

DECEMBER 31, 2012

Mr. Chuck J. Bullard
President
Sunoco, Inc. (R&M)
1735 Market Street, Suite LL
Philadelphia, PA 19103

Re: CPF No. 3-2009-5016

Dear Mr. Bullard:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$32,500. It further finds that Sunoco, Inc. (R&M) has completed the actions specified in the Notice to comply with the pipeline safety regulations. When the civil penalty has been paid, this enforcement action will be closed. 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. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. David Barrett, Director, Central Region, OPS
Mr. John Pickering, Senior Vice President, Manufacturing, Sunoco, Inc. Refining &
Marketing, 1735 Market Street, Suite LL, Philadelphia, PA 19103
Mr. David Hoffman, Vice President, Toledo Refining Company, LLC, 1819 Woodville
Road, Oregon, Ohio 43616

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

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In the Matter of)	
)	
Sunoco, Inc. (R&M),)	CPF No. 3-2009-5016
)	
Respondent.)	
)	

FINAL ORDER

Between October 24-28, 2005, 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 on-site pipeline safety inspection of the facilities and records of Sunoco, Inc. (R&M) (Sunoco R&M or Respondent), in Toledo, Ohio. Sunoco R&M operates various crude oil and petroleum products pipelines and terminal facilities from Texas and the Gulf of Mexico to the Great Lakes Region.¹

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated September 17, 2009, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Sunoco R&M had violated 49 C.F.R. §§ 195.406(b) and 195.573(d) and proposed assessing a civil penalty of \$32,500 for one of the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the other alleged violation.

Sunoco R&M responded to the Notice by letters dated October 19 and November 19, 2009 (collectively, Response). The company did not contest the allegations of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Sunoco R&M did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

¹ <http://www.sunocologistics.com/Customers/Business-Lines/Asset-Map/130/> (last accessed December 12, 2012).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b), which states:

§ 195.406 Maximum operating pressure.

(a) ...

(b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b) by permitting the pressure in Line 59 to exceed 110 percent of the maximum operating pressure (MOP) of 605 psig. Specifically, the Notice alleged that on November 17, 2004, Sunoco R&M permitted Line 59 to operate at pressures ranging from 621.6 to 697.5 psig for a period of 34 minutes.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.406(b) by permitting the pressure in Line 59 to exceed 110 percent of the MOP of 605 psig.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(d), which states:

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

(a)...

(d) *Breakout tanks.* You must inspect each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank to ensure that operation and maintenance of the system are in accordance with [American Petroleum Institute] API Recommended Practice 651. However, this inspection is not required if you note in the corrosion control procedures established under § 195.402(c)(3) why compliance with all or certain operation and maintenance provisions of API Recommended Practice 651 is not necessary for the safety of the tank.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(d) by failing to cathodically protect three breakout tanks in accordance with API Recommended Practice 651 (RP 651). Specifically, the Notice alleged that Sunoco R&M failed to cathodically protect breakout tanks 1601, 1602, and 16015 or, alternatively, to demonstrate that under its procedures compliance with the cathodic protection requirements of RP 651 was not necessary for these tanks, based on their design and operating parameters and other relevant factors.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(d) by failing to cathodically protect breakout tanks 1601, 1602, and 16015 in accordance with RP 651.

These findings of violation will be considered prior offenses 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 \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. 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 \$32,500 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$32,500 for Respondent's violation of 49 C.F.R. § 195.406(b) by permitting the pressure in Line 59 to exceed 110 percent of the MOP of 605 psig. In its Response, Sunoco R&M explained that the root cause of the overpressure event was the inadvertent closure of a third-party valve at the downstream pumping station and that its P-16001 pump in operation at the time had a low-flow shutdown which activated after valve was closed. Respondent noted that no adverse impacts or product releases resulted from the event and that it was discovered and reported by Sunoco R&M's own personnel. Respondent further explained that it removed the P-16001 pump from service and began operating with a smaller pump which is not capable of exceeding the MOP on Line 59. For these reasons, Respondent requested that PHMSA consider eliminating the proposed penalty.²

With respect to the nature, circumstances, and gravity of this violation, any overpressure event has the potential to impact safety because normal pressure levels have been exceeded. Respondent is correct that fortunately no product releases resulted from the event, but this was taken into consideration when the proposed penalty amount was determined and would have been higher had a release been involved. While a third-party's equipment was involved, Respondent is culpable for the violation as pipeline operators are obligated to control the pressure in the lines they operate. I acknowledge the corrective action taken by Respondent following the event to begin using a pump with more appropriate capacity for the application, but this does not constitute a good-faith effort to comply with the regulation prior to the event.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of **\$32,500** for violation of 49 C.F.R. § 195.406(b).

Payment of the civil penalty must be made within 20 days of service of this Final Order. Payment may be made by sending a certified check or money order (containing the CPF Number for this case), made payable to "U.S. Department of Transportation," to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-341), P.O. Box 269039, Oklahoma City, Oklahoma 73125. Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions

² Response letter dated October 19, 2009.

are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$32,500 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.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to Item 2 in the Notice for violation of 49 C.F.R. § 195.573(d). 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. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 195.573(d) (**Item 2**), Respondent has completed the installation of cathodic protection systems on two of the tanks and has taken the third out of service.

Accordingly, I find that compliance has been achieved with respect to this violation. In addition, Respondent no longer operates the pipeline facilities that were the subject of this proceeding. Therefore, the compliance terms proposed in the Notice are not included in this Order. The current operator, Toledo Refining Company, LLC, is hereby provided with a copy of the Order and requested to operate the facilities in question in accordance with its terms.

Under 49 C.F.R. § 190.215, Respondent has the right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, 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. § 190.215. 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