



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

233 Peachtree Street Ste. 600
Atlanta, GA 30303

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

January 31, 2019

Mr. Fred Hampton
Vice President
Valero Partners Operating Company, LLC
One Valero Way
San Antonio, TX 78249

CPF 2-2019-7001

Dear Mr. Hampton:

From March through August, 2018, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected Valero Partners Operating Company, LLC (Valero) Operator Qualification (OQ) Program in both San Antonio, Texas, and through subsequent off-site review.

As a result of the inspection, it is alleged that Valero has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. §195.505 Qualification program.

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

(a) Identify covered tasks;

Valero failed to meet the regulatory requirement because it did not identify all covered tasks performed on its various pipeline facilities.

Appendix B of Valero's Operator Qualification (OQ) Program, titled "Valero Covered Task List," documented the covered tasks identified by Valero. PHMSA's review of

Appendix B revealed that it included single tasks covering various activities not suited to a sole Covered Task. Furthermore, several commonly-performed tasks meeting the 4-part test, as defined by 195.501(b), were not included in Valero's OQ Program, or were not adequately addressed. Specific examples are as follows:

- **Covered Task 27.2 - API 653 Inspection of In-Service Breakout Tanks**

API Standard 653, titled "Tank Inspection, Repair, Alteration and Reconstruction," is incorporated by reference (IBR) in the CFR, and details the requirements for API breakout tank inspections. At the time of PHMSA's inspection, the activities prescribed by the referenced API Standard were captured in Valero's OQ Program solely by the above-referenced Covered Task. API 653 prescribes a comprehensive approach to numerous aspects of tank service and maintenance. The Standard covers, but is not limited to, requirements for conducting internal and external inspections at varying intervals, and with attention paid to significantly different parameters and threats. For example, the standard includes an eighteen-page appendix, which in turn includes sample checklists of items requiring consideration to develop an effective inspection assessment schedule. Breakout tank inspections, following API Standard 653, are complex and extensive, and not suited to a sole Covered Task.

- At the time of PHMSA's inspection, Valero's Covered Task List did not include a Covered Task for pipefitting of screw-type fittings and flanged connections. This is a common task and regularly performed during routine pipeline maintenance activities. The task is extensive and meets the requirements of a "Covered Task," as defined by 195.501(b).

2. §195.505 Qualification program.

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

(a)

(b) Ensure through evaluation that individuals performing covered tasks are qualified

Valero failed to comply with the regulation because it did not ensure through evaluation that individuals performing covered tasks are qualified.

The Valero OQ Program required the first re-evaluation of qualified contract personnel to consist of either a knowledge or a performance evaluation, and the second re-evaluation to consist of both a knowledge and performance evaluation. This alternating cycle continues through subsequent re-evaluations. Valero used a database maintained by a third-party vendor to document qualification records for contract employees, and this database did not distinguish between a first evaluation and subsequent re-evaluations. Consequently, Valero was not able to demonstrate that contract employees maintained qualifications in accordance with its OQ Program. It should be noted that Valero was able to track this information for its employees but not for contract employees.

3. § 195.505 Qualification program.

Each operator shall have and follow a written qualification program.

Valero failed to comply with the regulation because it did not follow its written qualification program.

Valero's OQ Program permitted the use of industry certifications as acceptable evaluation methods for certain covered tasks. At the time of PHMSA's inspection, Section 3.5 of Valero's OQ Program, titled "Evaluation Methods," stated the following:

"The Company OQ Administrator will monitor all approved vendors and industry programs to ensure continued compatibility with the Company's OQ Program. Appendix C of this plan lists those "third party" qualifications accepted by the Company."

Valero failed to follow the requirements of its OQ Program because it did not monitor all industry programs listed in the referenced Appendix C to assure compatibility with its OQ Program. PHMSA's review of several industry certifications included in Appendix C revealed that many did not meet the requirements of Valero's OQ Program. Specifically, many such certifications were not relevant to the given covered task or did not contain a knowledge or performance assessment as required by Valero's OQ Program.

4. §195.505 Qualification program.

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

(a) ...

(b) Ensure through evaluation that individuals performing covered tasks are qualified;

Valero failed to comply with the regulation because its written qualification program did not ensure through evaluation that individuals performing covered tasks are qualified. Specifically, Valero failed to ensure that individuals were qualified to material relevant to the covered tasks for which they were being qualified.

At the time of PHMSA's inspection, Valero's OQ Program incorporated evaluation material from Valero, as well as two OQ Service Providers, herein referred to as OQ Service Providers A and B. The three sources of evaluation material provided either a written exam or an electronic exam to evaluate an individual's knowledge of the task, and a performance verification to evaluate an individual's skill and ability to perform the task. PHMSA's review of evaluation material from each of the sources identified numerous instances of exams that lacked a sufficient number of questions, referenced irrelevant or fundamentally incorrect information, or lacked sufficient detail to evaluate an individual's knowledge of the task. Furthermore, PHMSA's review identified performance verifications that did not provide for performance of all required steps of certain tasks, or that accepted an oral assessment with no actual performance of the task required.

Examples of covered tasks with identified deficiencies in evaluation material are below:

- **Covered Task 1.1 – Measure Structure-to-Soil Potentials**

Valero's OQ Program accepted OQ Service Provider A's written exam, titled "Measure Structure-to-Soil Potentials," to demonstrate an individual's knowledge for this task. PHMSA's review of the referenced exam revealed that of 10 questions, only 2 pertained to measurement of structure-to-soil potentials. The remaining 8 pertained to cathodic protection (CP) system design. Furthermore, several questions meant to demonstrate an individual's knowledge of the referenced task were determined to be fundamentally incorrect. Examples are below:

- One entry in OQ Provider A's bank of questions for the qualification exam for the above-referenced task requires the examinee to complete the statement "*A foreign structure is any structure that:*", with the answer key indicating the correct response as "*is not owned by your company.*" Absent a definition in the CFR, NACE/ASTM G193-12d, titled "Standard Terminology and Acronyms Relating to Corrosion," defines a *foreign structure* as "any metallic structure that is not intended as a part of a system under cathodic protection."

Further, OQ Provider A's bank of questions for the qualification exam for the above-referenced task included the following question:

"An individual takes a pipe-to-soil potential reading that is acceptable within Section 195 of the DOT procedures. What does this mean?"

This question is fundamentally incorrect, as DOT does not provide procedures for taking pipe-to-soil potential measurements.

- **Covered Task 7.7 - Perform Coating Inspection**

This covered task applies to performing coating inspection when coating is being applied. At the time of PHMSA's inspection, Valero's OQ Program accepted OQ Service Provider B's written exam, titled "Prevention of Atmospheric Corrosion exam," to demonstrate an individual's knowledge for this task. This exam included questions under four subsets: *Preventing Atmospheric Corrosion*, *Inspection of Coatings*, *Perform Surface Preparation*, and *Coating Application*. PHMSA's review of the exam material revealed deficiencies with numerous questions included in these subsets, as follows:

- *Preventing Atmospheric Corrosion* – this subset of questions contained two questions that did not pertain to any coating inspection tasks.
- *Inspection of Coatings* – this subset of questions did not address any of the requirements of the above-referenced task. All questions pertained to atmospheric corrosion inspections, which is Valero Covered Task 7.1, titled "Visual Inspection of Atmospheric Coating."

- *Coating Application* – this subset included six questions, none of which pertained to evaluating an individual’s knowledge to measure environmental conditions, evaluate surface preparation, measure dry film thickness, conduct pinhole/holiday tests, adhesion tests or hardness tests. Each of these topics are required competencies for the above-referenced task.

Furthermore, Valero’s OQ Program accepted three of OQ Service Provider B’s performance verifications for this task- *Prevention of Atmospheric Corrosion*, *Inspection of Coatings* and *Perform Coating Inspection*. Per Valero’s OQ Program, any one of these would be considered adequate to verify an individual’s performance of the above-referenced task. PHMSA’s review revealed deficiencies with each of these performance verifications, as follows:

- OQ Service Provider B’s performance verification titled “Prevention of Atmospheric Corrosion,” required the individual to perform several coating inspection tasks but did not require measuring relative humidity, a required component of the task.
- OQ Service Provider B’s performance verifications titled “Inspection of Coatings” and “Perform Coating Inspection,” both required wet and dry film thickness measurements, as well as adhesion testing, but did not require measurement of environmental conditions, evaluation of surface preparation, or pinhole/holiday testing, all required components of the task.

Moreover, Valero’s OQ Program also accepted Valero’s Performance Verification 7.7, titled “Use of Coating Inspection Tools,” for this task. This performance verification required wet and dry film thickness measurement, as well as pinhole/holiday testing. This performance verification, however, did not require measurement of environmental conditions or evaluation of surface preparation, both of which are required components of the task.

- **Covered Task 38.3 - Visually Inspect that welds Meet DOT Requirements**

API Recommended Practice (RP) 1161, titled “Recommended Practice for Pipeline Operator Qualification (OQ),” serves as the basis for the Valero covered task list.

Regarding the above-referenced task, API RP 1161 states the following:

“This task involves visually inspecting welds to ensure they are in accordance with the latest DOT-approved versions of API 1104 and the applicable qualified welding procedure and to identify any defects that may affect the integrity of a pipeline tie-in or component replacement.”

API Standard 1104, titled “Welding of Pipelines and Related Facilities,” 20th Edition, is IBR in Part 195 of the CFR. Section 5.3 of API Standard 1104, titled “Procedure Specification,” references lineup, bevel, preheating, travel direction, travel speed, voltage, and amperage as critical elements of a welding procedure. None of the evaluation material from either Valero, OQ Service Provider A, or OQ Service

Provider B evaluated an individual's ability to verify that such critical elements of the welding procedure were accounted for.

Furthermore, at the time of PHMSA's inspection, Valero's OQ Program accepted OQ Service Provider B's Performance Verification, titled "Visually Inspect that Welds Meet DOT Requirements," for verification of performance of the above-referenced task. This Performance Verification allowed for either performance, simulation, or oral evaluation. Section 3.5 of Valero's OQ Program, titled "Evaluation Methods," indicated that performance of the task is the preferred method of performance verification, but that in certain situations a simulation of the actual process may be allowed. It did not allow for acceptance of an oral evaluation to demonstrate an individual's ability to perform the above-referenced task.

Proposed Compliance Order

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$213,268 per violation per day the violation persists, up to a maximum of \$2,132,679 for a related series of violations. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations.

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

With respect to Items 1, 2, 3, and 4, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Valero Operating Partners, LLC. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this

Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 2-2019-7001** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,


For

James A. Urisko
Director, Office of Pipeline Safety
PHMSA Southern Region

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Valero Partners Operating Company, LLC (Valero) a Compliance Order incorporating the following remedial requirements to ensure the compliance of Valero with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to Valero's failure to identify all covered tasks performed on its various pipeline facilities, Valero must, within 90 days following the date of issuance of the Final Order, complete the following:
 - a. Review and update Appendix B the OQ Program, titled "Valero Covered Task List," to ensure that all covered tasks performed on Valero pipeline facilities are included and accurately listed.
 - b. Ensure the Covered Task List review required by Item 1a. includes the development of a list of covered tasks specific to breakout tank inspections and maintenance activities.
2. In regard to Item 2 of the Notice pertaining to Valero's inability to assure its contractor personnel are qualified in accordance with the requirements of Valero's OQ Program, Valero must within 90 days following the issuance of the Final Order, complete the following:
 - a. Develop the capability to distinguish between the initial evaluation and all subsequent re-evaluations for contractor personnel or revise the requirements of the OQ Program to comply with the capabilities of the referenced third-party OQ database.
3. In regard to Item 3 of the Notice pertaining to Valero's failure to monitor all vendor and industry programs to assure compliance with the requirements of Valero's OQ program, Valero must within 90 days following the issuance of the Final Order, complete the following:
 - a. Review the evaluation requirements for all accepted industry and third-party certifications to assure compliance with the requirements of Valero's OQ Program, and their validity as acceptable evaluation methods for their respective covered tasks.
 - b. Review and update Appendix C of the Valero OQ Program to assure all certifications listed are appropriate for each respective covered task and contain a knowledge evaluation and a performance evaluation that complies with the requirements of Valero's OQ Program for initial certification, as well as subsequent re-certifications.
4. In regard to Item 4 of the Notice pertaining to Valero's written OQ program failing to have adequate provisions to ensure through evaluation that all individuals performing covered tasks are qualified, Valero must within 90 days following the issuance of the Final Order, complete the following:
 - a. Review all evaluation material referenced by both Valero and its OQ service providers to ensure compliance with Valero's OQ Program.

- b. Review and update Appendix C of the Valero OQ Program to assure all Valero and OQ Service Provider evaluation materials are appropriate for the given covered task and contain a knowledge and performance evaluation that complies with the requirements of Valero's OQ Program.
- 5. Within 120 days of issuance of the Final Order, Valero must submit to the Director, Office of Pipeline Safety, PHMSA Southern Region, documentation demonstrating satisfactory completion of Items 1, 2, 3 and 4 including, at a minimum, updated versions of Appendix B and Appendix C with a list of any changes made.
- 6. It is requested (not mandated) that Valero maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director, Office of Pipeline Safety, PHMSA Southern Region. It is requested that these costs 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.