

DEC 16 2010

Mr. David Justin
Vice President, Operations
Sunoco Pipeline, L.P.
1818 Market Street, Suite 1500
Philadelphia, PA 19103

RE: CPF No. 3-2008-5002

Dear Mr. Justin:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws part of an allegation of violation, makes a finding of violation with respect to the other part, and assesses a reduced civil penalty of \$34,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. David Barrett, Director, Central Region, PHMSA

Mr. Bruce D. Davis, Jr.
Vice President, General Counsel and Secretary
Sunoco Logistics Partners, L.P.
1735 Market Street, Suite LL
Philadelphia, PA 19103-7583

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0043 9429]

**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 Pipeline, L.P.,)	CPF No. 3-2008-5002
)	
Respondent.)	
)	

FINAL ORDER

On December 11-15, 2006, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Sunoco Pipeline, L.P. (Respondent or Sunoco), in Michigan and Ohio. Sunoco, a subsidiary of Sunoco Logistics Partners, L.P., operates approximately 3,600 miles of PHMSA-regulated pipelines transporting crude oil, refined petroleum products, and highly volatile liquids in Texas, Pennsylvania, Ohio, New Jersey, New York, and Michigan.¹

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated March 11, 2008, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 195.412(a) and proposed assessing a civil penalty of \$44,000 for the alleged violation. The Notice also proposed finding that Respondent had committed another probable violation of 49 C.F.R. Part 195 and warning Respondent to take appropriate corrective action to address such probable violation or be subject to future enforcement action.

Sunoco responded to the Notice by letters dated April 9, 2008, July 31, 2008, and August 19, 2008 (collectively, Response). Sunoco contested the allegation and requested a hearing. A hearing was subsequently held via telephone conference on August 21, 2008, with Renita K. Bivins, an attorney in the Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel. Respondent was given 30 days to provide a post-hearing submission. After the hearing, the company provided additional written material for the record by letter dated September 12, 2008, including a summary of the information it had presented at the hearing (Supplemental Response). OPS was also given 30 days to submit additional information and submitted Google Map aerial photographs of Respondent's right-of-way during the subject period.

¹ 2010 submissions by Sunoco to the Office of Pipeline Safety's Online Data Entry System (ODES) Administration; PHMSA internal records.

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a), which states:

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

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

The Notice alleged that Respondent violated 49 C.F.R. §195.412(a) by failing to adequately inspect the surface conditions on or adjacent to each pipeline right-of-way, using aerial or foot patrols, at intervals not exceeding 3 weeks, but at least 26 times each calendar year. According to the Notice, the week-long PHMSA audit included observations of Sunoco's active rights-of-way and its aerial and foot patrol programs. Specifically, the Notice alleged that the OPS inspector observed two areas that were overgrown along Sunoco's Medina Main Line Block Valve and the Hudson Pump Station rights-of-way. The two areas alleged to have been overgrown lay between Cook and Nichols Roads (Cook Road area),² and between Candlewood Lane and Oak Hill Road (Candlewood area) in Summit County, Ohio. At the hearing, Sunoco submitted Exhibits CR-1 through CR-8 and addressed the two areas separately.

Cook Road Area

Sunoco contended that the 3,400-foot-long Cook Road area, with the exception of a 430-foot portion, was patrolled by foot, and that the right-of-way was cleared in accordance with all applicable regulations. As for the 430-foot portion, Sunoco contended that the area was clearly visible by aerial patrol, as required by 49 C.F.R. § 195.412(a). Sunoco explained that, of the 430-foot portion, only 150 feet were covered with pine trees that do not lose their foliage; the remaining 280 feet of the right-of-way were covered by deciduous trees, making aerial observation possible from October through May. Respondent further explained that this 430-section of the right-of-way was bordered on the south side by a residential driveway and garage, making aerial observation of the right-of-way feasible during the winter and summer. Respondent also explained that its air patrol contract required weekly air patrols for rights-of-way, with 35 to 40 patrols per year, conditions permitting. Respondent stated that the frequency of air patrols was well above the 26 times per year required by 49 C.F.R. § 195.412(a).

