**DECEMBER 31, 2012**

Mr. Michael J. Hennigan
President and Chief Executive Officer
Sunoco Logistics Partners L.P.
1818 Market Street, Suite 1500
Philadelphia, PA 19103-3615

**Re: CPF No. 4-2010-5010**

Dear Mr. Hennigan:

Enclosed please find the Decision on Reconsideration issued in the above-referenced case. It grants your Petition, in part, to the extent you requested reconsideration of the civil penalty amount assessed in the August 1, 2012 Final Order and reduces the total civil penalty by $10,000, but denies your Petition in all other respects. Service of the Decision 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. Rod Seeley, Director, Southwest Region, PHMSA
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, PHMSA
Ms. Lisa A. Runyon, Senior Counsel, Sunoco Logistics Partners, L.P.

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

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

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| **In the Matter of** | ) | |
| **Sunoco Logistics Partners, L.P.,** | ) | **CPF No. 4-2010-5010** |
| **Petitioner.** | ) | |

## DECISION ON RECONSIDERATION

In an August 1, 2012 Final Order, I found that Sunoco Logistics Partners, L.P. (Sunoco Logistics or Petitioner) had committed seven violations of the hazardous liquid pipeline safety regulations in 49 C.F.R. Part 195 in connection with an investigation by the Pipeline and Hazardous Materials Safety Administration (PHMSA) of an accident that occurred on the West Texas Gulf Pipeline System at the Colorado Station in Colorado City Texas on June 17, 2009.[1] Specifically, I found that Sunoco Logistics had violated 49 C.F.R. §§ 195.52(a)(2), 195.50(a), 195.402(c)(3), 195.402(c)(13), 195.402(e), 195.402(e)(9), and 195.505(c) (Items 1-7 respectively). I assessed Petitioner a civil penalty of $415,000 for committing these violations and ordered the company to take certain actions to comply with the cited regulations.

On August 27, 2012, Sunoco Logistics submitted a petition for reconsideration (Petition) of the Final Order. In its Petition, Sunoco Logistics requested reconsideration of the findings of violation for Items 1, 2, and 4 of the Final Order, and requested that the civil penalties assessed for these three items be rescinded.[2]

Having reviewed the record including all factual and legal arguments, I find that Petitioner's arguments warrant a partial reduction in the civil penalties assessed for Items 1 and 2 in the August 1, 2012 Final Order as set forth below. Accordingly, the Petition is granted in part, to the extent that it sought reconsideration of the civil penalties assessed for Items 1 and 2. I also find that the findings of violation in the Final Order for all three of these items were supported by the evidence, and that Petitioner has presented no information or arguments that would warrant the withdrawal of any of these three findings of violation. I further find that Petitioner has presented

[1] *In the Matter of Sunoco Logistics Partners, L.P*, Final Order, CPF No. 4-2010-5010 (Aug. 1, 2012).

[2] Petition at 1-2.

no information or arguments that would warrant the reduction or elimination of the civil penalty assessed for Item 4. Accordingly, the Petition is denied in all other respects.

Standard of Review

A Petitioner is afforded the right to petition the Associate Administrator for reconsideration of a Final Order. However, that right does not constitute an appeal or an opportunity to seek a de novo review of the record. Instead, it is a venue for presenting the Associate Administrator with information that was not previously available or requesting that any errors in the Final Order be corrected. Requests for consideration of additional facts or arguments must be supported by a statement of reasons as to why those facts or arguments were not presented prior to the issuance of the Final Order. Repetitious information or arguments will not be considered.[3]

Background

On March 11, 2010, PHMSA issued to Petitioner a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) as a result of an investigation by PHMSA of an accident that occurred on the West Texas Gulf Pipeline System at the Colorado Station in Colorado City Texas on June 17, 2009. On that date, a fire occurred during a pipeline repair project involving the replacement of a section of pipe and a spill of approximately 3,416 barrels of crude oil occurred later that day at the same location. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Sunoco Logistics had committed various violations of 49 C.F.R. Part 195 and proposed assessing a total civil penalty of $415,000 for the alleged violations. The Notice also proposed ordering Petitioner to take certain measures to correct the alleged violations.

