

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

WEYERHAEUSER PAPER COMPANY,

Respondent.

DOCKET NO. PG-040984

COMPLAINT

1 The Washington Utilities and Transportation Commission (Commission), on its own motion, and through its Staff, alleges as follows:

I. PARTIES

2 The Commission is an agency of the State of Washington, authorized by Title 80 RCW to regulate in the public interest the services, facilities, and practices of all persons engaging within this state in the business of operating a gas pipeline.

3 Respondent Weyerhaeuser Paper Company (Weyerhaeuser) is subject to regulation by the Commission pursuant to RCW 80.28.210 and 480-93 WAC.

II. JURISDICTION

4 The Commission has jurisdiction over this matter pursuant to the provisions of RCW 80.01, RCW 80.04, RCW 80.28, and chapter 480-93 WAC. Specific provisions include but are not limited to: RCW 80.01.040, RCW 80.04.387, RCW

80.28.130, RCW 80.28.207, RCW 80.28.210, and WAC 480-93-010, WAC 480-93-220, and WAC 480-93-223.

III. FACTUAL ALLEGATIONS

- 5 On November 17, 2004, Commission Pipeline Safety Staff (Staff) conducted the 2004 Operator Qualification (OQ) Program Inspection at Weyerhaeuser's Longview Mill facility.
- 6 Staff determined that Weyerhaeuser had committed nine violations of chapter 480-93 WAC, which among other things, adopts certain minimum gas pipeline safety requirements, by adopting by reference specific provisions of Title 49, Code of Federal Regulations (CFR) Part 192 and requires gas companies to comply with such regulations. *See e.g.*, WAC 480-93-010, WAC 480-93-015, and WAC 480-93-220. For purposes of this Complaint, when a violation of a specific section of the CFR is alleged, that is intended to allege a violation of Commission rules adopting such regulations.
- 7 If a violation is continuing in nature, each day the violation continues is considered a separate violation. *RCW 80.04.387.*
- 8 Weyerhaeuser was provided a copy of Staff's investigation report in this docket. A copy of the investigation report is attached to the Complaint.
- 9 The Commission alleges, based on Staff's investigation report, as follows:
- 10 **49 CFR Part 192.805(a). Qualification Program.** At the time of the inspection, Weyerhaeuser's OQ program had not identified and documented all applicable covered tasks. Tasks such as excavation of pipelines, lubricating valves, calibrating and operation of leak detection instruments and locating equipment, and inspection of exposed pipe were not included in the covered task list. Additionally, the OQ program did not adequately provide provisions to identify

covered tasks per 49 CFR Part 192.801(b). Weyerhaeuser's conduct violates 49 CFR Part 192.805(a), which requires each pipeline operator to have and follow a written OQ program that includes provisions to identify covered tasks. One violation is alleged. This violation continued for 1,297 days. The total cumulative days that this series of violations continued would result in a potential penalty that exceeds the maximum amount of \$200,000, according to WAC 480-93-223.

11 **49 CFR Part 192.805(b). Qualification Program.** At the time of the inspection, Weyerhaeuser's OQ program did not include evaluation methods for individuals performing covered tasks, including the ability to recognize and react to abnormal operating conditions (AOCs). As a result, Weyerhaeuser could not provide documentation demonstrating the evaluation and qualification of individuals performing covered tasks. Weyerhaeuser's conduct violates 49 CFR Part 192.805(b), which requires each operator to have and follow a written OQ program that includes provisions to ensure through evaluation that individuals performing covered tasks are qualified. One violation is alleged. This violation continued for 748 days. The total cumulative days that this series of violations continued would result in a potential penalty that exceeds the maximum amount of \$200,000, according to WAC 480-93-223.

12 **49 CFR Part 192.805(c). Qualification Program.** At the time of the inspection, Weyerhaeuser's OQ program did not contain provisions for non-qualified individuals to perform covered tasks while being directed and observed by a qualified individual. Weyerhaeuser's conduct violates 49 CFR Part 192.805(c), which requires each operator to have and follow a written OQ program that includes provisions to allow individuals that are not qualified to perform a covered task if directed and observed by an individual that is qualified. One violation is alleged. This violation continued for 1,297 days. The total cumulative days that this series of violations continued would result in a potential penalty that exceeds the maximum amount of \$200,000, according to WAC 480-93-223.

