

**SEP 02 2009**

Mr. David A. Justin  
Vice President, Operations  
Sunoco Pipeline L.P.  
525 Fritztown Road  
Sinking Spring, PA 19608

**RE: CPF No. 1-2007-5001**

Dear Mr. Justin:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$150,000. 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.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Byron Coy, Eastern Region Director, PHMSA

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5845]**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

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**In the Matter of** )

**Sunoco Pipeline L.P.,** )

**Respondent.** )  
\_\_\_\_\_ )

**CPF No. 1-2007-5001**

**FINAL ORDER**

On November 25, 2005, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), Eastern Region, investigated an incident that occurred a few days earlier at the Darby Creek Tank Farm (DC Tank Farm), a hazardous liquid pipeline facility operated by Sunoco Pipeline L.P. (Sunoco or Respondent) and located in Sharon Hill, Pennsylvania.<sup>1</sup> The incident in question involved the overfilling and release of more than 10,000 barrels of crude oil from one of the DC Tank Farm's breakout tanks, DC-24.<sup>2</sup>

As a result of that inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated May 15, 2007, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Sunoco had committed two violations of the hazard liquid pipeline safety regulations and assessing the company a civil penalty of \$150,000 for those violations.

<sup>1</sup> The DCTF is part of the Fort Mifflin Terminal Complex, a series of facilities that receive, store, and supply crude oil to a nearby refinery in Philadelphia, Pennsylvania.  
<http://www.reuters.com/finance/stocks/companyProfile?symbol=SXL.BE> (last accessed Aug. 21, 2009).

<sup>2</sup> Specifically, according to the information in the case file, at 10:00 a.m. on November 22, 2005, two Sunoco employees finished filling DC-24 to capacity and began to fill another tank, DC-35, with crude oil. Those employees did not, however, close the "street valve" on DC-24 in making that transition. Consequently, crude oil continued to flow into and out of DC-24 for the next several hours, while Respondent's day- and night-shift employees continued to fill DC-35 and a subsequent tank, DC-3. Finally, at about 1:15 a.m. the next morning, the amount of crude oil in DC-24 exceeded its capacity and the tank started to overflow. That condition went unnoticed until 40 minutes later, when a Sunoco employee opened an office door and observed crude oil flowing from that tank onto the grounds of the facility. Shortly thereafter, Respondent's employees closed the street valve and shut down DC-24.

Sunoco responded to the Notice by letter dated July 2, 2007 (Response).<sup>3</sup> Without disputing the probable violations, Respondent described the steps taken by the company to prevent and respond to the overflow of DC-24. The company also requested that the proposed civil penalty be reduced from \$150,000 to \$25,000 and, if that request was not granted, that an informal hearing be held.

On November 14, 2007, PHMSA convened that hearing via telephone, with an attorney from the Office of Chief Counsel presiding and three individuals appearing on Respondent's behalf, Mr. David A. Justin, Vice President of Operations, Mr. David Meadows, Manager of DOT Compliance, and Mr. Brad Lange, Region 1 Supervisor.

Following the hearing, Sunoco submitted a Post-Hearing Brief, dated December 5, 2007 (Brief), and additional evidence for the record. That evidence included part of the transcript of an October 20, 2006 arbitration proceeding between Respondent and the United Steel Workers Local 10-100, the union representing one of the employees involved in the November 2005 incident.

### **FINDINGS OF VIOLATION**

**Items 1a and 1b of the Notice** alleged that Sunoco violated 49 C.F.R. § 195.402(a), which states, in relevant part:

#### **§ 195.402 Procedural manual for operations, maintenance, and emergencies.**

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. . . .

More specifically, Item 1a alleged that Sunoco violated § 195.402(a) by not following the DC Tank Farm's written procedures for "Swinging Tanks"<sup>4</sup> and performing a "Shift Turnover."<sup>5</sup> As evidence of that violation, the Notice stated that Respondent's personnel filled DC-24 to capacity with crude oil on the morning of November 22, but failed to close the street valve on that tank before repeating that same process on DC-35.<sup>6</sup> That failure, according to the Notice, contributed to the subsequent overflow of DC-24 at 1:15 a.m. on November 23.