In support of its position, Respondent stated that during a post-audit teleconference with PHMSA, Sunoco's air patrol pilot had reported that he could perform an adequate right-of-way aerial patrol with the tree conditions on the right-of-way at that time. Respondent also stated that on May 30, 2007, the pilot emailed Sunoco's Region 3 Field Engineer with a list of right-of-way sections that were obscured by tree foliage and in need of ground right-of-way patrol, which

² Exhibit CR-1: Schematic showing Cook Road to Nichols Road segment of Sunoco's 8-inch pipeline to be approximately 3,400 feet long.

included the Nichols and Cook Roads areas. Respondent further stated that it initiated a ground patrol of the Cook Road area right-of-way on June 15, 2007.

In response, OPS asserted that during its week-long audit it observed Sunoco's active right-of-way patrolling program, including aerial and foot patrols. The inspector testified that he walked part of the right-of-way and photographed the subject areas. The OPS inspector further testified that, during the audit, he discovered an area approximately ½ mile long and sections of the right-of-way in the Cooks and Nichols Road area covered by pine trees and deciduous trees up to one foot in diameter, impeding aerial patrol. The OPS inspector also testified that the Cook Road area was not on Sunoco's list of foot-patrolled areas and that Sunoco personnel indicated that the area was patrolled by air. During the hearing, OPS also pointed out that this was conflicting information, as Respondent testified that the area was patrolled both by air and foot.

In support of its position that the area was overgrown, OPS submitted an October 2000 TerraServer³ satellite photograph of the area. OPS also submitted Google maps with satellite aerial photographs.⁴ OPS asserted that the photographs submitted by Sunoco actually supported the allegation of violation⁵ and that the photographs showed the right-of-way to be overgrown, thus reducing visibility and making appropriate aerial patrolling unlikely.

Respondent took exception to the satellite photo introduced by OPS and included on page 7 of the Violation Report (VR). Respondent argued that the photo resolution was not clear and was not an accurate depiction of the foliage during the December 2006 audit, as the photo was taken in June 2007. Sunoco further argued that the photo should not be used to determine compliance because it was taken six months after the audit. Sunoco also argued that, even if accepted, the photos were favorable to Respondent because they showed most of the right-of-way as being clear and visible.

Respondent asserted that on June 8, 2006, six months prior to the OPS audit, Sunoco emailed⁶ the air patrol pilot to ask if there were any areas obscured from aerial view. Respondent explained that the June 14, 2006 response from the air patrol pilot identified several areas that were obscured by tree growth, but that the Cook Road area was not included on the list.⁷

³ The TerraServer viewer allows users to select imagery from different dates and of different resolutions. While most of the TerraServer imagery is focused on high-resolution, color, satellite and aerial imagery, TerraServer.com also offers Color Infrared Imagery, Panchromatic Imagery, Low Resolution Satellite Imagery, and Topographic Maps. TerraServer provides access to drawing and measuring tools that can measure surface distance and area on an image.

⁴ Satellite photo taken October 12, 2002 from the Terraserver.com, OPS Violation Report (VR), Exhibit A, p. 6; Photo of right-of-way taken June 2007, VR p. 7; Photo from TerraServer.com taken October 12, 2000, VR p. 8; and Photo taken June 25, 2007 from bottom of the hill looking west towards right-of-way, VR p. 9.

⁵ The photographs taken by Respondent's air patrol were labeled as "Exhibit CR-2, an aerial photograph of the right-of-way on December 27, 2006," and "Exhibit CR-3, an aerial photograph of the right-of-way taken May 24, 2007."

⁶ Sunoco Exhibit CR-6, Email from Sunoco to air patrol pilot asking, "would you be able to let me know if there are any areas along our right of way that you can't see...?", dated June 8, 2006, and email response from pilot, dated June 14, 2006.

⁷ Sunoco Exhibit CR-6. Email response from air patrol pilot, dated June 14, 2006.

Respondent explained that the same inquiry was made of the pilot on January 26, 2007, two months following the OPS audit. In an email response,⁸ dated February 7, 2007, the pilot advised Sunoco that it was winter and no leaves were on the trees. Sunoco continued to assert that the right-of-way was clear. Respondent stated that its records indicating the completion of the patrols were signed on January 10, 2007, and May 16, 2007, respectively.

The OPS inspector countered that he personally walked the right-of-way, saw dense foliage, spoke to Respondent's personnel about the right-of-way, and discussed the history of the line during the OPS audit. OPS explained that the photos provided an overview of the status of the right-of-way with a snapshot of moments in time, showing an aerial view of the overgrown surface condition of Sunoco's right-of-way. OPS further explained that the satellite photographs⁹ showed the right-of-way was not clear, although Respondent's aerial records indicated continuous patrolling throughout years 2001 through 2007.

OPS also testified that, although Sunoco personnel indicated that the area was aerially patrolled, Respondent's email dated June 26, 2007, indicated the area was supposed to be included in the foot patrol process on January 26, 2006, and January 12, 2007. However, Sunoco's records show the Cook Road area foot patrols did not start until June 15, 2007, after the December 2006 audit. OPS also testified that, prior to June 15, 2007, Sunoco indicated that it did not consider this area to be in need of foot patrols, yet the pilot's aerial photographs¹⁰ showed the area to be overgrown at that time.

After considering all the evidence, I find that a portion of the Cook Road right-of-way was not clearly visible by aerial patrol. The photo on page 7 of the Violation Report shows a marker under a pine tree and that the first 150 to 200 feet of the right-of-way were under pine trees. Respondent's own Exhibit CR-2 and Exhibit CR-3 show the right-of-way to be overgrown in a time of tree growth. Sunoco acknowledged that the 430-foot tree-covered section of the right-of-way was in need of what it referred to as "First Round Clearing." I also find that there is no evidence that the Cook Road area was on Respondent's list of foot-patrolled areas. Sunoco did not submit its 2006 "Right of Way Patrol" records, either before or during the hearing, to show that it performed foot patrols of the area. Although Respondent submitted its 2007 "Right of Way Patrol" records,¹¹ the records are not relevant to the allegation of violation stemming from the 2006 OPS audit, as the foot patrol records started in June 15, 2007.

⁸ Sunoco Exhibit CR-7. Email regarding obscured right-of-way from Northern States Aviation, dated February 7, 2007.

⁹ Satellite photo taken October 12, 2002 from the Terraserver.com, VR, Exhibit A, p. 69; Photo from TerraServer.com October 12, 2000, VR p. 8.

¹⁰ Patrol pilot photograph of right-of-way, VR, Exhibit A, p. 5.

¹¹ Sunoco Exhibit CR-8; Right of Way Patrol, DOT 195.412, Week Ending June 2, 2007; Week Ending June 16, 2007; Week Ending June 30, 2007; Week Ending July 13, 2007; Week Ending July 28, 2007; Week Ending August 7, 2007; Week Ending August 22, 2007; Week Ending September 15, 2007; Week Ending September 29, 2007; Week Ending October 13, 2007; Week Ending October 27, 2007; Week Ending November 10, 2007; and Week Ending November 21, 2007.

I further find that Sunoco failed to demonstrate that it performed foot patrols of the areas where overgrown trees on the right-of-way precluded effective inspection of the condition of the pipeline surface conditions by aerial patrol. The photo on page 7 of the Violation Report, taken during the December audit, shows that the right-of-way was covered by tree foliage, reducing the likelihood that it was visible by aerial patrol. Therefore, I reject Sunoco's argument that its pilot could see the Cook Road area right-of-way and that the areas not visible were foot-patrolled. The inability to effectively inspect the right-of-way by aerial patrol, combined with the lack of foot patrol records, demonstrates that Sunoco failed to adequately patrol its rights-of-way within the required intervals. Accordingly, I find that Respondent violated 49 C.F.R. § 195.412(a) by failing to inspect the Cook Road area surface conditions on or adjacent to each pipeline right-of-way, at intervals not exceeding three weeks, but at least 26 times each calendar year.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

Candlewood Area

As for the Candlewood area, Sunoco contended that the allegation of violation in the Notice was inaccurate. Sunoco attributed the inaccuracy to statements it made during the OPS audit. Sunoco testified to making statements that confused an "old" right-of-way" with the existing right-of-way. Respondent explained that it mistakenly stated that a section of pipeline along the Candlewood area right-of-way was replaced by a horizontal directional drill (HDD) and that the replacement pipe was not on the original right-of-way. During the hearing, Sunoco presented information to show that the HDD was indeed on the original right-of-way. Respondent clarified that the 1990 HDD was installed directly under the existing pipeline right-of-way for approximately 1,850 feet of the total 2,175-foot HDD length. Sunoco argued that the photo on page 9 of the Violation Report, captioned "old right of way," was not representative of the deciduous trees in eastern Ohio during the December audit. Respondent also contended that the photo was not correct because there was no "old right of way." Sunoco added that although the caption reads, "looking west down the old pipeline right of way," it is a photo of its current right-of-way. In support of its position, Sunoco also submitted alignment sheets.

The OPS inspector testified that the audit revealed the Candlewood area was not on Sunoco's list of patrolled areas, and that Sunoco personnel indicated that the area was not foot-patrolled. The OPS inspector also stated that he walked the right-of-way with Respondent's personnel, saw dense foliage, and discussed the history of the line, as well as Sunoco's reasons for the HDD. OPS later accepted Respondent's explanation and clarification regarding the location of the HDD and right-of-way.

After considering all the evidence, I find that there was miscommunication, and that inaccurate statements were made, during the OPS audit regarding the 1990 HDD and true location of the pipeline, which led to this allegation of violation. Based upon Sunoco's clarification that the 1990 HDD was installed on the original pipeline right-of-way, this allegation of violation is withdrawn.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$44,000 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$44,000 for Respondent's violation of 49 C.F.R. § 195.412(a), for failing to adequately inspect the Cook Road and Candlewood area surface conditions on or adjacent to Medina Main Line Block Valve and the Hudson Pump Station pipeline rights-of-way at intervals not exceeding 3 weeks, but at least 26 times each calendar year.

As noted above, I found that Respondent failed to inspect the Cook Road area surface conditions on or adjacent to each pipeline right-of-way, at intervals not exceeding three weeks, but at least 26 times each calendar year. I further found that there was no basis for a similar allegation of violation for the Candlewood area and therefore withdrew that portion of Item 1.

Maintaining a system of inspection ensures reasonable promptness in the detection of all surface conditions on and adjacent to the pipeline right-of-way. Patrolling alerts the operator to any indication of pipeline leaks and the detection of excavation activity that could affect the safe operation of the pipeline.

Based upon the withdrawal of part of the allegation of violation, I am reducing the civil penalty. Accordingly, having reviewed the record, the nature of the circumstances, gravity of the violation, including location of the pipe in an HCA and length of time the violation existed, I assess Respondent a reduced total civil penalty of \$34,000.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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 \$34,000 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 United States District Court.

WARNING ITEM

With respect to Item 2, the Notice alleged a probable violation of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. This warning was for:

49 C.F.R. §195.589(c) (**Item 2**) – Respondent’s alleged failure to maintain records to demonstrate that it inspected each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion. Specifically, Respondent allegedly failed to provide documentation of atmospheric corrosion inspections for spans located at MP 171.9, MP 172, MP 175, and MP 175.5, as required by 49 C.F.R. §195.583(a) and (b).

Respondent presented information in its Response showing that it had taken certain actions to address the cited items. Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that a probable violation of 49 C.F.R. § 195.589(c) (Notice Item 2) has occurred, and Respondent is hereby advised to correct such conditions. In the event that OPS finds a violation for this item in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, 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 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. § 190.215. 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued