



Sunoco Logistics

Sunoco Pipeline L.P.
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Sugar Land, TX 77478

February 1, 2017

VIA: Electronic Mail and FedEx

Mr. James Urisko
Director, Southern Region
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
233 Peachtree Street NE
Suite 600
Atlanta, GA 30303

**Re: CPF No. 2-2016-5006
Notice of Probable Violation and Proposed Compliance Order**

Dear Mr. Urisko:

The Notice of Probable Violation and Proposed Compliance Order (NOPV) was issued to the Mid-Valley Pipeline Company (MVPL) and received on December 12, 2016. The MVPL system is operated by Sunoco Pipeline L.P. (SPLP). This NOPV provided SPLP 30 days to respond. On December 22, 2016 SPLP requested an extension of time to respond until February 1, 2017. PHMSA approved this extension of time via electronic mail on January 9, 2017. Attached to this letter is the SPLP response.

Should you have any questions or require further information, please contact Todd Nardozzi of our Sugar Land, TX office at 281-637-6576 or via email at tgnardozzi@sunocologistics.com

Sincerely,

David R. Chalson
Sr. VP - Operations
Sunoco Pipeline L.P.

Enclosure

Cc: Karen McMillin
Kevin Docherty

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1. §195.440 Public awareness.

••• (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.

MVPL did not assess the unique attributes and characteristics of its pipeline and facilities in its Public Awareness Program (PAP) baseline message brochures. The MVPL pipeline transports crude oil and is operated by Sunoco.

In 2013 and 2015, the baseline message brochures MVPL sent (or otherwise delivered) to the affected public, excavators, emergency responders, and public officials did not identify the product transported as crude oil and did not describe the unique attributes and characteristics of the MVPL crude oil pipeline. In 2014, the baseline message brochures MVPL sent (or otherwise delivered) to excavators and emergency responders did not identify the product transported as crude oil and did not describe the unique attributes and characteristics of the MVPL crude oil pipeline.

The MVPL pipeline transported crude oil but did not transport gasoline, diesel, kerosene, heating oil, jet fuel, butane, ethane, propane, or natural gas in 2013, 2014, or 2015. Yet, all of the MVPL baseline message brochures for calendar years 2013, 2014, and 2015 contained the following statement:

"You are receiving this brochure because a Sunoco Pipeline LP., 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." [emphasis added]

Similarly, the MVPL did not transport highly volatile liquids (HVLs). Yet, the message brochures MVPL sent to emergency responders emphasized responding to an emergency on a pipeline transporting HVLs with statements such as,

"Keep in mind, Highly Volatile Liquid (HVL) vapors are heavier than air and can collect in low areas such as ditches, sewers, etc."

SPLP Response

PHMSA asserts that Sunoco Pipeline L.P. (SPLP) did not assess the unique attributes and characteristics of its pipeline and facilities in its PAP baseline message brochures. In claiming this, PHMSA appears to be stating that SPLP did not *solely* identify crude oil in the PAP brochures and accordingly, was overly inclusive in identifying other products besides crude oil, and that SPLP should have been listed on the communications, rather than MVPL. SPLP disputes this alleged violation from a legal and practical standpoint - because neither §195.440 nor API 1162 impose such requirements on an operator and because SPLP had valid business and logistical reasons for formulating the PAP brochures the way it did.



The primary objectives of a PAP developed by following API 1162 is to raise awareness to the affected public and key stakeholders of the presence of pipelines in their communities and also to provide general information about the “unique attributes and characteristics of the operator’s pipeline and facilities.” In this regard, it is undisputed that crude oil was identified in SPLP’s PAP baseline message brochures delivered to stakeholders in 2013, 2014 and 2015 as a product that was transported in pipelines operated by SPLP. As PHMSA seems to acknowledge in the NOPV, the MVPL pipeline transports crude oil and is operated by SPLP.

Yet, there is no requirement in either the regulation or API 1162 that required SPLP to solely list only the products that were then being transported through the pipeline at the time that the PAP brochures were prepared. Simply put, there is no prohibition in API RP 1162 on identifying additional commodities which were reasonably expected to be moved in the pipeline and providing additional safety information related to such commodities to the affected public and key stakeholders. In fact, in prior years, there was a potential business need of SPLP to batch other products in the MVPL pipeline such as butane, hence it was prudent of SPLP to keep information on such products in the PAP baseline message brochures. As conditions have changed, and that potential has become less likely in the foreseeable future, SPLP in turn has further narrowed the PAP baseline message brochures, as discussed below in this response.

Notably, crude oil is a hazardous liquid and shares many of the same characteristics as other hazardous liquids shipped via pipeline. Also a key consideration is that different grades of crude oil have varying characteristics such as gravity and vapor pressure. In some cases this can result in a particular grade of crude oil having characteristics closer to that of natural gasoline, for example, than that of a typical grade of crude oil. This supports providing additional safety information in the PAP baseline message brochures that can help educate stakeholders on the characteristics of a similar group of materials shipped via pipeline. In fact, PHMSA groups crude oil, gasoline, diesel, kerosene, heating oil and aviation fuel under Guide no. 128 of the *Emergency Response Guidebook* which is published by PHMSA. These are all hazardous liquids commonly shipped via pipeline. The effectiveness of SPLP’s PAP baseline message brochures, and the resulting benefit to the public being overly informed by the products that could reasonably be transported through the pipeline, guide in favor of more disclosure, not less. Taking a contrary position (as this NOPV has) could effectively place on the operator an obligation to change its PAP brochures for each and every commodity that is shipped through the pipeline (including different grades of such commodities) and close in time to such shipment where SPLP contends that this is better achieved by providing such information to stakeholders beforehand, as SPLP had done here.

Further, MVPL has shared Right of Way (ROW) with other pipeline systems and operators and is crossed in over 400 locations by other pipeline systems along its route from Texas to Michigan. Although not required by the regulations, providing additional information to assist stakeholders in identifying and responding to pipeline releases that could occur in or near the MVPL ROW promoted overall pipeline safety and was in keeping with the spirit of API RP 1162.



PHMSA asserts that the message brochures MVPL sent to emergency responders emphasized responding to an emergency on a pipeline transporting HVL's. While the brochures do indeed include information that would assist a responder under such conditions, it was included as an extra measure of caution regarding HVL products. However, beginning in 2016 and prior to the PHMSA inspection of the MVPL pipeline, SPLP decided to remove the content concerning HVLs from the PAP baseline message brochures sent to all stakeholders along the MVPL pipeline. Specifically, under the "Products that may be transported in your area" on the back page of the brochures all reference to HVL's has been removed.

The revised PAP baseline message brochures were delivered to emergency responders, schools, farmers, and excavators along the MVPL pipeline in 2016. The affected public, public officials, farmers, excavators, emergency responders and schools will all receive the revised brochures in 2017. Examples of the 2016 brochures are found under [Attachment 1](#) of this response.

Also, the brochures MVPL sent to emergency responders provided very little specific information on what emergency responders should expect of MVPL in the event of a pipeline leak or emergency. The emergency responder brochures contained the following statement:

"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."

SPLP Response

The information for Emergency Responders is within a specialized, eight-page responder brochure that contains copious information on responding to a pipeline emergency as well as links to additional Emergency Responder resources specific to pipelines. The responder brochure is always accompanied by a letter that contains specific Company contact data:

- Direct email address to Public Awareness Program Administrator
- Toll free general contact number
- Toll free 24/7 Emergency contact number

These letters also provide offers and instructions to Emergency Responders on how to obtain additional detailed information and training offered directly by SPLP. The letters for 2013 - 2015 were reviewed by PHMSA during the course of the inspection and copies of the 2013 and 2015 letters were included as evidence in the PHMSA Violation Report.

The annual distribution of PAP baseline message brochures and letters to Emergency Responders is supplemented by annual Emergency Responder training sessions across the entire system, which are yet another opportunity to get safety information and detailed pipeline specific information to the Emergency Response community in the areas where MVPL has pipelines.



It should also be noted that pipeline markers located along the MVPL right-of-way list the operator's name as *Mid-Valley Pipeline Company*, not *Sunoco Logistics* or *Sunoco Pipeline L.P.*

SPLP Response

The toll-free phone number (800-753-5531) indicated on all markers along the MVPL pipeline is the correct number to be contacted and is also listed in the PAP baseline message brochures to all key stakeholders and affected public. Additionally, beginning with the 2014 PAP baseline message brochures, MVPL pipeline was noted as being operated by SPLP. Beginning in 2016, the PAP baseline message brochures included information on the cover that SPLP is the operator of MVPL. These PAP baseline message brochures for 2013-2015 were reviewed by PHMSA during the course of the inspection and were included as evidence in the PHMSA Violation Report.

Lastly, at the time of PHMSA's inspection the MVPL PAP, titled *Sunoco Pipeline L.P. Public Awareness Program*, dated December 17, 2015, did not include any documentation as to why compliance with all or certain provisions of API's 1162 was not necessary.

SPLP Response

195.440(c) does state the following:

The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

However, it is unclear to SPLP what PHMSA intended by making the statement above as there was no specific example(s) provided by PHMSA of SPLP not following API RP 1162. As such, the NOPV did not include "... a statement of the evidence upon which the allegations are based" as required by 190.207(b). Moreover, SPLP has not identified any instances where its PAP deviates from and of the general program recommendations of API RP 1162.

Proposed Compliance Order

In regard to Item Number 1 of the Notice pertaining to MVPL's failure to address the unique characteristics and attributes of its crude oil pipeline system in its baseline message brochures, MVPL must develop and distribute to the affected public, excavators, public officials and emergency responders new baseline message material that clearly identifies the subject pipeline as "Mid-Valley Pipeline Company" and adequately addresses the unique characteristics and attributes of the crude oil being transported by MVPL.

In conclusion, SPLP contests the Probable Violation of 195.440(b) and the Proposed Compliance Order for all of the reasons stated above in response to each specific issue noted by PHMSA under Item 1. As such, SPLP requests that both the Probable Violation and Proposed Compliance Order be withdrawn by PHMSA.



2. §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).

MVPL did not implement a written continuing public education program that followed the guidance provided in API RP 1162 because it did not perform an adequate program effectiveness evaluation of its PAP. API RP 1162 Section 8.4, titled "*Measuring Program Effectiveness*," indicates operators should assess program effectiveness using the following measures:

- *Whether the information is reaching the intended stakeholder audiences (i.e. percentage of intended audience actually reached)*
- *If the recipient audiences are understanding the messages delivered*
- *Whether the recipients are motivated to respond appropriately in alignment with the information provided, and*
- *If 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)*

Upon request for documentation of MVPL's PAP effectiveness evaluation, MVPL personnel produced a letter dated December 19, 2014, from a consultant contracted by Sunoco to conduct the effectiveness evaluation. While the letter contained statements the consultant presented in an attempt to address the above-listed bullet items, the statements were generally unsupported by data or facts and simply reflected the consultant's opinion.

The consultant's letter did, however, contain one reference to specific data but that reference was incorrect. Data presented during the inspection showed that 703,180 total mailings went out and 5,104 responses were received in 2013; yielding a return of only 0.73%. The letter incorrectly stated,

"In 2013, over 700,000 total mailings went out. Sunoco enjoys a much higher response Business Reply Cards (BRCs) than industry average (<1%, Sunoco ~2% to 3%)."

SPLP Response

As an initial matter, with respect to the discussion contained herein regarding the SPLP PAP, it is important to note that the statements and data pertain to the entirety of the mileage of pipeline systems that SPLP operates and that mileage which is subject to compliance with 195.440 and not just the MVPL pipeline.

SPLP has a vast amount of information and data pertaining to the effectiveness of our PAP, and provided that information to the consultant who conducted the effectiveness evaluation referenced by PHMSA. The consultant is a former CATS Manager for PHMSA SW Region and is very experienced with evaluations of PAPs having conducted approximately 40 PAP inspections while with PHMSA.



The Consultant was also provided the current SPLP PAP (Version 3.4, dated March 31, 2014) and made an assessment of the Program based on all of the supporting documentation that was provided to him by SPLP, including the annual distribution of pipeline safety materials to stakeholders, liaison meetings with stakeholder groups, minutes of the annual meetings of the Public Awareness Program Team/Steering Committee, effectiveness measurements tools such as the API PAPERS surveys in which SPLP participated and annual Effectiveness Measurement Reports generated by the third party vendor utilized by SPLP to assist in program implementation.

The statement "Sunoco enjoys a much higher response to Business Reply Cards (BRCs) than industry average (<1%, Sunoco 2% to 3%)" is supported by the data from returns of BRCs over the past several years that BRCs have been included in the annual distribution of pipeline safety material to stakeholders. PHMSA was provided results of BRC returns over the years of 2012-2015 during the course of the 2016 inspection and this data was included as evidence in the PHMSA Violation Report. This data indicates that for those years, 31,202 BRCs were returned for all stakeholder groups out of the 2,336,092 pipeline safety brochures that were sent. That is an overall response rate of over 1.3%. While there is annual variation among the response rates for each stakeholder group, the overall takeaway is that the BRC response rate is >1%. Indeed, data for BRC responses shows that farmers in 2012 had over a 4% response rate and almost 2% in 2013. Emergency Officials have consistently demonstrated good returns of around 3%: 3.55% in 2012, 3.00% in 2014 and 3.09% in 2015, thus supporting the consultant's statement. The consultant was provided the data and observed that different stakeholder groups had response rates in the 2-3% range at various times.

While statistically significant response rates are important, the data from the responses is also analyzed following each year's PAP safety material distribution and the results used to improve future editions of the material, per the process described in Table 18 of the PAP - Effectiveness Analysis Process for Annual PAP Material Distribution. To gauge effectiveness annually, SPLP goes beyond what is required by API RP 1162 and includes BRCs with the annual distribution of safety messages. BRCs not only provide valuable feedback on the pipeline safety material distribution, but are also a vital effectiveness measurement tool and are utilized to enhance the PAP and messaging on an annual basis.

In addition to the above, SPLP has participated in the 2013 and 2015 Public Awareness Program Effectiveness Research Survey (PAPERS), which is an industry effort for pipeline operators designed to "...enable participants to answer key questions posed as part of RP 1162, such as:

- Is the information reaching the intended stakeholder audiences?
- Are the recipients understanding the messages delivered?
- Are the recipients motivated to respond appropriately in alignment with the information provided?

Participation in PAPERS provides each company with its own results and the aggregated results of all other companies participating in the same survey. The 2015 PAPERS results are found under **Attachment 2** of this response. The consultant was provided the 2013 PAPERS results and utilized that as another basis for the statements in the 2014 Effectiveness Evaluation.



With regards to the first bullet above:

The consultant's letter attempted to address the requirement to determine if the information had reached the intended stakeholder audiences with the following unsupported statement:

"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 consultant's letter contained no information on the actual number of mailings, the actual number of mailing returns, what would be considered acceptable, or whether any trends in the data were seen over the evaluation period.

SPLP Response

The consultant was provided the data from the annual PAP mailing and BRC returns. PHMSA was provided results of BRC returns over the years of 2012-2015 during the course of the 2016 inspection and this data was included as evidence in the PHMSA Violation Report. The data, referenced in our response above (over 2.3 million pipeline safety brochures sent from 2012 to 2015), indicates an overall response rate for BRCs that is greater than the industry average of <1%, as indicated by the third party vendor that performs mailing related services for the PAP. The results of the BRC returns are analyzed and utilized to enhance future messaging and overall effectiveness of the PAP.

With regards to the second bullet above:

The consultant's letter attempted to address the requirement to determine if recipient audiences had understood the messages delivered with the following unsupported statement:

"Sunoco survey results (see above) confirm that Sunoco stakeholders are at least intelligent as most pipeline stakeholders."

The consultant's letter did not contain any of the referenced survey results. Furthermore, the regulatory requirement is to determine whether stakeholders have understood the messages delivered by Sunoco, not to assess stakeholder intelligence.

SPLP Response

The consultant reviewed the data and analysis of BRC returns and the Effectiveness Measurement reports (EMR) that are generated from each distribution of pipeline safety material to stakeholders. The EMR is compiled each year and consists of analysis of the BRC returns from the annual PAP mailing. It is over 50 pages of content with detailed analysis of responses to the questions on the BRC for each stakeholder group and looks at the Outreach, Knowledge, Behavior, and Outcomes for each group. The statement by the consultant characterizing pipeline stakeholder "intelligence" was made following a review of the analysis of the BRC returns contained in the EMRs, and was based on the consultant's many years of experience evaluating PAPs while with PHMSA.



With regards to the third bullet above:

The consultant's letter attempted to address the requirements to determine if recipients of Sunoco's message materials were motivated to respond appropriately and in alignment with the message content with the following unsupported statement:

"Based on feedback from business response cards, Sunoco 's generally excellent rapport with landowner's 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. "

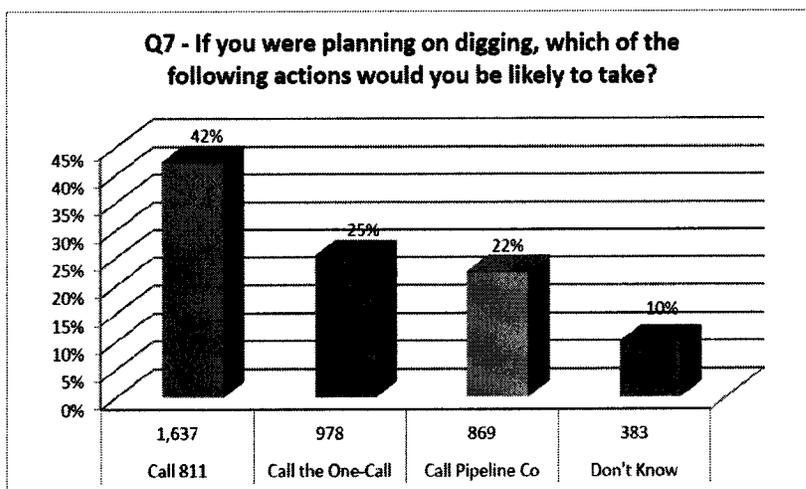
The consultant's letter did not contain any information on feedback received from business reply cards, the number of one call tickets received, or the number of third party damage or near miss events Sunoco had experienced. Sunoco's rapport with landowner's was not relevant to whether the landowner's or other stakeholder's were motivated to respond appropriately by the message materials. Moreover, it is unclear what type of cooperation from elected officials and emergency responders is referenced or what relevance this had to their ability to respond appropriately based upon the message materials provided by Sunoco.

SPLP Response

The returned Business Reply Cards (BRCs) from the stakeholder mailings are analyzed and the data summarized in the annual Effectiveness Measurement Report (ERM). The BRCs include questions to gauge stakeholder behavior, such as: "If you were planning on digging, which of the following actions would you be likely to take?", and "What would you likely do if you saw suspicious or construction related activity on or near a pipeline right-of-way?" The consultant utilized data from the 2012 and 2013 ERMs and the 2013 PAPERS survey and made a characterization of the results based on his analysis and experience instead of regurgitating the abundant quantity of data that was available.

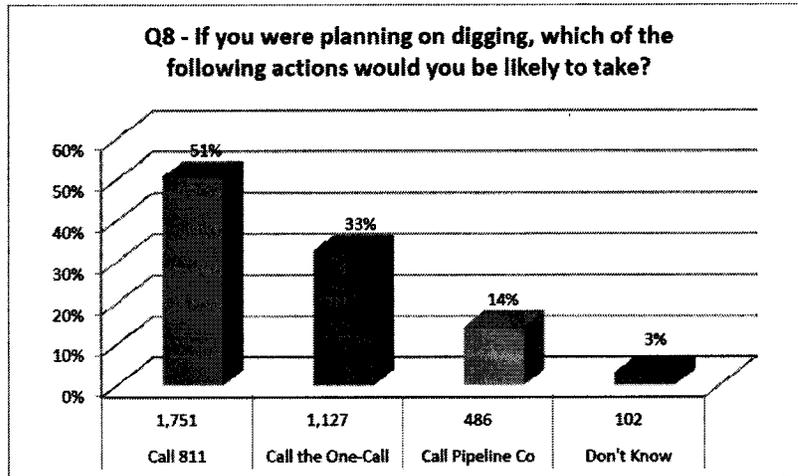
Below is a sample of data from the 2012 ERM:

Affected Public





Excavators



The Effectiveness Measurement Reports for years 2012-2015 are found under **Attachment 3** of this response. The data presented above for each year is found on the following pages of the respective ERMs:

Year	Affected Public	Excavator
2012	p. 10	p. 22
2013	p. 11	p. 32
2014	p. 12	p. 27
2015	p. 15	p. 24

With regards to the fourth bullet above:

The consultant's letter attempted to address the requirements to determine if the implementation of the PAP had impacted bottom-line results (such as a reduction in the number of incidents caused by third-party damage) with the following unsupported statement:

"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."

This statement does not present any data to support whether the PAP had any impact what so ever on bottom-line results. In fact, in the preceding paragraph of the letter, the consultant discussed a "relative lack of third party damages or near misses." This implied that Sunoco had experienced third party damages or near misses, but nothing in the letter indicated whether the number of third party damages or near misses increased, decreased or remained the same over the 4-year evaluation period. Lastly, at the time of PHMSA's inspection the MVPL PAP, titled *Sunoco Pipeline L.P. Public Awareness Program*, dated December 17, 2015, did not include any documentation as to why compliance with all or certain provisions of API's RP 1162 was not necessary.



SPLP Response

The consultant characterized the PAP based on his overall review of the program and analysis of all provided data. The record for third-party incidents for MVPL shows that there is a very low number of incidents. For example, since 2015, there have been only two (2) third-party incidents on the MPVL pipeline. This low number of incidents supports the consultant's statement about implementation of the Program.

Proposed Compliance Order

In regard to Item Number 2 of the Notice pertaining to MVPL's failure to perform an adequate effectiveness evaluation of its Public Awareness Program, MVPL must complete a written Public Awareness Program effectiveness evaluation that meets the requirements of API RP 1162, Section 8.

In conclusion, SPLP contests the Probable Violation of 195.440(a) and the Proposed Compliance Order for all of the reasons stated above in response to each specific issue noted by PHMSA under Item 2.

SPLP requests that PHMSA reevaluate and reconsider the findings of the Notice based on this written response and the attached materials. Upon completion of such process, SPLP requests that both the Probable Violation and Proposed Compliance Order relating to Items 1 and 2 above be withdrawn by PHMSA.