

DECEMBER 31, 2012

Gregory J. Goff
President and Chief Executive Officer
Tesoro Corporation
19100 Ridgewood Parkway
San Antonio, TX 78259

Re: CPF No. 5-2012-6008

Dear Mr. Goff:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one allegation of violation, makes findings of violation, and specifies actions that need to be taken by your subsidiary, Tesoro Hawaii Corporation, to comply with the pipeline safety regulations. When the terms of the Compliance Order have been completed, as determined by the Director, Western Region, 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. Ralph Grimmer, Vice President, Logistics, Tesoro Refining & Marketing Company,
19100 Ridgewood Parkway, San Antonio, TX 78259
Mr. Ryan K. Biggs, Director, Environmental, Health & Safety, Tesoro Corporation,
19100 Ridgewood Parkway San Antonio, TX 78259
Mr. Chis Hoidal, Director, Western 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)	
)	
Tesoro Hawaii Corporation)	CPF No. 5-2012-6008
a subsidiary of Tesoro Corporation)	
)	
Respondent.)	
_____)	

FINAL ORDER

From March 30 to April 2, 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 Tesoro Hawaii Corporation (Tesoro or Respondent), a subsidiary of Tesoro Corporation in Honolulu, Hawaii. Tesoro Corporation, through its subsidiaries, operates seven refineries, as well as various bulk terminals and approximately 900 miles of crude oil and petroleum product pipelines in the western United States.¹

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated April 17, 2012, a Notice of Probable Violation and Proposed Compliance Order (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 Tesoro had violated 49 C.F.R. §§ 195.214(a), 195.402(c)(12), 195.452(k), 195.573(a)(2), 195.573(e) and 195.577(a) and proposed ordering Respondent to take certain measures to correct the alleged violations. The warning item required no further action, but warned the operator to correct the probable violation or face possible enforcement action.

Tesoro responded to the Notice by letter dated May 15, 2012 (Response). Tesoro requested and was granted an extension of time by OPS to respond by June 21, 2012. Tesoro submitted its supplemental response by letter with attachments dated June 15, 2012 (Supplemental Response). The company contested two of the six allegations of violation and the warning item, and provided information concerning the corrective actions it had taken. Respondent did not request a hearing and therefore has waived its right to one.

¹ <http://www.tsocorp.com> (last visited November 13, 2012)

FINDINGS OF VIOLATION

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

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.214(a), which states:

§ 195.214 Welding Procedures.

(a) Welding must be performed by a qualified welder in accordance with welding procedures qualified under Section 5 of [American Petroleum Institute (API)] API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code (incorporated by reference, *see* § 195.3). The quality of the test welds used to qualify the welding procedure shall be determined by destructive testing.

The Notice alleged that Respondent violated 49 C.F.R. § 195.214(a) by failing to use a welding procedure that was qualified under API Standard 1104. Specifically, the Notice alleged that Tesoro failed to demonstrate that the company's welding procedure (PLM-A2), used in the installation of a 65-inch sleeve repair, had been qualified using destructive testing, in accordance with the requirements of API 1104.

Respondent did not contest this allegation of violation.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.214(a) by using a welding procedure during the 65-inch sleeve repair that was not qualified in accordance with API Standard 1104.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(12), which states in relevant part:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a)

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1) . . .

(12) Establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(12) by failing to establish and maintain liaison with fire, police, and other appropriate public officials who may respond to an emergency on Tesoro's pipeline.

Respondent did not contest the allegation of violation but described its subsequent liaison activities and its intent to meet routinely with local emergency response officials.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(12) by failing to establish and maintain liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid pipeline emergency.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(k), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(k) *What methods to measure program effectiveness must be used?*

An operator's program must include methods to measure whether the program is effective in assessing and evaluating the integrity of each pipeline segment and in protecting the high consequence areas. See Appendix C of this part for guidance on methods that can be used to evaluate a program's effectiveness.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(k) by failing to include methods in its Integrity Management Program (IMP) to measure whether the program was effective in assessing and evaluating the integrity of each pipeline segment and in protecting high consequence areas (HCAs). Specifically, the Notice alleged that the company failed to perform a causal factor analysis of two separate third-party strikes on their Honolulu pipeline in 2009.² The Notice further alleged that Tesoro had not determined the root cause of the two third-party strikes so that preventative actions could be taken to prevent a similar occurrence in the future.

In its Response, Respondent stated that it did not contest the allegation of violation but provided an explanation of the company's response to both of the third-party strikes. The company explained that it did not consider the third-party strikes to be "incidents" that required causal factor analysis; therefore, incident investigations were not performed at that time. Respondent further explained that both third-party strikes resulted in minor coating abrasion that had been repaired prior to the pipeline being reburied. Tesoro described the subsequent root cause analysis conducted regarding the third-party strikes, which highlighted poor excavation practices by the third-party excavators. Respondent further explained that it had revised its IMP to ensure third-party damage events, including abrasion damage events, are analyzed to ensure that all pipeline risks caused by third-party damage are addressed.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(k) by failing to include in its IMP methods to measure whether the program was effective in assessing and evaluating the integrity of each pipeline segment and in protecting HCAs.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(2), which states:

² Pipeline Safety Violation Report, (Violation Report) (April 17, 2012) at 39-40, and Exhibits A, B and D.

§ 195.573 What must I do to monitor external corrosion control?

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with § 195.571:

(1) . . .

(2) Identify not more than 2 years after cathodic protection is installed, the circumstances in which a close-interval survey or comparable technology is practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE SP 0169 (incorporated by reference, *see* § 195.3).

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(2) by failing to identify the circumstances in which a close-interval survey (CIS) is needed to accomplish the objectives of paragraph 10.1.1.3 of NACE SP 0169, which included assessing the effectiveness of the cathodic protection (CP) system and identifying areas of inadequate protection. PHMSA asserted that Tesoro's operations and maintenance (O&M) manual procedure LO028, Corrosion Control required that "Every 5 years the pipeline or portion of the pipeline will be evaluated for the need of a CIS (beginning 7/2004)".³ PHMSA's inspection found Tesoro had no records to demonstrate it had identified circumstances in which a CIS was practicable and necessary, in accordance with paragraph 10.1.1.3 of NACE SP 0169.

In its Response, Tesoro stated that the company had evaluated the need for CIS and generated a report to describe the company's determination that it is not practical, safe, or necessary to perform a CIS survey. The company explained that, in lieu of a CIS, it had implemented an alternative CP evaluation method to accomplish the objectives of NACE SP0169-2007, paragraph 10.1.1.3. Tesoro also noted that it planned to conduct a feasibility study in the first quarter of 2013 to identify areas where a CIS may be performed.

Respondent's arguments, however, are unpersuasive. Performing an analysis and generating a report in response to the Notice finding that a CIS was not necessary does not satisfy the requirement. Respondent would have had to have performed and documented such analysis in a technically sound manner at the time the decision not to perform a CIS was made. At the time of the inspection, Respondent did not have a documented analysis showing why it decided that such a survey was not necessary (and no survey had been performed). I acknowledge that Tesoro has taken action in the wake of the inspection to address the violation, including its plan to conduct a feasibility study in the first quarter of 2013, however such actions do not demonstrate that Respondent was in compliance with 49 C.F.R. § 195.573(a)(2) at the time of the inspection. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(a)(2) by failing to identify the circumstances in which a CIS or comparable technology was practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE SP 0169 within the required interval.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e), which states:

³ Violation Report at 41, and Exhibit C.

§ 195.573 What must I do to monitor external corrosion control?

(a)

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by § 195.401(b). However, if the deficiency involves a pipeline in an integrity management program under § 195.452, you must correct the deficiency as required by § 195.452(h).

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e) by failing to promptly correct CP deficiencies found in 2010, as required by § 195.401(b). Specifically, the Notice alleged that Tesoro did not demonstrate that corrective actions had either been planned or taken to correct approximately 12 recommendations regarding CP deficiencies identified in 2010, as a result of CP field activities.⁴ PHMSA's inspection revealed that Tesoro had no records to show whether all of the recommendations had been addressed. PHMSA asserted that an operator is required to correct any identified deficiency in CP and to maintain a record of those corrective actions for at least five years as per § 195.589(c).

In its Response, Tesoro did not contest the allegation but provided information concerning the corrective action that it had planned. Respondent explained that it had planned to complete the remaining 2010 CP Survey recommendations before the end of 2012.

Accordingly, after considering the evidence, I find that Respondent violated 49 C.F.R. § 195.573(e) by failing to promptly correct 12 deficiencies in corrosion control identified in 2010.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.577, which states:

§ 195.577 What must I do to alleviate interference currents

(a) For pipelines exposed to stray currents, you must have a program to identify, test for, and minimize the detrimental effects of such currents.

The Notice alleged that Respondent violated 49 C.F.R. § 195.577(a) by failing to have a program to identify, test for, and minimize the detrimental effects of stray currents on its Honolulu Pipeline System. Specifically, the Notice alleged that Tesoro failed to analyze whether stray currents were causing corrosion that had occurred where two foreign pipelines crossed over its Honolulu Pipeline System, and if so to take action to minimize the detrimental effects of these currents.

In its Response, Tesoro contended that there is no violation of 49 C.F.R. § 195.577(a), because it is premature to develop such a program until specifics of the rail system are provided by Kiewit, the Hawaii Rail Transit design engineering firm.⁵ Tesoro also contended that the proposed transit rail system is under construction and that preliminary information provided by Kiewit indicated that stray currents would not be an issue due to the design of the transit system. Respondent explained that the company attends regular task force meetings and receives progress updates from Kiewit. Respondent also explained that, once the rail system designs are

⁴ Violation Report at 42, and Exhibit D.

⁵ Supplemental Response at 5.

completed, Tesoro will develop a program to identify, test for and minimize the effects of the new rail system, as appropriate. The company stated that it would implement mitigation measures to address interference currents, as deemed necessary.

I find that the Respondent was persuasive on this point. The allegation of violation is not ripe for consideration and the record does not support PHMSA's allegation that is associated with a transit rail system that is under construction and proposed to lie parallel to the company's Honolulu pipeline. I find that the allegation of violation is premature because it is contingent upon future events that may not occur as anticipated, or indeed may not occur at all. Therefore, withdrawal of this Item is warranted. Based upon the foregoing, I hereby order that Item 7 of the Notice be withdrawn.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, 4, 5, 6 and 7 in the Notice for violations of 49 C.F.R. §§ 195.214(a), 195.402(c)(12), 195.452(k), 195.573(a)(2), 195.573(e) and 195.577(a), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Because I ordered that the allegation in Item 7 be withdrawn, the compliance terms proposed for Item 7 are not included in this order. The Director has indicated that Respondent has taken the following actions to address some of the cited violations:

1. With respect to the violation of § 195.214(a), **(Item 1)**, Tesoro qualified the sleeve welding procedure that had been used on June 19, 2009, and all welds completed during the subject sleeve repair project repair have been qualified.
2. With respect to the violation of § 195.402(c)(12) **(Item 2)**, Respondent met with the Honolulu LEPC (Local Emergency Planning Committee) on June 20, 2012, and shared information on Tesoro's Emergency Response Plan, expectations for personnel responding to emergencies at Tesoro assets, resources available and expertise necessary for incident mitigation. Tesoro also submitted its participant sign-in sheet from the June 2012 meeting.
3. With respect to the violation of § 195.452(k) **(Item 4)**, Tesoro submitted a copy of its revised DOT IMP that required coating abrasion events to be appropriately investigated. The revision also required that abrasion events are analyzed to determine gaps in the damage prevention and line locate programs.

Accordingly, I find that compliance has been achieved with respect to these violations. Therefore, the compliance terms proposed in the Notice for Items 1, 2, and 4 are not included in

this Order.

As for the remaining compliance terms, pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.573(a)(2) (**Item 5**), Respondent must perform a CIS of its Honolulu pipeline to (a) assess the effectiveness of the CP system; (b) provide base line operating data; (c) locate areas of inadequate protection levels; (d) identify locations likely to be adversely affected by construction, stray currents, or other unusual environmental conditions; and (e) select areas to be monitored periodically.
2. With respect to the violation of § 195.573(e) (**Item 6**), Tesoro must address each of the recommendations within the Caufman Engineering 2010 CP report for the company's Honolulu pipeline. Tesoro must document how they have addressed each of the recommendations.
3. Regarding the requirements for Notice Items 5 and 6 above, within sixty (60) days of receipt of this Final Order, Respondent must complete the required actions and submit documentation of completion to the Director, Western Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration. Please reference CPF# 5-2012-6008 in the title of the supporting documentation.
4. It is requested (not mandated) that Tesoro Hawaii maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total the Director. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions, and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

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.

WARNING ITEM

With respect to Item 3, the Notice alleged probable violations 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) and (c)(13) (**Item 3**) — Respondent's alleged failure to demonstrate that it had periodically reviewed the work done by operator personnel to determine the effectiveness of the procedures used in normal O&M and had taken corrective action where deficiencies were found. Specially, Tesoro could not produce any records showing that it had conducted such periodic reviews or that corrections had been taken.

Tesoro presented information in its Response showing that it had taken certain actions to address the Item 3. If OPS finds a violation of this provision, Respondent may be subject to future enforcement action.

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. 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued