



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

1200 New Jersey Avenue, SE
Washington, D.C. 20590

OCT 12 2012

Mr. Steve Cossé
President and Chief Executive Officer
Murphy Oil Corporation
200 Peach Street
El Dorado, AR 71730

Mr. F. William Grube
Chief Executive Officer
Calumet Specialty Products Partners, LP
2780 Waterfront Parkway East Drive, Suite 200
Indianapolis, IN 46214

Re: CPF No. 3-2011-6001

Gentlemen:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$157,900 against Murphy Oil Corporation. It also specifies actions that need to be taken by Calumet Specialty Products Partners, LP, the current owner, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided 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: Mr. David Barrett, Director, Central Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Steve Hunkus, Vice President, World Wide Refining, Murphy Oil Corporation,
200 Peach Street, El Dorado, Arkansas 71731
Mr. David J. Podratz, Manager, Superior Refinery, Calumet Specialty Products Partners,
LP, 2407 Stinson Avenue, Superior, Wisconsin 54880

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

**Murphy Oil Corporation,
Respondent,**

and

Calumet Specialty Products Partners, LP.

CPF No. 3-2011-6001

FINAL ORDER

On May 18-21 and June 2-5, 2010, 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 Murphy Oil Corporation's (Murphy or Respondent) Superior Unit in Superior, Wisconsin.¹ The Superior Unit consists of the Superior Refinery, three breakout tanks, and approximately 6.5 miles of pipeline within residential and industrial areas near Superior, Wisconsin.² The pipeline is located in a High Consequence Area (HCA).³

As a result of the inspection, the Director, Central Region, PHMSA (Director), issued to Respondent, by letter dated July 25, 2011, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Murphy had committed various violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$157,900 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning item required no further action but warned the operator to correct the probable violation or face potential enforcement action.

Murphy responded to the Notice by letter dated August 25, 2011 (Response). The company did

¹ The Superior Unit was purchased by Calumet Specialty Products Partners, LP (Calumet), on September 30, 2011. See Murphy Oil Corporation, Quarterly Report (Form 10-Q), at 8 and Exhibit 2.1 (filed November 4, 2011).

² Pipeline Safety Violation Report (Violation Report), dated July 25, 2011 (on file with PHMSA) at 1.

³ "High Consequence Areas" are defined as commercially navigable waterways, high population areas, other populated areas, and unusually sensitive areas. See 49 C.F.R. § 195.450.

not contest the allegations of violation but provided an explanation of its corrective actions and requested that several of the proposed civil penalties be reduced. Respondent did not request a hearing and therefore has waived its right to one.

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. § 195.234(e)(4), which states:

§ 195.234 Welds: Nondestructive testing.

(a) . . .

(e) All girth welds installed each day in the following locations must be nondestructively tested over their entire circumference, except that when nondestructive testing is impracticable for a girth weld, it need not be tested if the number of girth welds for which testing is impracticable does not exceed 10 percent of the girth welds installed that day:

(1) . . .

(4) Within the limits of any incorporated subdivision of a State government;

The Notice alleged that Respondent violated 49 C.F.R. § 195.234(e)(4) by failing to nondestructively test over their entire circumference all girth welds located within the limits of an incorporated subdivision of a State government. Specifically, the Notice alleged that while Murphy had made 62 girth welds within city limits of Superior, Wisconsin, in October 2008, Murphy had nondestructively tested only seven.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.234(e)(4) by failing to nondestructively test over their entire circumference all girth welds located within the limits of an incorporated subdivision of a State government.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(2), which states:

§ 195.404 Maps and records.

(a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information:

(1) . . .

(2) All crossings of public roads, railroads, rivers, buried utilities, and foreign pipelines.

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(a)(2) by failing to maintain current maps or records of its pipeline system indicating crossings of buried utilities. Specifically, the Notice alleged that Murphy's maps and records contained no information about buried utility crossings, despite the fact that the pipelines were located entirely within the city

limits of Superior, Wisconsin, and therefore likely to have a significant number of buried utility crossings.

Respondent did not contest this allegation of violation, and indicated in its Response that it had begun to update the company's maps with the required information. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(a)(2) by failing to maintain current maps or records of its pipeline system indicating crossings of buried utilities.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a) which states:

§ 195.412 Inspection of rights-of-way and crossings under navigable waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a) by failing to inspect its pipeline right-of-way at intervals not exceeding three weeks, but at least 26 times each calendar year. Specifically, the Notice alleged that Respondent did not conduct pipeline right-of-way patrols between April 24 and May 20, 2008, exceeding the maximum interval by six days, or between November 16 and December 15, 2008, exceeding the maximum interval by eight days.

Respondent did not contest this allegation of violation and stated that it had changed its inspection interval and its operations and maintenance manual to reflect the regulatory requirement.⁴ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.412(a) by failing to inspect its pipeline right-of-way at intervals not exceeding three weeks, but at least 26 times each calendar year.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overfill protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a) by failing to test each item of pressure control equipment at intervals not exceeding 15 months, but at least once each

⁴ Response at 1.

calendar year. Specifically, the Notice alleged that Respondent could not produce documentation that it had tested five thermal relief valves for the five years prior to the 2010 PHMSA inspection.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.428(a) by failing to test each item of pressure control equipment at intervals not exceeding 15 months, but at least once each calendar year.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.442(c)(1), which states:

§ 195.442 Damage prevention program.

(a) Except as provided in paragraph (d) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term “excavation activities” includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations.

(b) . . .

(c) The damage prevention program required by paragraph (a) of this section must, at a minimum:

(1) Include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located.

The Notice alleged that Respondent violated 49 C.F.R. § 195.442(c)(1) by failing to include in its written damage prevention program the identity of persons who normally engage in excavation activities in the area in which the pipeline is located. Specifically, the Notice alleged that Murphy’s list of excavators did not include ones from Duluth, Minnesota, and surrounding areas who engaged in excavation activity near Superior, Wisconsin. The Notice gave one specific example of an excavator who had actually been hired by Murphy in the past but who did not appear on the company’s list of excavators.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.442(c)(1) by failing to include in its written damage prevention program the identity of persons who normally engage in excavation activities in the area in which the pipeline is located.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(a) . . .

(b) Ensure through evaluation that individuals performing covered tasks are qualified; . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified. Specifically, the Notice alleged that Murphy identified the performance of rectifier inspections as a covered task, but that such task had been performed by an individual not qualified under Respondent's written operator qualification program. The Notice alleged that this individual had inspected each of Murphy's two rectifiers 27 times since November 2007.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified.

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 195.581(a), which states:

§ 195.581 Which pipelines must I protect against atmospheric corrosion and what coating material may I use?

(a) You must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

The Notice alleged that Respondent violated 49 C.F.R. § 195.581(a) by failing to clean and coat each pipeline or portion of pipeline that was exposed to the atmosphere. Specifically, the Notice alleged that much of Murphy's regulated piping at the Superior Refinery and the exposed piping associated with the breakout tanks near Lake Superior were not protected from atmospheric corrosion.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.581(a) by failing to clean and coat each pipeline or portion of pipeline that was exposed to the atmosphere.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. 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; the Respondent's ability to pay the penalty and 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 \$157,900 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$49,600 for Respondent's violation of 49 C.F.R. § 195.234(e)(4), for failing to nondestructively test over their entire circumference all girth welds located within the limits of an incorporated subdivision of a State government. As noted above, I found that Murphy failed to nondestructively test 55 girth welds meeting these criteria. Murphy did not contest the allegation. Respondent argued, however, that the penalty should be reduced by 50% because Respondent immediately came into compliance upon being informed of the violation and because there was no adverse impact on the environment.⁵

Inspection and testing of girth welds is required in the sensitive areas listed in § 195.234(e), so that an operator may be able to identify integrity problems before they cause accidents. Presumably, this is the very reason Murphy conducted nondestructive testing on seven of the girth welds. However, Murphy failed to inspect a large majority of its other girth welds. The gravity of the violation and culpability for the violation of an unambiguous regulation is not mitigated by later attempts to achieve compliance. I see no basis for reduction of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$49,600 for violation of 49 C.F.R. § 195.234(e)(4).

Item 3: The Notice proposed a civil penalty of \$13,300 for Respondent's violation of 49 C.F.R. § 195.412(a), for failing to inspect its pipeline right-of-way at intervals not exceeding three weeks, but at least 26 times a calendar year. As noted above, I found that Murphy had exceeded the maximum inspection interval on two occasions in 2008. Murphy did not contest the allegation but requested a reduction of the proposed penalty by 50%, in light of the fact it had conducted bi-monthly inspections in 2008 and had immediately conducted additional inspections after discovery of the violation.⁶ Respondent also argued that no adverse effect on the environment resulted from the longer inspection interval.

The proposed penalty for this Item already took into account that no pipeline failure or spill had resulted from the violation. Furthermore, the gravity of the violation was increased due to the proximity of the pipeline right-of-way to environmentally sensitive HCAs. Regular inspections of pipeline rights-of-way enable operators to identify integrity threats before they result in pipeline failures. Respondent is fully culpable for its documented delays in conducting inspections. The nature, circumstances and gravity of the violation warrant the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$13,300 for violation of 49 C.F.R. § 195.412(a).

Item 4: The Notice proposed a civil penalty of \$62,100 for Respondent's violation of 49 C.F.R. § 195.428(a), for failing to test each item of pressure control equipment at intervals not exceeding 15 months, but at least once each calendar year. Murphy neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty.

Pressure limiting devices are critical for preventing pressure-related pipeline failures; regular maintenance of such devices helps to ensure that facilities are adequately protected. Respondent

⁵ *Id.*

⁶ *Id.*

was fully culpable for the violation, apparently operating under the impression that thermal relief valves were not subject to this inspection and testing requirement. This omission lasted for at least five years and could have had significant consequences if an overpressure event had occurred. Given the potential threat posed by the violation, I find that the nature, gravity, circumstances, and duration of the violation support the proposed penalty amount. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$62,100 for violation of 49 C.F.R. § 195.428(a).

Item 6: The Notice proposed a civil penalty of \$32,900 for Respondent's violation of 49 C.F.R. § 195.505(b), for failing to ensure through evaluation that individuals performing covered tasks were qualified. Respondent did not contest the allegation but requested a 50% reduction in the proposed civil penalty, in light of the fact that the individual performing the covered task was competent and capable, that there had been no "adverse impacts" from the individual's lack of qualification, and that the individual was subsequently qualified to perform the task immediately after Murphy's discovery of the violation.⁷

I find these arguments unpersuasive. The purpose of the qualification program is to ensure that individuals performing critical safety-related tasks on pipelines are properly qualified to perform those tasks. In this instance, Respondent identified the task in question as one that was required by Part 195 and that would affect the operation or integrity of the pipeline; therefore, the failure to ensure the task was performed by a properly qualified individual was a significant oversight, no matter how competent the individual may have actually been. The failure to ensure that an individual performing covered tasks was properly qualified was in direct violation of both the regulation and Respondent's own written procedures. Corrective actions taken after the violation was discovered are commendable but do not warrant a reduction in the proposed penalty. I find that the nature, gravity, circumstances, and duration of the violation support the proposed penalty amount. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$32,900 for violation of 49 C.F.R. § 195.505(b).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$157,900**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$157,900 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty

⁷ *Id.* at 2.

may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 2, 4, 5, 6, and 8 in the Notice for violations of 49 C.F.R. §§ 195.404(a)(2), 195.428(a), 195.442(c)(1), 195.505(b), and 195.581(a), respectively. 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. The Director has indicated that Murphy took certain actions to address some of the cited violations but has not yet produced any documentation of these actions. Since Murphy no longer operates the Superior Unit and Calumet is now responsible for the safe operations of its pipeline facilities, PHMSA expects Calumet to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.404(a)(2) (**Item 2**), Calumet is expected to update its maps and records to reflect pipeline crossings of all buried utilities and make them available to appropriate personnel.
2. With respect to the violation of § 195.428(a) (**Item 4**), Calumet is expected to inspect and test each pressure-limiting device to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation.
3. With respect to the violation of § 195.442(c)(1) (**Item 5**), Calumet is expected to update its damage prevention program to include the identities of all parties that normally conduct excavation activities in the area in which the pipeline is located.
4. With respect to the violation of § 195.505(b) (**Item 6**), Calumet is expected to train and qualify the individuals responsible for performing the rectifier inspections required by § 195.573(c).
5. With respect to the violation of § 195.581(a) (**Item 8**), Calumet is expected to clean and coat each pipeline or portion of pipeline that is exposed to atmospheric corrosion. Respondent must develop a plan and schedule for protection of exposed piping.
6. PHMSA requests that Calumet submit documentation demonstrating compliance with each of these items to David Barrett, Director, Central Region, Pipeline and Hazardous Materials Safety Administration, 901 Locust Street, Kansas City, MO 64106, within 30 days after their completion.

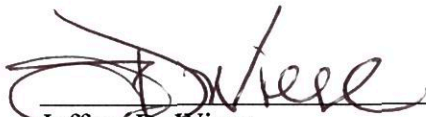
WARNING ITEM

With respect to Item 7, the Notice alleged probable violations of Part 195.505(b) but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 195.505(b) (**Item 7**) — Respondent's alleged failure to ensure through evaluation that individuals performing covered tasks were qualified. Specifically, Respondent failed to ensure that personnel installing Tapecoat – 20 coating were properly qualified.

Murphy presented information in its Response showing that it had taken certain actions to address this Item.⁸ However, if PHMSA finds a violation of this provision, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: 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. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.



Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

OCT 12 2012

Date Issued

⁸ *Id.* at 2.