- 13 **49 CFR Part 192.805(d). Qualification Program.** At the time of the inspection, Weyerhaeuser's OQ program did not address the evaluation method to be used if the operator had reason to believe that the individual's performance of a covered task contributed to an incident. Weyerhaeuser's conduct violates 49 CFR Part 192.805(d), which requires each operator to have and follow a written OQ program that includes provisions to evaluate an individual if the operator has reason to believe that the individual's performance of a covered task contributed to an incident. This violation continued for 1,297 days. The total cumulative days that this series of violations continued would result in a potential penalty that exceeds the maximum amount of \$200,000, according to WAC 480-93-223.
- 14 **49 CFR Part 192.805(e). Qualification Program.** At the time of the inspection, Weyerhaeuser's OQ program did not address the evaluation method to be used if the operator had reason to believe that an individual no longer is qualified to perform a covered task. Weyerhaeuser's conduct violates 49 CFR Part 192.805(e), which requires each operator to have and follow a written OQ program that includes provisions to evaluate an individual if the operator has reason to believe that the individual is no longer qualified to perform a covered task. One violation is alleged. This violation continued for 1,297 days. The total cumulative days that this series of violations continued would result in a potential penalty that exceeds the maximum amount of \$200,000, according to WAC 480-93-223.
- 15 **49 CFR Part 192.805(f). Qualification Program.** At the time of the inspection, Weyerhaeuser's OQ program did not address communication of changes that affect covered tasks. Weyerhaeuser's conduct violates 49 CFR Part 192.805(f), which requires each operator to have and follow a written OQ program that includes provisions to communicate changes that affect covered tasks to individuals performing those covered tasks. One violation is alleged. This

violation continued for 1,297 days. The total cumulative days that this series of violations continued would result in a potential penalty that exceeds the maximum amount of \$200,000, according to WAC 480-93-223.

- 16 **49 CFR Part 192.805(g). Qualification Program.** At the time of the inspection, Weyerhaeuser's OQ program did not identify covered tasks (including those related to AOCs) and the intervals of reevaluation of the individual's qualifications. Weyerhaeuser's conduct violates 49 CFR Part 192.805(g), which requires each operator to have and follow a written OQ program that includes provisions to identify covered tasks and the intervals at which evaluation of the individual's qualifications is needed. One violation is alleged. This violation continued for 1,297 days. The total cumulative days that this series of violations continued would result in a potential penalty that exceeds the maximum amount of \$200,000, according to WAC 480-93-223.
- 17 **49 CFR Part 192.807. Recordkeeping.** At the time of the inspection, Weyerhaeuser did not have records documenting evaluations or qualifications related to covered tasks, including recognizing and reacting to AOCs. Weyerhaeuser's conduct violates 49 CFR Part 192.807, which requires each operator to maintain records demonstrating compliance with the subpart. One violation is alleged. This violation continued for 748 days. The total cumulative days that this series of violations continued would result in a potential penalty that exceeds the maximum amount of \$200,000, according to WAC 480-93-223.
- 18 **49 CFR Part 192.809(b). General.** At the time of the inspection, Weyerhaeuser did not complete the qualification of individuals performing covered tasks by October 28, 2002. Weyerhaeuser's written OQ program did not have evaluation methods for covered tasks, including, AOCs, and did not provide documentation of the evaluation process to qualify individuals. Weyerhaeuser's conduct violates 49 CFR Part 192.809(b), which requires each operator to complete the qualification of individuals performing covered tasks by October 28, 2002. One violation is alleged. This violation continued for 748 days. The total cumulative

days that this series of violations continued would result in a potential penalty that exceeds the maximum amount of \$200,000, according to WAC 480-93-223.

19 Based on the foregoing allegations, a total of nine violations are alleged, before consideration of each day of a continuing violation. After considering each day of a continuing violation the total maximum penalty for this series of violations is \$1,800,000, according to WAC 480-93-223. Staff recommends the imposition of a penalty totaling \$250,000. The Commission is not bound by that recommendation and may impose penalties in the maximum amount permitted by law, or any other lesser amount permitted by law.

IV. CLAIM FOR RELIEF

20 The Commission realleges paragraphs 5 – 19.

21 WAC 480-93-010 requires gas companies' gathering, storage, distribution, and transmission facilities be designed, constructed, maintained, and operated in compliance with the provisions of Title 49 CFR, Parts 191, 192, 193, and 199.

22 The total number of violations alleged in this Complaint, before consideration of each day of a continuing violation, is nine violations.

23 RCW 80.04.387 provides that any corporation that violates any regulations issued under authority of RCW 80.28.210 may be subject to a civil penalty to be directly assessed by the Commission. Staff recommends the impositions of penalties totaling \$250,000. The Commission is not bound by that recommendation and may impose penalties in the maximum amount permitted by law, or any other lesser amount permitted by law.

24 The Commission directs that a prehearing conference be scheduled.

V. COMPLAINT

25 The Commission finds that probable cause exists to issue this complaint against
the Respondent as follows:

26 (1) Respondent has failed to comply with the rules and orders of the
Commission as set forth in the allegations above, and the Staff
investigation report attached to this Complaint.

27 (2) The Commission should assess monetary penalties and/or other sanctions
against Respondent if the alleged violations of state law or Commission
rules or orders identified by Staff during its investigation of Weyerhaeuser
practices are proven.

DATED at Olympia, Washington, and effective this 29th day of April, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

Attachment