U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

DEC 16 2010

1200 New Jersey Ave., SE
Washington, DC 20590

Mr. David A. Justin
Vice President, Operations
Sunoco Pipeline, L.P.
1818 Market Street, Suite 1500
Philadelphia, PA 19103

RE: CPF No. 4-2007-5040

Dear Mr. Justin:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of $119,000, and specifies actions that need to be taken by Sunoco Pipeline, L.P., to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, 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. Rod M. Seeley, Director, Southwest Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0041 0848]

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

In the Matter of	)	
	)	
Sunoco Pipeline, L.P.,	)	**CPF No. 4-2007-5040**
	)	
Respondent.	)	
	)	

FINAL ORDER

From March 13 through September 28, 2006, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Sunoco Pipeline L.P. (Sunoco or Respondent), in Oklahoma and Texas. Sunoco, a subsidiary of Sunoco Logistics Partners L.P., operates approximately 4,500 miles of hazardous liquid pipelines transporting crude oil, refined petroleum products, and natural gas liquids in Texas, Pennsylvania, Ohio, New Jersey, and several other states.

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated November 13, 2007, 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 Respondent had committed violations of 49 C.F.R. Part 195, proposed a civil penalty of $119,000 for the alleged violations, and proposed that Respondent be ordered to take certain measures to correct the alleged violations.

Respondent replied to the Notice by requesting a hearing in a letter to PHMSA dated February 4, 2008. Sunoco then submitted a written response to the allegations dated May 22, 2009, in which the company contested several of the allegations of violation and argued that the civil penalties should be eliminated or reduced (Response). By e-mail to PHMSA dated July 16, 2009, the company withdrew its request for a hearing, thereby waiving its right to a hearing and authorizing the entry of this Final Order.

FINDINGS OF VIOLATION

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

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.310(a), which states:

§ 195.310 Records.

(a) A record must be made of each pressure test required by this subpart, and the record of the latest test must be retained as long as the facility tested is in use.

The Notice alleged that Sunoco failed to retain a record of the latest pressure tests of its pipelines. Specifically, the Notice alleged that PHMSA asked to review such records when it inspected Sunoco's facilities in Corsicana, Texas, and that at that time, the company stated that most of these records were located in Sugar Land, Texas. The Notice alleged that when PHMSA subsequently visited Sunoco's Sugar Land, Texas office, the company stated that the records had been sent away to be scanned, and alleged further that the company never provided the records to PHMSA. Respondent did not contest this allegation of violation. Respondent's failure to produce complete records during or following PHMSA's inspections supports the conclusion that the company did not retain these records.

Accordingly, after considering all of the evidence, I find that Respondent violated § 195.310(a) by failing to retain a record of the latest pressure test for its pipelines.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.404, which states in relevant part:

§ 195.404 Maps and records.

(a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information:

(1) Location and identification of [its] pipeline facilities . . . .

(3) The maximum operating pressure of each pipeline . . . .

(4) The diameter, grade, type, and nominal wall thickness of all pipe.

(b) . . . .

(c) Each operator shall maintain the following records for the periods specified:

(1) The date, location, and description of each repair made to pipe shall be maintained for the useful life of the pipe.

(2) The date, location, and description of each repair made to parts of the pipeline system other than pipe shall be maintained for at least 1 year.

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

The Notice alleged that Respondent violated § 195.404 by failing to maintain: (1) current maps of its pipeline system; (2) documentation on how the maximum operating pressure (MOP) of each pipeline was calculated; (3) documentation providing data on pipe specifications; and (4) records of each pipeline's repair history.

Respondent did not contest most of the allegations and provided information on the steps it had taken to satisfy the proposed compliance order. However, Respondent disagreed with the statement in the Violation Report that the alignment sheets or system maps examined during the

PHMSA inspection were the "original alignment sheets" that had not been updated.[1] Sunoco contended that the alignment sheets had been periodically updated over the history of the pipeline and that the documents demonstrating compliance with the requirements of § 195.404 were available at the time of the inspection.

The evidence in the record demonstrates that Sunoco presented alignment sheets to OPS representatives during the PHMSA inspection, that such alignment sheets were being used by Sunoco operations personnel, and that they had not been updated to reflect recent system changes.[2]

Respondent also contended that certain documentation regarding pipe specifications was available at the time of the PHMSA inspection. However, it is apparent from the record that Sunoco did not provide this documentation to PHMSA during the inspection. Respondent did not contest the allegations regarding its failure to maintain records of MOP and pipeline repairs.

After considering all of the evidence, I find that Respondent violated § 195.404 by failing to maintain current maps of its pipeline systems, records of the MOP of each pipeline, records of pipe specifications of the system, and pipeline repair records.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a), which states in relevant part:

> **§ 195.410 Line markers.**
>
> (a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:
>
> (1) Markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known.

The Notice alleged that Respondent failed to place line markers in sufficient number over a buried pipeline in the Abilene, Texas area. In its Response, Sunoco did not contest this allegation. Accordingly, I find that Respondent violated § 195.410(a) by failing to place sufficient line markers over a buried pipeline.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a), which states:

> **§ 195.412 Inspection of rights-of-way and crossings under navigable waters.**
>
> (a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

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[1] Pipeline Safety Violation Report at 6 (Nov. 13, 2007) (Violation Report).

[2] Violation Report at 6.

The Notice alleged that Respondent failed to inspect surface conditions on or adjacent to certain pipeline rights-of-way at intervals not exceeding 3 weeks. Specifically, the Notice alleged that Sunoco could not provide records of aerial patrols of its pipelines in the Corsicana area for 2005 and 2006.

In its Response, Sunoco argued that it had carried out the required inspections, but acknowledged that it lacked records for a number of inspections. Sunoco argued that it could substantiate the inspections for which it lacked records with invoices and "aerial investigation reports." However, Sunoco submitted neither these invoices nor aerial investigation reports. Instead, Respondent submitted lists of dates on which it claimed patrols were conducted on the West Texas Gulf and Corsicana to Wichita Falls pipelines in 2005 and 2006, with notations indicating patrols that can allegedly be substantiated by invoices. Respondent maintained that these lists show that it conducted nearly twice as many aerial patrols as required by the regulations.

Section 195.412(a) requires Sunoco to inspect surface conditions along its rights-of-way at designated intervals. Respondent is further required to maintain records of each right-of-way inspection pursuant to § 195.404(c)(3). Merely providing lists of dates and references to invoices does not demonstrate that the required inspections took place, because they do not include the precise rights-of-way inspected, observations made by the individual performing the inspection, recommendations regarding necessary follow-up activities, or any information about follow-up actions that were performed. Respondent has not provided any actual inspection records or other such documentation or records to demonstrate that the company performed the inspections as required in the regulation.

Accordingly, after considering all of the evidence, I find that Respondent violated § 195.412(a) by failing to inspect the surface conditions on or adjacent to each pipeline right-of-way at least every three weeks.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.420, which states in relevant part:

> **§ 195.420 Valve maintenance.**
>
> (a) Each operator shall maintain each valve that is necessary for the safe operation of its pipeline systems in good working order at all times.
>
> (b) Each operator shall, at intervals not exceeding 7 ½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

The Notice alleged that Respondent failed to properly inspect each mainline valve. Sunoco's procedures provide that, as part of regular mainline valve inspections, each valve must be partially operated. The Notice alleged that during certain valve inspections, some mainline valves could not be partially operated to determine that they were functioning properly due to the scheduling of commodity movements, and that Sunoco never completed follow-up inspections of those valves.

In its Response, Sunoco did not contest the allegation of violation. Accordingly, I find that Respondent violated § 195.420 by failing to inspect its pipeline valves properly.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

> **§ 195.428 Overpressure safety devices and overfill protection systems.**
>
> (a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year . . . inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent failed to inspect and test certain overfill protection devices at intervals not exceeding 15 months, but at least once each calendar year. Specifically, the Notice alleged that Sunoco inspected the overfill protection devices in September 2005, but that the operator could not provide records of inspections of the devices during the 15-month period preceding that inspection.

In its Response, Sunoco did not contest the allegation that it could not provide the records of prior inspections, but it objected to the proposed finding of violation because the company became the operator of the West Texas Gulf Pipeline on January 1, 2005, and the Corsicana to Wichita Falls pipeline on August 1, 2005. Sunoco argued that it was not obligated to have records concerning inspections that occurred prior to its operation of the pipelines and explained that it had made "all reasonable efforts" to obtain the records from the previous operator.

