



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

NOV 20 2019

Mr. Kelcy Warren
Chief Executive Officer
Energy Transfer, LP
8111 Westchester Drive
Dallas, Texas 75225

Re: CPF No. 4-2016-5033

Dear Mr. Warren:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and specifies actions that need to be taken by your subsidiary, SunVit Pipeline, LLC, to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by certified mail is effective upon the date of mailing, as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. David Chalson, Senior Vice President, Operations, Energy Transfer, LP, 8111
Westchester Drive, Dallas, Texas 75225

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

_____)
In the Matter of)

SunVit Pipeline, LLC,)
a subsidiary of Energy Transfer, LP,)

Respondent.)
_____)

CPF No. 4-2016-5033

FINAL ORDER

From April 20, 2015, through July 17, 2015, 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 SunVit Pipeline, LLC (SunVit), in Midland, Texas. The SunVit pipeline is a 27-mile, 20-inch diameter pipeline that connects a 2-million-barrel crude oil terminal in Midland to the Sunoco Logistics¹ Permian Express 2 pipeline.² SunVit pipeline and facilities are operated by Sunoco Pipeline, LP (SPLP or Respondent).³

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated October 4, 2016, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that SunVit had violated 49 C.F.R. § 195.402 and proposed ordering Respondent to take certain measures to correct the alleged violation.

SPLP responded to the Notice by letter dated November 10, 2016 (Response). The company contested the allegation, offered additional information in response to the Notice, and requested that the allegation of violation and associated compliance order be withdrawn. Respondent did not request a hearing and therefore has waived its right to one.

¹ Sunoco Logistics is also a subsidiary of Energy Transfer, LP.

² *Vitol sells West Texas crude assets for \$720M*, Houston Business Journal, available at <https://www.bizjournals.com/houston/news/2016/09/27/vitol-sells-west-texas-crude-assets-for-720m.html> (last accessed October 31, 2019). See also, Pipeline Violation Report, at 1, on file with PHMSA.

³ SPLP Response, page 1, "The SunVit pipeline and facilities are operated by SPLP."

FINDING OF VIOLATION

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

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.402, which states in relevant part:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

(b)....

(c) The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1)....

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

(4)....

(7) Starting up and shutting down any part of the pipeline system in a manner designed to assure operations within the limits prescribed by § 195.406, consider the hazardous liquid or carbon dioxide in transportation, variations in altitude along the pipeline, and pressure monitoring and control devices.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(3)(7) by failing to prepare and follow a manual of written procedures that includes procedures for starting operations of a pipeline facility. Specifically, the Notice alleged that SunVit failed to have written procedures for filling operations during the commissioning of Tank 7112 on June 10-14, 2015. The Notice also alleged that the lack of written procedures was identified in internal company communications prior to the filling of the breakout tank. The Notice acknowledged that Respondent had a work plan for the filling of Tank 7112, but alleged that the work plan was not a manual of written procedures that met the requirements of § 195.402, noting that the work plan explicitly directed the reader to "Reference the written procedure for all guidelines."

In its Response, SPLP argued that it prepared a work plan to address the commissioning activities for Tank 7112, and that such a work plan satisfied the regulatory requirement for a procedure. Specifically, SPLP raised three arguments. First, SPLP claimed that in a prior

enforcement action, CPF 4-2015-5005H, PHMSA directed SPLP to implement a work planning process and requirements to define the appropriate level of preparation, review, and approval to ensure safe performance of activities if the scope of work is not in an existing O&M procedure.⁴ SPLP argued that in the case of filling Tank 7112, that objective was achieved. Second, SPLP argued the work plan developed for the filling of Tank 7112 fully accounted for the specifics of the operation and the requirements to fill the tank without incident, and that having a specific work plan is appropriate for tank fillings. Lastly, SPLP argued that the work plan's reference to written procedures does not inherently indicate that a separate procedure exists. Rather, SPLP argued that it directs the author(s) of the work plan to include reference to any applicable procedures so that they can be consulted during the task set forth in the work plan.

Analysis

Section 195.402 requires each pipeline operator to prepare and follow a manual of written procedures for conducting normal operations and maintenance activities. The manual must include procedures to provide safety during, among other things, starting up any part of the pipeline system.

In response to the allegation that Respondent failed to have a manual of written procedures for starting up its pipeline facility by conducting filling operations, Respondent did not claim to have a manual of written procedures, but instead asserted that it had a "work plan" that met the regulatory requirement.

The term "work plan" does not appear in the hazardous liquids pipeline safety regulations, but is commonly used in the industry to refer to a plan developed by an operator to guide a discrete or particular project. For example, following an accident, an operator may develop a work plan to verify the integrity of its pipeline by taking into consideration the particular factors involved in that specific accident.⁵ A work plan developed for a one-time project is different than a manual of written procedures required by § 195.402, which by definition provides procedures of general applicability that define the methods used by the operator when conducting all operations and maintenance functions on the pipeline facility. An operator's manual of written procedures may establish circumstances in which the operator prepares a project-specific work plan. For example, in a prior enforcement matter PHMSA found Respondent's manual of written procedures required a work plan to be prepared for a particular repair project.⁶

Having considered these general differences between a project-specific work plan and a manual of written procedures required by § 195.402, I will evaluate the evidence to determine if Respondent met the requirements of § 195.402. Firstly, Respondent's work plan was not identified as a written procedure and was not contained in Respondent's manual of written

⁴ SPLP Response, page 2. See also, In the Matter of West Texas Gulf Pipe Line Company, Consent Agreement, CPF 4-2015-5005H, at 5, *available at* https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420155005H/420155005H_Consent%20Agreement_10032016_text.pdf (Last accessed October 31, 2019).

⁵ E.g., Sunoco Logistics Partners, LP, CPF 4-2016-5030H, Item 8, 2016 WL 8199632 (Sept. 14, 2016).

⁶ Sunoco Logistics Partners, LP, CPF 4-2010-5010, Item 3, 2012 WL 4846347 (Aug. 1, 2012).

procedures for normal operations and maintenance activities. Respondent's work plan did not include procedures of general applicability for Respondent's pipeline system. The work plan was developed for one-time use during the filling of Tank 7112. As Respondent acknowledged, the work plan would need to be significantly altered were it to be applied to a different tank.⁷ Finally, during the inspection, Respondent's Compliance Officer stated he was not aware of any written procedures for filling tanks and a separate company email dated prior to the filling activity indicated Respondent did not have a written procedure for the activity. For these reasons, I find Respondent's work plan did not meet the requirements of § 195.402.

Notwithstanding, I will address Respondent's three additional arguments in turn. SPLP's first argument is that it relied on statements PHMSA made in a prior enforcement action, CPF 4-2015-5005H, which directed SPLP to implement a work planning process when it did not have an existing O&M procedure for a particular task. PHMSA issued CPF 4-2015-5005H, a corrective action order (CAO), to West Texas Gulf Pipe Line Company (West Texas), a subsidiary of SPLP, following a pipeline accident that occurred on February 25, 2015. The failure resulted in the release of approximate 30 barrels of crude oil. Following the February 25, 2015 failure, there were several events, including a second West Texas leak on June 7, 2015, that raised additional concerns about the overall safety of the West Texas pipeline system. PHMSA issued an amended CAO on September 4, 2015, to address events that occurred after the Original CAO was issued. To resolve the safety concerns raised by the Original and Amended CAO, PHMSA and SPLP entered into a consent agreement. The consent agreement and order was also captioned CPF 4-2015-5005H (Consent Agreement).

The Consent Agreement directed SPLP to hire a third-party pipeline expert in safety management systems and to submit a comprehensive plan on how it will address any deficiencies or risks identified by the third party. The Consent Agreement directed SPLP to include in its comprehensive plan, "[W]ork planning process and requirements to define the appropriate level of preparation, review, and approval to ensure safe performance of activities if the scope of work is not in an existing O&M procedure."⁸

Respondent's argument that this provision of the Consent Agreement validates the operator's conduct related to the allegations in this case cannot be sustained for several reasons. The Consent Agreement addressed specific safety issues found on the West Texas pipeline system and the scope of the Consent Agreement was limited to those issues and that pipeline system.⁹ The SunVit pipeline is not a part of the West Texas pipeline system and the Consent Agreement

⁷ SPLP Response, page 2, "SPLP does not disagree with the PHMSA contention that if this Work Plan was to be taken and applied to a different tank, it would need to be significantly altered to add the correct valve lineup, tank size, product, and account for other variables."

⁸ In the Matter of West Texas Gulf Pipe Line Company, Consent Agreement, CPF 4-2015-5005H, at 5, *available at* https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420155005H/420155005H_Consent%20Agreement_10032016_text.pdf (Last accessed October 31, 2019).

⁹ *Id.*, at 4, Part II, Item 12: "Regarding the entire West Texas Gulf Pipe Line System, its operation, and the Operating, Maintenance and Construction policies and procedures under which it operates, including all aspects for which the regulations in 49 C.F.R. §195 apply to the pipeline system and its operator, Respondent must:"

did not involve the filling of tanks. The terms of the Consent Agreement did not grant SPLP permission to start operations on a pipeline facility without a procedure and did not otherwise waive compliance with § 195.402. In fact, the Consent Agreement specifically stated that it did not “waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems.” Since the Consent Agreement did not waive compliance with § 195.402 and otherwise did not concern the pipeline facility or safety issues at issue here, I find SPLP’s argument that the prior Consent Agreement validates the operator’s conduct in this matter to be without merit.

SPLP’s second argument proclaimed the benefits and appropriateness of the work plan for filling Tank 7112. While PHMSA recognizes that Respondent will determine when development of a work plan is appropriate, I have already determined that the work plan in this case did not satisfy the requirements of § 195.402. Therefore, I find the discussion on the benefits of a work plan to be irrelevant to the allegation of violation.

Lastly, SPLP argued that the note in the work plan to “Reference the written procedure for all guidelines” was not dispositive of a procedure’s existence. Ultimately, I find the reference in the work plan to the possible existence of a procedure is immaterial since I have already determined that Respondent did not have a written procedure and thus failed to comply with the regulatory requirement of § 195.402.

Accordingly, after considering all of the evidence and arguments, I find that Respondent violated 49 C.F.R. § 195.402(c)(3)(7) by failing to prepare and follow a manual of written procedures that includes procedures for starting operations of a pipeline facility.

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

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 195.402(c)(3)(7). 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. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.402(c)(3)(7) (**Item 1**), Respondent must develop and utilize a comprehensive and detailed procedure which specifically addresses the considerations and actions to be taken in the filling of breakout tanks.
2. The procedure required above must be submitted to PHMSA and implemented within 30 days after receipt of the final order.

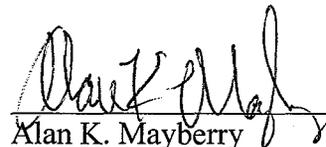
The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.



Alan K. Mayberry
Associate Administrator
for Pipeline Safety

NOV 20 2019

Date Issued