**AUGUST 27, 2014**

Mr. Michael J. Hennigan
President
Sunoco Logistics Partners Operations GP LLC
Sunoco Pipeline L.P.
1818 Market St., Suite 1500
Philadelphia, PA 19103

Re: CPF No. 1-2012-5013

Dear Mr. Hennigan:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of $100,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order is made pursuant to 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. Byron Coy, Director Eastern Region, OPS
Kevin Dunleavy, Esq., Chief Counsel, Sunoco, Inc.
1735 Market Street, Suite LL, 13th Floor, Philadelphia, PA 19103
Bizunesh Scott, Esq., Steptoe & Johnson LLP
1330 Connecticut Ave. NW, Washington, DC 20036

**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 L.P.,** | ) | **CPF No. 1-2012-5013** |
| **Respondent.** | ) | |

## FINAL ORDER

On October 11, 2010, 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 event that occurred on an out-of-service pipeline owned by Sunoco Pipeline L.P. (Sunoco or Respondent) in Burlington County, New Jersey.[1]

As a result of the investigation, the Director, Eastern Region, OPS (Director) issued a Notice of Probable Violation and Proposed Civil Penalty (Notice) on July 16, 2012.[2] In accordance with 49 C.F.R. § 190.207, the Notice alleged that Sunoco committed a violation of the pipeline safety regulations and proposed a civil penalty of $100,000. In accordance with § 190.205, the Notice also included a warning item advising Respondent to correct another probable violation.

Sunoco responded to the Notice and requested a hearing by letter dated August 16, 2012 (Response). Sunoco submitted a supplemental statement of issues on November 15, 2012 (Supp. Statement). In accordance with § 190.211, a hearing was held on November 27, 2012, in West Trenton, New Jersey, before the Presiding Official from the Office of Chief Counsel, PHMSA. After the hearing, Respondent submitted a post-hearing brief on January 12, 2013 (Brief).

## FINDING OF VIOLATION

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

[1] Sunoco operates approximately 4,700 miles of pipeline transporting crude oil and refined products in Texas and several other states. This information was reported for calendar year 2013 pursuant to 49 C.F.R. § 195.49.

[2] The Notice was issued in conjunction with a separate Notice of Amendment (CPF No. 1-2012-5012M). An Order Directing Amendment in that case was issued on September 20, 2013.

> **§ 195.402 Procedural manual for operations, maintenance, and emergencies.**
>
> (a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies . . . .
>
> (c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations . . . .
>
> (10) Abandoning pipeline facilities, including safe disconnection from an operating pipeline system, purging of combustibles, and sealing abandoned facilities left in place to minimize safety and environmental hazards . . . .

The Notice alleged that Respondent violated § 195.402(a) by failing to follow its written procedures for abandoning a pipeline. Specifically, the Notice alleged that during abandonment of the 16-inch Harbor Pipeline in Burlington County, New Jersey, on October 11, 2010, Respondent did not conduct vapor monitoring and used a torch to cut the pipe, resulting in a small amount of product inside the pipe catching fire, dripping out of the pipe, and burning in the trench. The Notice alleged that Respondent's procedures required: use of a mechanical cutter rather than a torch; performance of atmospheric monitoring to detect flammable vapors; and ensuring the pipeline has been sufficiently drained.

In its written submissions and at the hearing, Sunoco argued that its pipeline had already been abandoned prior to October 11, 2010, and therefore the Company was not required to comply with § 195.402(a) on the day of the event. Sunoco contended the cutting activities and fire were "outside of the scope of PHMSA's jurisdiction" and "not subject to PHMSA's oversight or enforcement" because the pipe was no longer used in the transportation of hazardous liquids.[3] Alternatively, Sunoco argued that even if the requirements of § 195.402(a) did apply, the alleged violation should be withdrawn because Sunoco complied with the applicable regulatory requirements.

The following analysis considers whether the pipeline was subject to § 195.402 on the day of the event. If the pipeline was subject to § 195.402, as alleged in the Notice, PHMSA must consider whether Sunoco complied with the regulation during the removal activities.

1. Relocation of the Harbor Pipeline and Events of October 11, 2010

In June 2010, Respondent began an effort to relocate its 16-inch Harbor Pipeline to allow widening of the nearby New Jersey Turnpike. The relocation project involved, among other things, construction of a new 1.85-mile pipeline segment approximately 350 feet away from the original location and removal of the old pipe.[4]

---

[3] Response at 1.

[4] Response at 1-2; Brief at 2-3.

On September 20, 2010, Respondent purged product from the existing pipeline using nitrogen and cleaning pigs. The next day the Company began cutting the pipe at the beginning and end points of the relocation. Special mechanical or "cold" cutters were used, which do not create sparks that could ignite flammable vapors in the pipeline. The valves at both ends of the section were removed, along with the flanges, and the pipe was capped at both ends. Over the next several weeks, Respondent cut and removed portions of the pipe.[5]

By October 2010, most of the old pipe had been removed. The remaining portion was tested for flammable vapors on Saturday, October 9, 2010, with results indicating it would be safe to perform "hot work," such as using a torch for cutting. No record of that vapor test was maintained. Respondent proceeded to use an oxy-acetylene torch to cut the pipe that day without incident.[6] Two days later, on Monday, October 11, 2010, Respondent again used a torch to cut the pipe. No vapor test was conducted that day as workers believed the test performed two days earlier was sufficient.[7]

During cutting on October 11, 2010, a worker began to notice smoke. Cutting was stopped and workers determined the smoke was coming from residual product in the pipe that had caught fire. A plastic cap on the end of the pipe "blew off with a pop" and a small amount of product dripped out of the pipe and burned on the ground with a flame up to 18 inches high.[8] Use of two fire extinguishers were unable to put out the flames, so equipment was used to pour dirt on the flame and burning pipe. Respondent reported the fire to the National Response Center in accordance with § 195.52, but subsequently attempted to rescind the report.[9]

2. Whether the Pipeline Was Subject to 49 C.F.R. § 195.402

The federal pipeline safety regulations in 49 C.F.R. Part 195 include standards for safely abandoning pipeline facilities to permanently remove them from service. The standards state that operators must prepare and follow written procedures for abandonment that address, at a minimum, safely disconnecting the facility from the operating system, purging the combustibles, and sealing the facility if left in place to minimize safety and environmental hazards.[10]

These requirements apply to all pipelines subject to 49 C.F.R. Part 195.[11] In the present matter, Respondent did not dispute that its pipeline was subject to Part 195—at least prior to the

---

[5] The new pipe was connected to the operating system on September 21, 2010, and placed in service on September 23, 2010. Respondent contended the old pipe was officially abandoned on September 21, 2010.

[6] Response at 1-2; Brief at 2-3.

[7] OPS Pipeline Safety Violation Report (Jul. 16, 2012), Exhibit A-2, Sunoco's *Incident Analysis for NJ Turnpike Fire In Pipe* at 1-2.

[8] *Incident Analysis* at 1-2.

[9] Brief at 6.

[10] § 195.402(a) and (c)(10).

[11] *See* § 195.1 (describing which pipelines are covered by Part 195).

relocation project. Accordingly, any abandonment of the facility was required to be performed in accordance with these requirements.

To determine whether Respondent's pipeline had been abandoned prior to the time of the event, PHMSA must consider whether Respondent followed written procedures for abandoning its pipeline that complied with the standards in § 195.402(a) and (c)(10).

*A. Respondent's Written Procedures for Abandonment*

Respondent's written procedures required completion of four general activities to abandon a pipeline under § 195.402(a) and (c)(10).[12] The requirements were: (1) purging product from the facility; (2) physically disconnecting the facility from other facilities currently in service; (3) capping the ends of the defining limits of the facility; and (4) if practical, physically removing the facility from the ground. These activities coordinate with § 195.402(c)(10).

With regard to whether Respondent completed the first activity, purging product from the facility, OPS argued that Respondent had not completely purged the line because a small amount of product was left over and caught fire.

The record reflects that in September 2010 Respondent purged the facility of combustibles using nitrogen and several cleaning pigs. At the hearing, both parties acknowledged that it may not be possible to remove absolutely all product during a purge, and that trace amounts of product or "clingage" may be left over. Clingage can coalesce over the course of several weeks at low points on the pipe segment, and may be of a quantity that could burn under the right conditions.[13]

The evidence suggests the small amount of product left over in Respondent's pipeline was clingage that had coalesced at the low spot where Respondent was cutting. There is not sufficient evidence in the record to find Respondent improperly purged its pipeline based solely on the presence of such a small amount of product in the line. Accordingly, PHMSA finds Respondent purged the facility as required under its procedures.

With regard to the second and third activities, evidence shows that in late September 2010, Respondent physically disconnected the pipe from service by removing the valves and flanges at both ends of the section.[14] Respondent also capped the pipe at both ends. These facts were not disputed. Therefore, PHMSA finds Respondent physically disconnected the facility and capped the ends as required under its procedures.

With regard to the final activity, Respondent was required to remove the pipeline from the ground if practicable. Evidence shows Respondent was in the process of removing the pipeline from the ground when the event occurred. A "substantial amount" of the facility had already

---

[12] Violation Report, Exhibit A-5, Sunoco's *DOT 195 Maintenance Manual, Subpart F: Operation and Maintenance, Section 195.402.c.10 Abandoning Pipeline Facilities* (Oct. 31, 2010).

[13] Brief, Affidavit at ¶ 9.

[14] Supp. Statement at 2.

been removed, but the portion at issue here had not been removed when Respondent's cutting activities resulted in a fire.[15]

Respondent argued that removal was not required. PHMSA notes two reasons why removal was required under the regulation to abandon the pipeline. First, an operator may only forgo removal under § 195.402(c)(10) if the operator elects to permanently abandon the facility in place. A pipeline that is not going to be permanently abandoned in place presents an ongoing safety risk, including cutting and removal processes undertaken while hazardous materials are present. In this case, Respondent did not intend to abandon the facility in place. Therefore, Respondent was required to remove the pipeline in a safe manner according to its written procedures. Second, Sunoco was required to follow its own written procedures for completing the abandonment. Sunoco's procedures specified the facility must be removed if practical.

For these reasons, PHMSA finds that under a plain reading of the regulation, Respondent's pipeline facility was not abandoned pursuant to § 195.402(a) and (c)(10) when the events occurred on October 11, 2010.

*B. Additional Information Presented by Respondent*

Respondent presented several additional reasons why PHMSA should find the pipeline was abandoned.

First, Respondent argued the pipeline no longer met statutory and regulatory definitions of a "pipeline facility" because it was no longer "used or intended to be used in transporting hazardous liquid."[16]

On this issue, PHMSA has consistently stated that a pipeline facility subject to Part 195 remains subject to the pipeline safety standards until it is abandoned in accordance with the regulations.[17] Respondent's pipeline facility had not been abandoned under § 195.402(a) and (c)(10). Therefore, it remained subject to Part 195.

Respondent also argued the pipeline was abandoned because: Sunoco had lost its right to operate the pipe; Sunoco never intended to use it again; the pipe could no longer be used to transport hazardous liquids; and the new replacement pipe had already been placed in service.[18]

---

[15] Supp. Statement at 2.

[16] Brief at 8 (quoting 49 U.S.C. § 60101(a)(5) and 49 C.F.R. § 195.2).

[17] *See, e.g.*, NuStar Terminals Operations P'ship, CPF No. 1-2011-5011, Item 4, 2012 WL 6946967 (Dec. 18, 2012) ("only pipelines permanently removed from service are exempt from Part 195 regulations"); Alyeska Pipeline Serv. Co., CPF No. 5-2005-5023, Item 8, 2009 WL 5538655 (Dec. 16, 2009) ("once a hazardous liquid pipeline facility is placed in service, that facility is subject to the requirements of Part 195 until it is abandoned"), also available at http://www.phmsa.dot.gov/pipeline/enforcement (follow links to enforcement actions since 2002). Although an abandoned pipeline no longer must be maintained under Part 195, it may still be subject to certain requirements under Part 195. *See, e.g.*, § 195.59 (requiring reporting of certain abandoned facilities).

[18] Supp. Statement at 2; Brief at 11-12.

While these facts may correlate with the abandonment, it is § 195.402 that establishes the regulatory requirements for abandonment under Part 195. Accordingly, these facts do not prove the pipeline was abandoned if the regulatory requirements were not met.

Respondent also cited a regulatory interpretation issued by PHMSA in April 2009.[19] The interpretation discussed the applicability of Part 195 to an inactive pipeline. While the interpretation did not contain an abundance of detail about the pipeline at issue, it noted the line had been disconnected and purged with nitrogen for several years.[20] The operator of the pipeline believed the inactive or "idle" pipeline was not subject to Part 195 because it was not being used in hazardous liquid service or engaged in transmission. As such, the operator believed the pipeline was "abandoned for regulatory purposes but not permanently abandoned" so the operator could use the pipeline again sometime in the future.

In the written interpretation issued by PHMSA, the Agency agreed the pipeline was no longer subject to Part 195, but not for the reasons offered by the operator. PHMSA clarified that the pipeline safety regulations do not recognize pipelines as "idled," so merely ceasing normal operation of a pipeline does not remove a pipeline from the Part 195 requirements. A pipeline must be abandoned according to § 195.402(c)(10) for the requirements in Part 195 to no longer apply. PHMSA found the operator's pipeline had been *permanently* abandoned, not merely abandoned "for regulatory purposes." Therefore, PHMSA found the pipeline could not be put back in service as the operator suggested. The only way the pipeline could be put back in serve was if the pipeline is maintained according to Part 195 for the entire abandonment period or if the pipeline can meet the requirements for a newly designed and constructed pipeline.

Sunoco argued this interpretation proves that its own disconnected and purged pipeline was no longer subject to Part 195.[21] This interpretation, however, did not establish a general standard that any disconnected and purged pipeline is no longer regulated. Rather, the interpretation clarified that a pipeline must be abandoned according to § 195.402(c)(10) for the requirements in Part 195 to no longer apply. The Agency concluded in the interpretation that the regulatory requirements had been met to abandon the line in place.[22] In the present matter, Sunoco had not met the regulatory requirements for abandonment, as already discussed.

Sunoco also cited an enforcement case issued in December 2009, in which PHMSA decided whether a pump station had been abandoned.[23] The pump station had been out of service for

---

[19] Brief at 9-10.

[20] Interpretation issued to Equistar Chemicals, LP, PI-08-0003 (Apr. 6, 2009), available at http://phmsa.dot.gov/pipeline/regs/interps (accessed Apr. 14, 2014).

[21] Brief at 10.

[22] Additional factual information about the pipeline was not included in the interpretation. For example, the interpretation did not describe the manner in which the pipeline was sealed, as required under § 195.402(c)(10) if the pipeline is abandoned in place. But PHMSA ultimately determined that each of the necessary regulatory requirements for abandonment were met.

[23] Alyeska Pipeline, CPF No. 5-2005-5023, Item 8.

eight years and was no longer used in the transportation of hazardous liquids. Citing the regulatory interpretation discussed above, PHMSA concluded that the pump station had not been abandoned because the operator had not completed the necessary steps to abandon the facility under § 195.402. PHMSA reasoned that once a hazardous liquid pipeline facility is placed in service, the facility is subject to the requirements of Part 195 until it is abandoned under the regulation.

In the present matter, PHMSA has similarly concluded that Sunoco did not complete the necessary steps under the regulation to abandon its pipeline facility. Therefore, the facility remained subject to Part 195.

Respondent also cited to administrative guidance material that addresses abandonment of pipelines. Respondent argued the guidance demonstrates that the pipeline was no longer subject to Part 195.[24]

PHMSA has made public its enforcement guidance for the Part 195 regulations. In the guidance, PHMSA discusses the differences between *abandoned* pipelines and *inactive* pipelines. Abandoned pipelines are described as permanently removed from service, physically separated from the source of hazardous liquid, and no longer required to be maintained under Part 195.[25] An inactive or idled pipeline, by contrast, is described as one that is not presently used to transport hazardous liquids, but still maintained under Part 195.[26] These explanations are informational only and do not constitute regulatory standards or definitions.[27]

PHMSA explains in the guidance that under the regulations, pipe is considered either active or abandoned—there are no provisions for idled or inactive pipe. Therefore, "[i]f a pipeline has not been abandoned according to the [regulation], then it is active and the operator must ensure that the pipeline complies with all requirements of Part 195."[28] This guidance is consistent with the above analysis of Respondent's pipeline.

### *C. Conclusion*

On the issue of whether Sunoco's pipeline had been abandoned prior to October 11, 2010, PHMSA finds Respondent was in the process of abandoning its facility, but the portion of pipe at issue had not been abandoned because it was not removed from the ground or permanently abandoned in place as required under § 195.402(a) and (c)(10). Also, Respondent had not

---

[24] *Operations & Maintenance (O&M) Enforcement Guidance: Part 195 Subpart F* (Dec. 7, 2011), available at http://www.phmsa.dot.gov/foia/e-reading-room (accessed Apr. 14, 2014).

[25] *O&M Enforcement Guidance* at 3.

[26] *O&M Enforcement Guidance* at 17.

[27] The introduction to the guidance states: "This document is not a regulation and creates no new legal obligations. The regulation is controlling."

[28] *O&M Enforcement Guidance* at 43.

completed its own procedures for the abandonment, which required removal. Therefore, the pipe remained subject to the regulations in Part 195.

3. Whether Sunoco Complied with § 195.402

Section 195.402(a) mandated that Respondent have and follow written procedures during the abandonment of its pipeline on October 11, 2010. The Notice alleged that Respondent violated § 195.402(a) by failing to follow its procedures entitled *Operator Qualification Procedure, OQP-361, Safe Disconnect of Pipeline Facilities*.[29]

As an initial matter, Respondent stated that *Procedure OQP-361* governed the Company's earlier decommissioning activities but not its activities on October 11, 2010. Respondent noted the purpose of *Procedure OQP-361* is "[t]o provide instructions for the safe disconnecting and draining of a pipeline section from service, permanently. This procedure does not include purging the liquid from the pipeline or sealing the pipeline."[30] Since the pipe had already been disconnected from the in-service pipeline, Respondent argued these procedures did not apply to subsequent cutting activities like those occurring on October 11, 2010.[31]

PHMSA has reviewed Respondent's procedures and agrees they do cover draining and cutting of a pipeline connected to an in-service facility. For example, Paragraph 2.9 of *Procedure OQP-361* requires opening drain valves and collecting the liquid drained from the pipeline.[32] After ensuring the pipeline is sufficiently drained, Paragraph 2.13 requires using a mechanical pipe cutter (cold cutter) for cutting the pipe. Paragraph 2.14 requires collecting any residual liquid released from the cut points. Finally, Paragraph 2.15 requires separation of the disconnected pipe segment from the operating pipeline.

While it is evident the procedures apply to the cutting of drained pipe, as asserted by Respondent, it appears the procedures could likewise apply to the cutting of pipe after it has been purged with nitrogen. Cutting a pipeline after draining and after purging with nitrogen both involve the possibility that flammable liquids or vapors will be encountered.[33] There is also a risk of ignition and fire during both activities. Respondent's cutting of its purged pipeline on October 11, 2010, presented many of the same hazards that *Procedure OQP-361* was designed to protect against. Respondent has not presented a convincing reason why it should not follow *Procedure OQP-361* when cutting a purged pipeline to ensure safety.

---

[29] Violation Report, Exhibit A-4, *Sunoco Procedure OQP-361* (Nov. 8, 2004).

[30] *Procedure OQP-361* at 2.

[31] Brief at 12-13.

[32] *Procedure OQP-361* at 9.

[33] For example, the procedures caution that individuals may encounter unexpected hazardous liquids or fire due to ignition of hazardous liquids or gases. *Procedure OQP-361* at 3. Likewise, when cutting a pipeline that has been purged, some product may remain in the line. Brief at 6.

Moreover, Respondent did not suggest that any other procedures applied to the cutting activities on October 11, 2010, and Respondent did not produce any alternative written procedures. Were PHMSA to accept that *Procedure OQP-361* did not apply to its cutting activities on October 11, 2010, PHMSA must conclude Sunoco violated § 195.402(a) by failing to have written procedures for cutting and removing the pipeline to complete abandonment.

Respondent argued in the alternative that "even if the procedures are found to have somehow applied thereafter, Sunoco nonetheless complied."[34] PHMSA considers each of the three alleged instances of noncompliance set forth in the Notice to determine whether Respondent followed its procedures as required under § 195.402.

*A. Paragraph 2.1 – Atmospheric Monitoring*

The Notice alleged that Respondent did not follow Paragraph 2.1 of *Procedure OQP-361*, which required the Operator to perform atmospheric monitoring during disconnection activities to detect potentially flammable vapors. Specifically, the Notice alleged that Respondent failed to test for vapors during disconnection activities on October 11, 2010.

In its written submissions and at the hearing, Sunoco argued that it performed gas monitoring two days before on October 9, 2010, and the test did not indicate the presence of flammable vapors. Respondent also argued that even if gas monitoring was conducted on the day of the incident, it "very likely . . . would not have detected the product."[35]

Having reviewed the evidence, PHMSA finds that Paragraph 2.1 of *Procedure OQP-361* required Respondent to "ensure atmospheric monitoring indicates no vapors present at all work locations." The monitoring was required to be performed "while disconnection activities are in progress."[36] Respondent did not perform atmospheric monitoring to check for vapors at the work location on October 11, 2010. Accordingly, Respondent did not comply with this procedure. While it cannot be known for certain if gas monitoring conducted the day of the fire would have detected flammable vapors, failing to perform the monitoring eliminated any chance of detecting them, and more importantly, did not comply with the procedures as written.

*B. Paragraph 2.13 – Use of Mechanical Cutters*

The Notice alleged Respondent did not follow Paragraph 2.13 of *Procedure OQP-361*, which required the Operator to use only a mechanical or "cold" pipe cutter for cutting the pipeline. The Notice alleged Respondent used an oxy-acetylene torch or "hot" cutter on October 9 and 11, 2010, when cutting flanges from the pipe.

---

[34] Brief at 13.

[35] Brief at 13.

[36] *Procedure OQP-361* at 8.

Respondent argued the pipe had previously been cut with a torch without incident, and that gas testing performed less than two days before the fire indicated a safe range for hot work. For this reason, Respondent argued residual product "was not anticipated."[37]

Having reviewed the evidence, PHMSA finds that Paragraph 2.13 of Respondent's *Procedure OQP-361* stated that workers were required to "obtain mechanical pipe cutter (i.e., cold cutter), and cut [the] pipe between bond clamps."[38] The procedure did not permit using an oxy-acetylene torch. Regardless of whether residual product was "anticipated," small amounts of product may remain in a pipeline after it has been purged.[39] The use of cold cutters is meant to address this hazard by preventing an ignition source where flammable vapors and hazardous liquids may be present. PHMSA finds Respondent's use of a torch did not comply with this procedure.

### *C. Paragraph 2.10 – Ensuring the Segment is Sufficiently Drained*

Finally, the Notice alleged Respondent did not follow Paragraph 2.10 of *Procedure OQP-361*, which required the Operator to ensure the pipeline was sufficiently drained. The Notice alleged that a small amount of liquid present in the pipe caught fire, spilled onto the ground, and burned in the trench, demonstrating the pipeline had not been adequately drained.

Sunoco contended that it had drained the line consistent with its procedures and industry standards by using pigs and purging it with nitrogen to remove all product to the extent possible.

As explained in more detail above, the record reflects that Respondent purged its facility and the small amount of product left over was clingage that had coalesced where Respondent was cutting. There is not sufficient evidence in the record to find Respondent improperly purged its pipeline based solely on the presence of such a small amount of product in the line. This allegation is withdrawn.

#### 4. Conclusion

Having reviewed the evidence, PHMSA finds Respondent committed a violation of § 195.402(a) by failing to follow its procedures for performing mechanical cutting and atmospheric monitoring when abandoning its pipeline. These findings of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

PHMSA also finds there is insufficient evidence to prove Respondent failed to sufficiently drain the pipeline. This portion of the alleged violation is withdrawn.

---

[37] Supp. Statement at 3.

[38] *Procedure OQP-361* at 8.

[39] Brief at 6.

## 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.[40]

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, PHMSA considers 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 good faith of Respondent in attempting to comply with the pipeline safety regulations; and the effect on Respondent's ability to continue in business. PHMSA may also consider the economic benefit gained from the violation, and such other matters as justice may require.

The Notice proposed a civil penalty of $100,000 for the violation cited above, which was the maximum penalty authorized for a single-day violation. The proposed penalty amount was based on factual assertions in the Violation Report relevant to each of the penalty assessment considerations. Respondent contested some of those factual assertions and provided additional information in support of eliminating or reducing the proposed civil penalty.

Nature, circumstances, and gravity of the violation

The proposed penalty was based, in part, on assertions that Sunoco did not follow its procedures and that Sunoco discovered this issue when conducting a post-accident analysis. The proposed penalty was also based on the gravity of the violation being "a causal factor in an accident."[41]

Respondent advanced two reasons why the gravity of the violation was less than alleged. First, Respondent argued the violation was only a contributing factor, if at all, because safety procedures were followed and it is not known whether gas monitoring would have detected the trace levels of product on October 11, 2010. Second, the violation had a relatively minor effect on safety because there was no reportable accident under § 195.50, no injuries or fatalities, no explosion, no wildlife impact, and no water contamination. This means there were no impacts on health and little (if any) impact on the environment.

PHMSA notes that Respondent's procedures for cold cutting and gas monitoring were intended to prevent accidental ignition where flammable vapors could be present. Had Respondent followed its procedures to detect combustible vapors and to avoid potential ignition sources, the event could likely have been avoided. PHMSA finds Respondent's failure to follow the procedures was a causal factor in the accident, as alleged. The event was a reportable accident under § 195.50 because it involved the release of hazardous liquid and a fire not intentionally set

[40] Subsequent to the Notice issued in this case, the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a), 125 Stat. 1905, increased the civil penalty liability for violating a pipeline safety standard to $200,000 per violation for each day up to a maximum of $2,000,000 for any related series of violations.

[41] Violation Report at 5.

by the operator. Accordingly, PHMSA finds the proposed civil penalty is appropriate given the nature, circumstances, and gravity of the violation.

Culpability

When evaluating an operator's culpability, PHMSA considers the extent to which the operator was responsible for the violation that occurred.[42] An operator is expected to be cognizant of the regulatory requirements applicable to its operations and is held responsible for complying with those requirements. An operator will generally be considered culpable for any failure to comply with the requirements absent some justification for the failure, such as an unforeseeable event outside of its control. Finding an operator culpable does not increase the level of the penalty, but if there is a lesser degree of blameworthiness, such as where there is some justification for a failure to comply, PHMSA may find it appropriate to propose or assess a reduce penalty.

In the present case, the Violation Report suggested Respondent should be credited with a lesser degree of blameworthiness because the Operator was cognizant of the regulatory requirement and "took some steps to address the issue, but did not achieve compliance."[43]

Respondent argued that it should be credited with an even lower degree of culpability because the Operator was diligent in taking all practicable steps to comply with the regulation.

Having considered Respondent's contention, PHMSA must reject it based on the evidence that Respondent failed to follow its procedures. PHMSA finds the Violation Report accurately described that Respondent had written disconnection procedures, but simply failed to follow them on the day of the accident.[44] For these reasons, the proposed penalty is appropriate based on the degree of Respondent's culpability.[45]

Good Faith of Respondent in Attempting to Achieve Compliance

When considering good faith in attempting to comply, PHMSA looks at the attempt by an operator to comply with the cited regulation prior to the occurrence of the violation.[46] If an operator made a clear, demonstrable effort to comply with the cited regulation when the violation occurred, PHMSA may find it appropriate to reduce the civil penalty.

---

[42] Belle Fourche Pipeline Co., CPF No. 5-2009-5042, at 19, 2011 WL 7006607 (Nov. 21, 2011).

[43] Violation Report at 7.

[44] Violation Report at 7. The highest level of culpability as listed in the Violation Report is reserved for situations in which the operator failed to take any action or made a minimal attempt to comply.

[45] Given the gravity of the violation, the Notice did not propose a reduced penalty.

[46] Kinder Morgan Liquids Terminals LLC, CPF No. 1-2011-5001, at 11, 2012 WL 6184429 (Oct. 17, 2012).

The Violation Report suggested that Sunoco did not act in accordance with its duty to follow its procedures and therefore no good faith credit was appropriate.[47] In response, Respondent argued that it should be credited with significant good faith based on the facts presented.

PHMSA finds Respondent did not take sufficient action to follow its procedures on October 11, 2010, which resulted in the violation. Therefore, no penalty reduction is warranted.

Remaining Factors

The Violation Report did not provide a history of any prior offenses committed by Respondent. Therefore this factor does not affect the civil penalty. In addition, Respondent did not claim that payment of the proposed penalty would affect its ability to continue doing business.

Partial Withdrawal of Alleged Violation

In Item 1 of this Order, PHMSA determined that Respondent violated § 195.402(a) in two ways: by failing to follow its procedures for performing mechanical cutting and by failing to perform atmospheric monitoring. PHMSA withdrew the third allegation that Sunoco violated § 195.402(a) by failing to sufficiently drain its pipeline. The withdrawal of this allegation does not result in a reduced penalty because the remaining violations each warrant assessment of the proposed maximum daily penalty amount given the gravity of the violations and other assessment criteria.

Having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty of $100,000.

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, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125-4915. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the $100,000 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 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.

[47] Violation Report at 7-8.

## WARNING ITEM

With respect to Item 2, the Notice alleged a probable violation of Part 195 and specifically considered it to be a warning item. In accordance with § 190.205, operators may submit a response to a warning, but there is no adjudication conducted to determine whether a probable violation occurred.[48] The warning in the Notice was issued for:

> § 195.404(c)(3) (**Item 2**) – Respondent's alleged failure to maintain a record of a gas monitoring test that was performed on October 9, 2010. Under § 195.404(c)(3), operators must maintain a record of such tests for at least 2 years.

In its Brief, Sunoco responded that the warning should be withdrawn because PHMSA does not have enforcement jurisdiction. In Item 1 of this Order, however, PHMSA determined the pipeline was subject to the pipeline safety regulations in Part 195.

If OPS finds this issue in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a petition for reconsideration of this Final Order to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, D.C. 20590, no later than 20 days after receipt of the Final Order by the Respondent. Any petition submitted must contain a 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. 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.

_____ _____

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued

[48] Administrative Procedures; Updates and Technical Corrections, 78 Fed. Reg. 58897, 58900 (Sept. 25, 2013).