



August 4, 2016

Mr. Rod Seeley  
Director, Southwest Region  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
8701 S. Gessner Road  
Suite 1110  
Houston, TX 77074

**VIA: Electronic Mail and FedEx**

**RE: July 7, 2016 - CPF 4-2016-5022  
Notice of Contest and Request for Hearing**

Dear Mr. Seeley:

Sunoco Pipeline L.P. (SPLP) is in receipt of the above-referenced Notice of Probable Violation (NOPV) which includes a Proposed Civil Penalty and Proposed Compliance Order which was issued to West Texas Gulf Pipe Line Company (WTG) under its operator identification number. The NOPV concerns an accident that occurred at the Wortham, TX Station on February 19, 2013. Pursuant to 49 C.F.R. §190.208, SPLP timely submits this response hereby contesting in full, and respectfully requesting an in-person oral hearing, on all matters listed in such NOPV and the accompanying Penalty. With regard to the accompanying Compliance Order, SPLP proposes an amendment to Item #2 below for the Southwest Region to consider and, if acceptable, either to be addressed in an amendment to the Compliance Order or in a separate Consent Order as permitted by §190.219; if PHMSA is not amenable to revision and/or further discussion, SPLP requests a hearing on said Item. With regard to the remainder of the Items in the Compliance Order, SPLP does not contest such Items but requests further discussion and/or a meeting with the appropriate personnel from the Southwest Region to establish a reasonable schedule and any other matters which may bear upon such Items.

We appreciate your office previously forwarding the Violation Report and Penalty Calculation to SPLP for our review. To the extent that the case file is supplemented with any additional documentation, or the prior Violation Report and/or Penalty Calculation are amended in any way, SPLP reiterates its prior request for a complete copy of the case file and violation report for this matter pursuant to 49 C.F.R. §190.208 and §190.209.

SPLP intends to raise legal and factual issues at the hearing which are expected to include, at a minimum, the following along with any other issues identified after the date of this letter:

- (1) Item 1 of the NOPV alleges that SPLP failed to provide an inspection in accordance with 49 C.F.R. §195.204 and use a qualified and trained inspector to oversee maintenance related activities that were performed at Wortham Station in February 2013. SPLP disagrees with Item 1 and intends to describe the process for selecting the inspector and evaluating the qualifications of the inspector that were in effect and followed at the time of



the work which was performed at the Wortham Station in February 2013 as well as provide appropriate supporting documentation.

- (2) Item 2 of the NOPV alleges that SPLP failed to provide documentation or demonstrate that it had reviewed the maintenance and normal operations procedures for effectiveness in accordance with 49 C.F.R. §195.402(c)(13) that were in use on February 19, 2013. Specifically, PHMSA references the Hot Work Procedure HS-P-009, Lockout-Tagout Program HS-P-005, and Overview of Work Permits Procedure HS-G-012 require annual evaluations at each facility. SPLP intends to demonstrate that each of the identified procedures were reviewed and evaluated in accordance with internal requirements. The performance of the identified procedures is evaluated annually via review of corresponding records at manned facilities and, on an as-needed basis, on projects or at unmanned facilities similar to the pump station involved in this instance. In addition, third party HES&S audits are conducted on an annual basis that evaluate overall HES&S Program Compliance and are shared with both area management and the executive team. Additionally, other instances may warrant the review and update of a Procedure, which SPLP is prepared to demonstrate an example following the 2009 Colorado City event that was referenced by PHMSA in the NOPV and Violation Report. Most findings result in at least re-training personnel to ensure that compliance with the written procedure and training will be adjusted accordingly. For example, SPLPs LOTO training has directly evolved into a hands-on demonstration of LOTO compliance and comprehension.
- (3) Item 3 of the NOPV alleges that SPLP failed to perform a post-accident review of the employee activities in accordance with 49 C.F.R. §195.402(e)(9) to determine whether the procedures were effective in the emergency, and therefore took no corrective action for the accident that occurred on February 19, 2013. It is SPLP's understanding that 49 C.F.R. §195.402(e)(9) pertains to a review of emergency procedures and their effectiveness after they are utilized in the course of a response to a pipeline emergency which would typically involve activation of a Facility Response Plan under 49 C.F.R. §194. Although SPLP had a Facility Response Plan in place for this area of operation, it was not activated in this instance as the Wortham event did not meet the requirements for activation. The record indicates that prompt medical attention was secured for the injured and that further work activities were halted for the day. On point with §195.402(e)(9), SPLP intends to demonstrate that a post-accident review was nonetheless conducted and lessons learned which were referenced in the post-accident review were incorporated with other changes to the OQ Plan and contractor oversight in accordance with the regulatory requirements.
- (4) Item 4 of the NOPV alleges that SPLP failed to perform an analysis that determined the cause(s) of this accident in accordance with 49 C.F.R. §195.402(c)(5) and their Operating Procedure OPER-PR-002 Spill Reporting, Root Cause Analysis and Documentation. The SII Report for the accident that occurred on February 19, 2013 as provided to PHMSA was incomplete and inconclusive. SPLP intends to demonstrate that OPER-PR-002 was not followed because SPLP believed that the incident was not a spill. The investigation team followed the guidelines for an injury investigation by performing a Serious Incident Investigation (SII) and did not involve the control center because it was not involved in the incident. Notably, the SII determined a conclusive root cause for the occurrence of the accident consistent with §195.402(c)(5).



- (5) Item 5 of the NOPV alleges that SPLP failed to follow OPER-PR-002, Spill Reporting, Root Cause Analysis and Documentation to take prompt remedial action to minimize the possibility of recurrence of accidents and thereby failed to comply with 49 C.F.R. §195.402(c)(6). As discussed in response to Item 4 above, at the time of the accident SPLP believed the event was not reportable as a spill and therefore OPER-PR-002 was not followed. SPLP intends to demonstrate that the 2009 Colorado City incident and the 2013 Wortham incident involved different material facts and should not be considered to have the same root cause. Moreover, SPLP intends to demonstrate that policies and procedures were revised and/or developed as a result of the Colorado City incident, irrespective of whether that incident can be considered similar to the facts of the Wortham incident; for example, the Down Time Request (DTR) and Work Plan process were specifically created as a result of the Colorado City incident.
- (6) Item 6 of the NOPV alleges that SPLP failed to comply with 49 C.F.R. §195.505(b) by failing to ensure that the individuals performing the covered tasks at the Project location were qualified by failing to verify operator qualification records for its welders and inspector and other contract personnel prior to performing covered tasks. SPLP intends to show that the welders were Operator Qualified on the specific tie-in weld covered task via welder qualification records (WQRs). It is also SPLP's position that there were no OQ requirements for its inspectors.
- (7) Item 7 of the NOPV alleges that SPLP failed to comply with 49 C.F.R. §195.505(d) by failing to evaluate the performance of any of the individuals performing covered tasks at the time of the Accident to determine if their performance of a covered task contributed to the accident on February 19, 2013. Additionally, the NOPV alleges that SPLP did not ensure that employees were evaluated prior to allowing them to resume the performance of covered tasks after the accident occurred on February 19, 2013. As discussed in response to Items 4 and 5 above, at the time of the accident SPLP believed the event was not reportable as a spill. Additionally, SPLP did not initially have reason to believe the remaining personnel on site had any responsibility for the event. As the more-detailed investigation ensued the following day, it was first made known to SPLP that others had potential involvement whose actions may have contributed to the incident.
- (8) Item 8 of the NOPV alleges that SPLP failed to comply with 49 C.F.R. §199.105 by failing to ensure that its employees and contractor personnel were post-accident drug tested and could produce no records for testing of any personnel involved in the accident, nor did they provide justification that ruled out their contribution to the accident. SPLP contends that it complied with the requirements of §199.105(b) because it had no reason to believe "based on the best information available immediately after the accident" that the employee's [or contractor's] performance contributed to the accident and that, because of the time that had passed between the accident and the identification of facts based on the availability of the personnel involved, it was not likely that a drug test would have revealed whether the performance (or accident) was affected by any drug use.
- (9) Item 9 of the NOPV alleges that SPLP failed to comply with 49 C.F.R. §199.225 by failing to ensure that its employees and contractor personnel were post-accident alcohol tested and could produce no records for testing of any personnel involved in the accident, nor did they provide justification that ruled out their contribution to the accident. SPLP contends that it complied with the requirements of §199.225(b) because it had no reason to believe at the time of the accident ". . . using the best available information at the time of



the determination, that the covered employee's performance . . . contributed to the accident.”

