

March 7, 2018

Mr. David Chalson
Senior Vice President, Operations
Inland Corporation
4041 Market Street
Aston, PA 19014-3197

Re: CPF No. 1-2017-5003

Dear Mr. Chalson:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws the allegation of violation and the proposed civil penalty of \$55,200. This enforcement action is now closed. Service of the Final Order by certified mail is effective upon the date of mailing as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Director, Eastern Region, Office of Pipeline Safety, PHMSA
Mr. Kevin Dunleavy, Assistant General Counsel, Sunoco GP LLC/Sunoco Logistics,
3801 West Chester Pike, Newtown Square, PA 19073

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of)	
)	
Inland Corporation,)	CPF No. 1-2017-5003
)	
Respondent.)	
)	

FINAL ORDER

On October 14-15, 2015, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Inland Corporation (Inland or Respondent) in Canton, Ohio. Inland consists of approximately 586 miles of refined products pipelines and facilities that service refineries and terminal markets across Ohio. In 2011, Sunoco Logistics Partners, LP acquired a controlling financial interest in Inland Corporation, and is now the operator of the Inland pipeline system and majority owner.¹

As a result of the inspection, the Acting Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated February 6, 2017, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Inland violated 49 C.F.R. § 195.248(a) and proposed assessing a civil penalty of \$55,200 for the alleged violation.

On behalf of Inland, Sunoco Pipeline, LP (SPLP), responded to the Notice by letter dated February 27, 2017 (Response). SPLP contested the allegation and requested a hearing. A hearing was subsequently held on June 7, 2017, in West Trenton, New Jersey, with an attorney from the Office of Chief Counsel, PHMSA, presiding. After the hearing, Respondent provided a post-hearing statement for the record, by letter dated June 30, 2017 (Closing).

WITHDRAWAL OF ALLEGATION

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.248(a), which states:

¹Sunoco Logistics Press Release, *website, available at* [http://sitemanager.pdigm.com/user/file/Ohio/Sunoco Pipeline LP Inland Corporation Mid Valley Pipeline Company.pdf](http://sitemanager.pdigm.com/user/file/Ohio/Sunoco_Pipeline_LP_Inland_Corporation_Mid_Valley_Pipeline_Company.pdf) (last accessed December 5, 2017).

§ 195.248 Cover over buried pipeline.

(a) Unless specifically exempted in this subpart, all pipe must be buried so that it is below the level of cultivation. Except as provided in paragraph (b) of this section, the pipe must be installed so that the cover between the top of the pipe and the ground level, road bed, river bottom, or underwater natural bottom (as determined by recognized and generally accepted practices), as applicable, complies with the following table:

Location	Cover inches (millimeters)	
	For normal excavation	For rock ¹ excavation
Industrial, commercial, and residential areas.....	36 (914)	30 (762)
Crossing of inland bodies of water with a width of at least 100 feet (30.5 millimeters) from high water mark to high water mark.....	48 (1219)	18 (457)
Drainage ditches at public roads and railroads.....	36 (914)	36 (914)
Deepwater port safety zones.....	48 (1219)	24 (610)
Gulf of Mexico and its inlets in waters less than 15 feet (4.6 meters) deep as measured from mean low water.....	36 (914)	18 (457)
Other offshore areas under water less than 12 ft (3.7 meters) deep as measured from mean low water.....	36 (914)	18 (457)
Any other area.....	30 (762)	18 (457)

¹ Rock excavation is any excavation that requires blasting or removal by equivalent means.

The Notice alleged that Respondent violated 49 C.F.R. § 195.248(a) by failing to ensure that all pipe be buried so that it is below the level of cultivation, and installed so that the cover between the top of the pipe and the ground level, road bed, river bottom, or underwater natural bottom complies with specific depth of cover (DOC) requirements. Specifically, the Notice alleged that Inland failed to bury a portion of line segment 13224 SUFF-CNTN-5 to a 36-inch DOC, as required for industrial, commercial, and residential areas. When reviewing Inland’s records of the pipeline replacement, OPS relied on photographs of the work site and statements by the Respondent in determining the requisite DOC was not achieved.

