

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

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

WEYERHAEUSER PAPER COMPANY,

Respondent.

DOCKET NO. PG-040984

ANSWER

1                   The Washington Utilities and Transportation Commission (“WUTC” or “Commission”) has important responsibilities in auditing and enforcing Operator Qualification (“OQ”) regulations related to gas pipeline safety. Weyerhaeuser Company (“Weyerhaeuser” or “Respondent”) is committed to safe operations of the Ostrander gas pipeline and to complying with the Commission’s OQ regulations. Moreover, Weyerhaeuser believes that its employees and contract pipeline operators have been properly trained and are qualified to perform their duties. The contract pipeline operators respond nearly daily to events identified by Weyerhaeuser’s information gathering system. In addition, Weyerhaeuser employees and contract pipeline operators have responded appropriately to the rare “significant” operating events that have occurred since the pipeline was constructed in 1991. Nevertheless, Weyerhaeuser welcomes the Commission Staff’s audits of its facilities as an additional means of ensuring safe

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operation of the pipeline and as a source of information regarding improvements that might be made to pipeline operations. Weyerhaeuser takes any concerns of Staff seriously, and Weyerhaeuser is continually looking for opportunities to improve its OQ program.

2                   With these principles in mind, Weyerhaeuser answers the Complaint of the Commission in the above referenced docket as stated below. With respect to factual allegations that are admitted below, Weyerhaeuser also provides additional information related to the circumstances of the incidents at issue. This information is provided to aid the Commission and Staff in understanding the context of the alleged violations and in determining what level of sanctions may be appropriate, if any, to the extent violations of cited regulations occurred.

3                   Since paragraph 1 contains no legal or factual allegations, Weyerhaeuser neither admits nor denies such paragraph.

4                   Weyerhaeuser admits paragraph 2.

5                   Weyerhaeuser denies paragraph 3 and alleges that Weyerhaeuser Company, a Washington corporation, is subject to regulation by the Commission in certain respects concerning the Ostrander natural gas pipeline in Cowlitz County and Longview WA. Weyerhaeuser Paper Company is not a legal entity. Hence, the proper name for the Respondent is Weyerhaeuser Company.

6                   Answering paragraph 4, Weyerhaeuser admits that the Commission generally has jurisdiction over this matter pursuant to the provisions of RCW 80.01, RCW 80.04, RCW 80.28 and chapter 480-93 WAC. With respect to the specific

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provisions cited in the Complaint, paragraph 4 contains legal conclusions to which no answer is required.

7                    Answering paragraph 5, Weyerhaeuser admits that Commission Staff conducted an inspection at the Longview Mill facility on November 17, 2004.

8                    Answering paragraph 6, Weyerhaeuser admits that Staff has alleged certain violations of chapter 480-93 WAC, which are documented in correspondence provided to Weyerhaeuser and attached to the Complaint (see letter, Alan E. Rathbun, Pipeline Safety Director, to Ron Kosloski, Facilities Engineer, dated December 23, 2004, with attachment). The first sentence of paragraph 6 states the opinions and conclusions of Staff for which an answer is inappropriate, and it is therefore denied. Weyerhaeuser neither admits nor denies the second sentence of paragraph 6, which describes an aspect of the structural format of the Complaint and does not contain any factual or legal allegations that require an answer.

9                    Paragraph 7 states a legal opinion or conclusion for which an answer is inappropriate, and it is therefore denied.

10                   Answering paragraph 8, Weyerhaeuser admits that Staff's correspondence to Weyerhaeuser is attached to the Complaint (see letter, Alan E. Rathbun, Pipeline Safety Director, to Ron Kosloski, Facilities Engineer, dated December 23, 2004, with attachment). In all other respects, Weyerhaeuser denies paragraph 8.

11                   Weyerhaeuser neither admits nor denies paragraph 9, which describes an aspect of the structural format of the Complaint and does not contain any factual or legal allegations that require an answer.

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12                    Answering paragraph 10, Weyerhaeuser denies the allegation in the first sentence that at the time of inspection, Weyerhaeuser’s OQ program did not identify all applicable covered tasks. At that time, Weyerhaeuser’s OQ program identified covered tasks as required by 49 CFR § 192.805(a).

13                    Further answering paragraph 10, Weyerhaeuser denies that the second sentence alleges facts that constitute a violation of 49 CFR § 192.805(a). Weyerhaeuser denies that it was required to include the tasks listed in this sentence as covered tasks.

14                    Further answering paragraph 10, Weyerhaeuser denies that the first part of the third sentence alleges facts that constitute a violation of 49 CFR § 192.805(a). The OQ program itself need not provide provisions for identification of covered tasks. Pipeline Safety: Qualification of Pipeline Personnel, 64 Fed. Reg. 46853, 46862 (Aug. 27, 1999). The second part of the third sentence states a legal opinion or conclusion for which an answer is inappropriate, and it is therefore denied.

15                    Further answering paragraph 10, the remainder of the paragraph states legal opinions or conclusions for which answers are inappropriate and, are such opinions or conclusions are therefore denied.

16                    Although Weyerhaeuser denies the allegations in paragraph 10, in response to Staff’s findings, Weyerhaeuser has modified its OQ program to identify many more tasks, using model protocols. The current OQ program specifies that the “four part test” from 49 CFR § 192.801(b) was applied when developing the list of covered tasks.

17                    Answering the first two sentences of paragraph 11, Weyerhaeuser denies that at the time of the inspection, Weyerhaeuser’s OQ program did not specify evaluation methods to determine if an individual was qualified to perform a covered task. While Weyerhaeuser is confident that all Weyerhaeuser personnel and contract personnel working on pipeline operations have been appropriately trained to perform covered tasks for which they are qualified, Weyerhaeuser has modified its OQ program in response to Staff’s findings. The OQ program now states more clearly the evaluation methods for competencies and skills associated with covered tasks to ensure a thorough evaluation.

18                    Further answering paragraph 11, the remainder of the paragraph states legal opinions or conclusions for which answers are inappropriate, and such opinions or conclusions are therefore denied.

19                    Answering the first sentence of paragraph 12, Weyerhaeuser admits that at the time of the inspection, its OQ program did not specify that covered tasks could be performed by nonqualified individuals as long as a qualified individual directly observed the nonqualified individual. The purpose of this requirement is to ensure that when nonqualified individuals perform covered tasks, they are subject to close observation by a qualified individual. Pipeline Safety: Qualification of Pipeline Personnel, 64 Fed. Reg. at 46862. At the time of the inspection, Weyerhaeuser did not have nonqualified individuals performing covered tasks. However, in response to Staff’s findings, Weyerhaeuser has added provisions to its OQ program to allow a nonqualified person to perform a covered task under the direct observation of a qualified person.

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DAVISON VAN CLEVE, P.C.  
333 S.W. Taylor, Suite 400  
Portland, OR 97204  
Telephone: (503) 241-7242

20 Further answering paragraph 12, the remainder of the paragraph states legal opinions or conclusions for which answers are inappropriate, and such opinions or conclusions are therefore denied.

21 Answering paragraph 13, Weyerhaeuser denies that the first sentence of paragraph 13 alleges facts that constitute a violation of 49 CFR § 192.805(d). That rule does not require an OQ program to specify the evaluation method to be used if an operator has reason to believe that the individual's performance of a covered task contributed to an incident; it only requires that the operator evaluate the individual under those circumstances. See Pipeline Safety: Qualification of Pipeline Personnel, 64 Fed. Reg. at 46862.

22 Further answering paragraph 13, Weyerhaeuser denies the allegation in the first part of the second sentence that Weyerhaeuser's OQ program violated 49 CFR § 192.805(d) at the time of the inspection. While Weyerhaeuser's OQ program did not mirror the language of the rule with respect to evaluation of individuals who may have been involved in an incident, the program did contain provisions requiring evaluation of all pipeline operators involved in pipeline incidents. Nevertheless, in response to Staff's findings, Weyerhaeuser has modified its OQ program to include precise language requiring reevaluation of a person's qualification when the Plan Administrator has reason to believe that the person's performance of a covered task contributed to an incident.

23 Further answering paragraph 13, the remainder of the paragraph states legal opinions or conclusions for which answers are inappropriate, and such opinions or conclusions are therefore denied.

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Answering paragraph 14, Weyerhaeuser denies that the first sentence of paragraph 14 alleges facts that constitute a violation of 49 CFR §192.805(e). That rule does not require an OQ program to specify the evaluation method to be used if an operator has reason to believe that an individual is no longer qualified to perform a covered task; it only requires that the operator evaluate the individual under those circumstances. See Pipeline Safety: Qualification of Pipeline Personnel, 64 Fed. Reg. at 46862.

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Further answering paragraph 14, Weyerhaeuser denies the allegation in the first part of the second sentence that a violation of 49 CFR §192.805(e) occurred at the time of the inspection. At that time, Weyerhaeuser's OQ program required evaluation of pipeline operators after each emergency response training drill to determine whether additional training was necessary. It also required additional training for operators who had been off of the pipeline operation for 6 months or longer. While Weyerhaeuser's OQ program did not mirror the language of the rule with respect to evaluation of individuals who may no longer be qualified to perform covered tasks, the program did provide for evaluation of individuals on an ongoing basis and additional training where warranted. Nevertheless, in response to Staff's findings Weyerhaeuser has modified its OQ program to include precise language requiring reevaluation of individuals when the Plan Administrator has reason to believe that an individual is no longer qualified to perform a covered task. The program also specifies the methods by which individuals may be evaluated under these circumstances.

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DAVISON VAN CLEVE, P.C.  
333 S.W. Taylor, Suite 400  
Portland, OR 97204  
Telephone: (503) 241-7242

26 Further answering paragraph 14, the remainder of the paragraph states legal opinions or conclusions for which answers are inappropriate, and such opinions or conclusions are therefore denied.

27 Answering paragraph 15, Weyerhaeuser denies the allegation in the first sentence that at the time of inspection, its OQ program did not address communication of changes that affect covered tasks. At that time, the OQ program required additional training of qualified individuals any time new equipment or operations were introduced into the pipeline system or new pipeline safety regulations were introduced. Weyerhaeuser notes that its current OQ program addresses the method of communicating and documenting changes made to the pipeline operations that would affect covered tasks performed by qualified individuals.

28 Further answering paragraph 15, the remainder of the paragraph states legal opinions or conclusions for which answers are inappropriate, and such opinions or conclusions are therefore denied.

29 Answering paragraph 16, Weyerhaeuser denies that at the time of inspection, Weyerhaeuser's OQ program did not identify covered tasks. Weyerhaeuser admits that, at the time of the inspection, Weyerhaeuser's OQ program did not identify the intervals at which evaluation of an individual's qualifications for particular tasks was needed. Weyerhaeuser has since modified its OQ program to incorporate an expanded list of covered tasks and corresponding reevaluation intervals.



30 Further answering paragraph 16, the remainder of the paragraph states legal opinions or conclusions for which answers are inappropriate, and such opinions or conclusions are therefore denied.

31 Answering paragraph 17, Weyerhaeuser denies the allegation contained in the first sentence that at the time of the inspection, it did not maintain qualification records. The remainder of the paragraph states legal opinions or conclusions for which answers are inappropriate, and such opinions or conclusions are therefore denied.

32 Answering paragraph 18, Weyerhaeuser denies the allegation in the first sentence that it did not complete the qualifications of individuals performing covered tasks by October 28, 2002. In addition, Weyerhaeuser denies that the second sentence of paragraph 18 alleges facts that constitute a violation of 49 CFR §192.809(b). Finally, Weyerhaeuser denies that a violation of 49 CFR §192.809(b) occurred at the time of the inspection.

33 Further answering paragraph 18, the remainder of the paragraph states legal opinions or conclusions for which answers are inappropriate, and such opinions or conclusions are therefore denied.

34 Paragraph 19 of the Complaint states legal opinions or conclusions for which an answer is inappropriate, and such opinions or conclusions are therefore denied.

35 Answering paragraph 20 of the Complaint, Weyerhaeuser incorporates by reference its answers to paragraphs 5–19 of the Complaint, as set forth above.

