

January 13, 2016

Mr. Michael J. Hennigan
President
Sunoco Logistics Partners Operations, LP
1818 Market Street, Suite 1500
Philadelphia, PA 19103

Re: CPF No. 1-2014-5005

Dear Mr. Hennigan:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Sunoco Pipeline, LP. It makes one finding of violation and assesses a reduced civil penalty of \$22,300. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by certified mail is deemed effective upon the 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. Byron Coy, P.E., Director, PHMSA Eastern Region, OPS
Mr. David Chalson, Senior Vice President of Operations, Sunoco Pipeline, LP, 4041
Market Street, Aston, Pennsylvania 19014
Ms. Kathleen Shea-Bailey, Counsel to Sunoco Pipeline, LP, 3807 Westchester Pike,
Newtown Square, Pennsylvania 19073

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)	
)	
Sunoco Pipeline, LP,)	CPF No. 1-2014-5005
 a subsidiary of Sunoco Logistics Partners Operations, LP,)	
)	
Respondent.)	
)	

FINAL ORDER

During the weeks of April 1 and April 8, 2013, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an inspection of the procedures and records of Sunoco Pipeline, LP (Sunoco or Respondent), at its facilities in Icedale, Pennsylvania. Sunoco, a subsidiary of Sunoco Logistics Partners Operations, LP, operates more than 7,500 miles of liquid pipelines across the United States.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated October 2, 2014, 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 violated 49 C.F.R. § 195.573 and assessing a civil penalty of \$29,500 for the alleged violation.

Respondent responded to the Notice by letter dated October 31, 2014 (Response). Sunoco contested the allegation of violation, offered information in response to the Notice, and requested that the proposed civil penalty be reduced or eliminated. On February 27, 2015, Respondent sent an additional response to PHMSA (Second Response), offering additional information in support of its arguments contesting the allegation. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

¹ *Sunoco Logistics Partners Operations LP* website: <http://www.sunocologistics.com/Public-Awareness/26/> (last visited September 22, 2015); Bloomberg Business, Company Overview of Sunoco Pipeline LP. website: <http://www.sunocologistics.com/Public-Awareness/26/> (last visited September 22, 2015).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with § 195.571: ...

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by § 195.401(b). However, if the deficiency involves a pipeline in an integrity management program under § 195.452, you must correct the deficiency as required by § 195.452(h).

The regulation further references 49 C.F.R. § 195.401(b), which states:

§ 195.401 General requirements.

(a) ...

(b) An operator must make repairs on its pipeline system according to the following requirements:

(1) *Non Integrity management repairs.* Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.

(2) *Integrity management repairs.* When an operator discovers a condition on a pipeline cover under § 195.452, the operator must correct the condition as prescribed in § 195.452(h).

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e) by failing to correct identified deficiencies in corrosion control within a reasonable time, as required by § 195.401(b)(1). Specifically, the Notice alleged that Sunoco failed to act within a reasonable time to correct identified deficiencies in corrosion control at test stations 7636+69 and 7245+00 of Unit 3241 near Greensburg, Pennsylvania (Unit 3241).

According to PHMSA, the cathodic protection at these stations was deficient because it did not meet the requirements set out in § 195.571, which requires that cathodic protection (CP) must meet the applicable criteria contained in paragraph 6.2 of National Association of Corrosion Engineers, International (NACE) Standard Practice (SP) 0169.² To meet the CP criteria delineated under NACE SP 0169 and more fully described in the Notice, the records for stations

² See 49 C.F.R. § 195.571, which states:

§ 195.571 What criteria must I use to determine the adequacy of cathodic protection?

Cathodic protection required by this subpart must comply with one or more of the applicable criteria and other considerations for cathodic protection contained in paragraphs 6.2 and 6.3 of NACE SP 0169 (incorporated by reference, *see* § 195.3).

7245+00 and 7636+69 had to show pipe-to-soil readings of at least minus .85V.³ However, the records for station 7245+00 taken from 12/28/2010 to 12/16/2012 allegedly showed pipe-to-soil readings of below minus .85V, and records for station 7636+69 taken from 9/30/2010 to 2/1/2012 showed pipe-to-soil readings of below minus .85V.⁴ Further, as detailed below, for station 7245+00 these deficiencies were first noticed on November 20, 2009, but were not permanently corrected until December 17, 2012.⁵

In its Response, Sunoco acknowledged that the readings were low at both test stations during the time periods alleged in the Notice, but made several arguments as to why Respondent should not be found in violation of § 195.573(e). First, Respondent claimed that it had undertaken two engineering evaluations, as allowed under the company's own procedures, to determine alternative measures to correct the identified corrosion deficiencies.⁶ Sunoco also claimed that these evaluations were aimed at determining both temporary and long-term solutions.⁷

Respondent asserted that these actions included installing a temporary bond on Unit 3241 to provide cathodic protection from an adjacent system, and also implementing a long-term improvement plan for this unit.⁸ Sunoco conceded, however, that it removed the temporary bond after 10 months to accommodate a close interval survey and that this bond remained disconnected because it was depriving another area of sufficient cathodic protection current.⁹ Sunoco also claimed that in December 2012 it installed and energized a new rectifier and ground bed to permanently correct the identified deficiencies.¹⁰ Sunoco asserted that such actions were in conformance with its own procedure for monitoring corrosion control and taking remedial actions to correct the deficiencies at stations 7245+00 and 7636+69 before the next scheduled test interval, "*unless an engineering evaluation determines alternative measures to be adequate* (emphasis added). [Sunoco] did just that by evaluating alternative measures while also working on remedial action..." and by conducting an engineering evaluation that showed the alternative measures it took would correct the identified deficiencies.¹¹

On February 27, 2015, Respondent sent a Second Response, adding additional information as to why the Notice and the associated penalty should be withdrawn. The company presented a

³ See NACE SP 0169, Paragraph 6.2

⁴ See Notice of Probably Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) at 2.

⁵ See Respondent's Response to the Notice (Response) at 4 – 5.

⁶ Response at 1 – 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

chronology of steps it had taken to acquire the easement for an anode ground bed system designed to provide adequate long-term CP.¹²

I am aware of Sunoco's various efforts to correct the identified CP deficiencies at station 7245+00, as well the arguments presented in both its Response and Second Response. However, the evidence presented by Respondent only confirms that the identified deficiencies were not corrected within a reasonable time.

Low readings were first identified for station 7245+00 on November 20, 2009.¹³ The temporary bond was installed on January 15, 2010, but then disconnected on December 1, 2010.¹⁴ The company's own documents show that no other measures, either temporary or permanent, were put in place to correct this deficiency until December 17, 2012.¹⁵ At this point, over two years had elapsed from the time the temporary bond was disconnected, (and three years after the deficiency was first identified), until the new ground bed and rectifier were energized to permanently correct the CP deficiency.

As noted above, Respondent argued that it had followed its own internal procedures to address the CP deficiencies. These procedures incorporated language from § 195.401(b), which provides that identified deficiencies should be "corrected within a reasonable period of time." According to Respondent, the term "reasonable period" is undefined both under the regulation and its own procedures.¹⁶ Sunoco asserted that it had adhered to § 195.401(b) by requiring corrective action to take place prior to the next test interval, or by performing an engineering evaluation to determine if alternative remediation measures were adequate.¹⁷ Respondent specifically noted an email, dated February 6, 2014, in which it stated that it had found its alternative remediation measures to be adequate.¹⁸

Sunoco is correct that temporary measures were indeed taken to "maintain and improve" the low cathodic protection levels of station 7245+00 while Respondent pursued a permanent solution. However, while Sunoco claimed an "engineering evaluation" was performed to determine if alternative remediation measures were adequate, it has not provided evidence of such an evaluation, nor showed how the temporary measures would correct the deficiency. Further, as seen above, the temporary measures Sunoco implemented were discontinued two years prior to permanent measures being implemented.

¹² See Respondent's Second Response to the Notice (Second Response) at 1.

¹³ Response at 4 – 5.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 1.

¹⁷ Response at 1 – 3.

¹⁸ Notice at 4.

While the phrase “reasonable period of time” in § 195.401(b) is undefined, previous PHMSA final orders have interpreted the phrase to mean generally no more than 15 months – the maximum time allowed between annual cathodic protection surveys under 49 C.F.R. § 195.573(a)(1).¹⁹ As seen above, Respondent noted a cathodic protection deficiency at station 7245+00 on November 20, 2009, but did not correct this deficiency until over three years later, on December 17, 2012.