- (10) Item 10 of the NOPV alleges that SPLP failed to comply with 49 C.F.R. §195.402(c)(3) by failing to have a formal written procedure for the installation and operation of vapor barriers, including mudpacks or bentonite mud plugs, or similarly constructed vapor barriers for the work that occurred inside the Wortham Station in February 2013. SPLP intends to demonstrate that despite the lack of a formal procedure in place at the time of the accident, the SPLP Recommended Practice (RP) for Fire Clay Mud Pack installation dated May, 30 2008 was in effect. This RP provided the basis for the formation of the SPLP Procedure OPER-PR-0005 Installation of Mud Plugs and Vapor Barriers Rev. O dated September 9, 2014.
- (11) Item 11 of the NOPV alleges that SPLP failed to comply with 49 C.F.R. §195.402(c)(3) by failing to follow seven items in its Hot Work Procedure HS-P-009 during the work performed at the Wortham Station from the fall of 2012 through post-accident March 2013. SPLP intends to demonstrate that the Hot Work on site was managed in accordance with the written procedure and in accordance with the written contract for the contractor representatives. Specific details to each lettered finding's responses will be prepared accordingly.
- (12) Item 12 of the NOPV alleges that SPLP failed to comply with 49 C.F.R. §195.402(c)(3) by failing to follow nine aspects of its procedures for issuing Work Permits, addressed by Overview of Work Permits Procedures Document HS-G-012. SPLP intends to demonstrate that the Work Permit Procedure was properly communicated ahead of time to the contracting company, and that the Work Permit Procedure was followed to the degree SPLP would be expected to be reasonably responsible. Specific details to each lettered finding's responses will be prepared accordingly.
- (13) Item 13 of the NOPV alleges that SPLP failed to comply with 49 C.F.R. §195.402(c)(3) by failing to follow twelve provisions of its Lockout/Tagout Program covered by Procedure HS-P-005. SPLP intends to demonstrate that Lock-Out Tag-Out was performed in accordance with the written Procedure. Specific details to each lettered finding's responses will be prepared accordingly.
- (14) Item 14 of the NOPV alleges that SPLP failed to comply with 49 C.F.R. §195.505 by failing to follow eight provisions of its written Operator Qualification Program. SPLP intends to prove that the contractor and construction manager were aware of covered tasks and that those tasks can only be performed by personnel qualified under the program. Specific details for each letter of the allegations for this item will be prepared accordingly.
- (15) Item 15 of the NOPV alleges that SPLP failed to comply with 49 C.F.R. §195.505(a) by failing to include the installation and operation of bentonite mud plugs as a vapor barrier as a covered task in its written OQ Plan for the work performed in the Wortham Station in 2012 – 2013. SPLP intends to demonstrate that at the time of the accident in February 2013 the installation and operation of bentonite mud plugs as a vapor barrier was not considered to meet all of the elements of the 4 part test found in 49 C.F.R. §195.501(b). However, as a proactive measure, SPLP has since implemented Covered Task 412 Installation and Operation of Mud Plugs effective August 1, 2015.



- (16) SPLP contends that certain violations are duplicative within the NOPV and/or duplicative of other NOPV's issued and/or may constitute a "related series of violations" under 49 U.S.C. 60122(a).
- (17) SPLP contends that the civil penalty sought in the amount of \$1,539,800 exceeds the maximum penalties permitted, is unjustified under 49 C.F.R. §§190.221 and 190.223, excessive both individually and in the aggregate, and not consistent with penalty consideration factors specified in 49 C.F.R. §190.225, applicable statute and precedent.
- (18) SPLP contends that APA standards, 5 U.S.C. §706, and Due Process considerations require, among other considerations, that an agency give effect to the PSA's penalty provisions in a consistent manner including notice of an agency's intended application and penalty factors and that an operator be provided the opportunity to present conflicting facts prior to the rendering of a decision.
- (19) SPLP reserves the right to identify and address additional issues prior to the hearing upon further reflection and/or advice from counsel who will represent SPLP at the hearing. SPLP intends to provide a more descriptive response to each of the contested violations of the NOPV prior to the hearing, as permitted by 49 C.F.R. §190.211.

Subject to agreement by the parties to a reasonable schedule, SPLP does not contest Proposed Compliance Order Items #1, 3 or 4 which PHMSA has proposed and which relate to Item #1, 6 and 15 of the NOPV. With regard to Compliance Order Item #5, it is SPLP's understanding that is a request and SPLP will take that Item under advisement.

With regard to Item #2 of the Proposed Compliance Order (which correlates with Item #4 of the NOPV), PHMSA claims that SPLP failed to perform an analysis to determine the cause(s) of this incident in accordance with Operating Procedure OPER-PR-002. As such, PHMSA proposes that SPLP obtain a third party to perform a Root Cause Analysis (RCA) of the accident. As stated in response to Item #5 above, SPLP contends that an assessment was completed where SPLP identified the cause to be "failure to follow procedures". As additionally outlined in Item #5, PHMSA's investigation had determined that there were inadequate procedures and work plans that contributed to the accident, as well as a lack of training and qualification of the employees performing the procedures. Based on the review initially conducted by SPLP, the review conducted by PHMSA during its investigation, subsequent reviews by SPLP, and the passage of time since the event which prevents the involvement of key personnel, SPLP does not believe an additional RCA would further the intended purpose at this time.

In lieu of Item #2 of the Compliance Order proposed by PHMSA, SPLP proposes the following as an amendment pursuant to §190.207. Rather than conducting an RCA, for the reasons previously stated, SPLP believes there is more value in developing a plan for the implementation of a safety management system (SMS) that will more comprehensively provide a system to identify and address any gaps in areas such as procedures, training, as well as other areas that will foster an identification of gaps and continuous improvement in those areas identified:

"Within 120 days of the Final Order, SPLP shall submit to PHMSA a written plan to adopt and implement a safety management system. The safety management system shall promote a



safety culture and shall include the elements considered essential in the American Petroleum Institute (API) Recommended Practice (RP) 1173 including:

- i. Management Commitment and Leadership
- ii. Risk Management
- iii. Operational Controls
- iv. Incident Investigation, Evaluation and Lessons Learned
- v. Safety Assurance and Continuous Improvement
- vi. Competence, Training, Qualification and Development
- vii. Emergency Preparedness and Response
- viii. Documentation and Record Keeping
- ix. Stakeholder Engagement
- x. Management Review and Continuous Improvement"

If the Region is amenable to amending the language of Item #2, SPLP will not contest the Item and the Item could be embodied in a Consent Order (as authorized by §190.219) or a Final Order. However, if the Region is insistent on completion of an RCA, SPLP contests such Item and requests a hearing.

As communicated from SPLP's counsel to PHMSA's counsel previously, we remain open to discussing the issues raised by this letter and the NOPV, Proposed Penalty and Compliance Order before any scheduled hearing with the purpose of reaching a good faith resolution on some or all of the Items. SPLP believes that both parties would benefit from such a dialogue and that the spirit and intent of the regulations, including efficiency of the Hearing Officer's time, would be furthered by doing so. If the Region is inclined to discuss this matter upon further reflection and/or after receipt of SPLP's response, please contact me at 610-859-5754 or at [drchalson@sunocologistics.com](mailto:drchalson@sunocologistics.com) or have your counsel contact SPLP's in-house counsel, Kevin Dunleavy, at 215-977-6273 or by e-mail at [kevin.dunleavy@sunoco.com](mailto:kevin.dunleavy@sunoco.com).

If the Region is not amenable to discussing these matters before a hearing, we look forward to the opportunity to present this further at the hearing. On its behalf, SPLP expects to have personnel from various departments and various levels of management in attendance at the hearing along with counsel.

Sincerely,

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David R. Chalson  
Sr. Vice President, Operations  
Sunoco Pipeline L.P.

Cc: Lawrence White (Hearing Officer) (via e-mail); Adam Phillips, Esq. (PHMSA Counsel)  
Lauren Manns, Esq. (PHMSA Counsel) (via e-mail);  
Mike Slough, Todd Stamm; James Torbet; Leif Jensen; Todd Nardoizzi; Kevin Dunleavy,  
Esq. (via e-mail)