Section 195.428(a) requires Sunoco to ensure that its overfill protection devices are inspected at intervals not exceeding 15 months, but at least once each calendar year. In order to demonstrate that the inspections it performed in September 2005 were conducted within 15 months of the previous inspections in compliance with § 195.428(a), Sunoco must have records demonstrating the prior inspections occurred no earlier than June 2004.[3] The fact that Sunoco took over operation of the facilities eight months or less before performing its own inspection of the devices does not exempt Respondent from these requirements.[4] As the operator the pipeline facilities, Sunoco is responsible for full compliance with each applicable pipeline safety regulation.

Accordingly, I find that Respondent violated § 195.428(a) by failing to demonstrate that it had inspected and tested each overfill protection device at intervals not exceeding 15 months, but at least once each calendar year.

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 195.432, which states:

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[3] Respondent is required to maintain records of each inspection, pursuant to § 195.404(c)(3), for at least 2 years.

[4] I reject Respondent's rationale that compliance with inspection intervals and record keeping requirements is somehow waived by a change in ownership or operating responsibility. I further note there is no provision in the safety regulations permitting new operators to make mere assumptions about when past inspections occurred simply because they did not obtain from the prior operator records required to be kept by regulation.

§ 195.432 Inspection of in-service breakout tanks.

(a) . . . .

(b) Each operator shall inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to section 4 of API Standard 653. However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3) . . . .

(d) The intervals of inspection specified by documents referenced in paragraphs (b) and (c) of this section begin on May 3, 1999, or on the operator's last recorded date of the inspection, whichever is earlier.

The Notice alleged that Respondent failed to inspect the physical integrity of certain breakout tanks according to section 4 of API Standard 653 (API 653).[5] Specifically, the Notice alleged that Sunoco failed to perform a monthly inspection of Corsicana breakout tanks 2660, 2661, and 2692 in January 2006 and in any months prior to September 2005, as evidenced by the absence of any records demonstrating such inspections were performed.[6] The Notice further alleged that Respondent failed to inspect several out-of-service breakout tanks, namely Corsicana tanks 2601, 2603, 2724, Wortham tank 42, and Ringold tank 2720.

In addition, the Notice alleged that those monthly inspections that Respondent did perform failed to identify issues that PHMSA observed during its field inspection, such as vegetation growth between steel tank rims and ring walls and settling around the foundation. Also, the Notice alleged that Sunoco had failed to act on many of its own recommendations for follow-up made as a result of its tank inspections, such as those regarding foundation problems, erosion, and seeps or leaks. The evidence in the record included a spreadsheet listing the Corsicana breakout tanks, inspection recommendations for certain tanks, and monthly tank inspection reports.

In its Response, Sunoco contested the allegation that it failed to comply with § 195.432. In regard to the allegation that the company failed to conduct monthly inspections of in-service breakout tanks, the company contended that it could not locate monthly tank inspection records for January 2006 "due to problems with administrative help responsible for filing."[7] Respondent also explained that it became the operator of the West Texas Gulf Pipeline on January 1, 2005, and of the Corsicana to Wichita Falls 16-inch pipeline on August 1, 2005, and that it is not unreasonable for it to take a year to implement Sunoco's programs. Sunoco also explained that the company did not receive any monthly inspection records from the previous operator for the period prior to Sunoco becoming operator. Therefore, Sunoco did not have any records for the months prior to September 2005.

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[5] American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction," incorporated by reference at 49 C.F.R. § 195.3.

[6] Inspection intervals are provided in § 6 of API 653. Section 6.3.1.2 of API 654 specifies that routine in-service inspections shall be conducted at intervals not exceeding one month. Formal internal inspections are to be conducted at intervals calculated based on corrosion rate, but at least at intervals not exceeding 20 years. If the corrosion rate is not known, however, the interval for internal inspections shall not exceed 10 years.

[7] Response at 10.

Sunoco is required by regulation to perform tank inspections at the intervals established by Section 6.3.1.2 of API 654, including monthly in-service inspections and more in-depth out-of-service inspections at intervals calculated based on corrosion rate, but ranging from 10 to 20 years. Sunoco is also required to keep a record of each tank inspection for at least 2 years or until the next inspection or test is performed, whichever is longer.[8] At the time of the PHMSA inspection in mid-2006, Sunoco did not have inspection records to demonstrate that certain monthly tank inspections had been performed for Corsicana breakout tanks 2660, 2661, and 2692. The absence of inspection records supports a finding that the company failed to perform in-service tank inspections during the time Sunoco had operational control over the subject breakout tanks.

In regard to the inspection of certain out-of-service breakout tanks, Sunoco contended that for Corsicana tanks 2601 and 2603, the company had no record of prior inspections from the previous operator, and that therefore § 195.432(d) permitted Sunoco to use a 20-year inspection interval running from May 3, 1999, because Sunoco assumed inspections had never been performed by the previous operator. For Corsicana tank 2724, Ringold tank 2720, and Wortham tank 42, Sunoco indicated that it had inspection records from the prior operator and committed to "complete future inspections at the required interval beginning with the date that we became operator."[9]

Respondent's conduct is not consistent with § 195.432 in several respects. First, Sunoco used the latest possible interval date of May 3, 1999, merely because the company did not receive inspection records from the previous operator. Section 195.432(d) provides that the intervals for inspection "begin on May 3, 1999, or on the operator's last recorded date of the inspection, *whichever is earlier.*"[10] The regulation is a minimum safety standard to ensure the integrity of breakout tanks, and in some situations operators may find the need to inspect tanks at shorter intervals. The records that Sunoco acquired from the previous operator indicated that the previous operator had an inspection program for breakout tanks, making it probable that the subject tanks were previously inspected. Therefore, Sunoco was required to identify the dates of the previous inspections to calculate the proper inspection interval in accordance with § 195.432. If Respondent truly could not determine the last recorded date of inspection, the company should have performed an inspection on the tanks upon acquisition to ensure compliance with the regulation. Second, with regard to Corsicana tank 2724, Ringold tank 2720, and Wortham tank 42, for which Sunoco had prior inspection records, Sunoco committed in its Response to complete future inspections at intervals "beginning with the date that [Sunoco] became operator."[11] This is also inconsistent with § 195.432, because the regulation requires intervals to be based on prior inspection dates, not the date operating responsibility shifted to Sunoco.

In its Response, Sunoco did not address the allegations in the Notice that it had failed to identify certain issues during inspections, such as vegetation growth and settling around foundation, or that it had failed to act on recommendations resulting from integrity inspections.

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[8] § 195.404(c)(3).

[9] Response at 11.

[10] § 195.432(d) (emphasis added).

[11] Response at 11.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.432 by failing to inspect the physical integrity of certain breakout tanks according to API 653.

Item 9: The Notice alleged that Respondent violated 49 C.F.R. § 195.434, which states:

> **§ 195.434 Signs.**
> Each operator must maintain signs visible to the public around each pumping station and breakout tank area. Each sign must contain the name of the operator and a telephone number (including area code) where the operator can be reached at all times.

The Notice alleged that Respondent failed to maintain signs visible to the public around the Colorado City, Texas breakout tank facility. In its Response, Sunoco did not contest the allegation, and provided information regarding corrective action taken to install new signs "even though station signs had not been found lacking in previous PHMSA inspections." Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.434 by failing to maintain signs visible to the public around the Colorado City, Texas breakout tank facility.

Item 10: The Notice alleged that Respondent violated 49 C.F.R. § 195.436, which states:

> **§ 195.436 Security of facilities.**
> Each operator shall provide protection for each pumping station and breakout tank area and other exposed facility (such as scraper traps) from vandalism and unauthorized entry.

The Notice alleged that Respondent violated § 195.436 by failing to provide protection from vandalism and unauthorized entry for the Colorado City, Texas breakout tank facility. Specifically, the Notice alleged that the facility was not protected because it had security fencing only on one side of the facility, and hog wire fencing on the other three sides, which was inadequate to protect against vandalism and unauthorized entry.

In its Response, Sunoco contested the allegation, arguing that the level of security provided by the existing fence was appropriate given the facility's location in a rural area with no documented history of trespass or vandalism. While high-risk locations may certainly require additional security measures, § 195.436 requires at a minimum that operators surround even low-risk facilities with protection from unauthorized entry and vandalism, such as a security fence.[12] In the present case, protection for Respondent's breakout tank facility consisted of six-foot-high chain link fence with barbed wire on one side, but only a farm-type fence with no barbed wire on the other sides, which did not provide sufficient protection from unauthorized entry.

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[12] *See, e.g.*, PHMSA Interpretation of § 195.436 (Aug. 13, 1980) (finding a tank farm in a rural area needs more than just livestock fencing or hourly patrols) (*available at:* http://www.phmsa.dot.gov/pipeline/regs/interps); *In the Matter of Jayhawk Pipeline, L.L.C.*, Final Order, CPF No. 3-2002-5021, 2003 WL 25429861 (Dec. 11, 2003) (rejecting the assertion that an operator may take lesser precautions for facilities located in isolated rural areas) (*available at:* http://www.phmsa.dot.gov/pipeline/enforcement).

In its Response, Sunoco also contended that this issue had not been the subject of a previous citation by PHMSA, and that PHMSA has historically issued only Warning Letters for allegations involving § 195.436. PHMSA has broad discretion in selecting appropriate enforcement tools, however, and may issue Warning Letters or Notices of Probable Violation when finding a probable violation during an inspection. PHMSA has, in fact, issued Notices of Probable Violation in the past for violations of § 195.436.[13] Furthermore, PHMSA is not precluded from taking enforcement action for a violation that was not identified during a previous inspection.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.436 by failing to provide protection from vandalism and unauthorized entry for the Colorado City, Texas breakout tank facility.

Item 11: The Notice alleged that Respondent violated 49 C.F.R. § 195.571, which states:

> **§ 195.571 What criteria must I use to determine the adequacy of cathodic protection?**
>
> Cathodic protection required by this subpart must comply with one or more of the applicable criteria and other considerations for cathodic protection contained in paragraphs 6.2 and 6.3 of NACE Standard RP 0169 (incorporated by reference, *see* § 195.3).

The Notice alleged that Respondent failed to ensure that cathodic protection complied with applicable criteria in paragraphs 6.2 and 6.3 of NACE Standard RP 0169 (NACE RP0169).[14] Specifically, the Notice alleged that Sunoco failed to properly consider voltage (IR) drop when evaluating pipe-to-soil readings under the -850 mV criterion for determining the adequacy of cathodic protection. Furthermore, the Notice alleged that Sunoco could not demonstrate through any test or study that its cathodic protection met the alternative 100 mV criterion.

In its Response, Sunoco contested the allegation of violation and contended that it had adequately considered IR drop in evaluating the adequacy of cathodic protection. Sunoco acknowledged that it primarily used the -850 mV criterion, which is specified in paragraph 6.2 of NACE RP0169, but also indicated that it used the 100 mV depolarization criterion in certain locations. Respondent listed data collection methods it used to consider IR drop, such as: close-interval surveys on a five- to seven-year basis; depolarized potential surveys to establish baseline data for the 100 mV depolarization criterion; in-line inspections at five-year maximum intervals to evaluate effectiveness of corrosion control; inspections of exposed coating and pipe surface for external corrosion; IR-free readings at locations such as pipe risers, spans, and pipe exposures; and leak history. Respondent also submitted a table of close-interval survey and in-line inspection dates.

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[13] *See id.*; *see also In the Matter of Nustar Logistics, L.P.*, Final Order, CPF No. 4-2005-5048, 2009 WL 1211363 (Mar. 11, 2009).

[14] NACE International Standard Recommended Practice 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems," incorporated by reference at § 195.3.

Section 195.571 specifies that cathodic protection must comply with one or more of the criteria established in paragraphs 6.2 and 6.3 of NACE RP 0169. Paragraph 6.2.2.1.1 of NACE RP0169 establishes one of the criteria as a negative potential of at least 850 mV with the cathodic protection applied, but "[v]oltage drops other than those across the structure-to-electrolyte boundary must be considered for valid interpretation of this voltage measurement." Since Sunoco primarily uses the -850 mV criterion, the company must consider IR drop for a valid interpretation of this measurement.

Respondent's use of close-interval surveys and the use of "instant off" potentials in comparison to polarized potentials is an acceptable method to evaluate IR drop, provided that such information is then used to evaluate annual cathodic protection survey readings. This means that readings with the current applied must be at least as negative as -850 mV plus the negative of the IR drop determined for each particular location. This methodology may not be used, however, for those pipelines in which Respondent did not perform a recent close-interval survey, or for pipelines acquired without any close-interval survey information.

The other methods that Respondent used to evaluate corrosion that had already taken place –such as in-line inspections, inspections of exposed pipe, and leak histories – are not considered substitutes for evaluating the adequacy of current cathodic protection readings. In addition, pipe-to-soil potentials taken at the pipe surface when a pipe is excavated have a high potential for error, in part because the soil around the pipeline has been disturbed and may not provide a true reading of the polarized potentials when the pipe is normally covered with soil. Such readings do not provide a reliable assessment of IR drop for use in evaluating the adequacy of cathodic protection readings with current applied.

For those pipelines without a recent close interval survey with instant off readings, Sunoco has not demonstrated that it properly considered IR drop in the cathodic protection readings in order to meet the -850 mV requirement. Respondent also has not submitted documentation demonstrating compliance with the alternative 100 mV criterion, such as actual studies or polarization/depolarization measurements.

Therefore, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.571 by failing to properly consider IR drop to ensure that cathodic protection complied with applicable criteria.

Item 12: The Notice alleged that Respondent violated 49 C.F.R. § 195.589 which states:

> **§ 195.589 What corrosion control information do I have to maintain?**
> (a) . . . .
> (c) You must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart [subpart H, §§ 195.551–195.589] in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. You must retain these records for at least 5 years, except that records related to §§ 195.569, 195.573(a) and (b), and 195.579(b)(3) and (c) must be retained for as long as the pipeline remains in service.

The Notice alleged that Respondent violated § 195.589 by failing to maintain records required to demonstrate the adequacy of corrosion control measures for the West Texas Gulf (26") pipeline. Specifically, the Notice alleged that, at the time of the inspection, Respondent could not provide required records of corrosion control inspections for the West Texas Gulf (26") Pipeline.

In its Response, Sunoco denied the allegation. Respondent claimed that it obtained the required records from the previous operator of the pipeline, and attached a spreadsheet listing relevant records that Sunoco does and does not possess. Sunoco did not provide the actual records, however, and I do not find the spreadsheet submitted proves that such records exist or that Respondent indeed possesses them. Secondly, the spreadsheet itself indicates that Respondent is missing a substantial number of records since January 2002, including all the records of atmospheric corrosion inspections for 2004.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.589 by failing to maintain records of required corrosion control inspections with respect to the West Texas Gulf (26") pipeline.

Item 15: The Notice alleged that Respondent violated 49 C.F.R. § 195.579(a), which states:

> **§ 195.579 What must I do to mitigate internal corrosion?**
> (a) *General.* If you transport any hazardous liquid or carbon dioxide that would corrode the pipeline, you must investigate the corrosive effect of the hazardous liquid or carbon dioxide on the pipeline and take adequate steps to mitigate internal corrosion.

The Notice alleged that Respondent failed to investigate adequately the corrosive effect of the hazardous liquid transported in its pipelines. In its Response, Sunoco contested the allegation. Respondent stated that it commissioned an analysis of internal corrosion of the West Texas Gulf Pipeline, and that this report, dated November 29, 2005, satisfied the requirements of § 195.579(a).

The report cited by Respondent addressed corrosion only on mainline pipes, not on "dead-legs" or infrequently used pump station pipes. The evidence in the Violation Report indicates that two Sunoco pipelines, neither of which is the West Texas Gulf Pipeline, have experienced leaks caused by internal corrosion, and that neither leak occurred on a mainline pipe. One leak occurred on a "dead leg," and another occurred on a lateral pipeline used for inputting trucked barrels of crude oil. Particularly given Respondent's history of leaks along such pipelines, the November 2005 study, which was limited to assessing corrosion on a single mainline pipeline, was inadequate.

The Response also described Sunoco's efforts to monitor internal corrosion on the specific lateral truck line that experienced a leak as well as its plan to identify and eliminate "dead-legs." Respondent also stated that it has instituted a program to perform guided-wave scans on low-flow lines, and that it has attempted to ensure that low-flow lines are operated periodically to reduce the possibility of corrosion. Unfortunately, the company did not submit specific information, such as inspection records or written procedures, documenting its efforts to investigate the corrosive effect of hazardous liquid on non-mainline pipes. Respondent also did

not indicate when these efforts began, nor did it explain whether its efforts to investigate corrosion have extended across its entire system.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.579(a) by failing to investigate adequately the corrosive effect of the hazardous liquid transported in its pipeline system.

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.

The Notice proposed a total civil penalty of $119,000 for the violations of 49 C.F.R. §§ 195.412(a) (Item 5), 195.420 (Item 6), 195.428(a) (Item 7), 195.432 (Item 8), 195.436 (Item 10), and 195.589 (Item 12).

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, PHMSA 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, PHMSA may consider any ascertainable economic benefit gained from the violation and such other matters as justice may require.

Respondent has a substantial history of prior offenses. Respondent was the subject of seven final orders containing findings of violation in the five years preceding the issuance of the Notice. These prior offenses involved civil penalties totaling $407,200 as well as compliance orders. Thus, Sunoco's history of prior offenses provides no support for reducing the civil penalties in this case. Respondent has provided no evidence suggesting that it is unable to pay the proposed civil penalty or that paying the penalty would adversely affect its ability to continue in business. PHMSA has no evidence that Respondent gained any ascertainable economic benefit from the violations.

The other assessment factors are considered in the discussion of each Item below.

Item 5: The Notice proposed a civil penalty of $11,000 for Respondent's violation of 49 C.F.R. § 195.412(a). As discussed above, I found that Respondent violated § 195.412(a) by failing to inspect the surface conditions on or adjacent to its pipeline rights-of-way at least every three weeks.

Respondent could not produce records demonstrating that required surface inspections took place. The missing records relate to two pipelines, and numerous records are missing for a two-year period.

Respondent objected to the assessment of a civil penalty "since in all but a couple of cases the missing reports are not necessary to comply with the regulatory frequency." Respondent claimed that invoices substantiated many of the flights for which actual records were missing. As discussed above, invoices typically do not contain the sort of information necessary to substantiate that inspections of particular areas took place and, in any event, Respondent has not provided such invoices.

There is no evidence that Respondent is not fully culpable for this violation. Respondent is aware of the requirement to carry out surface inspections and of the necessity of retaining records to substantiate these inspections, as indicated by its possession of records of other inspections. Respondent stated that it carried out the inspections, and that the missing records are attributable to poor job performance by administrative personnel and to a pilot's hard-drive crash. Respondent is responsible for conducting the activities required and for keeping the necessary documentation to ensure their compliance with pipeline safety regulations; thus, neither of these explanations mitigates Respondent's culpability for its failure to demonstrate compliance with § 195.412(a).

The violation did not have any known effect on pipeline integrity, but generally speaking, regular inspection of pipeline rights-of-way is an essential part of ensuring pipeline safety. Inspections, and records for follow-up, allow operators to identify leaks, operational problems, and potential third-party damage. The failure to identify and report encroachments or activities in pipeline rights-of-way could result in accidents or damage to the pipeline facilities and the environment. Although the violation in this case was of a relatively low gravity, this does not provide support for reducing the relatively low proposed penalty. Therefore, the nature, circumstances, and gravity of the violation support the proposed penalty.

Finally, I have considered any good faith efforts by Respondent to achieve compliance before the violation was identified, but do not find any evidence of such efforts warrants reducing the civil penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $11,000 for the violation of 49 C.F.R. § 195.412(a).

Item 6: The Notice proposed a civil penalty of $37,000 for Respondent's violation of 49 C.F.R. § 195.420. As discussed above, I found that Respondent violated § 195.420 by failing to properly inspect each mainline valve.

Sunoco did not contest the allegation, but requested a reduction in the proposed civil penalty. Respondent provided no basis for its request for a penalty reduction.

The violations involved several valves that were not properly inspected during numerous inspection visits. Specifically, the valves were not partially operated, as Sunoco's procedures require. There is no evidence that Respondent is not fully culpable for this violation.