



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

NOV 15 2005

Mr. P. Steve Broker
Vice President, Western Area
Sunoco Pipeline L.P.
907 South Detroit
Tulsa, OK 74120

Re: CPF No. 4-2005-5011

Dear Mr. Broker:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$11,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

A handwritten signature in black ink, appearing to read "James Reynolds", with a long horizontal line extending to the right.

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

In the Matter of)	
Sunoco Pipeline L.P.,)	
Respondent)	CPF No. 4-2005-5011

FINAL ORDER

On April 5–9, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration’s Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent’s East Texas Pipeline System and records. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated February 24, 2005, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 195.573(a)(1) and proposed assessing a civil penalty of \$11,000 for the alleged violation.

Respondent responded to the Notice by letter dated March 28, 2005 (Response). Respondent did not contest the facts alleged in the Notice, but offered an explanation and requested the alleged violation be withdrawn or the proposed civil penalty be reduced. Respondent did not request a hearing, and therefore waived its right to one.

FINDING OF VIOLATION

Section 195.573(a)(1) of Title 49 of the Code of Federal Regulation requires that Respondent conduct tests of a cathodic protection system at least once each calendar year, with intervals not to exceed 15 months to determine whether the protection complies with applicable criteria contained in NACE Standard RP0169-96. The Notice alleged Respondent failed to record readings at Test Stations TS 51, TS 68, and TS 70 during calendar years 2001, 2002 and 2003, and TS 52 during calendar years 2002 and 2003.

In its Response, Respondent acknowledged that it did not perform the tests as alleged, but contended that cathodic protection was nevertheless adequate in 2001, 2002 and 2003. In its Response and in an email to OPS dated April 22, 2004, Respondent stated that four of the five test stations identified in the Notice were not “critical” test points, and therefore tests at those locations were not necessary. Respondent cited readings taken nearby and at “local lows”

(locations where readings are typically lower than surrounding areas) to suggest that levels at the four missed noncritical locations were adequate. Respondent acknowledged that only one "critical" test location was missed (TS 52), but stated that the location was likely to have been adequate because casings at that location were traditionally at similar levels as the pipe, and were tested in 2001 and 2003 and found adequate. Based on this explanation, Respondent contended that it was in compliance with § 195.573(a)(1).

Section 195.573(a)(1) requires that operators verify the adequacy of cathodic protection on protected pipelines each calendar year. Failing to take readings at particular test stations for consecutive years, without documenting an acceptable justification for not performing those tests, prevents an operator from reaching a comprehensive, documented determination about the adequacy of its cathodic protection. Respondent did not perform tests at the above-referenced test locations for consecutive years. Although Respondent submitted in its Response an analysis of historic readings taken during the subject time period, Respondent's comparative analysis was performed after OPS's 2004 inspection. The after-the-fact determination conducted by Respondent did not meet the intent of the regulation, which required Respondent to determine at the time the tests were required to be performed whether cathodic protection is adequate. Respondent's analysis does not justify withdrawing the alleged violation because Respondent failed to take readings at particular test stations for consecutive years and did not document at the time the readings were expected to be performed any conclusive determination that tests were not necessary at those locations for determining the adequacy of the cathodic protection system. Accordingly, I find Respondent violated § 195.573(a)(1).

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

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a 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. The Notice proposed a total civil penalty of \$11,000 for violation of § 195.573(a)(1).

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

Respondent requested that the civil penalty be reduced because the pipeline was adequately protected between 2001 and 2003. Respondent explained that, although readings were missed at five test stations during consecutive years, many of the test stations were not "critical" for determining the adequacy of cathodic protection. Respondent further explained that some of the missed readings should be extrapolated from readings taken nearby and at "local lows" to show the line was under adequate protection.

Although cathodic protection levels may have been adequate when the readings were missed, Respondent did not document a justified decision to forgo testing at the identified locations. Therefore, Respondent failed to reach an acceptable determination about the adequacy of the cathodic protection system. Inadequate cathodic protection can result in corrosion on the pipe, which may cause a leak or rupture of the pipeline. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$11,000.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$11,000 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 United States District Court.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. However, if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative action and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.


for
Stacey Gerard
Associate Administrator
for Pipeline Safety

NOV 15 2005

Date Issued