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<sup>3</sup> On June 21, 2007, the Director granted Sunoco's request for an extension of the 30-day deadline for submitting a Response to the Notice.

<sup>4</sup> Sunoco Logistics Marketing and Terminals L.P., Darby Creek Tank Farm, Operations Manual, Procedure 20, Swing Tanks (issued Nov. 2004).

<sup>5</sup> Sunoco Logistics Marketing and Terminals L.P., Darby Creek Tank Farm, Operations Manual, General Procedure 2, Shift Turnover (issued Nov. 2004).

<sup>6</sup> According to Parts B and D of Procedure 20, the employees at the DC Tank Farm are required to ensure that the valves on the previous tank are closed and the new tank are opened when swinging receiving tanks.

The Notice also stated that Sunoco's personnel did not discuss the status of the valve position on DC-24 when turning over from the day to the night shift, and that the records from the day shift incorrectly indicated that the valve on DC-24 was closed, not open.<sup>7</sup>

Finally, the Notice stated that in a January 10, 2006 meeting, Sunoco representatives admitted that the day shift operator "was busy with other activities" and "did not close [the Tank #24] valve per" the company's written procedures.

Respondent has not disputed any of these allegations. Consequently, I find that Sunoco violated § 195.402(a) by failing to "follow . . . [its] manual of written procedures for conducting normal operations and maintenance activities[.]" to include closing valves on breakout tanks and performing shift turnovers.

Item 1b alleged that Sunoco further violated § 195.402(a) by not following the DC Tank Farm's written procedures for responding to high level alarms.<sup>8</sup> In support of that allegation, the Notice first stated that Respondent's personnel ignored an initial high level alarm, erroneously considered it to be false. The Notice also stated those employees failed to respond to a second alarm "because an audible component was not connected and the control monitor could only display tanks the operator designated as active."<sup>9</sup> According to the Notice, Sunoco's "failure to acknowledge [these] alarms contributed to the overflow of [Tank #24] and subsequent damage to the tank."

Respondent has not disputed any of these allegations. Accordingly, I find that Sunoco violated § 195.402(a) by failing to "follow . . . [its] manual of written procedures for . . . handling abnormal operations and emergencies[.]" to include responding to high level alarms.

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

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<sup>7</sup> General Procedure 2 requires, among other things, that "within [the] first hour of [a] shift change" an employee "[d]iscuss ongoing operations" and "entries in the 'Operating Summary' Report with [the] outgoing crew," "[c]heck logbooks for ongoing operations[.] . . . [v]isually check all tanks, lines, valves and pumps[.] . . . [c]heck that all important information received agrees with the logbooks."

<sup>8</sup> Sunoco Logistics Marketing and Terminals L.P., Darby Creek Tank Farm, Operations Manual, Procedure 12, Respond to Tank High Level Alarm (issued Nov. 2004). Procedure 12 requires, among other things, that an employee respond to a high level alarm by "[d]etermin[ing] which tank is in high level alarm condition and acknowledge[ing] [the] alarm" and then "verify[ing] the high level condition immediately" by "[g]et[ting] the gauge on [the] tank." *Id.* That procedure further states that "IF [a] high level in [the] tank exists, THEN divert [the] flow to another tank . . . ([i]f possible)" and "IF unable to divert [the] flow to another tank, THEN [to] notify the source of the flow to shutdown." *Id.* Finally, the procedures requires the employee to "[s]ecure the tank" and "[g]et [the] closing gauge on [that] tank and determine [the] volume of crude that must be gravitated or pumped out of the tank to return [the] tank to [a] normal level."

<sup>9</sup> According to the transcript of the October 2006 arbitration proceeding submitted by Sunoco, a set of speakers intended to magnify the sound of one of the high-level alarms was inexplicably disconnected at the time of the incident.

## ASSESSMENT OF PENALTY

In determining the amount of a civil penalty, 49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that I consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require.

The Notice proposed a \$100,000 civil penalty for Item 1a and a \$50,000 civil penalty for Item 1b, for a total civil penalty of \$150,000. Respondent argues that these amounts are excessive and that the total civil penalty should be no more than \$25,000.<sup>10</sup> Sunoco supported that position in its Response by arguing that there was nothing "else it could have done to prevent the [i]ncident short of having a supervisor present 24/7 to watch over the employees' tasks, which is . . . unworkable."<sup>11</sup> Indeed, Sunoco observed that the culpable employees had received all the training needed to safely and effectively operate DC-24, but simply ignored that training and the DC Tank Farm's operating procedures on the day and night in question.<sup>12</sup> Sunoco also noted that it disciplined those employees, one of whom received a suspension without pay and the other of whom was terminated before obtaining reinstatement via arbitration, that each of them underwent additional training and requalification on the procedures at issue, and that their role in causing the overflow of DC-24 is noted in the company's personnel records.<sup>13</sup>

Sunoco similarly argued in its Brief that the company had all of the procedures required to safely operate and maintain the DC Tank Farm, and that the personnel responsible for the overfilling of DC-24 received proper training on the execution of those procedures. Respondent also noted that the release only had a minimal impact on the environment and did not affect the public, a result of the successful mitigation provided by the company's facilities and procedures for spill containment. Sunoco further stated that the company cooperated with PHMSA during the investigation, disciplined the culpable employees, and derived no economic benefit from the incident. In fact, Respondent noted that it actually spent some \$250,000 in responding to and remediating this incident. Lastly, the company reiterated that "two properly trained and qualified employees simply chose to ignore Sunoco Pipeline's manuals and procedures and their own extensive training and qualifications."<sup>14</sup>

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<sup>10</sup> Response at 1-2.

<sup>11</sup> Response at 2.

<sup>12</sup> Response at 1.

<sup>13</sup> *Id.*

<sup>14</sup> Brief at 1-2.

I do not find Respondent's arguments for reducing the proposed civil penalty persuasive. As the operator of the DC Tank Farm, Sunoco is responsible for ensuring that its employees comply with all applicable PHMSA regulations. That includes the requirement that Respondent's personnel "conduct[] normal operations and maintenance activities and handl[e] abnormal operations and emergencies" per the terms of its written procedures.<sup>15</sup> Moreover, the mere existence of such procedures and provision of employee training on their proper execution does not satisfy the former obligation. To the contrary, Sunoco has a separate and distinct duty to ensure that its employees *actually implement* its written procedures when performing normal operations and maintenance activities and responding to abnormal operations and emergencies. Therefore, even if Respondent developed and provided adequate training on the procedures in question, that fact alone does not preclude an appropriate civil penalty for its failure to ensure that the personnel at the DC Tank Farm actually followed those procedures on November 22 and 23, 2005.

Likewise, while relevant in terms of deterring future violations, Sunoco's decision to discipline and retrain the offending employees is not a compelling basis for reducing the civil penalty in this case. Such post-hoc measures do not change the fact that an unauthorized release of hazardous liquids occurred at the DC Tank Farm and that Respondent, as the operator of that facility, is ultimately responsible for that violation. Similarly, the fact that Sunoco had alarms and other equipment for detecting abnormal operations at the time of the incident does not warrant a reduction in this civil penalty. The violations here relate solely to the actions of Respondent's employees, not the presence or operability of its alarms and equipment. Furthermore, contrary to Sunoco's arguments, a 10,000-barrel-plus release of crude oil is an environmentally significant event, a fact best demonstrated by the large volume of such a spill and the costs associated with its remediation.

More importantly, PHMSA considered the mitigating factors identified by Sunoco in calculating the civil penalty in this case,<sup>16</sup> and the total amount proposed is consistent with the penalties

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<sup>15</sup> 49 C.F.R. § 195.10 (noting that "[a]n operator may make arrangements with another person for the performance of any action required by [Part 195, Title 49, Code of Federal Regulations, but that] . . . the operator is not thereby relieved from the responsibility for compliance with any requirement of [Part 195]").

<sup>16</sup> Pipeline Safety Violation Report (Violation Report), PHMSA, C.P.F. 1-2007-5001 (signed May 17, 2007) (on file). Indeed, the Violation Report confirms that PHMSA fully understood and considered the totality of the circumstances presented, including the mitigating factors identified by Sunoco, when calculating the proposed civil penalty amounts in this case. For example, the Violation Report notes under "Civil Penalty Assessment Considerations" for Item 1A that Sunoco "appears to have a thorough safety program and is traditionally respons[ive] to identified compliance and safety issues." *Id.* at 4. It further notes that Sunoco "conducted a very extensive accident investigation to determine that employees did not follow procedures . . . [and had] initiated changes to negate the need to issue a compliance order." *Id.* Similarly, the Violation Report notes in the "Civil Penalty Assessment Considerations" for Item 1B that Sunoco's "procedures were clear about how personnel are required to monitor and react to alarms conditions," that Respondent "[wa]s making significant changes in [its] operating procedures . . . [and] to [its] control room technology to make equipment status and alarms more apparent," and that it "[wa]s implementing several procedural changes to improve [its] response to emergencies and consistency at each of the operator's eight other manned operating facilities in the eastern region," thereby "negat[ing] the need to issue a compliance order." *Id.* at 6. The Violation Report also contains a thorough and accurate description of the November 2005 incident, including the fact that Sunoco lost \$7,800 worth of crude oil, incurred \$28,800 in property damage, and expended more than \$211,100 in other remediation costs. *Id.* at 3. In other words, Sunoco's bases for requesting a reduction in the civil penalty are already reflected in the original amounts proposed in the Notice.

assessed for analogous violations involving spills of similar magnitude. For example, PHMSA recently imposed a \$105,000 civil penalty for a violation that resulted in a spill of 9,030 gallons of oil.<sup>17</sup> Like Sunoco, the operator in that case “requested a reduction or elimination of the civil penalty based upon: (1) the company's prompt response to the accident, including cleanup; (2) the corrective actions it initiated after the accident to prevent similar accidents; (3) the minimal impact that the accident had on public safety and the environment; (4) its cooperative response to the OPS investigation; and (5) its compliance history.”<sup>18</sup> PHMSA found those arguments unconvincing, however, stating:

The corrective actions to which Respondent refers . . . were taken after the accident had already occurred. It is true that PHMSA considers any “good faith” efforts in calculating and assessing civil penalties, but only for those actions that an operator has taken in a reasonable attempt to achieve compliance. Once an accident has occurred or a violation has been discovered, PHMSA would expect any prudent and responsible operator to cooperate in preventing another accident or violation.

With respect to Respondent's contention that the release's impacts on public safety and the environment were minimal, I would note that virtually any release of hazardous liquids from a pipeline can result in serious risk of injury. In this case, the pipeline ruptured and released approximately 9,030 gallons of crude oil into the environment. Respondent is fortunate that no greater environmental harm or physical injury occurred. The record indicates that at least one . . . employee was on site at the time of the incident and therefore could have been injured.<sup>19</sup>

I find this reasoning applicable and extremely persuasive here.

For these reasons, I find that a civil penalty of \$100,000 for Item 1a and \$50,000 for Item 1b is justified by the penalty assessment criteria. Accordingly, I assess Respondent a total civil penalty of \$150,000.

### **PAYMENT OF PENALTY**

Payment of the \$150,000 civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury.

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<sup>17</sup> *In the Matter of Enbridge Pipelines LLC-North Dakota*, C.P.F. No. 3-2007-5022 (Jun. 2, 2009) (finding that operator violated 49 C.F.R. § 194.406(b) by failing to provide an adequate pressure relief device on an isolated pipeline segment which later failed).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$150,000 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.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. 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 terms of the order, including any required corrective action and amendment of procedures, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued