

MARCH 15, 2013

Mr. Steve Cossé
President and Chief Executive Officer
Murphy Oil Corporation
200 Peach Street
El Dorado, AR 71730

Mr. F. William Grube
Chief Executive Officer
Calumet Specialty Products Partners, LP
2780 Waterfront Parkway East Drive, Suite 200
Indianapolis, IN 46214

Re: CPF No. 3-2011-6001

Gentlemen:

Enclosed please find the Decision issued by PHMSA on the Petition for Reconsideration filed by Murphy Oil Corporation in the above-referenced case. For the reasons set forth in the Decision, the petition is granted in part, denied in part, and the total civil penalty reduced to \$151,250. Payment of the civil penalty is due within 20 days of service. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Central Region, Office of Pipeline Safety, PHMSA, this enforcement action will be closed.

Service of this decision by certified mail is deemed effective upon date of mailing, or as otherwise provided 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. David Barrett, Director, Central Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Steve Hunkus, Vice President, World Wide Refining, Murphy Oil Corporation,
200 Peach Street, El Dorado, Arkansas 71731
Mr. David J. Podratz, Manager, Superior Refinery, Calumet Specialty Products Partners,
LP, 2407 Stinson Avenue, Superior, Wisconsin 54880
Kevin J. Lipson, Esquire, DLA Piper LLP

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

In the Matter of)	
)	
Murphy Oil Corporation,)	CPF No. 3-2011-6001
Petitioner,)	
)	
and)	
)	
Calumet Specialty Products Partners, LP.)	

DECISION ON PETITION FOR RECONSIDERATION

On October 12, 2012, pursuant to 49 U.S.C. § 60118 and 49 C.F.R. § 190.213, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), issued a Final Order in this proceeding, finding that Murphy Oil Corporation (Murphy or Petitioner) had committed various violations of 49 C.F.R Part 195. These findings of violation arose from an on-site pipeline safety inspection of the facilities and records of Murphy’s Superior Unit in Superior, Wisconsin.¹ The Superior Unit consists of the Superior Refinery, three breakout tanks, and approximately 6.5 miles of pipeline within residential and industrial areas near Superior, Wisconsin.² The pipeline is located in a High Consequence Area (HCA).³

The Director, Central Region, OPS (Director), issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) to the Petitioner by letter dated July 25, 2011. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Murphy had committed various violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$157,900 for the alleged violations. Murphy responded to the Notice by letter dated August 25, 2011 (Response). The company did not contest the allegations of violation but provided an explanation of its corrective actions and requested that several of the proposed civil penalties be reduced.

The Final Order made findings of violation and assessed a total civil penalty of \$157,900 for the violations. The Final Order also specified actions that needed to be taken by Calumet, the

¹ The Superior Unit was purchased by Calumet Specialty Products Partners, LP (Calumet), on September 30, 2011. See Murphy Oil Corporation, Quarterly Report (Form 10-Q), at 8 and Exhibit 2.1 (filed November 4, 2011) (available at <http://www.murphyoilcorp.com/ir/filings.aspx?source=1002&fg=23>, last accessed on March 11, 2013).

² Pipeline Safety Violation Report (Violation Report), dated July 25, 2011 (on file with PHMSA) at 1.

³ “High Consequence Areas” are defined as commercially navigable waterways, high population areas, other populated areas, and unusually sensitive areas. See 49 C.F.R. § 195.450.

current owner of the pipeline system, to comply with the pipeline safety regulations (Compliance Order).

Pursuant to 49 C.F.R. § 190.215, a respondent may petition PHMSA for reconsideration of a final order. PHMSA does not consider repetitious information, arguments, or petitions, but may consider additional facts or arguments, provided that the respondent submits a valid reason why such information was not presented prior to issuance of the final order. PHMSA may grant or deny, in whole or in part, a petition for reconsideration without further proceedings, or may request additional information, data, and comment as deemed appropriate. The filing of a petition stays the payment of any civil penalty assessed, but does not stay any required corrective action.

I. Decision

In its Petition, Murphy did not contest any of the findings of violation in the Final Order, but requested reconsideration of the civil penalties assessed for Items 1, 3, and 6. As noted above, 49 C.F.R. § 190.215 provides that PHMSA will not “consider repetitious information, arguments or petitions” in a petition for reconsideration. Upon careful review of Murphy’s petition for a reduction of the three penalties, I cannot discern any new information or arguments that were not previously submitted in the company’s Response. Therefore, I find the Petition to be without merit on procedural grounds.

Notwithstanding the repetitious nature of the Petition, I have reviewed and reconsidered Murphy’s arguments for penalty reductions. As discussed more fully below, I affirm the penalties assessed for Items 1 and 6, but reduce the penalty for Item 3.

II. Discussion

In assessing each of the civil penalties in the Final Order, I considered the nature, circumstances, and gravity of the violation, including adverse impacts on the environment; the degree of Petitioner’s culpability; the history of Petitioner’s prior offenses; Petitioner’s ability to pay the penalty and any effect that the penalty might have on its ability to continue doing business; and the good faith of Petitioner in attempting to comply with the pipeline safety regulations. Each of the three penalties is discussed in detail below.

Item 1

In its Petition, Murphy requested that the civil penalty associated with this violation of 49 C.F.R. § 195.234(e)(4) be reduced by 50% to \$24,500. Murphy did not submit any new arguments for a reduction in penalty, but reiterated the arguments and explanations made in its Response. Murphy pointed to its “lack of prior offenses” and stated that its “strong compliance program ensures that Murphy will not repeat this violation in the future.”⁴ However, as noted in the Violation Report supporting the Notice, Murphy’s compliance history was already taken into account in the proposed penalty,⁵ and the company’s intention to not commit the same offense in the future is no reason to reduce a penalty for past conduct. As the Final Order explained, “[t]he

⁴ Petition at 2.

⁵ Violation Report at 38.

gravity of the violation and culpability for the violation of an unambiguous regulation is not mitigated by later attempts to achieve compliance. I see no basis for reduction of the proposed penalty.”

Murphy also argued that the failure of the Final Order to either reduce the civil penalty or to articulate why the lack of adverse impacts associated with this violation should not prompt a reduction in the civil penalty rendered the penalty arbitrary and capricious.⁶ I disagree. The civil penalty proposed by the Notice had already taken into account the fact that no pipeline failure or environmental consequences resulted from this regulatory violation.⁷ Therefore, it was neither arbitrary nor capricious for the Final Order to decline to further reduce the penalty. In addition, Petitioner neither explained nor provided any legal authority for its due process claim.

I find that Murphy has not presented any new information or other basis in its Petition to support a penalty reduction. The assessed civil penalty of \$49,600 stands and Murphy’s petition on this Item is denied.

Item 3

In its Petition, Murphy requested that the civil penalty associated with this violation of 49 C.F.R. § 195.412(a) also be reduced by 50% to \$6,650. In the Final Order, I found that Murphy failed to inspect its pipeline right-of-way at intervals not exceeding three weeks, but at least 26 times each calendar year, on two occasions in 2008. Specifically, I found that Respondent did not conduct pipeline right-of-way patrols between April 24 and May 20, 2008, exceeding the maximum interval by six days, or between November 16 and December 15, 2008, exceeding the maximum interval by eight days.⁸

As in its discussion of the penalty assessed for Item 1, Murphy pointed to its “lack of prior offenses” and stated that its “strong compliance program will prevent any future violations of this requirement.”⁹ However, Murphy’s compliance history was already taken into account in the penalty proposed by the Notice,¹⁰ and the company’s intention to not commit the same offense in the future is no reason to reduce a penalty for past conduct.

In its Petition, Murphy argued that the penalty was unreasonably high in light of the circumstances surrounding the violations. Murphy noted that the violations were limited in scope and duration, and that it had in fact performed regular bi-monthly inspections of its right-of-way.¹¹ While it is true that Petitioner failed to meet the prescriptive requirement of the regulation on two occasions, it did nevertheless conduct the other 24 required inspections during the rest of the year. Due to the limited scope and duration of the violation, and having reviewed

⁶ Petition at 3.

⁷ Violation Report at 5.

⁸ Final Order at 3.

⁹ Petition at 3.

¹⁰ Violation Report at 38.

¹¹ Petition at 3.

the record and reconsidered the assessment criteria, I find that a 50 percent reduction in penalty for Item 3 is warranted. Accordingly, I assess Petitioner a reduced civil penalty of \$6,650 and grant Murphy's petition on this Item.

Item 6

In its Petition, Murphy requested that the civil penalty associated with this violation of 49 C.F.R. § 195.505(b) also be reduced by 50% to \$16,450. Murphy argued that the penalty assessed for this violation was “unreasonably high” because the violation “was limited to one individual who was, in fact, competent to perform rectifier inspections.”¹² However, the violation was for the failure to ensure through evaluation that individuals performing covered tasks were qualified. While this violation was limited to one person, it occurred 27 times over a period of 2½ years. As the Final Order explained:

“The purpose of the qualification program is to ensure that individuals performing critical safety-related tasks on pipelines are properly qualified to perform those tasks. In this instance, Respondent identified the task in question as one that was required by Part 195 and that would affect the operation or integrity of the pipeline; therefore, the failure to ensure the task was performed by a properly qualified individual was a significant oversight, no matter how competent the individual may have actually been.”¹³

In its Petition, Murphy argued that the Final Order “indicated that the lack of adverse impacts did not affect the penalty.”¹⁴ Murphy also argued that the failure of the Final Order to either reduce the civil penalty or to articulate why the lack of adverse impacts associated with the violation should not prompt a reduction in the civil penalty rendered the penalty arbitrary and capricious.

For the same reasons discussed above, I disagree. The Final Order acknowledged that the lack of adverse impacts from the individual being unqualified under Murphy's operator qualification program had already been taken into account in proposing the penalty.¹⁵ Therefore, it was neither arbitrary nor capricious for the Final Order to decline to further reduce the penalty. In addition, Petitioner neither explained nor provided any legal authority for its due process claim.

Murphy also cited its lack of prior offenses and stated that it had a “robust compliance program that will prevent any future violations of this requirement,” reiterating the reasoning from its Response.¹⁶ However, Murphy's compliance history was already taken into account in the penalty proposed by the Notice, and the intention to not commit the same offense in the future is no reason to reduce a penalty for past conduct.

¹² *Id.* at 4.

¹³ Final Order at 7.

¹⁴ Petition at 4.

¹⁵ Violation Report at 29-31.

¹⁶ Petition at 4.

I find that Murphy has not presented any new information or other basis in its Petition to support a penalty reduction. The assessed civil penalty of \$32,900 stands and Murphy's petition on this Item is denied.

III. Conclusion

Based on a review of the record and for the reasons stated above, the civil penalty of \$13,300 assessed for Item 3 in the Final Order is reduced to \$6,650. The Petition is denied in all other respects.

Payment in full of the civil penalty of **\$151,250**, as reduced by this Decision, is now due and must be made within 20 days of service. Failure to pay the \$151,250 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 district court of the United States.

Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. 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, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

This decision is the final administrative action in this proceeding.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued