

VIA EMAIL AND CERTIFIED MAIL:

Mr. Gregory McIlwain
Chief Executive Officer and Chairman
Energy Transfer, L.P.
8111 Westchester Drive
Dallas, Texas 75225

RE: In the Matter of Sunoco Partners Marketing & Terminals, L.P. – CPF No. 4-2018-5021S

Dear Mr. Warren:

Enclosed please find the fully executed Consent Agreement and Order that resolves the issues underlying the Notice of Proposed Safety Order issued by PHMSA on October 4, 2018 to your subsidiary, Sunoco Partners Marketing and Terminals, L.P., in the above-referenced proceeding. Your receipt of this Consent Agreement and Order constitutes service, 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, OPS
Ms. Linda Daugherty, Deputy Associate Administrator for Field Operations, Pipeline Safety, OPS
Mr. Gregory McIlwain, Senior Vice President, Operations, Energy Transfer, L.P.
Ms. Jennifer Street, Executive Vice President, Energy Transfer, L.P.
Mr. Jonathan Hunt, Vice President, Terminal Operations, Energy Transfer, L.P.
Mr. Mark Milliken, Senior Director, Safety, Process and Pipelin Safety and Asset Security, Energy Transfer, L.P.
Mr. Todd Nardozi, Senior Manager, DOT Compliance, Energy Transfer, L.P.
Ms. Annie Cook, Counsel, Troutman Sanders, LLP, 600 Peachtree Street, NE, Suite 3000, Atlanta, GA 3030

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

_____)
In the Matter of)

Sunoco Partners Marketing & Terminals, L.P.,)
a subsidiary of Energy Transfer, L.P.)

Respondent.)
_____)

CPF No. 4-2018-5021S

CONSENT AGREEMENT AND ORDER

On October 4, 2018, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Notice of Proposed Safety Order (Notice), to Sunoco Partners Marketing and Terminals, L.P. (Sunoco), a wholly owned subsidiary of Energy Transfer, L.P. (Sunoco or Respondent). The Notice alleged that conditions exist on certain pipeline facilities owned and operated by Sunoco in Nederland, Texas that pose a pipeline integrity risk to public safety, property or the environment. The Notice also made preliminary findings of fact and proposed corrective measures.

On November 2, 2018, Sunoco responded to the Notice by submitting a timely written response and request for an informal consultation pursuant to 49 C.F.R. § 190.239(b)(2). An informal consultation was held on January 30, 2019, between representatives from Sunoco and PHMSA. By entering into this Consent Agreement, Sunoco agrees that no further administrative hearing will be provided for in this matter pursuant to 49 C.F.R. § 190.239(b)(2).

Accordingly, upon consent and agreement of the Parties and in accordance with 49 C.F.R. § 190.219, PHMSA and Sunoco hereby agree to the terms and conditions set forth in this Consent Agreement and Order (Agreement and Order) to resolve the issues underlying the Notice.

I. General Provisions

1. Respondent acknowledges that as the operator of certain pipeline facilities at Sunoco's Nederland Terminal that are regulated by PHMSA, Sunoco is subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Agreement, Respondent further acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. 60101, *et seq.*, and the regulations and orders issued thereunder. The relevant assets that are jurisdictional to PHMSA include, breakout tanks and associated in-plant piping.

2. Respondent does not admit or deny any allegation or conclusion in the Notice, but agrees for purposes of this Agreement to complete the corrective actions specified in Section II of this Agreement and Order (Corrective Measures) and to abide by the terms of this Agreement and Order. This Agreement and Order does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil or administrative proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement and Order.

3. Respondent consents to the issuance of this Agreement and Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of this Agreement and Order, including all rights to administrative or judicial hearings, reviews, or appeals, except as set forth herein.

4. This Agreement and Order shall apply to, and be binding upon, PHMSA and Sunoco, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and Order and any incorporated work plans and schedules to all of Sunoco's officers, employees, and agents whose duties might reasonably include compliance with this Agreement and Order.

5. For any transfer of ownership or operating responsibility of Sunoco's pipeline facility in Nederland, Texas occurring during the term of this Agreement and Order, Respondent will provide a copy of this document to the prospective transferee at least 30 days prior to such transfer and simultaneously provide written notice of the prospective transfer to the PHMSA Southwest Region Director (Director).

6. This Agreement and Order constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied herein. The Parties acknowledge that there are no representations, agreements, or understandings relating to settlement other than those expressly contained in this Agreement and Order, except that the terms of this Agreement and Order may be construed by reference to the Notice.

7. Nothing in this Agreement and Order affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement and Order alters PHMSA's right of access, entry, inspection, and information gathering, or PHMSA's authority to bring enforcement action(s) against Sunoco pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law, including additional enforcement action relating to Sunoco's regulated pipeline facilities in Nederland, Texas.

8. This Agreement and Order does not waive or modify any Federal, State, or local law or regulation applicable to Respondent's facility in Nederland, Texas. This Agreement and Order is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Sunoco remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

9. This Agreement and Order does not create rights in, or grant any cause of action to, any third party not party to this Agreement and Order. U.S. Department of Transportation and PHMSA are not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement and Order. Sunoco agrees to hold harmless U.S. Department of Transportation, PHMSA, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Agreement and Order.

10. This Agreement and Order resolves the underlying issues in the Notice. This Agreement and Order makes no findings of violation.

11. Upon the issuance of the Agreement and Order, Sunoco agrees to perform the Corrective Measures set forth below.

II. Corrective Measures

12. **Complete Inventory.** Within 90 days after this Agreement and Order is issued, Respondent must submit to the Director a complete inventory of all tanks and piping subject to regulatory oversight under 49 CFR Part 195.

13. **Remedial Work Plan.** Within 120 days after this Agreement and Order is issued, Respondent must submit to the Director for approval, a written remedial work plan (Plan) that includes corrective measures. Once approved, the Plan shall automatically become incorporated into this Order. The Plan must include provisions to:

- a. Determine or confirm the maximum operating pressure (MOP) for all regulated piping and pipeline components consistent with § 195.406.
 - i. Identify all regulated piping segments and the methods used to safely validate the MOP of those segments.
 - ii. Identify measures Sunoco will take to ensure the continued integrity of all regulated piping and components as the MOP verification is in progress. The Plan must address the incorporation of the regulated pipeline facilities at the Nederland Terminal in Sunoco's spill response plan, as appropriate, in accordance with 49 C.F.R. Part 194.
- b. Install overpressure safety equipment, as appropriate, on all regulated pipeline components consistent with § 195.428.
- c. Complete inspections on regulated tanks consistent with § 195.432. The Plan must include a risk based prioritization schedule to complete the tank inspections and to complete mandatory repairs prior to returning the tanks to service.
- d. Install cathodic protection on designated regulated underground piping and components as appropriate, consistent with § 195.563.

14. **Timeline.** The Plan must include a proposed timeline for completion of the corrective measures required in Paragraph 13.

15. **Procedures.** Upon request, and consistent with existing 49 C.F.R. Part 195 regulations, Respondent must submit to the Director any written procedures that will be used to complete the actions required by the Plan.

16. **Plan Revisions.** Respondent must revise the Plan as necessary to incorporate new information obtained during the evaluations and associated remedial activities. Respondent must submit any such revisions to the Director for approval prior to implementation and the Director shall respond within a reasonable time.

17. **Plan Implementation.** The Plan must be implemented as it is approved by the Director, including any revisions to the Plan. Results of actions taken in accordance with the approved Plan must be available for review by PHMSA. The Director may approve Plan elements incrementally, within a reasonable time.

18. **Integrity Management Program.** Within 30 days after this Order is issued, Respondent must submit documentation to the Director that confirms that regulated pipeline facilities at the Nederland Terminal have been incorporated into an Integrity Management Program, consistent with § 195.452.

19. **Reporting.** Reports must be submitted to the Director on a quarterly basis and must, 1) include all available data and results of the testing and evaluations required by this Order, and 2) describe the progress of all actions being undertaken pursuant to this Order. This schedule may be extended by written agreement with the Director. A final summary report of work performed on items required by this Order must be submitted to the Director within 30 days of the completion of the last action performed by Sunoco that is set forth in this Order.

20. **Voluntary Submission.** It is requested (not mandated) that Sunoco maintain documentation of the safety improvement costs associated with fulfilling this 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.

21. **Special Permits.** If Respondent's Plan or revisions to the Plan at any time includes applying for a special permit per § 190.341, a description must be included of any anticipated permits as well as a proposed timeline for all application submissions. Respondent must respond to any information requests made by PHMSA pursuant to such applications throughout the special permit application process within 30 days of each request. The status of special permit applications made pursuant to the Plan must be included in the quarterly reports (*see* Paragraph 19). For any special permit applications filed under the Plan, Respondent agrees to cooperate fully in the special permit process per § 190.341. The Director has the discretion to enforce this Order and/or the applicable pipeline safety regulations consistent with 49 C.F.R. Parts 190 and 195, subject to extensions of time granted under Section IV. and modifications of this Agreement approved under Section IX. If any special permit application included in the Plan is denied by PHMSA or

withdrawn by Respondent, Respondent must amend its Plan accordingly and submit it to Director within 30 days of the denial for approval.

III. Approvals

22. With respect to the submissions under this Agreement and Order requiring the approval of the Director, the Director shall act promptly to: (a) approve, in whole or part, the submission; (b) approve the submission on specified conditions; (c) disapprove, in whole or in part, the submission, directing that Sunoco modify the submission; or (d) any combination of the above. In the event of approval or approval upon conditions, Respondent will proceed to take all action required by the submission, as approved or conditioned by the Director. If the Director conditions or disapproves all or any portion of a submission, the Director shall in writing state with specificity the basis for the decision and Respondent will resubmit it to address the stated issues. If a resubmitted item is disapproved in whole or in part, the Director may again require Respondent to address the stated issues in accordance with the foregoing procedure, and the Parties may proceed to dispute resolution according to Section V. below.

IV. Extensions of Time

23. The Director may grant an extension of time for compliance with any of the terms of this Agreement and Order upon a written request submitted at least 15 days prior to a stated deadline, demonstrating good cause for an extension. The Director shall respond within a reasonable time to any request for extension of time.

V. Dispute Resolution

24. The Director and Sunoco will attempt to resolve informally any disputes arising under this Agreement and Order, including but not limited to any decision of the Director. The Director and Sunoco will first confer in an effort to resolve any dispute. If the Director and Sunoco are unable to resolve informally the dispute within 10 calendar days, Sunoco may request in writing, within 10 days, a written determination resolving the dispute by the Associate Administrator for Pipeline Safety, PHMSA. Along with its request, Sunoco will provide the Associate Administrator with all information Sunoco believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will promptly issue a written determination that shall be final. Decisions of the Associate Administrator will constitute final agency action, and are subject to judicial appeal. The existence of a dispute and PHMSA's consideration of matters placed in dispute shall not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement and Order during the pendency of the dispute resolution process, except as agreed by the Director or the Associate Administrator in writing.

VI. Enforcement

25. This Agreement and Order may be enforced by PHMSA pursuant to enforcement authorities available to the PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190. All deadlines set forth or referenced in this Agreement and Order will be automatically incorporated

into this Agreement and Order and, subject to Respondent's right to request an extension of time under Section IV and modify this Agreement under Section IX, are enforceable in the same manner.

VII. Recordkeeping and Information Disclosure

26. Except as otherwise provided herein, Sunoco agrees to maintain records demonstrating compliance with all requirements of this Agreement and Order for a period of at least five years.

27. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement and Order, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement and Order in accordance with 49 C.F.R. Part 7 and 49 C.F.R. § 190.343. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA will determine the release of any information submitted pursuant to this Agreement and Order in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

VIII. Effective Date

28. The term "Effective Date," as used herein, is the date on which this Agreement and Order is fully executed by the Parties. Unless specified to the contrary, all deadlines for actions required by this Agreement and Order run from the Effective Date.

IX. Modification

29. The terms of this Agreement and Order may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

X. Termination

30. This Agreement and Order terminates upon completion of Section II and all corrective measures, as determined by the Director. Sunoco may request written confirmation from PHMSA when this Agreement and Order is terminated and the Director will provide such confirmation within a reasonable time. Nothing in this Agreement and Order prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement and Order.

XI. Ratification

31. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and Order and to execute and legally bind such party to this document.

32. The Parties hereby agree to all conditions and terms of this Agreement and Order.

**For Sunoco Partners Marketing & Terminals, LP, as subsidiary of Energy Transfer, LP
(Respondent):**

Date

For PHMSA:

Alan K. Mayberry
Associate Administrator for Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation

Date