Accordingly, after considering all of the evidence I find that Respondent violated 49 C.F.R. § 195.573(e), by failing to correct identified deficiencies in corrosion control within a reasonable time, as required by § 195.401(b)(1).²⁰

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

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.²¹ In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must 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 total civil penalty of \$29,500 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$29,500 for Respondent’s violation of 49 C.F.R. § 195.573(e), for failing to correct identified deficiencies in corrosion control within a reasonable time, as required by § 195.401(b). Specifically, I found that Sunoco failed to act within a reasonable time to correct identified deficiencies in corrosion control at station 7245+00.

¹⁹ E.g., *In the Matter of Colonial Pipeline Company*, CPF 2-2008-5005, at 4, 2010 WL 6518285 (July 12, 2010) (“PHMSA has generally considered a ‘reasonable time’ to be the maximum time allowed between required annual cathodic protection surveys (15 months maximum from the discovery of a deficient survey reading).”).

²⁰ As for the second allegation of violation, that Sunoco failed to correct identified CP deficiencies at station 7636+69, I am not convinced that there is sufficient evidence to prove that the company failed to take action within a reasonable time. This is because Sunoco has presented evidence showing that the readings between 2010 and 2012 were inconsistent. On 9/30/10, the pipe-to-soil survey was observed to be -0.84V; on 12/28/10, a follow-up survey showed a reading of -0.95V; on 10/12/11, the reading was -0.73V; and on 2/1/13, the reading was -0.89V.

²¹ The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904, January 3, 2012, increased the civil penalty liability for violating a pipeline safety standard to \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.

Respondent contends that the proposed penalty should either be eliminated or reduced substantially because Sunoco made a good-faith effort to comply with § 195.573(e). Sunoco notes our previous decision in *Kinder Morgan Liquids Terminals, LLC*, which held that a proposed civil penalty may be reduced due to the actions an operator has taken in good faith to comply with a regulation.²² Sunoco maintains it undertook good-faith efforts to comply with § 195.573(e) by undertaking two engineering evaluations to determine alternative measures to correct the identified corrosion deficiencies, first installing a temporary bond at station 7245+00, and then taking steps to implement a long-term improvement plan through the acquisition of an easement to install an anode ground bed system.²³

After reviewing Respondent's arguments, I find the civil penalty proposed in the Notice should be reduced. While still responsible for having violated § 195.573(e), Sunoco's took significant steps to comply with the regulation but failed to achieve compliance for reasons that were partly outside of its control. Specifically, the company not only took action to install a temporary bond for station 7245+00, but it also experienced delays from the property owner of the location where the new ground bed needed to be installed.²⁴

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a reduced civil penalty of **\$22,300**.

Payment of the civil penalty must be made within 20 days of service. 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. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike

²² *In the Matter of Kinder Morgan Liquids Terminals LLC.*, CPF No. 1-2011-5001, at 10, 2012 WL 6184429 (Oct. 17, 2012) ("PHMSA does not generally find cause to reduce a civil penalty for corrective actions taken after the operator has already been notified of the deficiency through a compliance inspection by OPS, because operators are expected to bring their facilities into compliance with the regulations, particularly when an issue has been brought to the operator's attention by the agency. Rather, PHMSA generally considers evidence of good faith to be those actions taken by the operator as a deliberate attempt to comply with the regulation prior to when the violation occurred."); *see also In the Matter of Belle Fourche Pipeline Co.*, CPF No. 5-2009-5042, at 19, 2011 WL 700607 (Nov. 21, 2011) ("Fourth, BFPL [Belle Fourche Pipeline Co.] argued that the Violation Report included no evidence of the degree of culpability, but rather stated simply that the company was 'culpable' because it had knowledge of the regulation. In prior final orders, I have found that when evaluating an operator's culpability, I determine the extent to which the company deserves the blame for the violation that occurred. In this case, as the operator of the pipeline facility, BFPL is responsible for compliance and therefore is culpable for these violations of the pipeline safety regulations. I find no reason to determine there is any lesser degree of culpability on the part of Respondent for these violations."). Respondent also notes *Belle Fourche Pipeline Co.*, which shows that when evaluating an operator's culpability, PHMSA considers the extent to which the operator deserves the blame for the violation that occurred. Sunoco asserts the proposed penalty should be eliminated or reduced, as with regards to culpability, its personal were aware of the regulation violated and took steps to correct this deficiency – but simply could not do so within a reasonable period of time

²³ Response at 1 – 2; Second Response at 1.

²⁴ Second Response at 2 – 11.

Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$22,300 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.

Under 49 C.F.R. § 190.243, Respondent has the right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of the Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued