

Mr. John R. Nyce
Manager, Eastern Area
Sun Pipe Line Company
1275 Drummers Lane
Suite 300
Wayne, PA 19087-5806

Re: CPF No. 12502

Dear Mr. Nyce:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$4,000. The penalty payment terms are set forth in the Final Order. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
WASHINGTON, DC

_____)
In the Matter of)
Sun Pipe Line Company,) CPF No. 12502
Respondent.)
_____)

FINAL ORDER

On November 19-22, 1991 and March 9-12, 1992, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted on-site pipeline safety inspections of Respondent's facilities and records in Belle Meade, NJ (Hillsborough Maintenance) and Big Flats, NY (Big Flats Office). As a result of the inspections, the Director, (formerly Chief) Eastern Region, OPS, issued to Respondent, by letter dated June 25, 1992, a Notice of Probable Violation, Proposed Civil Penalty, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed two violations of 49 C.F.R. §§ 195.401(b), and proposed assessing a civil penalty of \$8,000 for the alleged violations. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its procedures for Operations, Maintenance and Emergencies.

Respondent responded to the Notice by letter dated July 29, 1992. Respondent submitted additional responses on August 26, 1992 and July 8, 1993. Respondent contested one of the allegations and submitted information to explain the allegations and in mitigation of the proposed civil penalty. Respondent has not requested a hearing and therefore, has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged two violations of 49 C.F.R. § 195.401(b), which requires that an operator, upon discovering any condition that could adversely affect safe operation of its pipeline, correct the condition within a reasonable time. Item 1 alleged that in

August 1988, Respondent had conducted an underwater inspection of the 14-inch pipeline crossing the Delaware River at Jacobs Creek, discovered exposed pipe that could adversely affect the pipeline's safe operation, yet by November 1991, had not taken corrective action to address the condition.

Respondent disputed the allegation. Respondent said that it had researched this location and determined that the exposed portion of pipe is within Jacobs Creek, a non navigable waterway, and that 2/3 of the exposed pipeline is located within a culvert. Respondent further said that the exposed pipe has a thickness twice that of the main line, is encased inside 18-inch steel casing, and is coated with Somastic and concrete Hevicoat. Respondent maintained that the additional wall thickness, concrete Hevicoat and steel casing provide protection that exceeds the 18 inches of alternative soil cover allowed by the pipeline safety regulations.

Although Respondent believes that the pipeline is adequately protected for a non navigable waterway, it did not make this determination until 1992, four years after the exposed pipe had been discovered. Respondent did not present any evidence that until the Notice was issued it had further inspected the site, performed an analysis to determine the condition of the exposed pipeline, and determined, based on this analysis, whether action was necessary to ensure the safe operation of the pipeline. Respondent's actions, four years after discovery of the condition potentially affecting the safe operation of the pipeline, do not constitute corrective actions taken within a reasonable time.

Furthermore, OPS determined, through consultation with the Coast Guard Philadelphia Area Commander, that Jacobs Creek is considered a navigable waterway as vessels could enter the waterway during high tide with the Delaware River. Thus, the exposed portion of pipe could be hit, creating a public safety and environmental hazard. Respondent has not demonstrated that the protection it described is adequate for an exposed pipeline in a navigable waterway.

Item 2 alleged that at the 6-inch pipeline crossing of the Susquehanna River, Respondent's underwater inspection in August 1988 had discovered approximately 110 feet of exposed pipe, yet by March 1992, Respondent had not initiated corrective action to address the exposure.

Respondent did not contest this allegation. Respondent explained that it had advanced this location's five-year underwater inspection, and used the information from this inspection to formulate corrective action to stabilize and repair the exposed pipe.

Accordingly, I find that Respondent committed both violations of 49 C.F.R. § 195.401(b). These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

At the time the Notice was issued, under 49 U.S.C. § 60122, Respondent was subject to a civil penalty not to exceed \$10,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations. The Notice proposed a penalty of \$8,000.

Both violations concerned Respondent's failure to address conditions on its pipeline, which could adversely affect its safe operation, within a reasonable time after discovering the conditions. Respondent's explanation and actions concerning the first violation do not warrant mitigation. However, with respect to the second violation, Respondent's actions to repair and stabilize the exposed underwater pipeline crossing the Susquehanna River warrant mitigation. Respondent explained that it had advanced its five-year underwater inspection of this location, repaired the damaged coating and placed and anchored concrete mats over the exposed area.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$4,000.

Payment of the civil penalty must be made within 20 days of service. Payment can be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this **payment to be made by wire transfer**, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. **Detailed instructions are contained in the enclosure.** After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel (DCC-1)**, Research and Special Programs Administration, Room 8405, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590-0001.

Questions concerning wire transfers should be directed to: **Valeria Dungee**, Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125; **(405) 954-4719**.

Failure to pay the \$4,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 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 an United States District Court.

AMENDMENT OF PROCEDURES

The Notice alleged inadequacies in Respondent's Operations, Maintenance and Emergencies Manual and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. § 195.402(c)(6). Respondent submitted copies of its procedures addressing conditions creating potential hazards to the public. The Director, Eastern Region, OPS has accepted these procedures as adequate to assure safe operation of Respondent's pipeline system. Accordingly, no need exists to issue an order directing amendment.

Richard B. Felder
Associate Administrator
for Pipeline Safety

01/22/1997
Date Issued