



Sunoco Logistics

Sunoco Pipeline L.P.
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VIA: Electronic Mail and FedExNext Day Delivery

October 31, 2016

Mr. Larry White
Presiding Official
DOT/PHMSA Office of Chief Counsel
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Washington DC 20590
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Mr. Rod Seeley
Director, Southwest Region Pipeline and
Hazardous Materials Safety Administration
U.S. Department of Transportation
8701 S. Gessner Road
Suite 1110
Houston, TX 77074
E-mail: Rodrick.M.Seeley@dot.gov

**RE: CPF 4-2016-5011 – Permian Express II Pipeline
Notice of Contest and Request for Hearing**

Dear Messrs. White and Seeley:

In a letter dated May 27, 2016, Sunoco Pipeline L.P. (SPLP) acknowledged receipt of the above-referenced Notice of Probable Violation which included a Proposed Civil Penalty and Proposed Compliance Order (collectively “NOPV”) dated April 28, 2016 and SPLP identified issues that it intends to raise at the upcoming November 10th hearing. The NOPV concerns inspections performed by PHMSA’s Southwest Region between May of 2014 and March of 2015 of SPLP’s Permian Express II Pipeline (PEXII) Construction Project, which inspections included SPLP’s welding activities. In its May 27th letter, SPLP suggested a meeting with the Southwest Region to discuss items contained in the NOPV but SPLP was informed shortly thereafter by PHMSA’s counsel that the Region had declined SPLP’s proposal. While SPLP believes that a meeting among the parties would promote, at the very least, a more representative consideration of all facts which bear upon the alleged violations and would most likely lead to a more efficient hearing, SPLP nonetheless yielded to the Region’s decision not to discuss these matters further. Based on SPLP’s current understanding of the NOPV and materials provided to SPLP to date, SPLP provides this letter and the attached flash-drive of materials to supplement its May 27th letter, which materials are further listed on Appendix “A” attached to this letter.

In addition to proposing a meeting among the parties prior to the November 10th hearing, SPLP also provided to PHMSA’s counsel back in July a Final Report from DNV-GL entitled “Review of Welding Documentation and Destructive Test Coupons from Permian Express II Pipeline Project” dated June 28, 2016. We understand from a discussion last week that the Final Report was never provided to the Region by counsel and, as such, SPLP has not received any comments or response from PHMSA to date. SPLP intended the Final Report to precipitate a dialogue between the parties and, in particular, whether the Final Report satisfied any aspects of the Proposed Compliance Order, again to promote progress and more efficiency in the hearing process. While SPLP remains open to discussing the Final Report before the upcoming hearing, a representative from DNV-GL, Bill Amend, will be attending and providing testimony at the



hearing to summarize the findings in the Final Report and address questions posed by the Hearing Officer.

We appreciate the Region previously forwarding the Violation Report associated with the NOPV along with the two-page document entitled "Civil Penalty Summary" (Eff. 10-8-15 Rev. 1) which generically repeats the assessment considerations outlined in the Violation Report without any specific information about the violations at issue in this matter. In an e-mail from PHMSA's counsel dated October 20, 2016, SPLP first received a two-page document entitled "Proposed Civil Penalty Calculation and Worksheet for CPF-4-2016-5011" dated 10-29-15 as it regards CPF 4-2016-5011. As a general matter, there are inconsistencies between the Violation Report and the Proposed Civil Penalty Calculation and Worksheet which are incapable of reconciliation based on the information in SPLP's possession. Even more to the point, while the Penalty Worksheet provides more numeric information for some of the components which were apparently taken into account in calculating the Proposed Civil Penalty in this matter, it remains abundantly clear that all factors and considerations which went into the calculation of the penalty (and/or apparent departures from numeric values in the Violation Report) still have not been provided to SPLP as of the date of this letter.

SPLP assumes that more specific guidelines are used by PHMSA to calculate any penalty, yet SPLP has not received such guidelines to date in this matter. In fact, SPLP repeated its request for supplemental materials in a letter dated October 24, 2016, including any policies, manuals, etc. which were used in the calculation of the penalty in this matter. Without this and/or more information concerning the Proposed Civil Penalty, SPLP has been severely constrained from evaluating and defending itself against the Proposed Civil Penalty. At the very least, the Penalty Worksheet provided to SPLP evidences the following deficiencies including but not limited to:

- a "point range" is provided for each assessment consideration with a general description taken from the Civil Penalty Summary, yet specific criteria which fit within each consideration has not been provided;
- under the Gravity Section, a line item identifies "[a]dditional gravity points for multiple instances of violation," yet SPLP has not been provided with the underlying computation nor the criteria which went into these determinations;
- a mis-application or unfair application of the facts as is relates to discovery and timing of the alleged probable violations in the penalty computation;
- a mis-computation of any period that such alleged violations continued;
- there has been no apparent consideration given for the fact that the alleged probable violations occurred during a time when the pipeline was under construction and not in service; and
- the casefile lacks evidence of intent necessary to show "egregious" and/or "conscious decision" conduct selected for four out of five alleged probable violations.