In its response and at the hearing, SPLP denied that it was in violation of § 195.248(a) because, at the time of the inspection, construction was ongoing and therefore the DOC at the time of the inspection was not intended to be final. Alternatively, Inland asserted that, at the time of the inspection, the 14-inch DOC was permissible under § 195.248(b), which provides an exception to DOC requirements if an operator deems the minimal cover requirements “impractical.”

At the hearing, SPLP laid out the timing of the construction and inspection activity. On October 13, 2015, SPLP initiated the pipeline replacement by exposing a portion of line segment 13224 SUFF-CNTN-5. From October 14-15, OPS conducted its inspection, which included a physical inspection of the construction site and a records review. SPLP argued that, at the time of OPS’ inspection, admittedly, it had not yet achieved 36-inch DOC; however, construction activity was ongoing.

OPS contradicted that account, and argued that, on October 14, 2015, an OPS inspector reviewing constructions records noted a post-construction photo and asked for the final DOC. According to OPS, the construction manager self-reported that the segment was backfilled to a DOC of 14-inches, and that it was only upon OPS advice that the construction site was backfilled to the required 36-inch DOC.

OPS presented two pieces of evidence in support of its contention that SPLP failed to provide the requisite DOC, and only after prodding by OPS, installed additional cover. The first² was the summary of an interview by Mr. Steve Scotto, who was the project manager for the pipeline replacement. The PSVR states that Mr. Scotto “Determined remedial measures to be taken after the issue was identified by PHMSA” and “Stated that the replacement segment of the pipeline had been backfilled to 14-inches. The second³ piece of evidence consists of two photos of the construction site on October 13 and October 15, 2015, both of which were taken by Respondent and provided to OPS. The first photo shows the dig site, various construction apparatus, and a bulldozer on October 13, 2015. The second photo is of the construction site after the Respondent installed 36-inches of cover. OPS captioned this photo “13224 SUFF-CNTN-5 feature 13-01 dig site after repair and remediation of cover on 10/15/15.”

In support of its assertion that SPLP was still in the process of backfilling SUFF-CNTN-5, Respondent presented an invoice showing the material used to backfill the pipeline was ordered prior to the inspection. It also presented testimony by Al Kravatz, Jay Dresh, and Stephen Scotto, SPLP personnel present during the construction activity, that the project was ongoing on October 14, 2015. SPLP also offered various documents into evidence to argue that SPLP delayed backfilling the site to ascertain compliance with the Army Corps permit conditions.

OPS bears the burden of proof in demonstrating that an operator violated the pipeline safety regulations. I find that, in this case, OPS did not carry its burden. There is contradictory testimony on the issue of whether the construction activity was complete. While OPS maintains that SPLP volunteered this information, the Respondent squarely denies that it ever told inspectors that construction was complete. The only photographic evidence that OPS provided in support of its allegation was taken by the Respondent, and OPS did not provide any other record or photograph in support of its contention that construction was completed as of on October 13th or 14th. In fact, the only photographs proffered were taken by the Respondent and show: (1) a construction site at which construction activity is clearly ongoing (October 13th); and (2) a completely remediated site with the requisite DOC (October 15th).

Accordingly, after considering the evidence and the legal issues presented, I find that OPS did not present sufficient evidence proving that the construction activity was complete, and therefore that SPLP violated DOC requirements.

² Pipeline Safety Violation Report (PSVR), 7.

³ PSVR, Exhibit A-1.

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.⁴

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; 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 \$55,200 for the violations cited above.

As discussed above, I withdraw the proposed penalty for violation of 49 C.F.R. § 195.248(a).

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

March 7, 2018

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

⁴ These amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).