Sunoco Logistics responded to the Notice by letter dated April 11, 2010 (Response). Petitioner contested most of the allegations and requested a hearing. A hearing was held on September 23, 2010, in Houston, Texas, with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Petitioner was represented by counsel. After the hearing, Petitioner provided additional written material for the record, by letter dated November 23, 2010 (Closing Response).

On August 1, 2012, I issued a Final Order finding that Sunoco Logistics had violated 49 C.F.R. §§ 195.52(a)(2), 195.50(a), 195.402(c)(3), 195.402(c)(13), 195.402(e), 195.402(e)(9), and 195.505(c); assessing Petitioner a civil penalty of $415,000 for committing these violations; and ordering the company to take certain actions to comply with the cited regulations.

[3] 49 C.F.R. § 190.215(a)-(e).

Analysis

*I. Final Order Items 1 and 2 regarding Accident Reporting*

Item 1 of the Final Order found that Petitioner violated 49 C.F.R. § 195.52(a)(2) by failing to give telephonic notice to the National Response Center at the earliest practicable moment after an unintentional fire occurred at the Colorado City Station on June 17, 2009 during a project involving the removal and replacement of a section of 24-inch diameter pipe that functioned as the suction and fill line for a crude oil breakout tank designated as Tank No. 10 (Line 10 Project). Item 2 of the Final Order found that Petitioner violated 49 C.F.R. § 195.50(a) by failing to submit a written accident report to PHMSA following the accident.

Sunoco Logistics undertook the Line 10 Project to replace a 5-foot section of the pipe due to corrosion in the pipe wall. Once the pipe was "cold cut" open and the corroded 5-foot section of pipe removed, petroleum was allowed to drip out of both sides of the open pipe into catch pans and mud was packed into both sides of the pipe opening to isolate the petroleum from the repair work involving torches. During the torch-beveling process, which is part of preparing the new pipe for welding, at least one mud pack failed, allowing some form of petroleum to escape past the mud and flammable petroleum vapors were ignited by the torch.

At this point, all personnel involved in the beveling process left the area immediately to escape the fire. The project leader then returned with a fire extinguisher and the fire was extinguished within about 15 minutes.[4] Sunoco Logistics ceased the repair work and contacted the West Texas District Manager in Abilene, Texas, who dispatched a Safety and Health Specialist to the Colorado City Station to investigate the fire.

In its Responses, at the hearing, and in its Petition, Sunoco Logistics argued with respect to both Items 1 and 2 that "the release was not a release from the pipeline and even if it was it did not constitute a release of hazardous liquids as required under the regulations to trigger a release notification."[5]

In evaluating Petitioner's argument that this fire was not required to be reported, I noted in the Final Order that the pipeline safety regulations in Part 195 are not limited to pipeline safety risks arising solely from products in a liquid state. In § 195.2, the definition of "hazardous liquid" means "petroleum, petroleum products, or anhydrous ammonia." It does not state that petroleum or petroleum products must be in a liquid state. For many years, PHMSA's regulations have specifically required hazardous liquid pipeline operators to address the safety threats posed by hazardous and/or flammable vapors incident to the transportation of hazardous liquids by pipeline. For example, § 195.438 prohibits "smoking and open flames in each pump station area and each breakout tank area where there is a possibility of the leakage of a flammable hazardous liquid or of the presence of flammable vapors."[6] In this case, Petitioner's own internal

[4] Statement of Felix M. Ramos, June 24, 2009 at 2. PHMSA Violation Report Exhibit G.

