December 1, 2016

Mr. Michael J. Hennigan
President and Chief Executive Officer
Sunoco Pipeline, LP
1818 Market Street, Suite 1500
Philadelphia, PA 19106

Re: CPF No. 4-2015-5012

Dear Mr. Hennigan:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a total civil penalty of $207,300. This is to acknowledge receipt of payment of $40,300, by wire transfer dated May 22, 2015. Item 1 of this enforcement action is now closed. With respect to Item 2, the penalty payment terms are set forth in the Final Order, which will close automatically upon receipt of payment of the remaining $167,000. 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,

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Rodrick M. Seeley, Director, Southwest Region, OPS
Mr. David R. Chalson, Senior Vice President, Operations, Sunoco Pipeline, LP

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	)	
	)	
Sunoco Pipeline, LP,	)	**CPF No. 4-2015-5012**
	)	
Respondent.	)	

FINAL ORDER

On March 1, 2015, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), initiated an investigation of an incident involving the hazardous liquid pipeline system owned by West Texas Gulf Pipeline Company and operated by Sunoco Pipeline, LP (SPLP or Respondent). Respondent's 580-mile system transports crude oil from West Texas gathering lines and interconnects to Corsicana and Nederland, Texas markets.[1]

The investigation arose out of a failure near Dawson, Texas. On February 25, 2015, SPLP reported to the National Response Center a release of crude oil at Mile Post (MP) 257 on the Blum-to-Wortham section of Respondent's pipeline system (Failure). The leak released approximately 30 barrels of oil. The OPS Southwest Region received a copy of the telephonic notice and contacted SPLP to initiate an investigation.

As a result of the investigation, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated April 27, 2015, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that SPLP had committed various violations of 49 C.F.R. Part 195 and proposed assessing a total civil penalty of $207,300 for the alleged violations.

Respondent responded to the Notice by letter dated May 22, 2015 (Response). SPLP did not contest the allegation of violation of 49 C.F.R. § 195.422 (Item 1) and paid the proposed civil penalty of $40,300, as provided in 49 C.F.R. § 190.227. Payment of the penalty serves to close this portion of the case with prejudice. Respondent did contest the allegation of violation of 49 C.F.R. § 195.401(b) (Item 2) and requested a hearing.

By subsequent letter dated December 2, 2015 (Supplemental Response), SPLP withdrew its request for a hearing and presented information seeking reduction of the proposed penalty with

[1] Pipeline Safety Violation Report (Violation Report) (April 21, 2015), (on file with PHMSA), at 1.

respect to Item 2, which authorized the entry of this Final Order without further notice. SPLP also indicated that by its decision not to contest this allegation, the company did not "admit the accuracy of the factual or legal assertions set forth in the [Notice]."[2]

FINDINGS OF VIOLATION

In its Response and Supplemental Response, SPLP did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.422(a), which states:

> **§ 195.422 Pipeline repairs.**
> (a) Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.
> (b) No operator may use any pipe, valve, or fitting, for replacement in repairing pipeline facilities, unless it is designed and constructed as required by this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.422(a) by failing to insure that the pipeline repair it performed was made in a safe manner and made so as to prevent damage to persons or property. Specifically, the Notice alleged that on or about February 25-26, 2015, in response to the Failure, SPLP first installed a repair at the site of the Failure, and then installed a second repair at an adjacent area of external corrosion. The second repair was made on a non-through-wall anomaly adjacent to the failure origin with a PLIDCO © Smith+Clamp™. The PLIDCO © Smith+Clamp™ is a pinhole-leak-repair clamp intended for through-wall pinhole leaks, but only as a leak-stoppage device. It is not intended as a permanent repair unless it also includes a PLIDCO © Weld+Cap™, which Respondent did not install. The installation of the PLIDCO © Smith+Clamp™ was not an appropriate use of the product for the second repair and was not used in a manner consistent with the manufacturer's installation instructions or design. The Notice alleged that the device used for the second repair was neither intended nor designed for use as a permanent repair, and therefore, the installation was not made in a safe manner so as to prevent damage to persons or property.

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. § 195.422(a) by failing to insure that a pipeline repair was made in a safe manner and made so as to prevent damage to persons or property.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.401(b)(1), which states:

> **§ 195.401 General requirements.**
> (a) . . . .

[2] Supplemental Response, at 1.

> (b) An operator must make repairs on its pipeline system according to the following requirements:
> (1) *Non integrity management repairs.* Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.401(b)(1) by failing to correct, within a reasonable time, a condition that could adversely affect the safe operation of its pipeline system. Specifically, the Notice alleged that SPLP had sufficient information when it performed in-line inspections (ILI) on the pipeline segment from Blum Station to Wortham Station in 2006 and again in September 2011 to know that an unsafe condition existed but failed to correct it. According to the Notice, the company's 2006 ILI data showed the Failure site "as a feature at Wheel Count 247894.01" and identified the feature as having approximately 17% metal loss. The 2011 ILI data showed the same feature as having approximately 68% metal loss. Based upon the calculated corrosion growth and assuming a straight-line basis for its continued growth, the feature at the leak site was allegedly experiencing a corrosion growth rate of approximately 10.2% per year. This growth rate would predict a through-wall leak in less than five years. SPLP, however, did not schedule its next ILI assessment until 2016, which was beyond the predicted and actual remaining life of the feature at the Failure site.

The Notice further alleged that Respondent's integrity management program (IMP) in place in 2011 contributed to SPLP's failure to correct this known condition within a reasonable time. According to the Notice, SPLP stated "that they did not have a process to look for variances between the [ILI vendor's] Draft Final to Final Report revisions or re-grading of features. . ." As such, SPLP neither recognized the accelerated corrosion growth nor took prompt action to correct it.

Respondent did not contest this allegation of violation, but asked for mitigation of the proposed civil penalty, which I will address in the "Assessment of Penalty" section below. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.401(b)(1) by failing to correct, within a reasonable time, a condition that could adversely affect the safe operation of its pipeline system.

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 $200,000 per violation for each day of the violation, up to a maximum of $2,000,000 for any

related series of violations.[3] 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; 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 civil penalty of $167,000 for the violation in Item 2 cited above.

Item 2: The Notice proposed a civil penalty of $167,000 for Respondent's violation of 49 C.F.R. § 195.401(b)(1), for failing to correct, within a reasonable time, a condition that could adversely affect the safe operation of its pipeline system. As noted above, SPLP did not contest the allegation of violation but argued that PHMSA should consider reducing the proposed penalty. The company presented several arguments in favor of a penalty reduction. First, the company stated that it disagreed with the assertion that its IMP lacked a process to identify variances between what it termed the ILI vendor's "electronic final report" and its final written report in hard-copy format.[4] On the contrary, SPLP asserted that there were documented procedures in place designed to capture variances between the two versions and to make them known to SPLP.[5]

Respondent asserted that the initial "electronic final report" from the ILI vendor in 2011 indicated a 45% metal loss of the feature located at Wheel Count 247894.01. The final report in hard copy, however, indicated that the anomaly had an estimated 68% metal loss. According to SPLP, its vendor failed to notify Respondent of this variance between the two reports or otherwise to make SPLP aware of the vendor's revision, as was required under SPLP's "ILI Vendor Requirements" document. As a result, the company stated that it then set the reassessment interval at five years, based on the historic corrosion growth rate from 17% in 2006 to 45% in 2011. Respondent also argued that the metal-loss deviations could not be directly attributed to corrosion growth. Finally, Respondent noted that since the time of the 2011 ILI data analysis, it had made procedural modifications to its ILI reporting process, including elimination of electronic final reports.

I reject the argument that any possible mistakes or shortcomings by SPLP's vendor should serve as a basis for reducing the proposed penalty. Even acknowledging that Respondent may have had processes in place, SPLP itself concedes that the procedures were not strictly followed.[6] It is important to note that "[i]nformation about the actions of Respondent's ILI vendor are

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[3] The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904, January 3, 2012, increased the civil penalty liability for violating a pipeline safety standard to $200,000 per violation for each day of the violation, up to a maximum of $2,000,000 for any related series of violations.

[4] Supplemental Response, at 3.

[5] Respondent did not submit for the record copies of the actual procedures referenced in its Response.

[6] Supplemental Response, at 4.

immaterial to the assessment of a civil penalty. . . ." *In the Matter of Tesoro Refining and Marketing Company (Tesoro)*, Final Order, CPF No. 5-2007-5031 (Dec. 28, 2009) (available at www.phsma.dot.gov/pipeline/enforcement). As the operator of a hazardous liquid pipeline, SPLP is ultimately accountable for reviewing all reports from its contractors and agents and making sure that any conditions that could adversely affect the safe operation of its pipeline are promptly corrected.

I would also note that the penalty for this Item was not calculated or related in any way to SPLP's procedures, but rather Respondent's failure to discover an unsafe condition and promptly carry out needed repairs. I find that, with respect to culpability, Respondent failed to take appropriate action to comply with a clearly applicable requirement by reviewing the vendor's final report, which showed the increased metal loss, and taking prompt action to correct the condition.

Second, SPLP argued that the "nature, circumstances and gravity of the alleged violation were comparatively minor… especially when the amount assessed in this instance is compared to other penalties assessed by PHMSA for similar circumstances."[7] I disagree. The gravity of the violation in this case was quite serious, insofar as it was a causal factor in the Failure. Because of the violation, pipeline integrity was significantly compromised and resulted in a release of crude oil that harmed the environment.[8] In fact, SPLP is fortunate that the amount of the spill was small and its impact limited; it could have easily resulted in a spill with far greater consequences.

Third, Respondent claimed that the violation related to 2011, before the statutory maximum civil penalty amount was increased.[9] Respondent argued that because the Notice does not appear to allege a multi-day violation, the maximum civil penalty amount should be no greater than $100,000. In this case, SPLP failed to schedule an assessment prior to the condition reaching the point at which it affected the pipeline's integrity. As stated in the Violation Report, the violation was not limited to a single point in time, but, rather, constituted an ongoing failure to correct an unsafe condition that continued for 1,043 days,[10] well past the 2012 effective date for the increased maximum civil penalty amounts. I find that the penalty proposed for this Item was based upon the $200,000 maximum daily penalty that went into effect in January 2012 and that the penalty was appropriately calculated.[11]

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[7] *Id.,* at 4-5.

[8] Violation Report, at 3.

[9] The amendments enacted by the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (PL 112-90) became effective January 3, 2012.

[10] Violation Report, at 13.

[11] In previous cases, PHMSA has held that "49 C.F.R. § 195.401(b) places an ongoing obligation on an operator to correct discovered conditions that could affect the safety of the pipeline. . . ." and "[d]aily violations continue to occur until the condition is corrected." E.g., In the Matter of Equitable Production Company and MarkWest Hydrocarbon Inc., Final Order, CPF No. 2-2006-5001 (Feb. 17, 2011) (available at www.phmsa.dot.gov/pipeline/enforcement).

Fourth, SPLP argued that it is entitled to a credit for its good-faith efforts, both following the Failure and after the Notice was issued, to rectify its procedures for dealing with ILI vendors. "There was no knowledge or intent either on the part of the ILI vendor or SPLP to fail to comply with any regulatory requirements."[12] While I acknowledge and commend the steps that Respondent took after the Failure and after receiving the Notice to correct the violation and avoid future accidents, these are the actions that any prudent operator would be expected to take under similar circumstances. PHMSA only recognizes and reduces a proposed penalty for those good-faith efforts taken by an operator to interpret and follow the regulations *prior* to a violation, not afterwards. As for the fact that there is no evidence that Respondent knowingly or intentionally violated the regulation, this level of culpability was already taken into account in proposing the penalty amount; otherwise, the penalty would have been higher.

Finally, SPLP argued that it has no prior history of violating §195.401(b) and that it derived no economic benefit from the procedure that was in place at the time or from the incident itself. While SPLP is correct that this Item does not constitute what PHMSA terms a "repeat offense" of the same regulation, SPLP does have a history of seven prior safety violations within the five years prior to this case. These prior violations did, in fact, serve to properly enhance the proposed penalty here.[13] As for the economic benefit, the proposed penalty was not based on any purported economic gain by the operator.

Considering all of SPLP's argument and the totality of the circumstances surrounding the failure, I am unconvinced that a penalty reduction is warranted. While it may be true that the Failure could potentially have been averted had SPLP's ILI vendor followed the terms of their agreement, this does not absolve the operator from full responsibility for the accident that occurred. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $167,000 for violation of 49 C.F.R. § 195.401(b).

In summary, having reviewed the record and considered the assessment criteria for Item 2 cited above, I assess Respondent a total civil penalty of **$167,000**.

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 (AMK-325), Federal Aviation Administration, 6500 S MacArthur Blvd., Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the $167,000 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

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[12] Supplemental Response, at 5.

[13] *See,* In the Matter of Sunoco Logistics Partners, LP, Final Order, C.P.F. No. 4-2010-5010 (Aug. 1, 2012) and Decision on Petition for Reconsideration (Dec. 31, 2012) (available at www.phmsa.dot.gov/pipeline/enforcement).

payment is not made within 110 days of service. Furthermore, 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.

Under 49 C.F.R. § 190.243, Respondent has the 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 the 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. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

December 1, 2016

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Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Date Issued