APR 14 2011

Mr. Jim Sanders
General Manager, Terminal and Pipelines
CITGO Petroleum Corporation
1293 Eldridge Parkway
Houston, TX 77077

Re: CPF No. 4-2007-5010

Dear Mr. Sanders:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws two of the allegations of violation, makes other findings of violation, assesses a reduced civil penalty of $82,000, and specifies actions that need to be taken by CITGO Pipeline Company 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. 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: Rod Seeley, Director, Southwest Region, PHMSA
Christian A. Garza, Corporate Counsel, CITGO Petroleum Corporation

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0075 9169]

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

In the Matter of	)	
CITGO Pipeline Company,	)	**CPF No. 4-2007-5010**
Respondent.	)	

FINAL ORDER

From February until June 2006, 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 CITGO Pipeline Company (CITGO or Respondent), a subsidiary of CITGO Petroleum Corporation.[1] The OPS inspection included CITGO pipeline facilities in Louisiana, Texas and Oklahoma.[2]

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated April 2, 2007, 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 had committed various violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of $94,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice further proposed finding that Respondent had committed another probable violation of 49 C.F.R. Part 195 and warning Respondent to take appropriate corrective action to address it or be subject to future enforcement action.

[1] CITGO Petroleum Corporation, a refiner, transporter and marketer of transportation fuels, lubricants, petrochemicals and other industrial products, is owned by PDV America, Inc., an indirect, wholly-owned subsidiary of Petroleos de Venezuela, S.A., the national oil company of Venezuela. *See* *http://www.citgo.com/AboutCITGO/CompanyHistory.jsp* (last accessed December 13, 2010).

[2] The OPS inspection included the following facilities: (1) the Sour Lake District facilities, including a 64-mile, 20-inch pipeline that transports crude oil from a tank farm in Sour Lake, Texas, to Lake Charles, Louisiana, and a 100-mile, 10- and 12-inch pipeline that transports propane and ethane from Lake Charles to Mount Belvieu, Texas; (2) the Eagle Line South, including a 264-mile pipeline that transports petroleum products from a pump station in Pasadena, Texas, to Arlington, Texas, and five other short pipelines in the Houston area; (3) the Eagle Line North, including an 8-inch, 229-mile pipeline that transports petroleum products from Arlington to Drumright, Oklahoma; and (4) a control center in Tulsa, Oklahoma.

CITGO responded to the Notice by letters dated May 4 and June 25, 2007 (collectively, Response). Respondent contested several of the allegations and requested a hearing, which was subsequently held on July 24, 2007, with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel, Mr. Christian A. Garza. After the hearing, CITGO provided additional written material for the record by letter dated August 23, 2007 (Closing).

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. § 195.128, which states:

> **§ 195.128 Station piping.**
> Any pipe to be installed in a station that is subject to system pressure must meet the applicable requirements of this subpart.

The Notice alleged that CITGO violated § 195.128 by installing pipe in a station that did not meet the applicable requirements in Subpart C of Part 195. Specifically, the Notice alleged that Respondent had installed permanent tanks for storing drag reducing agent (DRA)[3] at its pump stations and had connected the tanks to its pipeline with rubberized braided hoses, an installation that was not consistent with accepted industry standards (ASME B31.4) or Subpart C of 49 C.F.R. Part 195, particularly the requirement that station piping be of steel construction.

In its Response and at the hearing, CITGO argued that the installation of its DRA injection systems did not violate § 195.128. Specifically, Respondent stated that DRA is not a hazardous liquid, and that it had equipped the attached hoses with steel check valves to ensure that they would not experience system pressure. CITGO also stated that the pressure ratings of the hoses exceeded the maximum pressure requirements for its pipeline system. Therefore, the requirements in § 195.128 did not apply to this piping.

OPS countered that Respondent's DRA injection systems were "fabricated assemblies" under 49 C.F.R. § 195.130,[4] and that CITGO had to use steel station piping to connect the hoses in these assemblies to its pipeline to comply with 49 C.F.R. §§ 195.100 and 195.112(a). Steel station piping was required, OPS asserted, because the operating pressure of the DRA injection system exceeded that of Respondent's pipelines.