[5] Petition at 1.

investigation of the Line 10 Project accident concluded that the petroleum fire occurred "due to crude oil or crude oil vapors" passing around the mud plug.[7]

The last "catch-all" item in the list of criteria for reporting in § 195.52(a)(5) is an accident that "In the judgment of the operator was significant even though it did not meet the criteria of any other paragraph of this section." A fire occurring on a pipeline that transports flammable petroleum is a particularly hazardous type of pipeline accident and the fact that Petitioner ceased the repair work and launched an investigation by its Safety and Health Specialist demonstrates that Petitioner's project leader considered the accident to be significant at the time it occurred.

In the Final Order, I also noted that the purpose of accident reporting goes well beyond the need to keep statistics on spill volumes. Accident reporting provides a means for prompt response and investigation of significant accidents of this nature that put pipeline personnel at risk during pipe repairs and replacements. Both federal and state regulators depend on data from these accident reports to evaluate operator performance and manage their inspection programs, and to identify trends that may require changes or additions to the regulations to ensure safety. I found that Petitioner's argument that an unintentional petroleum fire need not be reported runs counter to the Part 195 regulations and would not be consistent with pipeline safety.

Based on a review of the record and the information provided in the Petition, I find, pursuant to 49 C.F.R. § 190.215(c), that the arguments in Sunoco Logistics' Petition regarding the findings of violation for Items 1 and 2 are repetitious. Notwithstanding such finding, I have considered all the information and arguments submitted by Petitioner and find no basis to alter the findings of violation in the Final Order. Therefore, I affirm the findings of violation set forth in the Final Order for Items 1 and 2.

*Reconsideration of the Civil Penalties Assessed for Items 1 and 2*

In assessing the civil penalties for Items 1 and 2 in the Final Order, I considered the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Petitioner's culpability; the history of Petitioner's prior offenses; Petitioner'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 Petitioner in attempting to comply with the pipeline safety regulations. I noted that accident reporting is a longstanding regulatory requirement and is a key part of pipeline safety. The absence of reporting is serious because it can adversely impact the oversight process. Making a telephonic report is not a costly or burdensome requirement and I found that Petitioner was fully culpable for its failure to provide telephonic notice since there was no impediment to doing so.

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[6] Many petroleum-based hazardous liquids are volatile and form vapor when exposed to the atmosphere depending on the temperature and the properties of the particular substance.

[7] *Investigation Report for Colorado City Station Oil Spill*, July 6, 2009, at 4. Response, Attachment 3.

While Petitioner's argument that Items 1 and 2 be withdrawn entirely was not persuasive, I acknowledge that this appears to be the first enforcement case to specifically articulate the need to report this particular type of fire. As a result, Petitioner may have had a credible, if erroneous belief that reporting was not required.[8] While PHMSA believes that any operator in Petitioner's circumstances should have reasonably concluded that reporting was required, if there is legitimate uncertainty about the applicability of a particular regulation, it is not always appropriate for the first operator found to have violated that regulation to be subjected to the full amount of the penalty that would otherwise be assessed after all other operators can avail themselves of the precedent established by that first instance. In this case, I acknowledge that Petitioner may have had a credible, if erroneous belief, that reporting was not required.

For the reasons discussed above, having reviewed the record and reconsidered the assessment criteria, I find that a 50 percent reduction in the civil penalty amounts assessed in the Final Order for Items 1 and 2 is warranted. Accordingly, I assess Petitioner a reduced civil penalty of $5,000 for its violation of § 195.52(a)(2) (Item 1) and $5,000 for its violation of § 195.50(a) (Item 2).

*II. Final Order Item 4 regarding Lockout/Tagout Audits*

Item 4 of the Final Order found that Petitioner violated 49 C.F.R. § 195.402(c)(13) by failing to follow its own procedures for determining the effectiveness of company procedures used in normal operation and maintenance and taking corrective action where deficiencies were found. Specifically, it alleged that Sunoco Logistics failed to conduct annual field audits of Lockout/Tagout (LOTO) work done by operator personnel at the Colorado City Station for 2008 and 2009, as set forth in its own Procedure HS-P-005.

In its Responses, at the hearing, and in its Petition, Sunoco Logistics argued that its failure to conduct annual field audits for 2008 and 2009 at the Colorado City Station was due to its use of a "random sampling" approach and not all stations in each geographic district where LOTO work had been done were audited every year.[9]

The LOTO procedure in effect during the relevant period states the following at page 18 in relevant part:

> The LOTO's required by this program will be reviewed at least annually by HES [Health, Environment, and Safety Dept.] to assure that the procedures and the requirements of this program are being followed. This review will be supplemented by:
>
> - Work site inspections conducted by HES, and any reports of program deficiencies made by Sunoco Logistics' supervisors; and,

[8] Under 49 C.F.R. § 190.11(a), however, an operator can obtain information and advice about compliance by telephone and internet at any time during business hours.

[9] Petition at 2.

> - A review of LOTO records, including site-specific ECPs [Energy Control Procedures] used or developed during the course of the year, and
>
> - A review of LOTOs being used at the facility.
>
> The periodic review will be designed to correct any deviations or inadequacies observed.[10]

In the Final Order, I noted that this procedure requires Petitioner to conduct annual field audits of all LOTO done by its personnel and does not exclude any facilities from being audited. Notably, Petitioner followed this procedure for all facilities for three consecutive years in 2005, 2006, and 2007 but did not follow it in 2008 and 2009 for the Colorado City Station, the period leading up to the June 17, 2009 accident.[11] Petitioner did not provide any documentation of a decision by the company to change to a sampling approach in the 2008 period.

Based on a review of the record and the information provided in the Petition, I find, pursuant to 49 C.F.R. § 190.215(c), that the arguments in Sunoco Logistics' Petition regarding the findings of violation for Item 4 are repetitious. Notwithstanding such finding, I have considered all the information and arguments submitted by Petitioner and find no basis to alter the finding of violation in the Final Order. Therefore, I affirm the finding of violation set forth in the Final Order for Item 4.

*Reconsideration of the Civil Penalty Assessed for Item 4*

In assessing the civil penalty for Item 4 in the Final Order, I considered the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Petitioner's culpability; the history of Petitioner's prior offenses; Petitioner'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 Petitioner in attempting to comply with the pipeline safety regulations. I noted that the 3,416 barrel oil spill was a direct consequence of the failure to fully accomplish LOTO. If Petitioner had performed the annual field audits of LOTO work in 2008 and 2009—the time period leading up to the accident—the deficiencies that manifested themselves on June 17, 2009, may have potentially been identified and corrected. Petitioner presented no justification for its failure to conduct these field audits.

Petitioner has presented no information or arguments that warrant a reduction in the penalty amount assessed in the Final Order for this Item. Accordingly, having reviewed the record and considered the assessment criteria, I affirm the assessment in the Final Order of a civil penalty of $22,500 for Petitioner's violation of 49 C.F.R. § 195.402(c)(13).

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[10] PHMSA Violation Report, Exhibit C.

[11] Respondent provided a Lockout/Tagout audit record to PHMSA dated 7/2009 but this record was for a specific project (project number 935004-isolate idle line 1-2-3-18/Booster pump) and was not an annual field audit for Lockout/Tagout work at the station.

## RELIEF GRANTED

Based on a review of the record and for the reasons stated above, the civil penalty of $10,000 assessed for Item 1 in the Final Order is reduced to $5,000; and the civil penalty of $10,000 assessed for Item 2 in the Final Order is reduced to $5,000.

## RELIEF DENIED

Based on a review of the record and for the reasons stated above, the Petition is denied in all other respects.

Payment of the $405,000 civil penalty assessed in the Final Order, as reduced by this Decision, is now due. To date, Petitioner has already paid $372,500 of this penalty. I hereby order that the remaining penalty amount of $32,500 be paid within 20 days following receipt of this Decision in accordance with the payment instructions set forth in detail in the Final Order. Federal regulations (49 C.F.R. § 89.21(b)(3)) require that all payments 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, OK 73125; (405) 954-8893.

Failure to pay the remaining $32,500 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. Failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

This Decision is the final administrative action in this proceeding.

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Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued