

OCTOBER 23, 2013

Ms. Valerie Fong
Utilities Director
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301

Re: CPF No. 5-2012-0005

Dear Ms. Fong:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and finds that the City of Palo Alto 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

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)	
)	
City of Palo Alto,)	CPF No. 5-2012-0005
)	
Respondent.)	
_____)	

FINAL ORDER

On February 14-17, 2012, 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 Operator Qualification (OQ) program of the City of Palo Alto (Palo Alto or Respondent) in Palo Alto, California. Palo Alto operates a gas distribution system consisting of approximately 207 miles of pipelines.¹

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated March 28, 2012, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Palo Alto had committed four violations of 49 C.F.R. § 192.805 and proposed ordering Respondent to take certain measures to correct the alleged violations.²

Palo Alto responded to the Notice by letter dated May 1, 2012 (Response). Palo Alto did not contest the allegations of violation, but provided explanations and information concerning the corrective actions it had taken and submitted copies of its revised OQ procedures. Respondent provided supplemental materials and additional copies of its OQ procedures on November 29, 2012 and June 28, 2013. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Palo Alto did not contest the allegations in the Notice that it violated 49 C.F.R.

¹ Pipeline Safety Violation Report (Violation Report), (March 25, 2012) (on file with PHMSA), at 1.

² The Director simultaneously issued a Notice of Amendment (CPF No. 5-2012-0006M). That case was closed on August 6, 2013.

Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.805(b), which states in relevant part:

§ 192.805 – 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 49 C.F.R. § 192.805(b) by failing to have an OQ program that ensured through evaluation that all individuals performing covered tasks were qualified. Specifically, the Notice alleged that Palo Alto did not have an OQ program that ensured individuals performing covered tasks were qualified to recognize and react to Abnormal Operating Conditions (AOCs), as required by the definition of “qualified” in § 192.803. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.805(b) by failing to have an OQ program that ensured individuals performing covered tasks were qualified to recognize and react to AOCs.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.805(c), which states in relevant part:

§ 192.805 – Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (a) Identify covered tasks;
- (b)
- (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. § 192.805(c) by failing to have OQ program provisions to ensure that individuals that were not qualified to perform a covered task were directed and observed by an individual that was qualified. Specifically, the Notice alleged that Palo Alto’s OQ program did not provide for a span of control that specified the number of non-qualified individuals that could be directed and observed by a qualified individual. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.805(c) by failing to have OQ program provisions to ensure that individuals that were not qualified to perform a covered task were directed and observed by an individual that was qualified.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.805(b), which states in relevant part:

§ 192.805 – 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 49 C.F.R. § 192.805(b) by failing to ensure that certain individuals performing a covered task, making fusion bonds, were qualified through evaluation to perform this covered task. Specifically, the Notice alleged that although the annual qualifications of nine individuals to make fusion bonds expired on March 3, 2010, these individuals made 41 fusion bonds prior to being re-qualified on October 28, 2010. In its Response, Palo Alto acknowledged that three of the nine individuals had not been properly qualified, and explained that it had excavated 5 of the 41 affected fusion bonds, had leak tested an additional 20, and would leak test the remaining locations to rectify the issue. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.805(b) by failing to ensure that certain individuals making fusion bonds between March and October 2010 were qualified through evaluation to perform this covered task.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 192.805(d), which states in relevant part:

§ 192.805 – Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (a) Identify covered tasks;
- (b)
- (d) Evaluate an individual if the operator has reason to believe that the individual's performance of a covered task contributed to an incident as defined in Part 191;

The Notice alleged that Respondent violated 49 C.F.R. § 192.805(d) by failing to have OQ program provisions to evaluate an individual if there is reason to believe that person's performance of a covered task contributed to an accident. Specifically, the Notice alleged that Palo Alto's OQ program did not have provisions to immediately suspend an individual from performing a covered task that may have contributed to an accident until that individual's performance of that task can be evaluated. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.805(d) by failing to have OQ program provisions to evaluate an individual if there is reason to believe that person's performance of a covered task contributed to an accident.

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 1-4 in the Notice for the violations of 49 C.F.R. § 192.805. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 192.805(b) (**Item 1**), Respondent has developed task-specific AOCs and revised its OQ program to ensure that all individuals performing covered tasks are qualified to recognize and react to these task-specific AOCs.
2. With respect to the violation of § 192.805(c) (**Item 2**), Respondent has revised its OQ program to include span of control provisions to ensure that individuals that are not qualified to perform a covered task are directed and observed by an individual that is qualified.
3. With respect to the violation of § 192.805(b) (**Item 3**), Respondent has conducted a leak survey at the 41 fusion bond locations including immediately adjacent structures.
4. With respect to the violation of § 192.805(d) (**Item 4**), Respondent has revised its OQ program to include provisions to immediately suspend an individual from performing a covered task that may have contributed to an accident until that individual's performance of that task can be evaluated.

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.

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