

November 14, 2019

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

Re: CPF No. 4-2016-5034

Dear Mr. Warren:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$251,800. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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

Enclosures (Final Order and NOPV)

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Todd Nardozzi, Senior Manager, DoT Compliance, Energy Transfer, LP, 1300 Main
Street, Houston, Texas 77002

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)

Sunoco Logistics Partners, LP,)
a subsidiary of Energy Transfer, LP,)

Respondent.)
_____)

CPF No. 4-2016-5034

FINAL ORDER

From November 2015 to March 2016, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an accident investigation into the facilities and records of Sunoco Logistics Partners, LP (Respondent), in Wortham, Texas. Sunoco owned¹ the West Texas Gulf Pipeline Company (WTG), a 26-inch, 580-mile pipeline system that transports crude oil from Colorado City to Longview, Texas, with additional delivery points along the Gulf Coast.² On November 10, 2015, employees attempted to disassemble a pressurized 10-inch flow control valve (“the control valve”), resulting in a release of crude oil.³ Five employees, including operator personnel and contractors, were injured.

As a result of the investigation, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated October 27, 2016, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Sunoco committed violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$251,800 for the alleged violations.

Sunoco responded to the Notice by letter dated November 30, 2016 (Response). Sunoco contested all of the allegations, offered additional information in response to the Notice, and

¹ At the time of the accident, Sunoco owned WTG. This pipeline is now a fully owned subsidiary of Energy Transfer (ET). See <https://www.energytransfer.com/crude-oil/> (last accessed October 4, 2019).

² On April 28, 2017, Energy Transfer Partners (ETP) and Sunoco Logistics Partners merged, leaving ETP. See <https://ir.energytransfer.com/news-releases/news-release-details/sunoco-logistics-partners-and-energy-transfer-partners-announce/>. (last accessed October 4, 2019).

³ “As a result of the release, five persons were injured with bruises, scrapes, and oil spray into to [*sic*] eyes and onto body. None of these injuries required admittance into the hospital.” Pipeline Safety Violation Report (Violation Report), (October 27, 2016)(on file with PHMSA), at 4.

requested a hearing. A hearing was subsequently held on March 28, 2017, in Houston, Texas, with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel.

FINDINGS 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.

(c) *Maintenance and normal operations.* 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.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(3) by failing to prepare and follow a manual of written procedures for operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of Subpart F (Operation and Maintenance) and Subpart H (Corrosion Control). Specifically, the Notice alleged that the Respondent did not have a written procedure for the operation and maintenance of the failed control valve. During the accident investigation, OPS interviewed Respondent's third-party contractors and the operator's own personnel that were involved in the work on November 10, 2015. No procedure, detailed job plan, or manufacturer's instruction for the flow control valve was shared with any of the workers prior to beginning work.⁴

At the hearing, Sunoco acknowledged that poor work planning had occurred and that the failed valve should not have been selected for operation. However, Sunoco denied that it should have had a written procedure for this kind of work and argued that "over-proceduralization" dilutes the overall effectiveness of its written procedural manual.

⁴ Violation Report, at 5.

OPS countered that Sunoco was performing an “uncommon” operation that should have been incorporated into Sunoco’s written procedural manual. In the Director’s Recommendation, OPS pointed to Sunoco’s admission that there was inadequate development or review of the work plan. In its view, this is ample evidence that the Respondent should have had a written procedure for operation and maintenance of this valve. I agree. A written procedure would have mandated the secondary review and detailed job plan that is needed to safely operate, maintain, and repair this valve, which is located in an area where the piping is poorly designed and difficult to isolate.⁵ This position is supported by the Root Cause Analysis (RCA) of this accident commissioned by Sunoco. DNV GL produced the RCA, which included six recommendations, the fourth of which was to “update company safe isolation procedures and educate workforce and contractors.”⁶ While the RCA does not explicitly find that operation of this particular valve be proceduralized, it does recommend that Sunoco update its safe isolation procedures. This recommendation supports OPS’ position that operation and maintenance of this valve, which was used as a positive isolation, should have been included in the Respondent’s manual.

Accordingly, after considering all of the evidence, I find that Sunoco failed to prepare and follow a manual of written procedures for operating, maintaining, and repairing the pipeline system

Item 2: 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.

(c) *Maintenance and normal operations.* 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.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(3) by failing to follow procedures for operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of Subpart F (operation and Maintenance) and Subpart H (Corrosion

⁵ The poor design in this area was discussed extensively both at the hearing and in the DNVGL RCA.

⁶ Violation Report, at Exhibit A.

Control). Specifically, the Notice alleged that Sunoco failed to follow its Lock Out Tag Out procedure prior to beginning work on November 10, 2015.

At the hearing, Sunoco did not contest this Item.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(3) by failing to follow procedures for operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of Subpart F (Operation and Maintenance) and Subpart H (Corrosion Control).

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.⁷ 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; 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 \$251,800 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$51,800 for Respondent's violation of 49 C.F.R. § 195.402(c)(3), for failing to include a procedure for operating, maintaining, and repairing the control valve in its manual of written procedures. Specifically, the respondent did not prepare detailed procedures for operating and maintaining the control valve in accordance with manufacturer and operator safety specifications, nor did it have complete procedures to ensure safe repair per 195.422, Subpart F. At the hearing, Sunoco maintained that it should not have had a procedure for the operation of this valve. However, as I stated above, I am finding a violation of Item 1 since failure to have an adequate procedure specific to this type of control valve contributed to the occurrence of the accident. In considering the nature, circumstances, and gravity of the accident here, I do not think a reduction in the civil penalty is warranted. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$51,800 for violation of 49 C.F.R. § 195.402(c)(3).

Item 2: The Notice proposed a civil penalty of \$200,000 for Respondent's violation of 49 C.F.R. § 195.402(c)(3), for failing to follow its Lock Out Tag Out procedure. Sunoco argued that the civil penalty should be withdrawn or, in the alternative, reduced because the RCA did not find that the failure to follow the Lock Out Tag Out procedure was a casual factor in the accident. However, the RCA states that "the direct cause of the release was that PRV-1111 had

⁷ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223; Revisions to Civil Penalty Amounts, 83 Fed. Reg. 60732, 60744 (Nov. 27, 2018).

not been de-energized (a part of the Lock Out Tag Out procedure).”⁸ Thus, the RCA supports OPS’ decision to treat the failure to follow the Lock Out Tag Out procedure as causal. I will also note here that this valve blew out under pressure, spewing crude oil 15 feet into the air. The RCA notes that the “combination of release pressure and oil spray knocked some team members to the ground, causing some injuries such as cuts, bruises, injuries to the eyes from oil spray, and ringing in the ears from the loud ‘pop’ that was heard.”⁹ The circumstances of this accident were very serious – both because of the injury count and the potential that existed here for more serious injuries. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$200,000 for violation of 49 C.F.R. § 195.402(c)(3).

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 the Final Order by Respondent. Any petition submitted must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. 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.

November 14, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

⁸ Violation Report, at Exhibit A (DNGL RCA, 18).

⁹ Id.