Section 195.128 only applies to station piping that is subject to system pressure. A "pipe" is defined for purposes of 49 C.F.R. Part 195 as "a tube, usually cylindrical, through which a hazardous liquid or carbon dioxide flows from one point to another."[5] OPS argues that CITGO's

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[3] DRA is a compound used to reduce friction and improve flow rate in petroleum pipelines.

[4] Section 195.130 states: "Each fabricated assembly to be installed in a pipeline system must meet the applicable requirements of [Subpart C of 49 C.F.R. Part 195]."

[5] 49 C.F.R. § 195.2.

DRA injection hoses are installed in pump stations and operate at a pressure higher than that of its pipelines. Therefore, those hoses are station "pip[ing] . . . subject to system pressure" under § 195.128 and must be of steel construction to comply with the design requirements in Subpart C of 49 C.F.R. Part 195, including §§ 195.100 and 195.112(a).

I do not find OPS' position persuasive.[6]

CITGO's DRA injection systems are "pipeline facilities" within the scope of the Pipeline Laws and Regulations.[7] However, § 195.128 only applies to "pipe," not all pipeline facilities, and, as noted above, the term "pipe" is defined as "a tube, usually cylindrical, *through which a hazardous liquid or carbon dioxide flows from one point to another*." The evidence indicates that the only product which flows through Respondent's DRA injection systems "from one point to another" is DRA, a compound that OPS has not argued is a hazardous liquid or carbon dioxide.[8]

Moreover, the fact that Respondent's DRA injection hoses operate at a pressure higher than that of its pipelines does not make those hoses "subject to system pressure" under § 195.128. In order for that regulation to apply, station piping must be capable of experiencing or being affected by the internal operating pressure of the pipeline system. That is not the case here, as the evidence shows that CITGO has used independent pumps to provide the pressure for its DRA injection systems and had installed steel check valves to isolate the hoses from the internal pressure of its pipeline.

For these reasons, I find that Respondent's DRA hoses are not station piping subject to system pressure for purposes of § 195.128. Accordingly, based upon a review of all the evidence, I hereby withdraw Item 1 of the Notice.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b), which states:

> **§ 195.406 Maximum operating pressure.**
> (a) . . . .

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[6] OPS bears the burden of proof in an enforcement proceeding and must prove, by a preponderance of the evidence, that an alleged violation occurred, i.e., that an operator had a legal duty to follow a particular regulation, and that it breached that duty by engaging in conduct that did not meet the applicable requirements. *In the Matter of Butte Pipeline Co. (Butte)*, Final Order, CPF No. 5-2007-5008, p.2 (Aug. 17, 2009) (http://primis.phmsa.dot.gov/comm/reports/enforce/documents/520075008/520075008_Final%20Order_08172009.pdf?nocache=1644); *see also*, *Schaeffer v. Weast*, 546 U.S. 49, 56-58 (2005).

[7] 49 C.F.R. § 195.2 defines the term *pipeline facility* as "new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of hazardous liquids or carbon dioxide."

[8] The term *hazardous liquid* is defined as "petroleum, petroleum products, or anhydrous ammonia." The term *petroleum* is defined as "crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas." The term *petroleum product* is defined as "flammable, toxic, or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks and other miscellaneous hydrocarbon compounds." *Id.*

> (b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

The Notice alleged that CITGO violated § 195.406(b) by failing to provide "adequate controls and protective equipment" to control the pressure of its pipeline within 110 percent of its maximum operating pressure (MOP). Specifically, the Notice alleged that Respondent had no records showing that it had considered "surge pressures" or that the pipeline was adequately protected from surges whereby the pressure could exceed 110 percent of MOP.

In its Response and at the hearing, CITGO argued that a "surge analysis" was not the only means of determining the adequacy of its pressure controls and protective equipment under § 195.406(b). Respondent stated that operating *records* could be used to show that a particular pipeline had not previously experienced surges over 110 percent of MOP. The company also included in its Response a brief analysis of its malfunction and abnormal operating condition reports for the 2004, 2005, and 2006 calendar years; a description of the controls and protective equipment it had installed on its pipeline system; and a 1996 memorandum describing the results of a surge analysis of its Eagle South Pipeline. These documents, CITGO asserted, showed that its pipelines had not experienced, and were not likely to experience, pressure surges over 110 percent of MOP. Notwithstanding its defense to the allegations, Respondent agreed to perform a surge analysis to substantiate the adequacy of the controls and protective equipment on its pipeline systems.

