

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

In the Matter of

West Texas Gulf Pipe Line Company,

Respondent.

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CPF No. 4-2015-5005H

CONSENT AGREEMENT

On March 12, 2015, under the authority of 49 U.S.C. § 60112, the Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), issued a Corrective Action Order (Original CAO) to West Texas Gulf Pipe Line Company (West Texas Gulf or Respondent), owned and operated by Sunoco Pipeline L.P. (SPLP), to take the necessary corrective actions to protect the public, property, and the environment from potential hazards associated with Respondent's West Texas Gulf Pipeline. PHMSA issued the Original CAO in response to a failure that occurred on February 25, 2015, on the West Texas Gulf Pipeline System #1, Unit 8514, at mile post (MP) 257 on the Blum-to-Wortham Segment, which resulted in the release of approximately 30 barrels of crude oil (Failure).

Since that time, there have been additional accidents on the West Texas Gulf Pipeline that have caused the expansion of PHMSA's concerns regarding the safety of the West Texas Gulf System. The following events have occurred:

- On April 8, 2015, PHMSA issued a Notice of Probable Violation and Proposed Civil Penalty and Compliance Order 4-2015-5009 (NOPV1) to Respondent for failure to report a serious accident that occurred on February 19, 2013, at its Wortham, Texas Facility (2013 Failure). Respondent has complied with the terms of the proposed Compliance Order and paid the proposed penalty, so PHMSA issued a Final Order and closed the case on November 3, 2015.
- On April 27, 2015, PHMSA issued a Notice of Probable Violation and Proposed Civil Penalty 4-2015-5012 (NOPV2) to Respondent for certain violations arising out of the Failure, alleging improper pipeline repair methods and the failure to correct a metal-loss condition that was known by Respondent to exist prior to the Failure. Respondent paid a portion of the proposed penalty in that case and is awaiting the issuance of a Final Order.
- On June 7, 2015, West Texas Gulf experienced a second leak on the Affected Segment involving external metal loss due to corrosion was reported to PHMSA by the Respondent at a location approximately seven miles downstream from the original leak

and nine and one-half miles upstream of the Wortham, Texas Facility for which the Original CAO was issued.

- On June 19, 2015, a major release of crude oil occurred at Respondent's Wortham Facility, where an estimated 3,300 barrels of crude oil leaked from a failed flanged connection on piping that was installed in 2013 and associated with the construction/modification project in which the February 19, 2013 accident occurred.
- On May 28, 2015 and June 23, 2015, two reportable accidents occurred at the SPLP Corsicana facility as part of the Permian Express II construction project. This project was managed by the same West Texas Gulf department responsible for projects upon which the West Texas Gulf February 19, 2013 accident and the June 19, 2015 accidents occurred.
- On November 10, 2015, a failure of a relief valve and release of crude oil occurred while piping associated with the June 19, 2015 release was being replaced. Five people were transported to the hospital for treatment of crude oil exposure to the face and eyes as well as bruises and contusions after a relief valve failed when it was improperly disconnected while under pressure. The accident was a result of improper isolation and failure to follow instructions for safely de-energizing the valve before its removal.
- Taken together, the accidents described above raised serious concerns to PHMSA about the overall safety of the West Texas Gulf Pipeline System, the processes by which West Texas Gulf makes decisions about safety, how different parts of the company discuss and learn from past mistakes, and whether there are sufficient measures in place for the company to have an effective safety culture.
- On September 4, 2015, PHMSA issued an Amendment to the Original CAO (Amended CAO), with preliminary findings describing the events that had occurred since the Original CAO was issued in February 2015, and ordering West Texas Gulf to prepare a comprehensive written plan to improve the safety performance of the Affected Segment, to hire an independent third party to review and oversee implementation of the plan, and other corrective actions.
- West Texas Gulf has filed the required monthly reports regarding the actions taken to address the issues in the CAO. The most recent report, dated April 15, 2016, indicates the pipeline has returned to service and is limited to the 80% operating pressure based on approvals provided by PHMSA.

The West Texas Gulf Pipe Line System is approximately 580 miles in length and transports crude oil from Colorado City, Texas, to terminals in Longview and Nederland, Texas.

Respondent requested a hearing, but PHMSA and Respondent agreed that settlement of this proceeding will avoid further administrative proceedings or litigation of this Notice and that entry into this Consent Agreement is the most appropriate means of resolving issues raised in the Amended CAO and in the public interest. Therefore, pursuant to 49 C.F.R. Part 190, without

adjudication of any issue of fact or law, and upon consent and agreement of Respondent and the PHMSA (the Parties), the Parties agree as follows:

I. General Provisions

1. Respondent acknowledges that its pipeline system 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 Consent Agreement, Respondent acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Amended CAO states claims upon which relief may be granted pursuant to 49 U.S.C. 60101, et seq., and the regulations and orders issued thereunder.

2. Respondent agrees to take the actions specified in Section II of this Agreement (Corrective Measures) and to abide by the terms of this Consent Agreement. These actions, including any work plans and schedules, shall automatically be incorporated into this Consent Agreement. This Consent Agreement 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 Consent Agreement.

3. After Respondent returns this signed Agreement, the PHMSA's representative will present it to the Associate Administrator for Pipeline Safety recommending that the Associate Administrator adopt the terms of this Agreement and Order. The terms of this Agreement and Order constitute an offer of settlement until accepted by the Associate Administrator.

4. Respondent consents to the issuance of a Consent 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 the Consent Agreement and Order, including all rights to administrative or judicial hearings or appeals. Upon issuance of a Consent Agreement and Order for this matter, Respondent's Request for Hearing will be deemed withdrawn. The Original CAO will continue in full force and effect according to its terms, and the Amended CAO will be deemed withdrawn upon issuance of a Consent Agreement and Order.

5. This Consent Agreement and Order shall apply to and be binding upon the PHMSA, and upon Respondent, 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 Consent Agreement and Order and any incorporated work plans and schedules to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this Consent Agreement and Order.

6. For all transfers of ownership or operating responsibility of Respondent's pipeline, Respondent shall provide a copy of this Consent Agreement and Order to the prospective transferee at least 30 days prior to such transfer and simultaneously provide written

notice of the prospective transfer to the PHMSA Region Director (Director) who issued the Notice.

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

8. Nothing in this Consent 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 Consent Agreement and Order alters the PHMSA's right of access, entry, inspection, and information gathering or the PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

9. This Consent Agreement and Order does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Consent Agreement and Order is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

10. This Consent Agreement and Order does not create rights in, or grant any cause of action to, any third party not party to this Consent Agreement and Order. The U.S. Department of Transportation is 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 Consent Agreement and Order. Respondent agrees to hold harmless the U.S. Department of Transportation, 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 Consent Agreement and Order.

II. Corrective Measures

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

12. Regarding the entire West Texas Gulf Pipe Line System, its operation, and the Operating, Maintenance and Construction policies and procedures under which it operates, including all aspects for which the regulations in 49 C.F.R. §195 apply to the pipeline system and its operator, Respondent must:

(1) submit, for prior review and approval of the Director, a comprehensive written plan, including timelines for specific actions to improve the safety record of Respondent's West Texas Gulf Pipe Line System; and

(2) hire an independent third-party pipeline expert in safety management systems (SMS) to review and assess the written plan, which third-party expert must oversee the creation, execution and implementation of the actions identified in the plan, and must provide bi-monthly monitoring summaries to PHMSA and Respondent concurrently. The specific role of the third-party SMS consultant is to review the creation, execution and implementation of the SMS, by performing a gap analysis, recommending improvements, observing the phases of implementation, providing consultation, and communicating via written reports concurrently to PHMSA and Respondent.

13. Respondent must address any deficiencies or risks identified in the third party's assessment, including modifying repair procedures and implementing corrective actions related to safety culture and safety management processes. If PHMSA disapproves of Respondent's rationale for deferment, the agency must provide written notice to Respondent in accordance with Section III below. The plan must be sufficiently detailed with specific tasks, milestones and completion dates. At a minimum, the plan must address:

(1) Organizational issues, including creation of a Safety Management System promoting a safety culture that is equivalent to the elements considered essential in the American Petroleum Institute (API) Recommended Practice (RP) 1173, including:

- i. Management Commitment and Leadership
- ii. Risk Management
- iii. Operational Controls
- iv. Incident Investigation, Evaluation and Lessons Learned
- v. Safety Assurance and Continuous Improvement
- vi. Competence, Training, Qualification and Development
- vii. Emergency Preparedness and Response
- viii. Documentation and Record Keeping
- ix. Stakeholder Engagement;

(2) Contractor oversight and inspection of construction activities while performing construction in existing or operating facilities, whether the facilities are owned or operated by Respondent or other pipeline operators transporting hazardous materials and subject to the requirements of 49 C.F.R. §195, and the commitment to ensure adequate resources are provided to maintain safety during construction activities. Specific attention shall be given to:

- i. Adherence to Respondent's Operations and Maintenance procedures required by 49 C.F.R. 195 Subpart F,
- ii. Operator Qualification regulations in 49 C.F.R. § 195 Subpart G, and
- iii. Drug and Alcohol Post Accident Testing regulations in 49 C.F.R. §199;

(3) Work planning process and requirements to define the appropriate level of preparation, review, and approval to ensure safe performance of activities if the scope of work is not in an existing O&M procedure;

(4) Any other task, issue, or item that is necessary to promote and sustain the safety of the West Texas Gulf Pipe Line System.

14. The actions required by this Consent Agreement are in addition to and do not waive any requirements that apply to Respondent's pipeline system under the Original CAO, and under 49 C.F.R. Parts 190, 194, 195 and 199, as applicable, or any other Order issued to Respondent under authority of 49 U.S.C. § 60101, *et seq.*, or under any other provision of Federal or State law.

15. Consent Order Documentation Report (CODR). Respondent must create and submit on a quarterly basis, a CODR. The intent is for the CODR to summarize all activities and documentation associated with the Consent Order and to identify any activities or documentation for the period reflected in previous report activities so the status of each item in the Consent Order is reflected in each report. When the Respondent has concluded all of the required items in the Consent Order, it will submit a final CODR to the Director. This will allow the Director to complete a thorough review of all actions taken by the Respondent with regards to the Consent Order prior to approving the closure of the Consent Order.

16. It is requested that Respondent maintain documentation of the costs associated with implementation of this Agreement, and include in each report submitted pursuant to Item 15, the to-date total costs associated with: (1) preparation and revision of procedures, studies and analyses; (2) physical changes to pipeline infrastructure, including repairs, replacements and other modifications; and (3) environmental remediation, if applicable.

17. The Director may grant an extension of time for compliance with any of the terms of the Consent Order upon a written request, timely submitted, demonstrating good cause for an extension.

18. For all submissions based upon this Consent Agreement that requires the approval of the Director, the Director may (a) approve the submission in whole or in part; (b) impose specific conditions; (c) modify the submission to cure any deficiencies; (d) reject the submission in whole or in part; or (e) any combination of the above.

19. Respondent may appeal any decision of the Director to the Associate Administrator for Pipeline Safety. Decisions of the Associate Administrator are final.

III. Review and Approval Process

20. With respect to any submission under Section II of this Consent Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission, (b) approve the submission on specified conditions, (c) disapprove, in whole or in part, the submission, or (d) any combination of the foregoing. If the Director approves, approves in part, or approves with conditions, Respondent will take all action as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures in Section IV with respect to any conditions the Director identifies. If the Director disapproves all or any portion of the submission, the Director will provide Respondent with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval.

IV. Dispute Resolution

21. The Director and Respondent will informally attempt to resolve any disputes arising under this Consent Agreement. If Respondent and the Director are unable to informally resolve the dispute within 15 days, Respondent may request in writing, within 10 days, a written determination resolving the dispute from the Associate Administrator for Pipeline Safety providing all information that Respondent believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a final determination in writing. The existence of a dispute and the PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process except as agreed by the Director or the Associate Administrator in writing.

V. Enforcement

22. This Consent Agreement and Order is subject to all enforcement authorities available to the PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190. All work plans and associated schedules set forth or referenced in Section II will be automatically incorporated into this Consent Agreement and are enforceable in the same manner.

VI. Recordkeeping and Information Disclosure

23. Unless otherwise required in this Consent Agreement, Respondent agrees to maintain records demonstrating compliance with all requirements of this Consent Agreement for a period of at least five years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to the PHMSA pursuant to this Consent Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by the PHMSA, covering part or all of the information required to be submitted to the PHMSA pursuant to this agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. The PHMSA determines release of any information submitted pursuant to this Consent Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and/or the PHMSA policies, and other applicable regulations and Executive Orders.

VII. Effective Date

24. The “Effective Date” as used herein is the date on which the Consent Order is issued by the Associate Administrator incorporating the terms of this Agreement. Unless specified to the contrary, all deadlines for actions required by this Consent Agreement run from the Effective Date of the Consent Order.

VIII. Modification

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

IX. Termination

26. This Consent Agreement terminates upon completion of all terms set forth in Section II (Corrective Measures) as determined by the Director, Southwest Region. Respondent may request written confirmation from the PHMSA when this Consent Agreement is terminated. To the extent ongoing monitoring is required, PHMSA may terminate this Consent Agreement with respect to all other requirements with the exception of such monitoring. Nothing in this Consent Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement.

X. Ratification

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

28. The Parties hereby agree to all conditions and terms of this Consent Agreement:

[SIGNATURES ON NEXT PAGE]

For Respondent, West Texas Gulf Pipe Line Company:

Mike Prince

By: Mike Prince, President
3801 West Chester Pike, Newtown Square, PA 19073

9-29-16
Date

For PHMSA:

Rodrick Seeley

Rodrick Seeley
Director, Office of Pipeline Safety
PHMSA Southwest Region
U.S. Department of Transportation

10/3/16
Date