JUL 27 2009

Mr. David A. Justin
Operations Vice-President
Sunoco Pipeline, L.P.
Eastern Area Headquarters
525 Fritztown Road
Sinking Spring, PA 19608

Re: CPF No. 1-2005-5005

Dear Mr. Justin:

Enclosed is the decision issued on the July 3, 2008 Petition for Reconsideration filed by Sunoco Pipeline, L.P., in the above-referenced enforcement case. For the reasons discussed in the decision, I have denied the Petition in part and granted it in part. When the reduced civil penalty of $40,000 has been paid in accordance with the terms set forth in the Final Order, this enforcement action will be closed. Your receipt of the decision constitutes service 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: Byron Coy, Director, Eastern Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5050]

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

In the Matter of	)	
Sunoco Pipeline, L.P.,	)	**CPF No. 1-2005-5005**
Petitioner.	)	

DECISION ON PETITION FOR RECONSIDERATION

Background

On June 10, 2008, pursuant to chapter 601, title 49 United States Code, the Associate Administrator for Pipeline Safety (Associate Administrator), Pipeline and Hazardous Materials Safety Administration (PHMSA), issued a Final Order in this case against Sunoco Pipeline, L.P. (Sunoco or Petitioner), finding that Petitioner had committed three violations of the Hazardous Liquid Pipeline Safety Regulations, codified at 49 C.F.R. Part 195, and assessing a civil penalty of $50,000. Petitioner operates an interstate hazardous liquid pipeline system divided into two sections: The Eastern Area, consisting of pipelines in six states; and the Western Area, consisting of pipelines in nine states. All three violations concerned Petitioner's Integrity Management Program (IMP).

On July 3, 2008, Petitioner filed a Petition for Reconsideration (Petition) of the Final Order. Sunoco sought reconsideration of all three findings of violation and the associated penalties. Sunoco first argued that it opposed "paying a civil penalty for alleged failures on its part to implement a complex program in conformance of regulations that were not written in the detail required to allow a pipeline operator to develop its [IMP] to meet the subsequent exacting expectations of the PHMSA audit team…"[1] Petitioner then provided specific arguments against each of the violations cited in the Final Order.

Under 49 C.F.R. § 190.215, a respondent may file a petition for reconsideration of a final order issued pursuant to § 190.213, requesting that the Associate Administrator reconsider his decision. Although PHMSA does not consider repetitious information, arguments or petitions, a respondent may request consideration of additional facts or arguments, provided that the company submits valid reasons why such information was not presented prior to issuance of the

[1] Petition at 1.

final order.[2] The purpose of reconsideration is to allow a respondent to present additional information or arguments that were unavailable or unknown prior to issuance of the final order, as well as to allow the agency to correct any error in the final order, but not to provide the operator with an opportunity for appeal or a *de novo* review.

Discussion

Petitioner appears to argue generally that civil penalties are inappropriate in this case because the findings of violation in the Final Order were based upon IMP regulations that lacked sufficient detail to put the company on notice as to what it was actually required to do.[3] The company recites some of the procedural history of the IMP regulations and asserts that the Final Order held Sunoco liable for failing to meet a more prescriptive standard than is enunciated in the regulations.

While Petitioner makes this argument generally, it does not provide any evidence showing how Sunoco is being held to a standard that is inconsistent with the IMP regulations. While it is accurate to say that the regulations are a combination of performance-based and prescriptive standards, this does not mean that operators have unfettered discretion to develop their own programs. On the contrary, the IMP developed by each operator must be both technically sound and supported by sufficient documentation to enable OPS to verify compliance. For these reasons, I reject Sunoco's general assertion that the company is being held to a standard that is incompatible or inconsistent with the published IMP regulations.

Petitioner also makes arguments specific to each Item in the Final Order and are discussed individually below.

Item 1- Violation of 49 C.F.R. § 195.452(b)(3)

In Item 1 of the Final Order, I found that Petitioner violated 49 C.F.R. § 195.452(b)(3) by failing to include in its IMP Baseline Assessment Plan (BAP) an element for the proper assessment of pre-1970 Low Frequency-Electric Resistance Welded (LF-ERW) pipe susceptible to longitudinal seam failure. The regulation requires Petitioner to include in its BAP a list of the methods used to assess LF-ERW pipe that is susceptible to seam failure.[4]

In order to support a finding of violation of § 195.452(b)(3), Petitioner's pipeline system must first be shown to contain pre-1970 LF-ERW pipe that is susceptible to longitudinal seam failure. The Pipeline Safety Regulations presume that all pre-1970 ERW pipe is susceptible to such failure unless the operator performs an engineering analysis that shows otherwise.[5] Such an analysis must consider the seam-related leak history of the pipe and pipe manufacturing information, as available.[6] Petitioner argues that it evaluated its pipeline system before the 2003

[2] 49 C.F.R. § 190.215(b) & (c).

[3] Petition at 1.

[4] 49 C.F.R. § 195.452(c)(i).

[5] 49 C.F.R. § 195.303(d).

[6] *Id.*

OPS inspection and determined that none of its pre-1970 LF-ERW pipe was susceptible to failure. Petitioner asserts that its evaluation considered the testing history, failure history, excavation results, pipe specifications, low operating conditions and history, and other factors in reaching this conclusion.[7]

Item 1 of the Notice alleged that Petitioner's BAP "does not account for the risk of [LF-ERW] pipe. The basis for this current position is being studied, but not yet established."[8] The Notice provided no other information as to how Sunoco failed to meet the requirement in § 195.452(b)(3) that an operator's BAP assess the risk of LF-ERW pipe in accordance with § 195.452(c).[9] In its Response, Sunoco contended that its original BAP did indeed account for the risk of LF-ERW pipe "by including risk factors within the respective Risk Models for low-frequency, pre-1970, ERW pipe. Line segments were then risk ranked to establish baseline assessment priorities and reassessment intervals."[10] The Final Order, however, did not address this evidence but merely repeated the allegations in the Notice and noted that Sunoco had acknowledged, through further study subsequent to the inspection, that some of its LF-ERW pipe "did indeed pose a relative risk of seam failure and [that the company] had made 'significant progress' in revising its assessment methods."[11]

Upon a careful review of the record, including the Violation Report filed by the inspector, I believe it is likely that Petitioner's initial BAP did violate § 195.452(b)(3) by failing to document how the company's initial risk analysis determined that no LF-ERW pipe segments were susceptible to longitudinal seam failure and to document that such analysis was technically sound. It is also clear that Petitioner's revised analysis and changed conclusions about its LF-ERW pipe subsequent to the date of the inspection suggest that Sunoco's original evaluation may not have adequately complied with the regulations.

On the other hand, neither the Notice nor the Violation Report contain a description of the particular data or information that was missing from the BAP, how Sunoco's pre-inspection risk analysis failed to properly account for the risk of LF-ERW pipe, or how it was otherwise inadequate under § 195.452(b)(3). The agency has the burden of proving each allegation by a preponderance of the evidence. In this case, the entire record consists of the Violation Report, the Notice, the operator's Response, and the Petition. Faced with Petitioner's assertion that its initial evaluation showed that none of its LF-ERW pipe was susceptible to seam failure and finding no information or evidence in the record to contradict the validity of Sunoco's original

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[7] Petition at 2.

[8] Notice at 1.

[9] 49 C.F.R. 195.452(c)(1)(i) provides that a BAP must include "[t]he methods selected to assess the integrity of the line pipe. An operator must assess the integrity of the line pipe by any of the following methods. The methods an operator selects to assess low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure must be capable of assessing seam integrity and of detecting corrosion and deformation anomalies…."

[10] Response at 1.

[11] Final Order at 2.

analysis and BAP, I find that there is insufficient evidence in the record to prove that the company violated § 195.452(b)(3) as of the July 2003 inspection.

Accordingly, I grant the Petition for Reconsideration with respect to Item 1 of the Final Order. The finding of violation and the associated reduced $10,000 civil penalty are hereby withdrawn.

Item 2a – Violation of 49 C.F.R. § 195.452(e)(1)

In Item 2(a) of the Final Order, I found that Petitioner violated 49 C.F.R. § 195.452(e)(1) by failing to demonstrate that its BAP schedule prioritized the assessment of pipeline segments by the level of risk that they posed to High Consequence Areas (HCAs).[12] PHMSA acknowledged that Petitioner's risk models did include certain risk factors related to population density, environmental damage, and river crossings, but found that the models were not directly correlated to actual HCA locations.[13]

Petitioner admitted that its pre-inspection risk models were "basic," but argued that the company nonetheless considered HCAs when prioritizing the assessment of pipeline segments.[14] Petitioner argued that it "utilized the information available in the National Pipeline Mapping System to identify locations where [its] pipelines could impact [HCAs]."[15] Petitioner provided no additional evidence, however, in support of this argument.

The BAP regulation requires operators to prioritize the assessment of pipeline segments that present the greatest risk to HCAs. In order to meet this requirement, operators must have an accurate indication of the probability and consequences of all threats to each HCA that could be affected. The record contains risk models for Petitioner's Western and Eastern Area pipelines.[16] These models list certain "consequence factors" for population, environmentally sensitive areas and pipeline flow rates.[17] While these factors appear related to certain types of HCAs, the risk models do not include any information indicating whether or how Petitioner incorporated *actual* HCA data into its risk models.

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[12] An HCA is defined as: (1) A *commercially navigable waterway*, which means a waterway where a substantial likelihood of commercial navigation exists; (2) A *high population area*, which means an urbanized area, as defined and delineated by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile; (3) An *other populated area*, which means a place, as defined and delineated by the Census Bureau, that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area; (4) An *unusually sensitive area. See* 49 C.F.R. § 195.450.

[13] Violation Report at 5. HCA data and locations are found in the National Pipeline Mapping System.

[14] Petition at 3.

[15] *Id*.

[16] Sunoco Pipeline Integrity Management Plan (Sunoco IMP), Sections 4.1 and 4.2 (June 9, 2003).

[17] Sunoco IMP Sections 4.1.2 and 4.2.4.

The record also contains charts of risk information for Petitioner's pipeline systems.[18] These charts contain references to generalized consequence factors such as "population density - % urban, [number] of river crossings, Environmental damage severity, [etc.],[19] but provide no indication as to how actual HCA data was used in the risk modeling process. Absent some record that Petitioner considered the potential consequences of releases on each specific HCA, OPS cannot assume that Petitioner accurately prioritized its pipeline segments. Presumably, an assessment of the potential consequences of a spill on each HCA would have generated documentation that Petitioner is required to maintain.[20] The record, however, contains no such documentation.

Petitioner also argued that OPS had taken issue during the inspection with the company's use of a process called "dynamic segmentation" to divide its pipeline system into segments by using the beginning and ending boundaries of HCAs along the pipeline, as compared to a "weighted segmentation based on physical pipeline beginning and endings and/or facility locations."[21] Whatever the importance or impact of dynamic segmentation may be, it is not mentioned in the Notice, Final Order or elsewhere in the record and Petitioner fails to show how it is relevant to or refutes the allegations in Item 2(a). Therefore, I cannot consider it here.

Upon consideration of all the evidence in the record, I find no basis for the withdrawal of the finding of violation or civil penalty for Item 2(a). Accordingly, the terms of the Final Order regarding this Item shall remain in effect.

Item 2c – Violation of 49 C.F.R. § 195.452(e)(1)

In Item 2(c) of the Final Order, I found that the Petitioner violated 49 C.F.R. § 195.452(e)(1) by failing to establish a BAP assessment schedule for its Eastern Area based upon a risk model that took into account all risk factors for that portion of its system. The Final Order found that Petitioner failed to include three specific risk factors (i.e., pipeline depth of cover, internal corrosion and operational factors) and that it only addressed such factors implicitly.[22] PHMSA found that Sunoco's risk model "did not articulate the factors in a manner that could be clearly identified or reliably validated."[23] In its Petition, Petitioner simply stated that its risk model did, in fact, provide for those risks. Petitioner provided no additional arguments or evidence to contradict the evidence in the Violation Report or the findings in the Final Order. Unlike the situation in Item 2(a) above, a review of the record confirms that the Notice did specify the three factors that Petitioner's risk model failed to identify in such a way that their consideration could be reliably validated. These allegations were supported by the Violation Report and properly weighed and addressed in the Final Order.

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[18] Response, Attachment 2A, Sunoco Data Entry Worksheets (The worksheets appear to be dated May 21, 2002).

[19] *Id.*

[20] 49 C.F.R. § 195.452(l).

[21] Petition at 3.

[22] Final Order at 4.

[23] *Id*.

Therefore, I find no basis for withdrawal of the finding of violation or the civil penalty for Item 2(c). Accordingly, the terms of the Final Order regarding this Item shall remain in effect.

Relief

Upon consideration of Petitioner's request for reconsideration and a review of all of the evidence, I grant the Petition for Reconsideration with respect to Item 1 and withdraw the associated reduced civil penalty of $10,000. Therefore, the total civil penalty assessed in the Final Order is reduced to **$40,000**. All other terms of the Final Order shall remain in effect. This decision on reconsideration is the final administrative action in this proceeding.

_____ _____

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued