



Sunoco Logistics

Sunoco Pipeline L.P.
One Fluor Daniel Drive
Building A, Level 3
Sugar Land, TX 77478

November 30, 2016

Mr. Rod Seeley
Director, Southwest Region
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
8701 S. Gessner Road
Suite 630
Houston, TX 77074

VIA: Electronic Mail and FedEx

**RE: CPF 4-2016-5034
Notice of Contest and Request for Hearing**

Dear Mr. Seeley:

The above-referenced Notice of Probable Violation which includes a Proposed Civil Penalty (collectively NOPV) and dated October 27, 2016 was received by Sunoco Pipeline L.P. (SPLP) on October 31, 2016. This NOPV relates to the PHMSA investigation of the accident that occurred on November 10, 2015 at the West Texas Gulf facility located in Wortham, Texas. The West Texas Gulf pipeline and facilities are operated by SPLP and, as such, SPLP timely submits this response on behalf of itself and West Texas Gulf. Pursuant to 49 C.F.R. §190.208, SPLP hereby contests in full, and respectfully requests an in-person oral hearing, on all matters listed in such NOPV.

The two (2) Probable Violations identified in the NOPV concern some of the same regulatory provisions and the same facility (West Texas Gulf Pipeline – Wortham Station) as the Probable Violations identified in the separate PHMSA enforcement matter (CPF 4-2016-5022) issued to SPLP on July 7, 2016. As such, SPLP expects that there will be overlapping discussion for both this enforcement matter and CPF 4-2016-5022 and SPLP expects that many of the same individuals from both SPLP and PHMSA will be required to be in attendance for both matters. Therefore, to promote expediency of the administrative process and efficiency of the resources of the Hearing Officer and the parties, with your consent and by copy of this letter to the Hearing Officer, SPLP requests that the Probable Violations identified in this enforcement matter (CPF 4-2016-5034) be heard, presented and discussed at the hearing which is scheduled to occur on February 23, 2017 regarding CPF 4-2016-5022.

We appreciate your office previously forwarding the Violation Report and Proposed Civil Penalty Worksheet to SPLP for our review. In another recent enforcement matter, SPLP received certain Pipeline Safety Procedures dated October 29, 2015 (Section 3) and March 23, 2016 (Section 4). Please confirm that these Procedures are the applicable procedures for this enforcement matter. To the extent that these Procedures were not used in the preparation of the NOPV, Violation Report and Worksheet involved in this matter, or if there are any additional procedures, policies or guidelines applicable to this enforcement matter, SPLP respectfully requests copies of all such



Procedures. Further SPLP also requests copies of any and all documents or materials which PHMSA relied upon in preparing the NOPV, the Violation Report and/or the Worksheet, any and all case file documents and materials which have not previously been produced to SPLP related to this enforcement matter, and any amendments or revisions to the Violation Report, NOPV or Worksheet for this matter pursuant to 49 C.F.R. §190.208 and §190.209 and due process rights.

SPLP intends to raise legal and factual issues at the hearing which will include, at a minimum, the following along with any related issues hereafter identified and/or which may be identified upon receipt of further information and documentation and/or during the hearing:

- (1) Item 1 of the NOPV alleges that SPLP failed to have a formal written procedure for the operation and maintenance of the 10-inch flow control valve involved in the accident at the Wortham facility in accordance with 49 C.F.R. §195.402(c)(3). SPLP intends to demonstrate instead that it did have a formal written procedure for Operation and Maintenance of the flow control valve (SPLP DOT Maintenance Manual Procedure 195.428). Although this procedure does not specifically detail the function for which the valve was being utilized during the execution of the applicable Work Plan for the activities on the date of November 10, 2015, the NOPV, the Violation Report and the Penalty Worksheet failed to recognize that this procedure existed and was in place during the relevant time period.
- (2) Item 2 of the NOPV alleges that SPLP failed to follow its Lock Out Tag Out (LOTO) procedure (HS-P-005) in accordance with 49 C.F.R. §195.402(c)(3). SPLP will demonstrate that actions were taken to comply with this procedure as part of the work planning process covering the activities on the date of November 10, 2015. As such, the NOPV, the Violation Report and the Penalty Worksheet failed to account for this and other material facts.
- (3) The civil penalty sought in the amount of \$251,800 is excessive both individually and in the aggregate, unjustified under 49 C.F.R. §§190.221 and 190.223, and is not consistent with penalty consideration factors specified in 49 C.F.R. §190.225, applicable statute, Procedures referenced above and/or precedent.
- (4) Administrative Procedure Act (APA) standards, 5 U.S.C. §706 and due process considerations require that an agency give effect to the PSA's penalty provisions in a consistent manner including notice of an agency's intended application and penalty factors. To date, SPLP has not been provided with any Procedures which sufficiently detail the specific criteria which fit within each "point range" provided in the Penalty Worksheet for each assessment consideration and/or provide guidance to the individual who completed the items in the Violation Report and/or Worksheet. Without this and/or more information concerning the Proposed Civil Penalty, SPLP has been severely constrained from evaluating the NOPV and defending itself.



- (5) At a minimum, the Violation Report and/or the Penalty Worksheet provided to SPLP in this matter evidences the following deficiencies including but not limited to:
- Failure to account for “good faith” factors;
 - mis-application or unfair application of the facts as it relates to discovery and timing of the alleged probable violations;
 - mis-application of the facts in the gravity section; and
 - mis-application of the penalty assigned per point for the purported violations (as referenced in the footnote on page 2 of the Worksheet).

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 and/or upon further reflection and/or advice from counsel who will represent SPLP at the hearing.

SPLP intends to provide a more descriptive response to each of the contested violations of the NOPV at or prior to the hearing, as permitted by 49 C.F.R. §190.211.

We look forward to the opportunity to discuss this matter further at the hearing. On its behalf, SPLP expects to have individuals in attendance at a hearing which may include the following: Leif Jensen, Todd Nardozzi, counsel, and/or such other individuals identified by counsel. If the Region is inclined to discuss this matter at this time and/or prior to the hearing, please do not hesitate to contact Todd Nardozzi at 281-637-6576.

Sincerely,

David R. Chalson
Sr. Vice President, Operations
Sunoco Pipeline L.P.

Cc: Kristin Baldwin (Hearing Officer) (via e-mail); Adam Phillips (PHMSA Counsel) (via e-mail);
Leif Jensen; Todd Nardozzi; Kevin Dunleavy (via e-mail)