Given all of this, SPLP hereby reserves all of its right to identify additional issues if/when SPLP receives such information and/or is permitted to review such additional materials.



From a substantive perspective, and in addition to the issues raised in the May 27th letter, SPLP intends to raise the following at the hearing along with related issues which may be hereafter identified and/or arise upon receipt of further information and documentation as well as during the hearing.

Notice of Probable Violation

With regard to alleged probable violation #1, SPLP attaches SP-332Sc-6G dated 11/08/14 (Rev. 2), the applicable procedure for Spread 24-3 at issue in this matter, along with the PQR 24 inch X65 dated 11-7-14 evidencing destructive testing performed by Hamilton Engineering. These along with additional materials attached hereto which were provided to Strike (SPLP's welding contractor for spread 24-3) demonstrate that a welding procedure that had been qualified under API 1104 was in place at the time that the spread 24-3 work was performed. Moreover, statements contained in both the NOPV and the Violation Report, and apparently relied upon in the Proposed Civil Penalty calculation, are inconsistent with API 1104 and interpretations/guidance.

With regard to alleged probable violation #2, while SPLP acknowledges that deviations from API 1104 occurred in some qualification records of welders on the project, such deviations were largely documentary in nature and are not indicative of integrity issues with the welds and/or pipeline, as evidenced by measures taken by SPLP after discovery.

With regard to alleged probable violation #3, SPLP intends to rely on the work performed by DNV-GL as well as measures undertaken by SPLP during and after construction of PEXII, including but not limited to: statistical analysis performed by an industry expert; hydrostatic testing of the PEXII line; 100% x-ray (RTR digital x-ray technology and/or gamma x-ray) of all production welds during construction on spread 24-3, inclusive of the fourteen samples (14) selected for cut out, with no rejectable flaws identified; all radiographic documentation was reviewed on at least four (4) separate occasions by Level III and Level II NDE professionals who determined that all welds met API 1104 radiographic acceptance standards without prejudice, among other factors. All of these processes will be further explained in detail at the hearing.

With regard to alleged probable violation #4, SPLP intends to have individuals present at the hearing with knowledge of the retesting process who will testify that such efforts were in conformance with SPLP's procedures.

With regard to alleged probable violation #5, SPLP disputes characterizations proposed in the Violation Report of the purpose of qualification efforts after discovery and the sufficiency of post-discovery sampling.



Proposed Compliance Order

With regard to Item 1 of the Proposed Compliance Order, in the continuing interest of improvement and to satisfy this item, SPLP is in the process of revising its procedures and proposes to submit this information to the Southwest Region within 60 days after the hearing in this matter.

With regard to Item 2 of the Proposed Compliance Order, SPLP relies upon the above-referenced Final Report from DNV-GL and the testimony to be provided at the hearing.

With regard to Item 3 of the Proposed Compliance Order, as proposed in its May 27th letter, SPLP has nearly completed this work and proposes to submit this information to the Southwest Region within 30 days after the hearing in this matter.

With regard to Items 4 and 5 of the Proposed Compliance Order, SPLP relies upon its May 27th response.

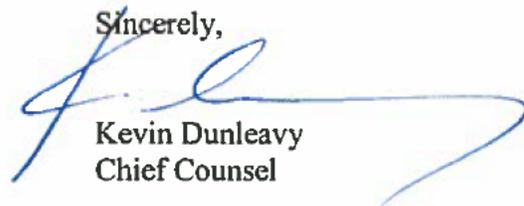
Along with myself, SPLP intends to have the following individuals present at the hearing on its behalf: Mike Slough, Leif Jensen, Bob Moon, Jay Dresh, David Born, SPLP's outside counsel (Alisa Chunephisal from the Norton Rose Fulbright firm), and Bill Amend from DNV-GL. Given that SPLP intends to walk-through certain materials at the hearing, for ease of following along, we request that the hearing room have audio-visual capability. At this time, SPLP also intends to have a court reporter present to transcribe the hearing.

For reasons specified herein, SPLP requests a relaxation and/or waiver of the timeframe specified in 49 C.F.R. 190.211(d) regarding pre-hearing submissions and, as permitted by 49 C.F.R. §190.211(g), permission to submit a post-hearing brief outlining arguments and materials to each of the contested violations of the NOPV, Compliance Order and Proposed Civil Penalty, as necessary.

Please be advised that we are submitting certain documents under "Confidential Business Information" designation and such documents have been watermarked accordingly on the enclosed flashdrive.

We look forward to the opportunity to present further to the Hearing Officer at the hearing. If either of you should have any questions about this submission or prefer to discuss this further, please contact me at 215-977-6273 or at kevin.dunleavy@sunoco.com.

Sincerely,



Kevin Dunleavy
Chief Counsel

Attachments



Sunoco Logistics

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cc: Adam Phillips (adam.phillips@dot.gov); Lauren Manns-Klegg (lauren.manns@dot.gov)
(each w/ attachments)
Dave Chalson; Mike Slough; Leif Jensen (via e-mail)
Alisa Chunephisal, Esq. (Norton Rose Fulbright) (via e-mail)



Appendix A

1. NOPV, Proposed Civil Penalty and Compliance Order CPF-4-2016-5011 dated April 28, 2016;
2. Letter from Sunoco Pipeline dated May 27, 2016 requesting a hearing and identifying issues;
3. Federal Register Notice, Volume 81, No. 200 (October 17, 2016) – stating the new policy of PHMSA to provide backup penalty calculations;
4. Proposed Civil Penalty Calculation and Worksheet for CPF-4-2016-5011 (received from PHMSA);
5. PHMSA “Civil Penalty Summary” (Eff. 10-8-15 Rev. 1)
6. “Maps 2924-M-CC-Overview” and “2924-M-GC-Overview” to depict PEXII and Spread 24-3 (from David Born);
7. Applicable procedures for spread 24-3: SP-332Sc-6G dated 5/22/14 (Rev. 1) and SP-332Sc-6G dated 11/08/14 (Rev. 2);
8. PQR 24 inch X65 dated 11-7-14;
9. Purchase Order for Spread 24-3 with Strike and the attached:
 - a. Exhibits A (General Terms);
 - b. PEXII PL Construction Specification Procedures (Exhibit E1) Table of Contents;
 - c. PEXII Branch Welding Procedures SP-1222SLH-BR-7018;
 - d. PEXII X65 Welding Procedures SP-332SC-6G-X65;
 - e. 801 Welding Requirements for DOT Facilities dated 9-20-13;
 - f. Exhibit A4 (Scope of Work);
 - g. Welding Manual materials;
10. Final Report from DNV-GL entitled “Review of Welding Documentation and Destructive Test Coupons from Permian Express II Pipeline Project” dated 6-28-16;
11. Documents relied upon by DNV-GL include but are not limited to:
 - a. API 1104 committee interpretations (20 ed.) dated 8-21-16;
 - b. PRCI reports addressing guidelines for meeting API 1104 requirements, including the 20th and 21st editions;
 - c. Copy of a presentation made to PHMSA that was referenced in the DNV GL report (footnote 8), “PHMSA JIP presentation May15 2014.pdf”;
 - d. Documents from the Lincoln Electric website (DNV GL report footnotes 1, 2 and 3) entitled “Lincoln shield arc 70+.pdf,” “Lincoln Stick electrode properties and techniques.pdf,” and “Lincoln 5P.pdf”;
 - e. Pages from an ASME report referenced in the DNV GL report (footnote 7) Guidance Material for Twenty-first API 1104 - 2014_07_18 “82681361 PRCI Final API 1104 Guide 20100430 rev 1 with appendix.pdf”;
12. Package for stencil B production weld removal and testing process under the Path Forward Plan;
13. Jan-X reader sheets for the 14 parameter welders demonstrating the dates that the welders tested;



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14. Files contained in the Welding Manual that was part of the Strike bid package and contract in 2014.

SPLP also intends to rely on API 1104 (20th ed. Reaffirmed April 2010) and the casefile provided by PHMSA (Violation Report + attachments). SPLP reserves the right to identify and address additional issues at the hearing upon further reflection and/or advice from counsel who will represent SPLP at the hearing.