I do not find Respondent's arguments convincing. None of the evidence in the record shows that Respondent considered pressure surges before installing the controls and protective equipment on its pipeline systems. CITGO did not complete its brief analysis of the reports from the 2004 to 2006 calendar years or its description of the protective equipment on its pipeline systems until after the issuance of this Notice; the 1996 memorandum only covered the 10-inch Eagle South Pipeline; and there is no evidence that Respondent could, or did, consider that memo in determining the appropriate controls and protective equipment for its other pipelines.[9]

Accordingly, based upon a review of all of the evidence, I find that Respondent violated § 195.406(b) by failing to provide adequate controls and protective equipment to control the pressure of its pipeline within the limit established under paragraph (a) of that regulation.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a), which states, in relevant part:

> **§ 195.410 Line markers.**
> (a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:

[9] *See, In the Matter of Kinder Morgan Energy Partners, L.P.*, C.P.F. 4-2006-5023 (Aug. 31, 2010).

> (1) Markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known.

The Notice alleged that CITGO violated § 195.410(a) by failing to install a sufficient number of markers along its buried pipeline so that its location was accurately known. Specifically, the Notice alleged that certain line markers could not be seen in either direction when crossing cultivated agriculture fields and at valve sites.

In its Response and at the hearing, CITGO argued that pipeline markers need not provide "line-of-sight" in all directions to comply with § 195.410(a)(1).

PHMSA acknowledges that while many operators follow the so-called "line-of-sight" test, as applied in the Notice in this case, many others do not. Furthermore, the regulation does not expressly require "line-of-sight." In an effort to arrive at greater consensus on this and other line-marking issues, PHMSA convened a public workshop in 2008 and is currently considering whether to issue a notice of proposed rulemaking.[10]

Under such circumstances, I find it is appropriate to withdraw the allegation of probable violation in Item 2 of the Notice. Such withdrawal neither constitutes an interpretation of § 195.410(a)(1) nor prejudices future potential enforcement action against Respondent or any other operator.[11]

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a), which states:

> **§ 195.412 Inspection of rights-of-way and crossings under navigable waters.**
>
> (a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a) by failing to inspect the surface conditions on or adjacent to each pipeline right-of way (ROW) at the required intervals. Specifically, the Notice alleged that large tree overhangs were allowed to grow and form a canopy over the pipeline that obscured the surface conditions adjacent to the ROW from observation by aerial surveillance, which is CITGO's primary means of patrolling its pipelines. Respondent did not contest this allegation. Accordingly, based upon a review of all the

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[10] The workshop was held on February 20-21, 2008, in Houston, Texas, to discuss, among other issues, the location of line markers. *Pipeline Safety: Workshop on Public Awareness Programs for Pipeline Operators and Location of Line Markers,* 73 Fed. Reg. 223 (Jan. 2, 2008).

[11] The Notice also indicated that the line markers on the Northgate Forest Golf Course were flush-mounted and did not list the correct operator name and phone number, an allegation that, if true, would constitute a violation of 49 C.F.R. § 195.410(a)(2)(ii). However, as the primary focus of Item 3 was the "line-of-sight" requirement and the Notice did not specifically cite an alleged violation of subsection (a)(2)(ii), no further action regarding CITGO's potential non-compliance with § 195.410(a)(2)(ii) is appropriate.

evidence, I find that CITGO violated 49 C.F.R. § 195.412(a) by failing to inspect the surface conditions on or adjacent to each pipeline ROW.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. §§ 195.432(b) and (d), which state:

> **§ 195.432 Inspection of in-service breakout tanks.**
>
> (a) . . . .
>
> (b) Each operator shall inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to section 4 of API Standard 653. However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under Sec. 195.402(c)(3).
>
> (c) . . . .
>
> (d) The intervals of inspection specified by documents referenced in paragraphs (b) and (c) of this section begin on May 3, 1999, or on the operator's last recorded date of the inspection, whichever is earlier.

The Notice alleged that Respondent violated 49 C.F.R. §§ 195.432(b) and (d) by failing to inspect the physical integrity of its breakout tanks in accordance with section 4 of API Standard 653 at the required intervals. Specifically, the Notice alleged that CITGO had not properly identified or resolved certain API 653 compliance issues during its monthly inspections. The Notice also alleged that CITGO's tank inspection records showed that two tanks were overdue for their out-of-service internal inspections; eight tanks missed their in-service external inspections; and eight tanks missed their ultrasonic inspections.

In its Response, CITGO did not contest these allegations. It offered no information to defend the adequacy of its monthly inspections, agreed that some of its breakout tanks had not received the required external inspections and acknowledged that a review and revision of its procedures for performing those inspections were in order. CITGO also provided an explanation as to why some of the breakout tanks in the Sour Lake District had not been inspected at the required intervals. Respondent provided similar information in its Closing.

Accordingly, based upon a review of all the evidence, I find that Respondent violated 49 C.F.R. §§ 195.432(b) and (d) by failing to inspect the physical integrity of its breakout tanks in accordance with section 4 of API Standard 653 at the required intervals.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. §§ 195.573(d) and (e), which state:

> **§ 195.573 What must I do to monitor external corrosion control?**
>
> (a) . . . .
>
> (d) *Breakout tanks.* You must inspect each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank to ensure that operation and maintenance of the system are in accordance with API Recommended Practice 651. However, this inspection is not

> required if you note in the corrosion control procedures established under Sec. 195.402(c)(3) why compliance with all or certain operation and maintenance provisions of API Recommended Practice 651 is not necessary for the safety of the tank.
>
> (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 the Respondent violated 49 C.F.R. §§ 195.573(d) and (e) by failing to have an adequate external corrosion control program for its aboveground breakout tanks and to ensure that operation and maintenance of its cathodic protection system was in accordance with API Recommended Practice 651 (RP 651). Specifically, it alleged that the company failed to correct an identified deficiency in corrosion control within "a reasonable time," as required by § 195.401(b), because one of the ground beds at the Sour Lake Tank Farm had started failing in December 2002, had completely failed by October 2003, and had remained out of service at the time of the February 2006 OPS inspection.

In its submissions and at the hearing, CITGO argued that the Sour Lake Tank Farm had four ground beds, that only one of those beds was out of service, and that the three remaining ground beds provided adequate cathodic protection throughout the relevant period. The company further stated that it had intended to replace the failed ground bed, if needed, and that it had done so in the fall of 2006. OPS countered that the cathodic protection system for the Sour Lake Tank Farm was designed to function as a unit, and that all four ground beds had to be operational for it to be considered "adequate" under RP 651.

The evidence supports OPS' position. CITGO installed a four-bed cathodic protection system at the Sour Lake Tank Farm, and there is no evidence, aside from the company's mere assertion in response to the Notice, that the system was designed to provide adequate protection in the event that one of the beds failed. Moreover, CITGO knew of the failed ground bed but did not correct the deficiency for more than three years. Accordingly, based upon a review of all the evidence, I find that Respondent violated 49 C.F.R. §§ 195.573(d) and (e) by failing to have an adequate cathodic protection system for its aboveground breakout tanks and to correct an identified deficiency in that system, as required by § 195.401(b)

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 195.579(a), which states:

> **§ 195.579 What must I do to mitigate internal corrosion?**
>
> (a) *General.* If you transport any hazardous liquid or carbon dioxide that would corrode the pipeline, you must investigate the corrosive effect of the hazardous liquid or carbon dioxide on the pipeline and take adequate steps to mitigate internal corrosion.

The Notice alleged that Respondent violated 49 C.F.R. § 195.579(a) by failing to investigate the corrosive effects of a hazardous liquid on its pipeline and take adequate steps to mitigate internal corrosion control. In particular, the Notice alleged that Respondent had not inspected certain dead legs, low points, facility and non-piggable pipe, and areas downstream of supplier taps for

indications of internal corrosion. The Notice further alleged that Respondent did not have an adequate program for monitoring internal corrosion, including proper corrosion monitoring points.

In its submissions and at the hearing, CITGO stated that it only transported refined petroleum products and crude oil imported via supertanker, neither of which is typically corrosive in a pipeline. Respondent further stated that it monitored for internal corrosion through "top-of-the-line" corrosion control coupons, and that the historical data from those coupons, including corrosion probe readings, showed that its pipelines had not experienced any corrosion-related problems.

I do not find CITGO's arguments persuasive.

Respondent's assertion that the products transported through its pipelines are not corrosive is unsubstantiated. As PHMSA has stated, "49 CFR 195.579(a) require[s] operators to *determine* if the hazardous liquids they are transporting could corrode the pipeline and, if so, take adequate steps to mitigate that corrosion potential." [12] Furthermore, "in accordance with 49 CFR 195.589(c), [operators] must maintain a record of the above analysis required by 49 CFR 195.579(a) in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion control measures are not necessary[,] . . . these records [must be retained] for at least five years[,] . . . [and they] must be readily available for inspection."[13]

In this case, the record does not indicate that CITGO ever performed any type of analysis to determine if the products being transported could be corrosive. Such analysis would require consideration of such risk factors as commodity type, flow rate, velocity, and operating pressure; the potential presence of foreign materials, contaminants, microbes, or other corrosive substances; pipe configuration, design, and specifications; and operating conditions.[14]

In addition, the historical data that Respondent relied upon to establish the non-corrosive nature of its products is inconclusive, i.e., the OPS inspector stated that CITGO's corrosometer probes were only capable of detecting severe corrosion in their present locations, and that the probes themselves were susceptible to pitting corrosion, which could affect the accuracy of any resulting readings. Therefore, Respondent should have used corrosometer probes in conjunction with other methods to monitor internal corrosion.[15]

Moreover, the evidence indicates that CITGO's corrosion control coupons were not located in all areas where water and other corrosive components could potentially accumulate, including facilities that were not amenable to inline inspection and areas of intermittent flow. Respondent has not demonstrated whether, if corrosion did occur, it would be prepared to take adequate steps to mitigate its effects, such as through the implementation of an inhibition program.

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[12] 73 Fed. Reg. 71089-90 (Nov. 24, 2008).

[13] *Id.*

[14] *Id.*

[15] *See, In the Matter of Sunoco Pipeline, L.P.*, C.P.F. 4-2007-5040 (Dec. 16, 2010).

Accordingly, based upon a review of all the evidence, I find that Respondent violated 49 C.F.R. § 195.579(a) by failing to investigate the corrosive effects of a hazardous liquid on its pipeline and to take adequate steps to mitigate internal corrosion control.

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. 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 $94,000 for the violations cited above.

Item 1: The Notice proposed a civil penalty of $12,000 for Respondent's alleged violation of 49 C.F.R. § 195.128, for failing to install station piping that met the applicable requirements in Subpart C. As noted above, I found that CITGO's DRA injection hoses were not station piping subject to system pressure for purposes of that regulation. Based upon the foregoing, I withdraw the proposed penalty for violation of 49 C.F.R. § 195.128.

Item 6: The Notice proposed a civil penalty of $32,000 for Respondent's violation of 49 C.F.R. §§ 195.432(b) and (d), for failing to inspect the physical integrity of its breakout tanks in accordance with section 4 of API Standard 653 at the required intervals. Specifically, the Notice alleged that CITGO had not properly identified or resolved certain API 653 compliance issues during its monthly inspections. The Notice also alleged that CITGO's tank inspection records showed that two tanks were overdue for their out-of-service internal inspections; eight tanks missed their in-service external inspections; and eight tanks missed their ultrasonic inspections.

CITGO did not contest these alleged violations. Breakout tank inspections are designed to detect corrosion, settlement, and other threats to the integrity of those facilities. When inspections are not adequately performed or do not occur at the required intervals, these threats are more likely to progress to the point of failure. The environmental consequences of such an event would be significant, particularly given the large quantity of hazardous liquids stored in the tanks. Moreover, the evidence shows that Respondent is fully culpable for failing to perform the required inspections, and there is no allegation that payment of the proposed penalty would impair its ability to continue doing business. Based upon the foregoing, I assess CITGO a civil penalty of $32,000 for violating 49 C.F.R. §§ 195.432(b) and (d).

Item 7: The Notice proposed a civil penalty of $50,000 for Respondent's violation of 49 C.F.R. §§ 195.573(d) and (e), for failing to have an adequate cathodic protection system at the Sour Lake Tank Farm and to correct an identified deficiency in that system. The record indicates that CITGO was aware that one of the ground beds in that system had failed but took no steps to address that deficiency for more than three years. In so doing, CITGO created an environment where corrosion at the Sour Lake Tank Farm could progress to a critical phase and present a significant risk to the safety of the public, property, and the environment. Furthermore, the evidence shows that Respondent was fully culpable for failing to correct this deficiency. The company has not presented any evidence or argument that would justify a reduction in the proposed penalty. Based upon the foregoing, I assess CITGO a civil penalty of $50,000 for violation of 49 C.F.R. §§ 195.573(d) and (e).

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 **$82,000**.

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 269039, Oklahoma City, OK 73125. The Financial Operations Division's telephone number is (405) 954-8893.

Failure to pay the $82,000 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, 6, 7 and 8 in the Notice for violations of 49 C.F.R. §§ 195.128, 195.406(b), 195.410(a)(1), 195.412(a), 195.432 (b) and (d), 195.573(d) and(e), and 195.579(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. I have withdrawn Items 1 and 3, so there is no need to include compliance terms for those Items. The remaining compliance requirements are set forth below.

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 49 C.F.R. § 195.406(b) (**Item 2)**, Respondent must perform an audit to ensure that it has adequate controls and protective equipment for

controlling the pressure of its pipeline within 110 percent of MOP. The audit must include a hydraulic analysis of the effect of surges during normal operations. Respondent must provide the Director with the results of that analysis and documentation of the implementation of any required modification to its pipeline facilities or equipment.

2. With respect to the violation of 49 C.F.R. § 195.412(a) (**Item 4**), Respondent must inspect all of its pipelines to locate areas where the ROW is overgrown with brush or tall grass or is overgrown by a canopy from surrounding trees that prevents visibility from aerial surveillance; develop a plan and schedule to clear brush and canopy from the ROW; and a plan for alternative surveillance method for affected ROWs that are being cleared and made suitable for aerial surveillance.

3. With respect to the violation of 49 C.F.R. §§ 195.432(b) and (d) (**Item 6**), Respondent must review its program for inspecting breakout tanks; develop a plan and schedule for inspecting any tanks that have missed any required periodic inspections; and provide documentation showing that it takes note monthly of items required under API 653 and any other matters from prior inspections that still require further action.

4. With respect to the violation of 49 C.F.R. §§ 195.573(d) and (e) (**Item 7**), Respondent must review its cathodic protection program; determine whether any of its cathodic protection systems are in need of repair or replacement; and develop a plan and schedule for performing such repairs or replacements.

5. With respect to the violation of 49 C.F.R. § 195.579(a) (**Item 8)**, Respondent must perform a comprehensive assessment to fully determine the corrosive effect of the transported products on pipelines and all facilities; provide documentation showing that areas susceptible to internal corrosion are inspected and monitored; and provide documentation showing that adequate steps to mitigate internal corrosion are implemented on any areas of active corrosion.

6. Respondent is requested to maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration, 8701 South Gessner, Suite 1110, Houston, Texas 77074. 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.

7. Within thirty days (30) days of receipt of the Final Order, Respondent must submit all required surveys, assessments, and plans with timetables, to the Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration, 8701 South Gessner, Suite 1110, Houston, Texas 77074.

8. Within 180 days of receipt of the Final Order, Respondent must complete all actions required by this Compliance Order and submit documentation of completion to the Director.

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 the 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 5, the Notice alleged probable violations of Part 192 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. § 195.420(c) **(Notice Item 5) —** Respondent's alleged failure to protect the valves on its pipeline systems from unauthorized operation and vandalism.

Although Respondent contested this item in its Response and at the hearing, it could not demonstrate that it had developed or implemented an adequate, risk-based process for ensuring valve protection. In particular, the evidence showed that CITGO had used various methods at different sites without having a reasoned basis for making those distinctions.

Accordingly, having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. § 195.420(c) (Notice Item 5) have occurred and Respondent is hereby advised to correct such conditions. In the event that OPS finds a violation of this provision in a subsequent inspection, 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. 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.

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Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued