U.S. Department
of Transportation
Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Avenue SE
Washington DC 20590

MAR 0 8 2019

Mr. Kelcy L. Warren
Chief Executive Officer
Energy Transfer Partners, LP
8111 Westchester Drive
Dallas, Texas 75225

Re: CPF No. 2-2016-5006

Dear Mr. Warren:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Mid-Valley Pipeline Company. It makes findings of violation and specifies actions that need to be taken to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Southern Region, this enforcement action will be 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: Mr. James Urisko, Director, Southern Region, Office of Pipeline Safety, PHMSA
Mr. Ryan Coffey, Executive Vice-President – Operations, Energy Transfer Partners, LP, 800 East Sonterra Boulevard, San Antonio, TX 78258
Mr. Todd Nardozzi, Senior Manager, DOT Compliance, Energy Transfer Partners, LP

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	)	
Mid-Valley Pipeline Company,	)	
a subsidiary of Energy Transfer Partners, LP,	)	**CPF No. 2-2016-5006**
Respondent.	)	

FINAL ORDER

From August 1 through August 2, 2016, 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 Public Awareness Program (PAP) records of Mid-Valley Pipeline Company (MVPL or Respondent) in Icedale, Pennsylvania. MVPL owns a 1,103-mile crude-oil pipeline running from Longview, Texas, to Samarian, Michigan (Mid-Valley Pipeline). The Mid-Valley Pipeline is operated by Energy Transfer Partners, LP.[1]

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated December 9, 2016, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that MVPL had committed two violations of 49 C.F.R. § 195.440 and ordering Respondent to take certain measures to correct the alleged violations.

On December 22, 2016, Sunoco Pipeline, LP (SPLP), filed a response on behalf of MVPL and requested an extension of the 30-day response time to February 1, 2017. PHMSA granted the request by email dated January 9, 2017, and on February 1, 2017, SPLP responded to the Notice (Response). The company contested the allegations, offered additional information in response to the Notice, and requested that the proposed compliance order be withdrawn. Respondent did not request a hearing and therefore has waived its right to one. For purposes of the following

[1] At the time of the PHMSA inspection, the Mid-Valley Pipeline was operated by Sunoco Pipeline, LP, a wholly-owned subsidiary of Sunoco Logistics Partners, LP. *See*, Sunoco Logistics Partners, LP 2016 Form 10-K, available at, http://www.sunocologistics.com/SiteData/docs/10K2016Fin/b9174876261d8ab4/10-K;%202016%20-%20Final.pdf (last accessed September 15, 2017). On April 28, 2017, Sunoco Logistics Partners, LP, and Energy Transfer Partners, LP, merged; the resulting entity is known as Energy Transfer Partners, LP. *See*, Energy Transfer, Company Information, website, *available at* http://www.sunocologistics.com/Investors/Company-Information/32/ (last accessed September 15, 2017).

discussion, the terms "Respondent," "MVPL," and "SPLP" are used interchangeably.

FINDINGS OF VIOLATION

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

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(b), which states:

> **§ 195.440 Public awareness.**
> (a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* § 195.3).
> (b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(b) by failing to implement a written continuing public education program that assessed the unique attributes and characteristics of its pipeline and facilities. Specifically, the Notice alleged that MVPL's PAP baseline-message brochures were deficient in four ways.

First, it alleged that Respondent's PAP brochures sent out to stakeholders in 2013, 2014, and 2105, including affected members of the public, excavators, emergency responders, and public officials, failed to identify crude oil as the product being transported by the Mid-Valley Pipeline and failed to describe the pipeline's unique attributes and characteristics. The Notice alleged that although the Mid-Valley Pipeline did not transport gasoline, diesel fuel, kerosene, heating oil, jet fuel, butane, ethane, propane or natural gas in 2013, 2014, or 2015, all PAP brochures contained the following statement:

> "You are receiving this brochure because a Sunoco Pipeline, L.P. pipeline is located in your community. Our underground pipelines provide a safe and efficient method of transporting a variety of products, including crude oil, gasoline, diesel fuel, kerosene, heating oil, jet fuel, butane, ethane, propane, and natural gas."

In other words, the brochures did not convey information on "the *unique* attributes and characteristics" of the Mid-Valley Pipeline, which only transported crude oil during those three years.

The Notice further alleged that the PAP brochures sent to emergency responders were deficient because they included statements about the characteristics of Highly Volatile Liquid (HVL) vapors, even though the Mid-Valley Pipeline did not transport HVLs. For example, the brochures allegedly emphasized responding to an emergency on a pipeline transporting HVLs, stating: "Keep in mind, Highly Volatile Liquid (HVL) vapors are heavier than air and can collect

in low areas such as ditches, sewers, etc."

Second, the Notice alleged that the PAP brochures sent to emergency responders included very little specific information about what emergency responders should expect of MVPL in the event of a pipeline leak or emergency. On the contrary, the brochures only described, in very general terms, what pipeline operators do when leaks occur.[2]

Third, the Notice alleged that the brochures sent to emergency responders identified the pipeline as being operated by Sunoco Pipeline, LP (SPLP), but pipeline markers located along the SPLP right-of-way (ROW) listed the operator's name as Mid-Valley Pipeline Company.

Fourth, the Notice alleged that at the time of the inspection, Respondent's PAP, dated December 17, 2015, did not include any documentation as to why compliance with all or certain provisions of API RP 1162 was not necessary.

In its Response, SPLP contested each of the allegations of violation. First, as for the allegation that the SPLP program failed to assess the unique attributes and characteristics of the Mid-Valley Pipeline, it argued that neither § 195.440(b) nor API RP 1162 requires an operator "to solely list only the products that were then being transported through the pipeline at the time that the PAP brochures were prepared." In addition, SPLP argued it had valid business and logistical reasons for formulating the PAP brochures the way it did. Respondent noted that it has a shared right-of-way (ROW) with other pipeline systems and is crossed in over 400 locations by other pipeline systems. Therefore, Respondent argued, "providing additional information to assist stakeholders in identifying and responding to pipeline releases that could occur in or near the SPLP ROW promoted overall pipeline safety and was in keeping with the spirit of API RP 1162."[3]

SPLP also argued that in prior years there had been a potential business need for SPLP to transport other products; therefore, it was prudent for Respondent to include information about different products in its PAP brochures. Furthermore, Respondent argued, as different grades of crude oil have varying characteristics, providing additional safety information could help educate

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[2] The Notice quoted the following language from the emergency-responder brochures:

> **"What does the pipeline company do if a leak occurs?**
> In order to prepare for the event of a leak, pipeline companies regularly communicate, plan and train with local emergency personnel such as fire and police departments. Upon the notification of an incident or leak, either by the pipeline company's internal control center or by phone, the pipeline operator will immediately dispatch trained personnel to assist public safety officials in their response to the emergency. Pipeline operators will also take steps to minimize the amount of product that leaks out and to isolate the pipeline."

Section 4.4 ("Emergency Preparedness Communications") of API RP 1162, explains the types of communications that operators should have with local emergency officials and that they should indicate that "detailed information has been provided to emergency response agencies in their jurisdictions." *See also, API RP 1162, Appendix C.*

[3] Response, at 2.

stakeholders in identifying and responding to pipeline releases. Taking a contrary approach, Respondent argued, could obligate operators to create a different PAP brochure for each commodity that is shipped through the pipeline, including different grades of such commodities.[4]

As for the second allegation that MVPL provided insufficient information to emergency responders concerning what to expect from SPLP in the event of an emergency, the company noted that in addition to an eight-page specialized PAP brochure, responder brochures were always accompanied by a letter containing specific company information and instructions on how to obtain additional detailed information and training. In addition, Respondent argued that the PAP brochure and letter were supplemented by annual emergency-responder training sessions throughout its pipeline system.

As for the assertion that MVPL incorrectly listed the operator's name on its pipeline markers, Respondent noted that the phone number on the markers was the correct number to contact and that since 2014, the company's PAP brochures had indicated that Mid-Valley Pipeline was operated by Sunoco Pipeline, LP.[5]

Regarding the allegation that MVPL's PAP did not include any documentation as to why compliance with all or certain provisions of API RP 1162 was unnecessary, Respondent argued that it was unclear what PHMSA intended by this assertion. Respondent also noted that the requirement to provide justification as to why compliance with all or certain provisions of API RP 1162 was unnecessary is found under § 195.440(c) not § 195.440(b). Moreover, Respondent claimed that it had not found, nor had PHMSA alleged, any instances where its PAP deviated from the general program recommendations of API RP 1162.

Analysis

I will address each of PHMSA's four allegations under Item 1 in order. As for the allegation that SPLP's brochures failed to describe the pipeline's unique attributes and characteristics, § 195.440(b) specifically requires pipeline operators to have a written public education program that assesses "the unique attributes and characteristics of the operator's pipeline and facilities." API RP 1162 cautions operators that "a one-size-fits-all public awareness program across all pipeline systems would not be the most effective approach."[6] More importantly, the language in paragraph (b) itself makes clear on its face that operators must not merely "follow the general program recommendations" of API RP 1162, but must *also* "assess the unique attributes and characteristics of the operator's pipeline and facilities." In providing guidance on § 195.440, PHMSA has stated that it has interpreted paragraph (b) to mean that "the operator's use of generic messages that are not specific to a particular pipeline system, stakeholder audience,

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[4] *Id.*

[5] *Id.*, at 4.

[6] API Recommended Practice 1162, Section 2.6 Baseline and Supplemental Awareness Programs, available at: https://primis.phmsa.dot.gov/comm/publicawareness/PARPI1162.htm (last accessed June 25, 2018).

and/or product information is likely to be unacceptable in most cases."[7] This interpretation has been reinforced and applied in various enforcement cases. Moreover, PHMSA has found that providing general pipeline-safety information alone or relevant information alongside non-relevant information fails to satisfy the "unique attributes and characteristics" requirement of the § 195.440(b).[8]

One of the main purposes of § 195.440(b) is to ensure that the public is made aware of the unique attributes and characteristics of the pipeline operated by each operator, to alert adjacent property owners, local governments, and first responders to the unique risks posed by that particular pipeline in the event of an accident, and to guide them in adjusting their own behavior to protect life, property and the environment.

SPLP's PAP brochures in 2013, 2014, and 2015, however, were generic and exemplify a "one-size-fits-all" approach to PAP brochures that does not follow API RP 1162. The brochures indicated that crude oil was a product transported by pipeline; however, they also listed nine other petroleum products that it could potentially carry without noting that crude oil was the *only* product then being transported by the Mid-Valley Pipeline system. The PAP brochures included content that was relevant to the identification of crude-oil leaks, but was presented alongside other non-relevant information or highlighted general facts that did not pertain to attributes and characteristics unique or specifically applicable to the Mid-Valley Pipeline system. In addition, the PAP brochures for first responders emphasized the characteristics of HVLs, a product that is not transported at all by the Mid-Valley Pipeline.

Thus, I find that the facts support a finding that the Respondent's PAP brochures in 2013, 2014, and 2015 failed to assess or describe the unique attributes and characteristics of the Mid-Valley Pipeline, as charged in the first allegation. SPLP's contention that neither § 195.440(b) nor API RP 1162 requires an operator "to solely list only the products that were then being transported through the pipeline at the time that the PAP brochures were prepared" fails to acknowledge the plain text of § 195.440(b), which requires that an operator's PAP "assess the unique attributes and characteristics of its pipeline and facilities." This interpretation is further supported by prior PHMSA decisions finding that a mixture of relevant and non-relevant information in stakeholder communications failed to satisfy the "unique attributes and characteristics" requirement in § 195.440(b).[9]

While SPLP contended that it had a valid reason to reference a broad range of products because it shared its ROW with other operators, I find this argument inconsistent with the requirement in the regulation to assess the "unique attributes and characteristics" of the pipeline. PHMSA has

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[7] PHMSA Public Awareness FAQs, Question 17, *available at* https://primis.phmsa.dot.gov/comm/PublicAwareness/Public%20Awareness%20Effectiveness%20FAQs%2020110927.pdf (last accessed August 10, 2017).

[8] MarkWest Ranger Pipeline Co., Corrected Final Order, CPF 2-2012-5007 *available at* https://primis.phmsa.dot.gov/comm/reports/enforce/FOCPEvent_opid_0.html?nocache=4128#_TP_1_tab_6 (last accessed September 20, 2018), at 4.

[9] *Id.*

previously advised operators that "the presentation of such different products/risks together is likely to result in confusion or the reader forgetting much of the material due to 'information overload,' further diminishing the likelihood that the reader will come away with an understanding of the 'unique attributes and characteristics' of the pipeline that affects it."[10]

SPLP's additional argument that PHMSA's position could force operators to change their brochures "for each and every commodity that is shipped through the pipeline (including different grades of such commodities)" is speculative and misses the key point. By providing additional safety information unrelated to the Mid-Valley Pipeline, *without emphasizing* the information specific to the Mid-Valley Pipeline, SPLP's PAP brochures in 2013, 2014, and 2015 failed to apprise stakeholders of the unique attributes and characteristics of the Mid-Valley Pipeline system that would be useful to them as stakeholders.

As for SPLP's response to the second allegation that the first-responder brochures included very little specific information about what emergency responders should expect of MVPL in the event of a pipeline leak or emergency, the company noted that its brochures indicated that trained SPLP personnel would be sent to assist public-safety officials. Additionally, Respondent's PAP brochures for emergency officials noted that SPLP's control center might stop or reduce the flow of product, dispatch pipeline emergency-response personnel and equipment, inform the responders of any special precautionary recommendations, act as liaison between emergency-response agencies and pipeline company personnel, and help bring the emergency to conclusion as quickly and safely as possible.[11] However, I find that the Notice failed to provide sufficient evidence to support the assertion that the brochures and accompanying letter did not provide emergency responders with specific information on what they should expect of SPLP in the event of a pipeline leak or emergency or how that lack of specificity violated API RP 1162 or the regulation. Therefore, I withdraw this portion of the allegation.

Regarding the third allegation that MVPL incorrectly listed the operator's name on its pipeline markers, Respondent did not challenge the allegation that its pipeline markers along the MVPL right-of-way incorrectly noted the name of the operator as "Mid-Valley Pipeline," but responded that, beginning in 2014, the PAP brochures stated that Mid-Valley Pipeline was operated by SPLP. The name of a pipeline is a unique identifier that assists the public in identifying a pipeline system. The benefit of a PAP brochure is greatly diminished if the reader does not recognize that the material pertains to a pipeline in their area because the name of the pipeline cannot be found anywhere on the PAP brochure. However, the Respondent recognized and resolved this shortcoming by 2014. Therefore, I withdraw this allegation for the years 2014 and 2015.

Lastly, concerning the fourth allegation that Respondent's PAP did not include any documentation as to why compliance with all or certain provisions of API RP 1162 was not necessary, Respondent noted that the requirement to provide justification as to why compliance with all or certain provisions of API RP 1162 was not necessary is found under § 195.440(c), not § 195.440(b). I agree and therefore withdraw this portion of the allegation as well.

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[10] *Id.*

[11] 2013, 2014, and 2015 Sunoco Emergency Official PAP Brochures, Violation Report, Exhibit A- Violation 1.

The withdrawal of allegations two and four, and the partial withdrawal of allegation three, are not fatal to the first allegation concerning Respondent's failure to assess the unique attributes and characteristics of its pipeline and facilities in its PAP. Therefore, for the reasons discussed above, I find that Respondent violated 49 C.F.R. § 195.440(b) by failing to assess the unique attributes and characteristics of its pipeline and facilities in its PAP brochures.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a), as quoted above, by failing to implement a written continuing public education program that followed the general program recommendations of API RP 1162. Specifically, the Notice alleged that MVPL failed to perform an adequate program-effectiveness evaluation of its PAP, as required under API RP 1162, Section 8.4, "Measuring Program Effectiveness" (Section 8.4) The Notice further alleged that the "2014 PAP Effectiveness Evaluation" performed by G2 Partners (Effectiveness Evaluation)[12] and provided by SPLP to demonstrate that it had assessed the effectiveness of its PAP program using the four measures identified in Section 8.4, contained statements that were generally unsupported by data or facts and simply reflected the opinion of the consultant retained to perform the evaluation.

The four effectiveness measures set forth in Section 8.4 and the Notice are as follows:

- Whether the information is reaching the intended stakeholder audiences;
- Whether the recipient audiences are understanding the messages delivered;
- Whether the recipients are motivated to respond appropriately in alignment with the information provided; and
- Whether the implementation of the Public Awareness Program is impacting bottom-line results (such as a reduction in the number of incidents caused by third-party damage).

The Notice addressed each of these four measures, alleging that the consultant retained by SPLP failed to provide any analysis of the data that had been provided to him by SPLP to support his conclusions about the overall effectiveness of SPLP's program. Moreover, it alleged that in one instance where specific data was actually provided, the data was inaccurate.

SPLP contested this allegation of violation and provided additional context and supporting documents.[13] Respondent also submitted additional data, including its 2015 Public Awareness Program Effectiveness Research Survey (PAPERS) results and Effectiveness Measurement Reports (EMRs) for 2012-2015.

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[12] 2014 Program Effectiveness Evaluation, Violation Report, Exhibit A-Violation 2.

[13] Respondent noted that the statements, data, and evaluation of the PAP pertained to the entirety of the pipeline mileage operated by SPLP that was subject to 49 C.F.R. § 195.440, not just the Mid-Valley Pipeline system.