36 Paragraphs 20–27 of the Complaint state legal opinions or describe procedural matters for the conduct of the hearing into this matter that do not require an

answer. Thus, Weyerhaeuser neither admits nor denies paragraphs 20–27 of the Complaint. Generally, Weyerhaeuser denies that the Commission should impose on Weyerhaeuser the penalties recommended by Staff with respect to the allegations set forth in the Complaint. If the Commission determines that penalties should be imposed, the amount of the penalty, if any, should be much less than the amount recommended by Staff.

#### AFFIRMATIVE DEFENSES

37

The amount of the total potential penalties of \$1,800,000 alleged in the Complaint, as well as Staff’s recommended imposition of penalties totaling \$250,000, is excessive and unreasonable in light of the alleged violations. The Commission’s policy is that “[t]he assessment of penalties for violations of law is meant to be corrective, not retributive. The purpose is to secure compliance by incenting reasonable and appropriate conduct by the offending party.” MCI Metro Access Transmission Serv., Inc. v. US WEST Comm., Inc., WUTC Docket No. UT-971063, Final Order at ¶ 154 (Feb. 10, 1999) (“MCI Metro”). In determining whether sanctions are appropriate, the Commission considers the following factors: 1) whether the offending conduct was associated with new requirements or issues of first impression; 2) whether the offending party should have known its conduct constituted a violation; 3) whether the offending conduct was knowing or intentional; 4) whether the offending conduct was gross or malicious; 5) whether repeated violations occurred; 6) whether the Commission previously had found violations; 7) whether the offending conduct improved; and 8) whether remedial steps were undertaken.

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The November 2004 inspection was the first time an OQ review was conducted for Weyerhaeuser's pipeline operations. At the time of the inspection, Weyerhaeuser believed that its OQ program complied with OQ regulations. Weyerhaeuser was fully cooperative with Staff's inspection, and the violations alleged in the Complaint do not represent knowing or intentional conduct by Weyerhaeuser that was gross or malicious. The alleged violations do not represent repeated violations, nor has the Commission previously found violations of Weyerhaeuser's OQ program. In addition, Weyerhaeuser has demonstrated its commitment to comply with OQ regulations. In response to Staff's review, Weyerhaeuser has retained the services of an expert third-party auditor to review Weyerhaeuser's OQ program and provide guidance to ensure Weyerhaeuser's full compliance with the regulations. Weyerhaeuser also has updated its written OQ program to address Staff's findings and promptly correct all of the alleged violations. Under these circumstances, imposition of fines in the magnitude of \$250,000, as recommended by Staff, would serve a retributive and not corrective function and would not meet the Commission's standard for imposition of penalties.

39

In the Complaint, the Commission cites RCW 80.04.387 for the proposition that "each day a violation continues is considered a separate violation." However, RCW 80.04.387 does not support this proposition. Accordingly, the Complaint fails to state a claim for relief based on "continuing" violations.

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The amount of penalty recommended by Staff exceeds the maximum that may be assessed under the Commission's regulations. WAC 480-93-223(2) states that "the maximum civil penalty shall not exceed two hundred thousand dollars for a related

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series of violations.” Staff’s recommendation of a \$250,000 penalty for a related series of violations exceeds this limit.

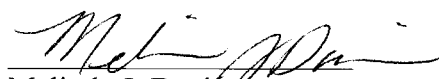
41                   The Complaint fails to allege facts sufficient to constitute a claim for relief as to certain cited regulations. As discussed in paragraphs 12, 20, and 23 above, the Complaint fails to allege facts that constitute violations of 49 CFR §§ 192.805(a), 192.805(d), or 192.805(e).

42                   Weyerhaeuser reserves the right to amend or supplement this Answer in accord with the Commission’s rules and procedure.

Dated in Portland, Oregon, this 15th day of June, 2005.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.



Melinda J. Davison  
Davison Van Cleve, P.C.  
333 S.W. Taylor, Suite 400  
Portland, Oregon 97204  
(503) 241-7242 telephone  
(503) 241-8160 facsimile  
mail@dvclaw.com  
Of Attorneys for Weyerhaeuser Company

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DAVISON VAN CLEVE, P.C.  
333 S.W. Taylor, Suite 400  
Portland, OR 97204  
Telephone: (503) 241-7242