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

1200 New Jersey Ave., S.E.
Washington, DC 20590

NOV 4 2008

Mr. Larry Hartness
Senior Vice President, Operations
Lion Oil Trading & Transportation, Inc.
P. O. Box 7005
El Dorado, Arkansas 71731-7005

RE: CPF No. 4-2006-5035

Dear Mr. Hartness:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of $20,000, and specifies actions to be taken by Lion Oil Trading & Transportation, Inc., to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. 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,

William H Gute
for

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: John Warren, Vice President Operations, LOTT
Kyle Michael, Management Controls Supervisor, LOTT
R.M. Seeley, Director, Southwest Region, 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	)	
	)	
	)	
Lion Oil Trading & Transportation, Inc.,	)	**CPF No. 4-2006-5035**
	)	
	)	
Respondent.	)	
	)	

FINAL ORDER

On April 27-28, 2005, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, conducted an inspection of the Operator Qualification (OQ) plans, procedures, and records of Lion Oil Trading & Transportation, Inc. (LOTT or Respondent), relating to its hazardous liquid pipeline facilities. The inspection took place at Respondent's offices in El Dorado, Arkansas. LOTT is a subsidiary of Lion Oil Company, whose operations include a crude oil refinery in El Dorado, three crude oil pipelines, and two refined products terminals in Memphis and Nashville. As a result of the inspection, the Director, Southwest Region, PHMSA (Director), issued to Respondent, by letter dated September 5, 2006, 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 Respondent committed various violations of 49 C.F.R. Part 195, Subpart G, and assessing a civil penalty of $45,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated November 9, 2006 (Response). LOTT contested several of the allegations, offered information in explanation of others, and requested an informal hearing. Respondent also requested and was granted an extension of time to comply with the terms of the proposed compliance order. A hearing was held on March 1, 2007, in Houston, Texas, with Renita K. Bivins, Esquire, Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent presented evidence regarding its OQ program and subsequently submitted additional written materials for the record.

FINDINGS OF VIOLATION

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

Item 1(A): Item 1(A) of the Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

> **§ 195.505 Qualification program.**
> Each operator shall have and follow a written qualification program. The program shall include provisions to:
> (a) Identify covered tasks;
> (b) Ensure through evaluation that individuals performing covered tasks are qualified;...

The Notice alleged that Respondent violated § 195.505(b) by failing to evaluate 63 of its employees in a manner that ensured that the individuals were qualified to perform each covered task. Specifically, the Notice alleged that the process established by Respondent to determine an individual's ability to perform a covered task was conducted in a group setting, where each employee could hear and benefit from the responses of other employees to answer the questions. This prevented each individual from being accurately "evaluated," as that term is defined in 49 C.F.R. § 195.503. The Notice also alleged that Respondent's OQ Plan (Plan) failed to cross-reference the activities of each employee to the covered tasks enumerated in the Plan and failed to identify abnormal operating conditions (AOCs) applicable to each covered task for which an employee was required to be evaluated, as more fully set forth in the Notice.

At the hearing, Respondent asserted that only four of the 63 individuals whose qualification records were examined actually worked on its pipeline facilities and were therefore subject to § 195.505(b). Respondent also expressed its belief that there had been a misunderstanding during the inspection regarding the availability of records for the tasks being performed by Respondent's employees. Records that cross-referenced the activities of each employee to the covered tasks in the Plan and records that identified AOCs applicable to each covered task were apparently available at the time of the inspection but not reviewed by the inspector. Respondent stated that, for whatever reason, the Office of Pipeline Safety (OPS) inspector only reviewed *summaries* of the covered tasks. Respondent explained that the summaries did not show the cross-references between covered tasks and AOCs. At the hearing and in its post-hearing submission, Respondent provided evidence and documents to address the qualification of certain employees, to show that it had cross-referenced the activities of each employee to the covered tasks in the Plan, and to identify the AOCs applicable to each covered task.

Finally, in response to OPS' concern that employees had been impermissibly evaluated in a group setting, Respondent indicated that its qualification exams were, in fact, administered individually and in accordance with regulatory requirements. Respondent argued that OPS had incorrectly inferred that the individuals shared answers during testing because employees were physically situated in a classroom setting. Respondent clarified that any sharing of information

among employees occurred only after completion of the exam, at which time information was shared to ensure that each individual understood why a particular response was correct or not. Respondent did acknowledge, however, that there may have been other deficiencies with its training and evaluation programs.

After considering all of the evidence, I find that Respondent's OQ documentation did cross-reference the activities of each employee to the covered tasks in the Plan; that Respondent did identify those AOCs that were applicable to each covered task; and that Respondent did properly administer OQ exams to individual employees. However, I further find that Respondent failed to document adequate training and evaluations to ensure that all of its employees had the ability to recognize and react to task-specific AOCs. Accordingly, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that all individuals performing covered tasks were qualified to perform those tasks and that each individual could recognize and react to specific AOCs that might be encountered while performing covered tasks.

Item 1(B): Item 1(B) of the Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), as stated above, by failing to ensure through evaluation that 14 individuals utilized as contractors to perform two covered tasks on LOTT's pipeline facilities were properly qualified. These 14 individuals were Lion Oil Company refinery employees. They worked as "pumpers" and "pumper assistants" on two of Respondent's product pipelines running from the adjacent refinery. Specifically, the Notice alleged that the Plan treated these 14 individuals as contractors and that Respondent's only qualification records for them consisted of a single attendance sign-up sheet for one group meeting held on November 22, 2002, almost a month after the transitional qualification compliance deadline of October 28, 2002, had passed.[1]

The Notice further alleged that Respondent used an unacceptable evaluation method for these 14 individuals. The Plan required the 14 workers to participate in a "simulated walk-through," but there was no indication whether the employees were evaluated on an individual or group basis or whether AOCs were addressed as part of this "walk-through." Finally, the Notice alleged that the three general refinery operation tests furnished to the PHMSA inspector appeared to have been developed to meet certain "Process Safety Management" (PSM) requirements of the federal Occupational Safety and Health Administration (OSHA), rather than the OQ requirements set forth in 49 C.F.R. Part 195 (Subpart G, Qualification of Pipeline Personnel).

At the hearing, Respondent presented evidence that these 14 individuals worked within the adjacent Lion Oil Company refinery and had been trained and evaluated in accordance with PSM requirements set by OSHA. Respondent provided documents and records of the PSM tests and evidence that the evaluations had been administered on an individual basis. Respondent contended that these evaluations required employees to demonstrate the personal knowledge,

---

[1] Transitional qualification is "qualification completed by October 28, 2002, of individuals who have been performing a covered task on a regular basis prior to the effective date of the rule." Final Rule, Pipeline Safety: Qualification of Pipeline Personnel, 64 FR 46853 (Aug. 27, 1999).

skills, and abilities necessary to implement certain "safe work practices" that were equivalent to AOCs and therefore that the evaluations performed for these 14 employees met the requirements of the OQ regulations. Respondent argued that these 14 individuals had been properly qualified prior to the October 28, 2002, deadline because the refinery's PSM program predated the effective date of the OQ requirements.

The purpose of the 49 C.F.R. Part 195 OQ regulations is to ensure that individuals performing operations and maintenance tasks affecting the operations of a hazardous liquid pipeline are qualified to perform certain tasks, in order to minimize threats to the public, property, and the environment from a potential pipeline failure. The purpose of OSHA's regulatory program, on the other hand, is to protect workers in the workplace. While compliance with a particular OSHA requirement may potentially satisfy an OQ requirement under certain circumstances, compliance with OSHA requirements does not automatically constitute compliance with the pipeline safety OQ requirements.

In this case, the safe work practices in Respondent's PSM program were not cross-referenced with the AOCs of covered tasks, which would be necessary in order for the PSM program to constitute an acceptable means of satisfying the OQ requirements. Moreover, Respondent did not provide documentation showing that AOCs or other relevant topics were addressed during the PSM evaluations. In fact, Respondent's OQ Plan makes no attempt to correlate the two programs or to demonstrate that its PSM program constituted an acceptable method of evaluation under § 195.505(b). Therefore, I find that Respondent's OSHA PSM evaluations neither constitute acceptable evaluations under PHMSA's OQ regulations nor meet the criteria for transitional qualification prior to the October 28, 2002, deadline. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that the 14 Lion Oil Company workers were qualified through evaluation to perform specific covered tasks on LOTT's pipeline and to recognize and react to AOCs associated with those tasks.

Item 2: Item 2 of the Notice alleged that Respondent violated 49 C.F.R. § 195.507(a), which states:

> **§ 195.507 Recordkeeping.**
>
> Each operator shall maintain records that demonstrate compliance with this subpart.
>
> (a) Qualification records shall include:
>
> (1) Identification of qualified individuals(s);
>
> (2) Identification of the covered tasks the individual is qualified to perform;
>
> (3) Date(s) of current qualification; and
>
> (4) Qualification method(s).

The Notice alleged that Respondent violated 49 C.F.R. § 195.507(a) by failing to maintain records demonstrating that all of its contractor personnel were properly evaluated and qualified to perform covered tasks. Specifically, the Notice alleged that Respondent failed to maintain

records or documentation demonstrating that AOCs were properly addressed in the qualification process, particularly for "certificated" contractors who were allowed to independently perform their specialty tasks.

Respondent did not contest this allegation, either in its Response or at the hearing. Accordingly, I find that Respondent violated 49 C.F.R. § 195.507(a) by failing to maintain records for contractor personnel demonstrating compliance with all qualification requirements.

Item 3: Item 3 of the Notice alleged that Respondent violated 49 C.F.R. § 195.509(a), 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 a state agency participating under 49 U.S.C. Chapter 601 if the program is under the authority of that state agency.[2]

The Notice alleged that Respondent violated 49 C.F.R. § 195.509(a) by failing to have a written OQ program in place by April 27, 2001. Specifically, the Notice alleged that Respondent's own records showed that it did not purchase the Plan and associated recordkeeping software from Pipeline Operator Qualification System, Inc. (POQS), until August 2001.

At the hearing, Respondent acknowledged that the POQS invoices were dated and submitted for payment on August 15, 2001, and September 7, 2001, but contended that its OQ Plan was actually completed prior to the April 27, 2001, deadline. It presented evidence that it had secured the services of a consultant to develop the required documentation and associated materials for an OQ program prior to the April 27, 2001 date. Having a program in place, however, means that it must have become effective on a specific date and been communicated to the affected employees. While Respondent's OQ Plan may have been *under development* prior to its purchase of the POQS software, Respondent was unable to demonstrate that the effective date of its written Plan and its communication to affected employees had occurred by April 27, 2001. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.509(a) by failing to have a written qualification program in place and available for review by the Administrator by April 27, 2001.

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

---

[2] The second sentence was added by an amendment that became effective July 1, 2005 (70 FR 10332).

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a 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 $45,000 for violations of 49 CFR Part 195.

With respect to Items 1(A) and 1(B), the Notice proposed that a civil penalty of $35,000 be assessed against Respondent for violating § 195.505(b). Item 1(A) alleged that Respondent failed to cross-reference the activities of each employee to the covered tasks in the Plan and to identify AOCs applicable to each covered task. In response, LOTT was able to show that it did indeed cross-reference the activities of each employee to the covered tasks in the Plan and did, in fact, identify AOCs applicable to each covered task. With respect to Respondent's failure to document adequate training and evaluations to ensure that its employees could recognize and react to task-specific AOCs, Respondent advised that its Plan was undergoing revisions to address the deficiencies in evaluating AOC proficiency. Respondent expected to complete a re-evaluation of all of its employees in accordance with the revised Plan by July 31, 2007.

On the other hand, LOTT was able to provide records demonstrating that it had addressed the qualifications of most of its workers. Approximately ten percent (10%) of its employee records showed that those workers had not been properly evaluated. Accordingly, the civil penalty for Item 1(A) has been reduced to $10,000.