Respondent argued that the statements in its Effectiveness Evaluation were supported by a vast amount of information and data provided to its consultant during his review of SPLP's PAP. Respondent noted that the consultant reviewed Business Reply Card (BRC) returns, SPLP's PAP (Version 3.4, dated March 31, 2014), the annual distribution of pipeline-safety materials to stakeholders, documents from liaison meetings with stakeholder groups, minutes of the annual meetings of the Public Awareness Program Team/Steering Committee, effectiveness measures tools such as the API PAPERS surveys in which SPLP participated, and annual EMRs generated by the third-party vendor utilized by SPLP to assist in program implementation. In addition, Respondent noted that the consultant who performed the effectiveness evaluation was a former community-liaison manager for PHMSA and had conducted approximately 40 PAP inspections while with PHMSA.

Analysis

Section 195.440(a) requires that pipeline operators follow the guidance in API RP 1162 in implementing their written continuing public education program. As mentioned above, API RP 1162, Section 8.4, states that operators "should assess progress" on the four measures quoted above to determine "whether the actions undertaken in implementation of this [Recommended Practice 1162] are achieving the intended goals and objectives" and to determine if revisions are necessary to the PAP plan, implementation, materials, frequency, or messages. [14] A "secondary purpose" is to demonstrate to company officials and federal and state regulators "the status and validity of the operator's Public Awareness Programs."[15]

But how are these goals to be accomplished? Neither § 195.440 nor the RP provides a specific formula or prescriptive approach for how operators must gather data on their PAPs or analyze them. This is left to the discretion of the operator, as is the decision whether to perform this work in-house or to use contractors. To determine whether an operator has met the minimum requirements of the regulation, we must look to several sources.

The first is the plain language and intent of the regulation itself. The intent of the regulation can be partially discerned from the preamble of the public awareness final rule itself,[16] which announces PHMSA's belief "that program evaluation is a key component for improving the effectiveness of operator public education programs and for improving pipeline safety awareness." The preamble states that

> . . . without periodic evaluations to determine if [public education] programs are reaching the intended audiences and increasing audience awareness of the appropriate and necessary safety information, the

[14] API Recommended Practice 1162, Section 8.4, Measuring Program Effectiveness, available at: https://primis.phmsa.dot.gov/comm/publicawareness/PARPI1162.htm (last accessed August 1, 2018).

[15] *Id.*, at Section 8.1, Purpose and Scope of Evaluation.

[16] Pipeline Operator Public Awareness Program Final Rule, 70 Fed. Reg. 28833, 28839 (May 19, 2005), available at https://www.gpo.gov/fdsys/granule/FR-2005-05-19/05-9464 (last accessed August 1, 2018).

> impact and effectiveness of an operator's program cannot be determined. Performing evaluations of the programs and making necessary adjustments are the only ways to ensure implementation as designed and effectiveness in achieving intended goals."[17]

A second source is the various guidance that PHMSA has provided to operators since the final rule was first adopted in 2005. For example, PHMSA has advised operators that gathering survey and assessment data alone does not constitute satisfactory completion of an effectiveness evaluation. Rather, it is necessary to conduct a rigorous analysis of the data, identify potential improvements, and document the analytical process by which conclusions were reached. Specifically, the guidance states that when evaluating a PAP, operators must be able to:

- Specify any findings or conclusions related to its program effectiveness, based on the gathered data;
- Identify and implement recommended changes and improvements to its program based on its conclusions; and
- Discuss the methodology used to evaluate its program effectiveness for all stakeholder audiences.[18]

A third source is the enforcement history of § 195.440, which can show how PHMSA has interpreted this regulation and provided fair notice to stakeholders of how it has applied the regulation through various enforcement actions.

Given these interpretive sources, I will consider each of four measures listed above and cited in the Notice, as follows:

8.4.1 Measure 1- Outreach: Percentage of Each Intended Audience Reached with Desired Messages

The Notice alleged that SPLP's 2014 Effectiveness Evaluation failed to address whether Respondent's messages had reached the intended stakeholder audiences. The Notice quoted the SPLP Effectiveness Evaluation as stating:

> Based on the number of mailings, the number of returns, and the estimated populations of each stakeholder group, it appears that Sunoco is offering the overwhelming majority of its stakeholders the opportunity to learn more about pipeline safety.

The Notice alleged that the Effectiveness Evaluation failed to substantiate its conclusions by

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[17] *Id.*

[18] PHMSA Public Awareness Program, FAQ, Question 11, available at https://primis.phmsa.dot.gov/comm/publicawareness/Public%20Awareness%20Effectiveness%20FAQs%2020110927.pdf (last accessed August 31,2017).

analyzing the actual number of mailings, the actual number of mailing returns, or what would be considered an acceptable number of responses, or any trends in the data over the evaluation period. In addition, the Notice alleged that the one reference to specific data regarding the percentage of intended audience reached was inaccurate. The Notice alleged that the Effectiveness Evaluation indicated that Respondent had a BRC response rate of approximately 2-3% in 2013, which was ostensibly above the industry standard of less than 1%.[19] However, the data provided during the PHMSA inspection indicated that SPLP had a BRC response rate of 0.73% in 2013, which is below the industry standard of 1%.[20]

Respondent argued that the Effectiveness Evaluation's conclusions were indeed supported by data from the annual PAP mailings and BRC returns. Respondent noted that from 2012-2015, 31,202 BRCs were returned out of 2,336,092 pipeline safety brochures sent out, which is an overall average response rate of 1.3%. Respondent stated that the response rate for some stakeholders was even higher. For farmers, Respondent noted that the response rate was over 4% in 2012 and almost 2% in 2013. For emergency officials, Respondent noted that the response rate was 3.55% in 2012, 3% in 2014, and 3.09% in 2015. Respondent argued that the higher response rate for various stakeholders supported the Effectiveness Evaluation's statement that Respondent had a response rate of approximately 2-3%.

API RP 1162, Section 8.4.1, Measure 1, provides that an operator "should establish a methodology to track the number of individuals or entities reached within an intended audience…."[21] The goal of the measurement is to "help evaluate the effectiveness of the delivery methods used." In this case, the Effectiveness Evaluation did not include information on the actual number of mailings, the actual number of mailing returns, what would be considered an acceptable response rate, trends observed over the course of the evaluation period, or details on how Respondent planned to improve its response rate. While Respondent provided the number of mailings and BRC returns in its Response, the record is still devoid of any evidence that Respondent actually conducted any sort of analysis of whether its outreach messages were effective in reaching stakeholders within the target geographic region along the pipeline.

As such, I find that Respondent failed to evaluate whether its PAP was reaching the company's intended stakeholder audiences.

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[19] 2014 Program Effectiveness Evaluation. *See* Pipeline Safety Violation Report (Violation Report) (December 9, 2016) (on file with PHMSA), Exhibit A-Violation 2, at 2, stating: "In 2013, over 700,000 total mailings went out. Sunoco enjoys a much higher response to Business Reply Cards (BRCs) than industry average (<1%, Sunoco ~2%-3%)."

[20] BRC Results 2013-2015, Violation Report, Exhibit A-Violation 2. *See also*, 2013 Effectiveness Measurement, page 2 of 54, Operator Response-Attachment 3.

[21] API Recommended Practice 1162, Section 8.4.1, Measuring Program Effectiveness, available at: https://primis.phmsa.dot.gov/comm/publicawareness/PARPI1162.htm (last accessed August 1, 2018).

8.4.2 Measure 2 - Understandability of the Content of the Message

The Notice alleged that the Effectiveness Evaluation's statements regarding the understandability of the content of the PAP message were unsupported. The Effectiveness Evaluation stated that "Sunoco survey results (see above) confirm that Sunoco stakeholders are at least as intelligent as most pipeline stakeholders." The Notice alleged that the Effectiveness Evaluation did not contain any of the referenced survey results. Moreover, the Notice stated that the regulatory standard is whether stakeholders have "understood" the messages delivered by Respondent, not whether they meet a certain level of intelligence.

Respondent argued that the statements in the Effectiveness Evaluation were indeed supported and that the consultant had reviewed and relied upon the data and analysis of BRC returns and EMRs generated from each distribution of pipeline safety materials to stakeholders. In addition, Respondent argued that the Effectiveness Evaluation's statement characterizing pipeline stakeholder "intelligence" was made upon a review of the analysis of BRC returns contained in the EMRs and was the consultant's professional opinion based on many years of experience, "having conducted approximately 40 PAP inspections while with PHMSA."[22]

I disagree. API RP 1162, Section 8.4.2, Measure 2, provides that an operator should assess the percentage of the intended stakeholder audience that understood and retained the key information in the PAP message received. The goal of the measurement is to "help evaluate the effectiveness of the delivery of the media, the message style, and content" and to "assess the effectiveness of delivery methods used." In this case, the Effectiveness Evaluation declared that, based on survey results, "Sunoco stakeholders are at least as intelligent as most pipeline stakeholders" but failed to include the referenced survey results or *any* data or statistics to support its claim regarding Sunoco stakeholder's level of understanding and retention of key information presented in the PAP messages. The EMR survey results provided by Respondent are simply a compilation of the results from the BRCs and do not contain any analysis of the BRC results, the notation of any trends, or any recommendations based on the BRC results.

PHMSA has advised operators that gathering survey and assessment data alone does not constitute satisfactory completion of an effectiveness evaluation. In following the provisions in API RP 1162, operators need to conduct an *analysis* of the data, document the analytical process by which their conclusions were reached, and identify potential improvements. The statements in SPLP's Effectiveness Evaluation were purely conclusory; the fact that the statements were made by a former PHMSA is immaterial. Since collecting data without analyzing it and making recommendations based on the raw data falls short of the regulatory requirement, I find that Respondent failed to evaluate the understandability of the content of its PAP message.

8.4.3 Measure 3 - Desired Behaviors by the Intended Stakeholder Audience

The Notice alleged that the Effectiveness Evaluation's conclusions concerning the third measure (i.e., desired behaviors by the intended stakeholder audience) were unsupported and, in some instances, irrelevant. In addressing this measure, the Effectiveness Evaluation stated:

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[22] Response, at 5.

> Based on feedback from business response cards, Sunoco's generally excellent rapport with landowners and other stakeholders along the pipeline; the relative lack of third party damages and near misses; the cooperation of Elected Officials and Emergency Responders; and the number of one-call tickets; it appears that Sunoco stakeholders do exhibit desired pipeline safety behavior.

The Notice alleged that the Effectiveness Evaluation did not contain any information on feedback from BRCs, the number of one-call tickets received, or the number of third-party damage or near-miss events that Respondent had experienced. Further, the Notice alleged that Respondent's "excellent rapport" with landowners and other stakeholders was irrelevant as to whether they were actually motivated to respond appropriately because of the PAP materials provided. In addition, the Notice alleged that it was unclear what type of cooperation from elected officials and emergency responders the Effectiveness Evaluation was being referred to or how that cooperation was relevant to the ability of local officials to respond appropriately, based upon the PAP materials that Respondent had provided.

Respondent argued that in preparing the Effectiveness Evaluation, MVPL's consultant had utilized data from the 2012 and 2013 EMRs and the 2013 PAPERS survey, and had made a characterization of the results based on his analysis and experience, instead of repeating the abundant quantity of data that was available. Respondent also provided a sampling of the data found in the EMRs.

I am unpersuaded that MVPL followed the process outlined in Measure 3. This metric requires an operator to determine whether "appropriate prevention behaviors have been learned and is [sic] taking place when needed and whether appropriate response or mitigation behaviors would occur and have taken place."[23] It is a measure that assesses learned and, if applicable, actual reported behavior. Again, the Effectiveness Evaluation failed to contain any survey results, data, or statistics to support its claims regarding the effectiveness of Respondent's PAP in ensuring that appropriate prevention behaviors had been learned and were taking place when needed. The Effectiveness Evaluation failed to explain how Respondent's "rapport" with stakeholders was relevant to determining if stakeholders exhibited desired behaviors, or how cooperation from Elected Officials and Emergency Responders demonstrated that they had learned or were exhibiting desired behaviors. The Effectiveness Evaluation mentioned that MVPL had a "relative lack" of third-party damage or "near misses," but failed to give specific statistics. One-call tickets were mentioned but without any qualifiers or analysis. In addition, the Effectiveness Evaluation failed to note any trends or make any recommendations based on analyzed data.

On the contrary, the 2012-2015 EMRs provided by Respondent merely compile data from the BRCs, without any analysis or any actual reported behaviors, such as the number of one-call tickets received or "near-miss" events that MVPL had experienced. Consequently, no correlation between the responses in the EMRs and the results of the effectiveness of

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[23] API Recommended Practice 1162, Section 8.4, Measuring Program Effectiveness, available at: https://primis.phmsa.dot.gov/comm/publicawareness/PARPI1162.htm (last accessed August 1, 2018).

Respondent's PAP can be derived.

For the reasons discussed above, I find that Respondent failed to evaluate whether the PAP had an impact on the desired behaviors by the intended stakeholder audience.

8.4.4 Measure 4- Achieving Bottom-Line Results

The Notice alleged that the statements in the Effectiveness Evaluation regarding the PAP's impact on bottom-line results were unsupported and unresponsive. In addressing Measure 4, the Effectiveness Evaluation stated:

> The Sunoco PAP has been in place since June 2006. Over the years it has evolved to its current state of refinement. It is actively managed and, because of its evolution, absent regulatory changes, it is unlikely that any major changes will be necessary. The foregoing analysis speaks for itself: It appears that Sunoco is doing an excellent job of implementing API RP 1162 and the affected stakeholders are benefitting from it.

The Notice alleged that the statement quoted above failed to present any data to support the conclusion that the PAP had an impact on bottom-line results. In addition, the Notice alleged that the Effectiveness Evaluation implied that MVPL had experienced third-party damages and "near misses" when addressing Measure 3, but in Measure 4 failed to address whether the number of third-party damages or "near misses" had changed over the four-year evaluation period.

Respondent argued that the consultant characterized the PAP based on his overall review of the program and analysis of all the data provided. In addition, Respondent noted that in 2015, the Mid-Valley Pipeline only had two third-party incidents and that the low number of incidents supported the Effectiveness Evaluation's statements regarding the implementation of the PAP.

Again, I disagree. Measure 4 provides that an operator should assess the bottom-line results of the PAP, such as a reduction in third-party incidents. In this case, the Effectiveness Evaluation did not present any data to justify its conclusion that Respondent's PAP had an impact on bottom-line results. It failed to note trends concerning third-party damage or "near misses," even though it was implied under the previous measure that Respondent had few incidences of third-party damage or "near misses." Instead, the Effectiveness Evaluation simply noted when the PAP was instituted and that it was "actively managed," conclusions that fail to provide any insight into the PAP's impact on bottom-line results. Although the Effectiveness Evaluation stated that changes to the PAP were not needed, it did not state any reasons or provide any analysis to support that conclusion.

Thus, the Effectiveness Evaluation failed to follow Measure 4 by demonstrating that Respondent had analyzed collected data, noted trends, and made decisions regarding the PAP based on analyzed results. In addition, the single statistic that that there were only two third-party incidents on its pipeline in 2015, is insufficient to draw any conclusions regarding the impact of Respondent's PAP on bottom-line results for the pipeline as a whole. Accordingly, I find that

Respondent failed to properly evaluate the bottom-line results of its PAP.

Since the inception of § 195.440 in 2005, PHMSA has required that performing a meaningful evaluation of an operator's public awareness program is necessary to ensure that the program achieves its intended goals.[24] PHMSA has advised operators of the importance of documenting the analytical process by which conclusions are reached.[25] In this case, MVPL's 2014 Effectiveness Evaluation failed to document, reference, or provide any supporting data to demonstrate that the conclusions presented in the report were based on the rigorous analytical process outlined ins API RP 1162. Therefore, for the reasons discussed above, I find that Respondent violated 49 C.F.R. § 195.440(a) by failing to implement a written continuing public education program that followed the general program recommendations of API RP 1162.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 2 in the Notice for violations of 49 C.F.R. §§ 195.440(b) and 195.440(a), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.440(b) (**Item 1**), Respondent must develop and distribute to the affected public, excavators, public officials, and emergency responders, new baseline message materials that clearly identify the subject pipeline as "Mid-Valley Pipeline Company" and adequately addresses the unique characteristics and attributes of the crude oil being transported by the Mid-Valley Pipeline.

2. With respect to the violation of § 195.440(a) (**Item 2**), Respondent must complete a written Public Awareness Program effectiveness evaluation that follows the general program recommendations of API RP 1162, Section 8.

3. Within 90 days of issuance of the Final Order, SPLP must submit to the Director, Southern Region, Office of Pipeline Safety, PHMSA, documentation demonstrating satisfactory completion of Items 1 and 2, including a copy of newly developed

[24] Pipeline Operator Public Awareness Program Final Rule, 70 Fed. Reg. 28833, 28839 (May 19, 2005), available at https://www.gpo.gov/fdsys/granule/FR-2005-05-19/05-9464 (last accessed August 1, 2018).

[25] PHMSA Public Awareness Program, FAQ, Question 11, available at https://primis.phmsa.dot.gov/comm/publicawareness/Public%20Awareness%20Effectiveness%20FAQs%2020110927.pdf (last accessed August 31,2017).

baseline message materials and a copy of the written program effectiveness evaluation.

4. It is requested (not mandated) that SPLP maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director, Southern Region, Office of Pipeline Safety, PHMSA. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed $200,000, as adjusted for inflation (49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

MAR 0 8 2019

Date Issued