section 192.619 was amended by the final rule published on October 17, 2008 (73 FR 62148).

Factors			
Class location	Segment Installed Before (Nov 12, 1970)	Segment Installed after (Nov 11, 1970)	Segment Converted under § 192.14
1	1.10	1.10	1.25
2	1.25	1.25	1.25
3	1.40	1.50	1.50
4	1.40	1.50	1.50

The Notice alleged that Respondent violated 49 C.F.R. § 192.619 by operating its pipeline at a pressure that routinely exceeds the established maximum allowable operating pressure (MAOP). Specifically, the Notice alleged that Breitburn Energy specified that the MAOP of its line was 200 psi based on the results of a 1994 hydrostatic pressure test. However, the Notice further alleged that Respondent maintained a normal operating pressure for this line of 200-250 psi, and that it had set the pressure relief valve at 250 psi. Breitburn Energy did not contest the allegation of the violation, but explained that it had mistakenly reported the operating pressure to be 200-250 psi. Respondent also claimed that the operating pressure of the line, based on measurements taken after the OPS inspection, is and has been 160-175 psi.

The records reviewed at the time of the OPS inspection showed that Breitburn Energy was consistently operating the line above its MAOP. Respondent has not introduced any evidence that refutes that fact. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.619 by exceeding the established MAOP for its pipeline.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 192.739, which states, in relevant part:

§ 192.739 Pressure limiting and regulating stations: Inspection and testing.

(a) Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is –

- (1) In good mechanical condition;
- (2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;
- (3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of § 192.302(a); and
- (4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

The Notice alleged that Respondent violated 49 C.F.R. § 192.739 by failing to inspect the pressure regulating valve on its line at the prescribed intervals. Specifically, the Notice alleged that for the 3-year period preceding the OPS inspection, Breitburn Energy did not have any records to show that it had inspected its pressure limiting device at least once each calendar year, at intervals not exceeding 15 months, to ensure that it is in good mechanical condition,

has adequate capacity, sets to control or relieve at the correct pressure, and is installed properly.

Respondent did not contest the allegation of violation, but stated that employee responsible for performing those inspections and retaining the required records had taken or destroyed all of those documents when he left the company. Breitburn Energy also stated that its pressure relief device had been “effectively” tested on a routine basis, as “it is set off each time the Southern California Gas Company shuts down its receiving line due to gas quality issues, which in turn causes pressure buildup of the transmission line causing the relief device to go off.”⁵

Breitburn Energy is required to retain a record of each pressure relief inspection for at least 5 years or until the inspection occurs, whichever is longer.⁶ Breitburn Energy cannot demonstrate that the pressure relief inspections occurred, because it has no records of the inspections. Moreover, Breitburn Energy acknowledges that the employee responsible for performing those inspections and retaining the required records made false statements about the performance of his duties. Furthermore, the actuation of the relief device as described in Breitburn Energy’s Response does not constitute an adequate inspection for purposes of this regulation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.739 by failing to inspect the pressure relief valve for its pipeline at the required intervals.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 192.745, which states, in relevant part:

§ 192.745: Valve maintenance: Transmission lines.

(a) Each transmission line valve that might be required during any emergency must be inspected and partially operated at intervals not exceeding 15 months, but at least once each calendar year.

The Notice alleged that Respondent violated 49 C.F.R. § 192.745 by failing to inspect the mainline block valves on its pipeline at the required intervals. Specifically, the Notice alleged that Breitburn Energy did not have any records to show that it had inspected the block valve on its line for the 3 years preceding the OPS inspection, and that each transmission mainline block valve that may be required during any emergency must be inspected at least once a year, with intervals not exceeding 15 months.

Respondent did not contest this allegation of violation, but explained that its policy is to conduct emergency shutoff valve inspections on an annual basis, and that management was told the required testing was done in this case. However, Breitburn Energy also acknowledged that the documentation associated with those inspections was not in its files.⁷

⁵ Response at 3.

⁶ 49 C.F.R. § 192.709(c).

⁷ Response at 4.

Breitbart Energy has a duty to retain a record of each valve inspection for at least 5 years or until the inspection occurs, whichever is longer.⁸ Without records of valve inspections, Breitbart Energy cannot demonstrate that the inspections occurred. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.745 by failing to inspect the mainline block valves on its pipeline at the required intervals.

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. 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 \$105,000 for the violations cited above.

In its response, Respondent alleged that for each of the violations, the inspection records are missing because a former employee destroyed or removed the documents from Breitbart premises without permission. Breitbart Energy explained that the employee charged with conducting the required inspections and maintaining the associated records regularly reported to his superiors that the inspections were conducted and recorded. Additionally, the employee verified to Breitbart's Environmental, Health and Safety department that all DOT compliance work was up to date. However, Breitbart Energy later learned that the employee had made false representations to management. This employee is no longer working at Breitbart Energy. After the employee left, Breitbart's management determined that the records of inspections were missing. They believe that the former employee is responsible for the compliance issues and missing records. Since the inspection, Breitbart Energy has replaced the crew at the Seal Beach facility. In addition, Breitbart Energy has instituted new internal policies and procedures to better monitor performance and to duplicate records.⁹

Item 1: The Notice proposed a civil penalty of \$35,000 for Respondent's violation of 49 C.F.R. § 192.465, for failing to inspect the rectifier that provides impressed cathodic protection for the pipeline. Breitbart Energy had no records to show that it had conducted the monitoring at least six times per year, with intervals not exceeding 2 ½ months. In its response, Breitbart Energy requested that the penalty be reduced because there was no adverse impact on the environment, Breitbart Energy has not had any prior violations at this location, and because the missing inspection records are the result of the personnel issue described above. Breitbart Energy stated

⁸ 49 C.F.R. § 192.709(c).

⁹ Response at 1.

that it is “confident that these inspections were conducted.”¹⁰ Furthermore, Breitburn Energy asserts that since the change of personnel at the facility, they have been maintaining and are able to locate all required records.

Respondent has not provided any evidence to substantiate its “confidence” in the fact that the required inspections ever occurred. The employee charged with performing those inspections has proven untrustworthy, and there is no other reliable evidence indicating that the inspections occurred. A reduction in the civil penalty is unwarranted because Breitburn Energy has not demonstrated that it took any action, over a period of three years, to ensure that the inspections its employee claimed to be conducting were actually conducted. Based upon the foregoing, I assess Respondent a civil penalty of \$35,000 for violation of 49 C.F.R. § 192.465.

Item 4: The Notice proposed a civil penalty of \$35,000 for Respondent’s violation of 49 C.F.R. § 192.739, for failing to inspect the pressure relief valve on its pipeline at the required intervals. Respondent has requested a reduction in the proposed penalty because it has a policy in place for inspecting these valves, even though the required documentation is missing due to the actions of its former employee. Breitburn Energy also seeks a reduction because the violation did not result in any adverse impact on the environment, and it has no history of prior violations at this location. However, Breitburn Energy has not shown that it made any efforts to ensure that its policy of inspecting the pressure relief valves was followed by the employees charged with conducting the inspections. Accordingly, I do not find support for a reduction in the civil penalty. Based upon the foregoing, I assess Respondent a civil penalty of \$35,000 for violation of 49 C.F.R. § 192.739.

Item 5: The Notice proposed a civil penalty of \$35,000 for Respondent’s violation of 49 C.F.R. § 192.745, for failing to inspect the transmission line emergency shutoff valve. Respondent requested a reduced penalty because management had been told the testing was performed, but the former employee destroyed or removed the relevant records. As explained in the assessment of penalty for Items 1 and 4, a reduction in the civil penalty is unwarranted because Breitburn Energy has not demonstrated that it took any measures to ensure that the inspections actually occurred. Based upon the foregoing, I assess Respondent a civil penalty of \$35,000 for violation of 49 C.F.R. § 192.745.

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 **\$105,000**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require 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 (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.

¹⁰ Response at 2.

Failure to pay the \$105,000 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, 3, 4, and 5 in the Notice for violations of 49 C.F.R. §§ 192.465, 192.609, 192.619, 192.739, 192.745, respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 192.465 (**Item 1**), Respondent has replaced personnel at the Seal Beach Facility and has instituted procedures to monitor performance and to duplicate records. Since the change of personnel, Breitburn Energy has conducted timely external corrosion monitoring and maintained the required records.¹¹
2. With respect to the violation of § 192.609 (**Item 2**), Respondent conducted a Class Location Survey dated June 24, 2008 and has prepared an additional Class Location Survey that it has included in its pipeline manual.¹²
3. With respect to the violation of § 192.619 (**Item 3**), Respondent took operating pressure measurements and determined that its normal operating pressure does not exceed its maximum allowable operating pressure. Respondent is also conducting a full evaluation of the pipelines at the facility to ensure that all systems are set at and operating at optimal pressures and settings.¹³
4. With respect to the violation of § 192.739 (**Item 4**), Respondent has corrected the personnel issues that led to the lack of records of inspections of the regulating valve.
5. With respect to the violation of § 192.745 (**Item 5**), Respondent has corrected the

¹¹ See Response at 2, and attachment to Response: "Sample Rectifier Inspection Logs."

¹² See attachment to Response.

¹³ See Response at 3.

personnel issues that led to the missing records of inspections of the emergency shutoff valve, and has instituted procedures to better monitor performance of inspections.

Accordingly, I find that compliance has been achieved with respect to these violations. Therefore, the compliance terms proposed in the Notice are not included in this Order. 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 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 this 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. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued