



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

233 Peachtree Street Ste. 600
Atlanta, GA 30303

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

December 9, 2016

Mr. David Chalson
Senior Vice President, Operations
Mid-Valley Pipeline Company
401 Market Street
Aston, PA 19014

CPF 2-2016-5006

Dear Mr. Chalson:

On August 1-2, 2016, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), Southern Region inspected the Mid-Valley Pipeline Company. (MVPL) Public Awareness (PA) program at your office in Icedale, PA, pursuant to Chapter 601 of 49 United States Code. As a result of the inspection, it appears that MVPL has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. MVPL is operated by Sunoco Pipeline L.P. (Sunoco). The items inspected and probable violations are as follows:

1. §195.440 Public awareness.

... (b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

MVPL did not assess the unique attributes and characteristics of its pipeline and facilities in its Public Awareness Program (PAP) baseline message brochures. The MVPL pipeline transports crude oil and is operated by Sunoco.

In 2013 and 2015, the baseline message brochures MVPL sent (or otherwise delivered) to the affected public, excavators, emergency responders, and public officials did not identify the product transported as crude oil and did not describe the unique attributes and characteristics of the MVPL crude oil pipeline. In 2014, the baseline message

brochures MVPL sent (or otherwise delivered) to excavators and emergency responders did not identify the product transported as crude oil and did not describe the unique attributes and characteristics of the MVPL crude oil pipeline.

The MVPL pipeline transported crude oil but did not transport gasoline, diesel fuel, kerosene, heating oil, jet fuel, butane, ethane, propane, or natural gas in 2013, 2014, or 2015. Yet, all of the MVPL baseline message brochures for calendar years 2013, 2014, and 2015 contained the following statement:

*"You are receiving this brochure because a **Sunoco Pipeline L.P.** pipeline is located in your community. Our underground pipelines provide a safe and efficient method of transporting a variety of products, including crude oil, gasoline, diesel fuel, kerosene, heating oil, jet fuel, butane, ethane, propane, and natural gas."* [emphasis added]

Similarly, the MVPL pipeline did not transport highly volatile liquids (HVLs). Yet, the message brochures MVPL sent to emergency responders emphasized responding to an emergency on a pipeline transporting HVLs with statements such as,

"Keep in mind, Highly Volatile Liquid (HVL) vapors are heavier than air and can collect in low areas such as ditches, sewers, etc."

Also, the brochures MVPL sent to emergency responders provided very little specific information on what emergency responders should expect of MVPL in the event of a pipeline leak or emergency. The emergency responder brochures contained the following statement:

"What does the pipeline company do if a leak occurs?"

In order to prepare for the event of a leak, pipeline companies regularly communicate, plan and train with local emergency personnel such as fire and police departments. Upon the notification of an incident or leak, either by the pipeline company's internal control center or by phone, the pipeline operator will immediately dispatch trained personnel to assist public safety officials in their response to the emergency. Pipeline operators will also take steps to minimize the amount of product that leaks out and to isolate the pipeline."

It should also be noted that pipeline markers located along the MVPL right-of-way list the operator's name as *Mid-Valley Pipeline Company*., not *Sunoco Logistics* or *Sunoco Pipeline L.P.*

Lastly, at the time of PHMSA's inspection the MVPL PAP, titled *Sunoco Pipeline L.P. Public Awareness Program*, dated December 17, 2015, did not include any documentation as to why compliance with all or certain provisions of API's RP 1162 was not necessary.

2. §195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see §195.3).

MVPL did not implement a written continuing public education program that followed the guidance provided in API RP 1162 because it did not perform an adequate program effectiveness evaluation of its PAP. API RP 1162 Section 8.4, titled "*Measuring Program Effectiveness*," indicates operators should assess program effectiveness using the following measures:

- *Whether the information is reaching the intended stakeholder audiences (i.e. percentage of intended audience actually reached)*
- *If the recipient audiences are understanding the messages delivered*
- *Whether the recipients are motivated to respond appropriately in alignment with the information provided, and*
- *If the implementation of the Public Awareness Program is impacting bottom-line results (such as a reduction in the number of incidents caused by third-party damage)*

Upon request for documentation of MVPL's PAP effectiveness evaluation, MVPL personnel produced a letter dated December 19, 2014, from a consultant contracted by Sunoco to conduct the effectiveness evaluation. While the letter contained statements the consultant presented in an attempt to address the above-listed bullet items, the statements were generally unsupported by data or facts and simply reflected the consultant's opinion.

The consultant's letter did, however, contain one reference to specific data but that reference was incorrect. Data presented during the inspection showed that 703,180 total mailings went out and 5,104 responses were received in 2013; yielding a return of only 0.73%. The letter incorrectly stated,

"In 2013, over 700,000 total mailings went out. Sunoco enjoys a much higher response to Business Reply Cards (BRCs) than industry average (<1%, Sunoco ~ 2% to 3%)."

With regards to the first bullet above:

The consultant's letter attempted to address the requirement to determine if the information had reached the intended stakeholder audiences with the following unsupported statement:

"Based on the number of mailings, the number of returns, and the estimated populations of each stakeholder group, it appears that Sunoco is offering the overwhelming majority of its stakeholders the opportunity to learn more about pipeline safety."

The consultant's letter contained no information on the actual number of mailings, the actual number of mailing returns, what would be considered acceptable, or whether any trends in the data were seen over the evaluation period.

With regards to the second bullet above:

The consultant's letter attempted to address the requirement to determine if recipient audiences had understood the messages delivered with the following unsupported statement:

"Sunoco survey results (see above) confirm that Sunoco stakeholders are at least intelligent as most pipeline stakeholders."

The consultant's letter did not contain any of the referenced survey results. Furthermore, the regulatory requirement is to determine whether stakeholders have understood the messages delivered by Sunoco, not to assess stakeholder intelligence.

With regards to the third bullet above:

The consultant's letter attempted to address the requirement to determine if recipients of Sunoco's message materials were motivated to respond appropriately and in alignment with the message content with the following unsupported statement:

"Based on feedback from business response cards, Sunoco's generally excellent rapport with landowner's and other stakeholders along the pipeline; the relative lack of third party damages and near misses; the cooperation of Elected Officials and Emergency Responders; and the number of one call tickets; it appears that Sunoco stakeholders do exhibit desired pipeline safety behavior."

The consultant's letter did not contain any information on feedback received from business reply cards, the number of one call tickets received, or the number of third party damage or near miss events Sunoco had experienced. Sunoco's rapport with landowner's was not relevant to whether the landowner's or other stakeholder's were motivated to respond appropriately by the message materials. Moreover, it is unclear what type of cooperation from elected officials and emergency responders is referenced or what relevance this had to their ability to respond appropriately based upon the message materials provided by Sunoco.

With regards to the fourth bullet above:

The consultant's letter attempted to address the requirement to determine if the implementation of the PAP had impacted bottom-line results (such as a reduction in the number of incidents caused by third-party damage) with the following unsupported statement:

"The Sunoco PAP has been in place since June 2006. Over the years it has evolved to its current state of refinement. It is actively managed and, because of its evolution, absent regulatory changes, it is unlikely that any major changes will be necessary. The foregoing analysis speaks for itself: It appears that Sunoco is doing an excellent job of implementing API RP 1162 and the affected stakeholders are benefitting from it."

This statement does not present any data to support whether the PAP had any impact whatsoever on bottom-line results. In fact, in the preceding paragraph of the letter, the consultant discussed a "*relative lack of third party damages or near misses.*" This implied that Sunoco had experienced third party damages or near misses, but nothing in the letter indicated whether the number of third party damages or near misses increased, decreased or remained the same over the 4-year evaluation period.

Lastly, at the time of PHMSA's inspection the MVPL PAP, titled *Sunoco Pipeline L.P. Public Awareness Program*, dated December 17, 2015, did not include any documentation as to why compliance with all or certain provisions of API's RP 1162 was not necessary.

Proposed Compliance Order

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$205,638 per violation per day the violation persists up to a maximum of \$2,056,380 for a related series of violations. For violations occurring between January 4, 2012 to August 1, 2016, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed \$100,000 per violation per day, with maximum penalty not exceeding \$1,000,000 for related series of violations.

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

With respect to items 1 and 2 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to MVPL. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

In your correspondence on this matter, please refer to **CPF 2-2016-5006** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



James A. Urisko
Director, Office of Pipeline Safety
PHMSA Southern Region

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Mid-Valley Pipeline Company. (MVPL) a Compliance Order incorporating the following remedial requirements to ensure the compliance of MVPL with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to MVPL's failure to address the unique characteristics and attributes of its crude oil pipeline system in its baseline message brochures, MVPL must develop and distribute to the affected public, excavators, public officials and emergency responders new baseline message material that clearly identifies the subject pipeline as "*Mid-Valley Pipeline Company.*" and adequately addresses the unique characteristics and attributes of the crude oil being transported by MVPL.
2. In regard to Item Number 2 of the Notice pertaining to MVPL's failure to perform an adequate effectiveness evaluation of its Public Awareness Program, MVPL must complete a written Public Awareness Program effectiveness evaluation that meets the requirements of API RP1162, Section 8.
3. Within 90 days of issuance of the Final Order, MVPL must submit to the Director, Office of Pipeline Safety, PHMSA Southern Region, documentation demonstrating satisfactory completion of Items 1 and 2, including, at a minimum, a copy of newly developed baseline message materials and a copy of the written program effectiveness evaluation.
4. It is requested (not mandated) that MVPL maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director, Office of Pipeline Safety, PHMSA Southern Region.

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.