MARCH 20, 2014

Mr. Peter Johnson
President
Sinclair Transportation Company
550 East South Temple
Salt Lake City, UT 84102

Re: CPF No. 5-2013-5005

Dear Mr. Johnson:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one allegation of violation, makes other findings of violation, and finds that Sinclair Transportation Company has completed the actions specified in the Notice to comply with the pipeline safety regulations. Therefore, this case is now 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, OPS
Mr. Mark A. Petersen, Vice-President, Sinclair Transportation Company

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [INSERT RECEIPT NO.]

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

In the Matter of	)	
Sinclair Transportation Company,	)	**CPF No. 5-2013-5005**
Respondent.	)	

FINAL ORDER

From July 10 to July 12, 2012, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the Denver Products Terminal facilities and records of Sinclair Transportation Company (Sinclair or Respondent) in Henderson, Colorado. Sinclair, a wholly-owned subsidiary of Sinclair Oil Corporation, operates approximately 1,100 miles of crude oil and refined products pipelines in Wyoming, Colorado, Missouri, and Iowa.[1]

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated April 25, 2013, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Sinclair had committed five violations of 49 C.F.R. Part 195 and proposed ordering Respondent to take certain measures to correct the alleged violations.

Sinclair responded to the Notice by letter dated June 14, 2013 (Response). The company contested four of the allegations of violation and provided information concerning the corrective actions it had taken. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

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

[1] PHMSA Violation Report at 1.

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.264, which states, in relevant part:

> **§ 195.264 Impoundment, protection against entry, normal/ emergency venting or pressure/vacuum relief for aboveground breakout tanks.**
>
> (a) . . .
>
> (d) Normal/emergency relief venting must be provided for each atmospheric pressure breakout tank. Pressure/vacuum-relieving devices must be provided for each low-pressure and high-pressure breakout tank.
>
> (e) For normal/emergency relief venting and pressure/vacuum-relieving devices installed on aboveground breakout tanks after October 2, 2000, compliance with paragraph (d) of this section requires the following for the tanks specified: . . .
>
> (2) Normal/emergency relief venting installed on atmospheric pressure tanks (such as those built to API Standard 650 or its predecessor Standard 12C) must be in accordance with API Standard 2000 (incorporated by reference, *see* § 195.3); . . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.264 by failing to meet the requirement for venting capacity for maximum liquid movement into or out of a breakout tank. Specifically, the Notice alleged that Sinclair did not document the method of calculation used to determine maximum flow rates for normal/emergency relief vents of its breakout tanks. According to the Notice, Sinclair was required to comply with API Standard 2000 with respect to normal/emergency relief vents, which requires that the method of calculation used by the company be properly documented.

In its Response, Sinclair explained that the breakout tank vents in question were installed during the 1963 to 1969 period and argued that the provisions of § 195.264(e) only apply to pressure/ vacuum-relieving devices installed on aboveground tanks after October 2, 2000. Respondent is correct that the provisions of § 195.264(e) do not apply to these tank vents.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Sinclair was not out of compliance with § 195.264 as alleged in the Notice. Based upon the foregoing, I hereby order that Item 1 be withdrawn.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

> **§ 195.402 Procedural manual for operations, maintenance, and emergencies.**
>
> (a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall

> be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal operations and maintenance (O&M) activities for tank foundations. Specifically, the Notice alleged that Sinclair failed to follow its own procedures, which provided for inspections and inspection intervals established in accordance with API Standard 653. According to the Notice, the PHMSA inspection revealed several instances of cracked concrete and corrosion in the area of the tank foundations. Furthermore, certain concrete tank foundation cracks were allegedly not repaired as required by API Standard 653, and Sinclair did not follow-up on the recommendations of its tank inspector that these cracks be sealed to prevent further cracking.

In its Response, Sinclair contended that the cracks in the tank foundations were "hairline" or "temperature" cracks and, in its view, not required to be repaired under API 653 because they did not "seriously affect the strength of the concrete structure."[2] Sinclair further argued that its contractor had determined that the cracks would not permit moisture infiltration and corrosion of the reinforcing steel, and stated that the corrosion observed in the area of the tank foundations was more likely due to corrosion on the tank chimes, for which PHMSA had issued a Warning Letter. Following receipt of the Notice, however, Sinclair did caulk and seal "a total of eight to twelve foundation cracks on Tanks 11, 12, and 13 that were determined to be 1/8 to 1/4-inch in width."[3]

Having considered Respondent's arguments, I do not find them persuasive. API 653 Section 4.5.1.2(c) states: "Expansion of freezing moisture in porous concrete, or in concrete with minor settlement cracks or temperature cracks, can result in spalling and/or the development of serious structural cracks." The Denver area is subject to seasonal precipitation and freezing temperatures, which can result in the expansion of moisture in cracks. API 653 requires the repairing of cracks before they become serious enough to affect the strength of the concrete structure.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own written procedures for repairing tank foundation cracks as part of conducting normal O&M activities for breakout tanks.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), as quoted above, by failing to follow its own manual of written procedures for conducting normal O&M activities for establishing internal tank inspections. Specifically, the Notice alleged that Sinclair failed to follow its own *O&M Manual Section 206.6(e),* which required that the tank inspection intervals be based upon the calculations described in API 653, Sections 6.4.2,and 6.4.3. According to the Notice, the company failed to document the calculations used to establish the internal inspection interval for each tank.

---

[2] Response at 3, citing API Standard 653, Section 4.5.1.2(e).

[3] Response at 4.

In its Response, Sinclair acknowledged that the calculation was not fully documented for five of the 12 internal inspections and did not contest the allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal O&M activities for establishing internal tank inspection intervals.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), as quoted above, by failing to follow its own manual of written procedures for conducting normal O&M activities for establishing external tank inspections. Specifically, the Notice alleged that Sinclair failed to follow its *O&M Manual Section 206.6(e)* because it did not document a valid calculation method used to establish the external inspection interval for each tank.

In its Response, Sinclair disagreed that it had committed a violation and contended that it had used a calculation method that was "algebraically equivalent" to the method set forth in *Section 206.6*. Respondent stated that it believed the RCA/4N method in its O&M procedures (where RCA is the shell corrosion allowance in millimeters and N is the shell corrosion rate in millimeters per year) was equivalent to the RL = Ca/Cr method it had used (where RL is Remaining Life, Ca is the corrosion allowance in inches, and Cr is the Corrosion Rate in inches per year). Sinclair stated that once the remaining life is less than 20 years, the inspection interval derived when the remaining life is divided by 4 would be no greater than five years. Sinclair stated that the calculations it performed in effect reached the same result as the method provided in its O&M procedures.

Having considered Respondent's arguments, I do not find them persuasive. As set forth in API 653, the RCA/4N method calls for the actual measured thickness of the tank wall to be used in the calculation, not the original wall thickness at the time of construction. Here, Respondent used the original wall thickness of the tank. For Tank No. 7, for example, Sinclair's chart shows previous 0.375" for course 1 and 0.250" for courses 2−5.[4] These reflect the original thickness of the tank as constructed in 1966, not the previous measured thickness. The most recent inspection of this tank in 2011 would have had to be based on the 2006 measurements, but it was not.

Finally, I would note that operators are required to follow their written procedures as they are. If Sinclair believes that two alternative formulas are appropriate for a given type of calculation, it would first need to amend its O&M procedures accordingly and not begin using the alternative formula until after the amendment had become effective.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal O&M activities for establishing external tank inspections.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.505, which states, in relevant part:

[4] Response Exhibit G.

§ 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;

(c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified; . . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.505 by failing to have and follow a written qualification program that included a provision allowing an individual who had not been qualified pursuant to Subpart G to perform a covered task only if such person were directed and observed by an individual who was qualified. Specifically, the Notice alleged that the individual who performed the monthly breakout tank inspections for Sinclair was not qualified to perform this task, as evidenced by his failure to properly record the cracks in the concrete foundations as unsatisfactory conditions on the tank inspection checklist or to acquire the proper tool to measure such cracks.

In its Response, Sinclair disagreed that it had committed a violation and provided documentation demonstrating that the individual who performed the monthly tank inspections was qualified in accordance with its written qualification program.[5] Respondent disputed the premise that the inspector should have recorded the condition of the foundations as unsatisfactory on his checklist for the reasons given in its response to Item 2 above. Respondent further argued that its breakout tank inspectors "are not necessarily charged with measuring foundation cracks, whether structural or not, but only in monitoring them monthly to determine whether the condition of the foundations appear to be deteriorating, hence satisfactory or unsatisfactory."[6]

Respondent's argument that the tank inspector should not have recorded the condition of the foundations as unsatisfactory is unpersuasive for the reasons discussed in Item 2 above, namely, that the cracks required repair pursuant to API 653. Respondent's argument that its breakout tank inspectors were not charged with measuring cracks is at odds with its contention that the tank foundations were being effectively monitored. Unless individual cracks are measured, marked, or numbered, it would not be feasible for an inspector to know, from memory, whether an existing crack had grown or whether a new one had appeared. The examination required by covered task SPL-2710 is for the purpose of identifying visual defects or damage that need to be addressed, such as cracks in a foundation. The tank inspector in this case failed to make and record these observations in a way that would result in follow-up action.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49C.F.R. § 195.505 by failing to have and follow a written qualification program that included a provision allowing an individual who had not been qualified pursuant to Subpart G to perform a covered task only if such person were directed and observed by an

[5] Response, Exhibit H.

[6] Response at 10.

individual who had been qualified.

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 1−5 in the Notice for violations of 49 C.F.R. §§ 195.264, 195.402(a), and 195.505. 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. As discussed above, Item 1 has been withdrawn. With respect to Items 2−5, the Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

> With respect to the violations of §§ 195.402(a) and 195.505 (**Items 2−5**) pertaining to the tank foundations and internal inspection intervals and its qualification program, Respondent has repaired the cracks in the concrete foundations that were identified, had re-trained the qualified individuals in this area, and has documented the appropriate internal and external inspection intervals for all of the breakout tanks.

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. Should Respondent elect to do so, 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