Item 1(B) alleged that Respondent violated § 195.505(b) by failing to ensure through evaluation that the 14 LOTT contract employees were qualified to perform two covered tasks, including the ability to recognize and react to AOCs. Respondent contested this Item, asserting that its PSM training and evaluation program satisfied PHMSA's OQ requirements. In its post-hearing submission, Respondent further advised that the re-evaluation of the pumper and pumper assistants on appropriate covered tasks would be completed by May 30, 2007. Respondent presented no information, however, that would warrant a reduction of the penalty amount associated with the allegation in Item 1B.

Having reviewed the entire record for Items 1(A) and (B) and considered the assessment criteria, I have determined that the civil penalty should be reduced from $35,000 to $10,000 for violating § 195.505(b).

With respect to Item 2, the Notice proposed that a civil penalty of $5,000 be assessed against Respondent for violating 49 C.F.R. § 195.507(a). The Notice alleged that LOTT failed to maintain records for contractor personnel that demonstrated compliance with all qualification requirements. Having a complete OQ program in place to ensure that individuals performing covered tasks are properly qualified is an important element of pipeline safety. The consequences of any errors that cause or contribute to a release from the pipeline can be serious. Respondent expressed its intention to revise its Plan to ensure that all contractor personnel performing covered tasks were properly evaluated and qualified and that relevant records were properly maintained. Respondent, however, has presented no information that would warrant a reduction of the penalty amount proposed for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $5,000 for violating § 195.507(a).

With respect to Item 3, the Notice proposed that a civil penalty of $5,000 be assessed against Respondent for violating 49 C.F.R. § 195.509(a). The Notice alleged that LOTT failed to have a written qualification program in place by the regulatory deadline of April 27, 2001. Having a complete OQ program in place to ensure that individuals performing covered tasks are properly qualified is an important part of pipeline safety. The consequences of any errors that cause or contribute to a release from the pipeline can be serious. Respondent has presented no information that would warrant a reduction in the penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $5,000 for violating § 195.509(a).

Accordingly, having reviewed the entire record and considered the assessment criteria, I hereby assess Respondent a total civil penalty of $20,000. Respondent has the ability to pay this penalty without adversely affecting 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.

Failure to pay the $20,000 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 United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 2 in the Notice for violations of 49 C.F.R. Part 195.

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. 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. Respondent must –

1. With respect to Item 1, revise your Plan to evaluate individuals separately and to specify how evaluations will be conducted on each individual to determine such person's ability to recognize and react to abnormal operating conditions. Include provisions to:

   a. Reevaluate each employee who continues to perform covered tasks on behalf of LOTT using the revised procedures, including the evaluation of individuals to recognize and react to the abnormal operating conditions that could be encountered performing covered tasks on your pipeline facility, in accordance with 49 C.F.R. § 195.505(b).

   b. Ensure that any individuals, other than employees, performing covered tasks on LOTT pipeline facilities are evaluated in accordance with the acceptability criteria in the Plan for each covered task and have been evaluated to recognize and react to the abnormal operating conditions that could be encountered while performing covered tasks on your pipeline facility, in accordance with 49 C.F.R. § 195.505(b).

2. With respect to Item 2, generate and maintain records that fully document the reevaluation of all individuals who are the subject of Item 1 above and ensure that such records are retained for inspection to demonstrate compliance, in accordance with 49 C.F.R. § 195.507(a).

3. Where applicable, costs associated with fulfilling this compliance order shall be reported to the Director. Costs shall 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.

4. These requirements shall be completed within 60 days of receipt of the Final Order. One copy of each employee qualification record generated is to be forwarded to R.M. Seeley, Director, Southwest Region, Pipeline and Hazardous Material Safety Administration, U.S. Department of Transportation, 8701 South Gessner, Suite1110, Houston, TX 77074.

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

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, 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 a petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.

William Huntz
for

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

NOV 4 2008
Date Issued