



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

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

JUN 18 2008

Mr. John Zager
General Manager
Union Oil Company of California
909 West 9th Avenue
Anchorage, AK 99501

Re: CPF No. 5-2003-5023

Dear Mr. Zager:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$75,000, and specifies actions to be taken to comply with this agency's 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, Western 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,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, Director, Western Region, PHMSA
Mr. Marc D. Bond, Senior Counsel, Chevron North America Exploration and
Production Company

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)	
)	
Union Oil Company of California,)	CPF No. 5-2003-5023
)	
Respondent.)	
_____)	

FINAL ORDER

On June 16-17, 2003, pursuant to 49 U.S.C. § 60117, representatives of the Research and Special Programs Administration,¹ Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the Operator Qualification (OQ) records and procedures for Unocal Alaska, a subsidiary of Union Oil Company of California (Union Oil or Respondent)² at Respondent's offices in Anchorage, Alaska. As a result of the inspection, the Director, Western Region, PHMSA (Director), issued to Respondent, by letter dated August 22, 2003, a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Warning (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 195.505(b), 195.507(b) and 195.509, proposed assessing a civil penalty of \$100,000 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also proposed finding that Respondent had committed a probable violation of 49 C.F.R. Part 195 and warning Respondent to take appropriate corrective action to address the probable violation or be subject to future enforcement action.

¹ Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) succeeded the Research and Special Programs Administration (RSPA) as the agency responsible for regulating pipeline safety. See Norman Y. Mineta Research and Special Programs Improvement Act, Pub. L. No. 108-426, 118 Stat. 2423. See also 70 Fed. Reg. 8299, 8301-8302 (2005) (redelegating authority to the Administrator of PHMSA).

² This action was originally brought against Unocal Alaska, a subsidiary of Union Oil Company of California. In 2005, Union Oil Company of California merged with Chevron Corporation. The pipeline facilities subject to this Order are currently operated by Union Oil Company of California as a subsidiary of Chevron Corporation.

Respondent responded to the Notice by letter dated September 26, 2003 (Response). Respondent contested some of the allegations of violation and provided information concerning the corrective actions it planned to take. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Respondent contested some of the allegations in the Notice and offered information in explanation of others, as follows:

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

49 C.F.R. § 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 failed to provide procedures in its written OQ program to ensure that contractor personnel performing covered tasks on Respondent's pipeline facilities were qualified to perform those tasks. The Notice also alleged that Respondent failed to provide any data that such contractor personnel were qualified. Respondent did not dispute this allegation. In its Response, Respondent indicated that it would qualify its contractor personnel. Accordingly, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to have and follow written procedures to ensure through evaluation that contractors performing covered tasks on Respondent's pipeline facilities were qualified.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), as quoted above, by failing to provide procedures to ensure that individuals performing covered tasks were qualified. The term "qualified" is defined in § 195.503, which states:

49 C.F.R. § 195.503 Definitions.

.....

Qualified means that an individual has been evaluated and can:

- (a) Perform assigned covered tasks and
- (b) Recognize and react to abnormal operating conditions.

The term "abnormal operating condition" is also defined in § 195.503:

Abnormal operating condition means a condition identified by the operator that may indicate a malfunction of a component or deviation from normal operations that may:

- (a) Indicate a condition exceeding design limits; or
- (b) Result in a hazard(s) to persons, property, or the environment.

Specifically, the Notice alleged that Respondent failed to ensure that individuals were properly qualified by not addressing abnormal operating conditions (AOCs) in its written OQ program. In addition, the Notice alleged that Respondent's written OQ program did not include a means to ensure that personnel performing covered tasks on Respondent's pipeline facility could recognize and react to AOCs.

In its Response, Respondent asserted that PHMSA's allegation was "not entirely correct." It explained that each of its Pipeline Specific Operations Manuals contained a section that listed some AOCs and how to respond to them. However, Respondent admitted that it had not addressed AOCs for every covered task. The company indicated that it planned to further develop AOCs and responses to AOCs in its written OQ program. Accordingly, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were properly "qualified," as that term is defined in § 195.503. This was because its written OQ program neither included AOCs for every covered task nor the means to evaluate whether individuals could recognize and react to such AOCs.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. §§ 195.505(b), as quoted above, and 195.509(c), and (d), which states:

49 C.F.R. § 195.509 General.

- (a)...
- (c) Work performance history review may be used as a sole evaluation method for individuals who were performing a covered task prior to October 26, 1999.
- (d) After October 28, 2002, work performance history may not be used as a sole evaluation method.

The Notice alleged that Respondent failed to appropriately evaluate and qualify nine (9) individuals who were hired after October 26, 1999, because the company used work performance history review (WPHR) as the sole evaluation method for qualifying them. The Notice also alleged that Respondent failed to appropriately evaluate and qualify one (1) employee hired before October 26, 1999, because it allowed that employee to evaluate himself. Respondent did not dispute this allegation. In its Response, Respondent stated that it would review its qualification records and re-qualify individuals who had been incorrectly qualified.

Accordingly, I find that Respondent violated 49 C.F.R. §§ 195.505(b) and 195.509 (c) and (d) by failing to appropriately evaluate and qualify nine (9) individuals hired after October 26, 1999, and one (1) individual hired before that date.

Item 4B: The Notice alleged that Respondent violated 49 C.F.R. § 195.507(b), which states:

49 C.F.R. § 195.507(b) Recordkeeping.

Each operator shall maintain records that demonstrate compliance with this subpart.

(a) ...

(b) Records supporting an individual's current qualification shall be maintained while the individual is performing the covered task. Records of prior qualification and records of individuals no longer performing covered tasks shall be retained for a period of five years.

Item 4B in the Notice alleged that Respondent failed to provide OQ records for two of its personnel and that no records were available for contractor personnel performing covered tasks. Respondent did not dispute this allegation. Accordingly, I find that Respondent violated 49 C.F.R. § 195.507(b) by failing to maintain OQ records for two (2) of its personnel and by failing to maintain records for contractor personnel hired by Union Oil and performing covered tasks.

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

WARNING ITEM

With respect to Item 4A, the Notice alleged a probable violation of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, the item is considered to be a warning item. The warning was for:

49 C.F.R. § 195.507(b) (Notice Item 4A) — Respondent's alleged failure to properly maintain its OQ records demonstrating compliance with Subpart G of Part 195. The Notice also indicated that records were not being maintained as required by Respondent's own written OQ program requirements. At the time of the inspection, Respondent's written OQ procedures specified that the OQ records were maintained at Respondent's Kenai, Alaska, offices. During the inspection, PHMSA inspectors observed that the Kenai office had been closed seven (7) months earlier, that the OQ records had been moved to another location, and that no Union Oil staff had maintained the records since the move.

I find, pursuant to 49 C.F.R. § 190.205, that a probable violation of 49 C.F.R. § 195.507(b) (Notice Item 4A) has occurred and Respondent is hereby advised to correct such condition. In the event that OPS finds a violation for this item in a subsequent inspection, Respondent may be subject to future enforcement action.

ASSESSMENT OF PENALTY

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 \$100,000 for the violations.

The OQ regulations are intended to ensure that each pipeline operator take appropriate and effective action to determine that its work force is qualified and thereby reduce the probability and consequences of pipeline incidents caused by human error. Respondent's failure to comply with various parts of the OQ regulations reduced the safety of its pipeline system and reflected an insufficient effort by the company to design and implement an OQ program that met the purpose and requirements of Subpart G.

With respect to Item 1 in the Notice, regarding Respondent's failure to have and follow written procedures to ensure that contractor personnel were qualified, the Notice proposed a civil penalty of \$25,000. Contractors must be as qualified to perform covered tasks as Respondent's own employees; they both may face AOCs or other critical situations and have to react appropriately to ensure pipeline safety. Respondent has provided no information or arguments that would warrant a reduction in the proposed civil penalty. Therefore, I assess a civil penalty of \$25,000 for Item 1.

With respect to Item 2 in the Notice, regarding Respondent's failure to address AOCs in its written OQ plan, the Notice proposed a civil penalty of \$50,000. This violation reduced pipeline safety because it increased the risk that an AOC would not be promptly identified and safely addressed by qualified personnel.

The Director reviewed Respondent's Response to Item 2 and has indicated that, as of the time of the inspection, Respondent had provided some AOC training for its personnel, though not for all covered tasks as required by § 195.505(b). The fact that Respondent had been providing some training on AOCs reduces the gravity of this violation and indicates that Respondent was acting with a degree of good faith in attempting to comply with the regulations. In light of this information and its impact on the application of the assessment criteria, I find that grounds exist in this particular case for reduction of the civil penalty for Item 2 from \$50,000 to \$25,000.

With respect to Item 3 in the Notice, regarding Respondent's failure to appropriately evaluate and qualify certain individuals, the Notice proposed a civil penalty of \$20,000. Respondent was found to have inappropriately used WPHR as the sole method of evaluation for certain individuals who performed covered tasks on Respondent's pipeline system. Respondent was also found to have inappropriately allowed an individual performing covered tasks to qualify himself. As with other Items in the Notice, this action reduced pipeline safety because unqualified individuals were permitted to perform covered tasks. Respondent has provided no information or arguments that would warrant a reduction in the civil penalty. Therefore, I assess a civil penalty of \$20,000 for Item 3.

With respect to Item 4B in the Notice, regarding Respondent's failure to provide OQ records for two (2) of its personnel and for contractor personnel, the Notice proposed a

civil penalty of \$5,000. Respondent's failure to provide OQ records made it difficult, if not impossible, to accurately determine whether individuals performing covered tasks on its pipeline system were properly qualified. Respondent's recordkeeping failure created the risk that an unqualified individual would perform a covered task on Respondent's pipeline system. Respondent has provided no information or arguments that would warrant a reduction in the civil penalty. Therefore, I assess a civil penalty of \$5,000 for Item 4B.

Accordingly, having reviewed the record and considered the assessment criteria for each Item, I assess Respondent a reduced total civil penalty of \$75,000.

Respondent has provided no information indicating that its payment of the penalty would adversely affect 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 \$75,000 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, 2, 3 and 4 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 shall -

1. With regard to Item 1 of the Notice pertaining to Respondent's OQ program, develop written OQ program procedures to ensure that contractor personnel performing covered tasks on Respondent's pipeline facilities are qualified.

Develop plans and a schedule for qualifying such contractor personnel. Submit to the Director the procedures, plans and schedule within sixty (60) days of receipt of the Final Order.

Evaluate and qualify all contractor personnel performing covered tasks on Respondent's pipeline facilities within four (4) months of receipt of this Final Order.

2. With regard to Item 2 of the Notice pertaining to Respondent's OQ program, review each covered task applicable to Respondent's pipeline facilities and determine and document the possible AOCs that could be encountered while performing each covered task. Also determine those AOCs that are generically found on Respondent's pipeline facilities. Submit to the Director the list of AOCs determined and their relationship to specific covered tasks and to general operations within sixty (60) days of receipt of the Final Order.

Submit to the Director written OQ program procedures to ensure that all personnel performing covered tasks, as documented in Respondent's database, are presented with the AOCs and that they can recognize and react to such AOCs. Submit a schedule for implementing such procedure. The presentation of AOCs to personnel performing covered tasks shall be completed and documentation of such presentation shall be submitted within four (4) months of receipt of the Final Order.

3. With regard to Item 3 of the Notice pertaining to the evaluation methods in Respondent's OQ program, review the qualification records of each individual for each covered task and determine which individuals hired after October 26, 1999, were qualified solely by work performance history review. Review qualification records to determine if any individual, hired at any time, served as his or her own evaluator, using any evaluation method, for purposes of OQ. Develop a list of the individuals which meet the criteria listed above. Develop OQ program procedures that provide for proper evaluation and qualification of the individuals on the list. Develop a schedule for such evaluation and qualification.

Submit the list, procedures and schedule to the Director within sixty (60) days of receipt of the Final Order. Complete evaluation and qualification of listed individuals within four (4) months of receipt of the Final Order.

4. With regard to Item 4B of the Notice pertaining to OQ program record keeping, review the records of existing personnel to determine if any personnel who perform covered tasks on Respondent's pipeline facilities are not qualified or not included in Respondent's OQ database. Develop a list of those individuals whose OQ records are missing or who are not included in the OQ database. Develop plans and a schedule for the evaluation and qualification of the listed individuals. Submit the list, plans and schedule to the Director within sixty (60) days of receipt of the Final Order. Complete evaluation and qualification of listed individuals within four (4) months of receipt of the Final Order.

- 5. With regard to the requirements set out in paragraphs 1-4 above, submit all required records, and notice and documentation of the completion of required actions to the Director, Western Region, PHMSA, 123000 W. Dakota Ave., Suite 119, Lakewood, CO 80228.

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 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.

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 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 the petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order shall be effective upon receipt.

William H. Bonte
for

 Jeffrey D. Wiese
 Associate Administrator
 for Pipeline Safety

JUN 18 2008

 Date Issued