



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

400 Seventh St., S.W.  
Washington, D.C. 20590

NOV - 3 2004

Mr. Rodney Reese  
Vice President  
Valero Logistics Operations, LP  
6000 North Loop, 1604 West  
San Antonio, TX 78249-1112

Re: CPF No. 5-2003-5001

Dear Mr. Reese:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws one of the allegations of violation, makes a finding of violation, and assesses a civil penalty of \$8,000. The Order also finds that you have addressed the inadequacies in your procedures that were cited in the Notice of Amendment. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

A handwritten signature in black ink, appearing to read "James Reynolds".

James Reynolds  
Pipeline Compliance Registry  
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, DC 20590

In the Matter of )  
)  
Valero Logistics Operations, LP )  
)  
Respondent. )  
)

CPF No. 5-2003-5001

FINAL ORDER

On March 11, 2002, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Respondent's Colorado Springs Pipeline facilities and records. As a result of the inspection, the Director, Western Region, OPS, issued to Respondent, by letter dated January 14, 2003, a Notice of Probable Violation, Proposed Civil Penalty, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$18,000 for the alleged violations. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its procedures for operations, maintenance and emergencies. The Notice also warned Respondent to take appropriate corrective action with respect to maintaining records of certain rectifier inspections.

Respondent responded to the Notice by letter dated February 14, 2003 (Response). Respondent offered information in explanation of the allegations, offered information concerning the corrective actions it has taken, requested the reduction or elimination of the proposed civil penalty, and requested a hearing. The hearing was held via teleconference on May 19, 2003. After this hearing, Respondent provided additional information for the record on May 27 and June 16, 2003.

FINDING OF VIOLATION

Item 3 in the Notice alleged that Respondent had violated 49 C.F.R. § 195.412 by failing to adequately perform right-of-way inspections between Mile Post (MP) 84 and MP 357 during the 2000-2001 period. In its response and at the hearing, Respondent did not contest the alleged violation. Accordingly, I find that Respondent violated the following section of 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. § 195.412 – failing to adequately perform right-of-way inspections between Mile Post (MP) 84 and MP 357 during the 2000-2001 period.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

#### WITHDRAWAL OF ALLEGATION

Item 4 in the Notice alleged that Respondent violated 49 C.F.R. § 195.432 by failing to adequately inspect eight breakout tanks at the Colorado Springs Terminal between May 2001 and March 2002. In its response and at the hearing, Respondent submitted information demonstrating that with respect to the specified tanks, although at the time it did not use a form of the kind suggested in API 653 to record the inspections, its inspection practices were in substantial compliance with regulatory requirements and these inspections were documented on alternative forms. Based on this information demonstrating compliance with the regulation, I am withdrawing this allegation of violation. Respondent should note, however, that use of standard monthly forms ensures that best practices are employed on a consistent basis and facilitates the OPS inspector's compliance determinations.

#### 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: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

The Notice proposed a civil penalty of \$8,000 for the violation of § 195.412 (Item 3) and a civil penalty of \$10,000 for the violation of § 195.432 (Item 4). As indicated above, Item 4 has been withdrawn. With respect to Item 3, Respondent acknowledged that the right-of-way inspections between Mile Post (MP) 84 and MP 357 were not adequately performed during the 2000-2001 period. Specifically, 14 instances were identified where the maximum interval of 21 days between patrols was exceeded for various sections of the line. Right of way patrolling is the primary means by which a pipeline operator monitors the conditions along a pipeline's route and identifies potential safety concerns such as the exposure of pipe due to soil erosion or encroachment on the right-of-way due to new construction.

In its response and at the hearing, Respondent explained that its right-of-way inspections were conducted via aerial patrols performed by a third-party contractor and indicated that it was unaware at the time that the contractor had failed to conduct the patrols in accordance with § 195.412. Respondent further explained that it has replaced this contractor with a new service provider and now requires the contractor to submit a written report documenting each aerial patrol within 24 hours

of conducting it and that these patrols are now conducted on a weekly basis. We recognize that Respondent has no history of noncompliance in this area and took prompt action to correct the lack of compliance. Nevertheless, Respondent is responsible for the actions of its third-party contractor and because portions of the right-of-way are near populated and environmentally sensitive areas near Colorado Springs and Denver, the failure to conduct right-of-way patrols within the specified intervals could have adversely impacted public safety. Respondent has not presented any information that would warrant a reduction in the civil penalty amount proposed for this item in the Notice. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$8,000 for its violation of § 195.412.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this payment to 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-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$8,000 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.

#### AMENDMENT OF PROCEDURES

The Notice alleged inadequacies in Respondent's procedures for operations, maintenance and emergencies and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. Part 195. Specifically, Item 1 of the Notice alleged inadequacies in Respondent's procedures for submitting supplemental accident reports and Item 2 of the Notice alleged inadequacies in Respondent's procedures for operating laterals in accordance with maximum pressure limits, breakout tank inspections, and corrosion control.

In its response, Respondent acknowledged the inadequacies in its procedures cited in the Notice, stated that it subsequently amended its procedures, and submitted copies of the amended procedures which the Director, Western Region, OPS reviewed. Based on the results of this review, I find that Respondent's original procedures as described in the Notice were inadequate to ensure safe operation of its pipeline system, but that Respondent has corrected the identified inadequacies. Therefore, issuance of an order directing amendment of Respondent's procedures is unnecessary.

WARNING ITEM

The Notice did not propose a civil penalty or corrective action for Item 5, failing to maintain records demonstrating that the inspection of certain rectifiers had been performed in accordance with the maximum intervals in § 195.573, but warned Respondent that it should take appropriate corrective action to correct the item. Respondent presented information in its response showing that it has addressed the cited item. Respondent is again warned that if OPS finds a violation for any of this item in a subsequent inspection, enforcement action will be taken.

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. However if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.

*William H. Gerard*

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Stacey Gerard  
Associate Administrator  
for Pipeline Safety

NOV - 3 2004

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Date Issued