

JUNE 17 2010

Mr. David A. Justin
Vice President, Operations
Sunoco Pipeline L.P.
1735 Market Street / 29th Floor
Philadelphia, PA 19103

Re: CPF No. 4-2007-5041

Dear Mr. Justin:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$200,000. 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. R. M. Seeley, Director, Southwest Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0043 9405]

**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. 4-2007-5041
)	
Respondent.)	
)	

FINAL ORDER

On January 9, 2007, pursuant to 49 U.S.C. § 60118 and 49 C.F.R. § 190.213, the Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), issued a Final Order to Sunoco Pipeline L.P. (Sunoco or Respondent). Sunoco, a subsidiary of Sunoco Logistics Partners L.P., operates approximately 4,500 miles of regulated hazardous liquid pipelines transporting crude oil, refined petroleum products, and highly volatile liquids in Texas, Pennsylvania, Ohio, New Jersey, and several other states. The Final Order and associated Compliance Order (January 2007 Order) found that Respondent had committed violations of the pipeline safety regulations at 49 C.F.R. Part 195 and ordered the company to take measures to comply with those regulations within 30 days of its receipt of the Final Order.¹ Sunoco received the January 2007 Order on January 17, 2007, as evidenced by an official return receipt.

As a result of a review of Sunoco’s compliance with the terms of the January 2007 Order, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated November 19, 2007, a Notice of Probable Violation and Proposed Civil Penalty (November 2007 Notice). In accordance with 49 C.F.R. § 190.207, the November 2007 Notice proposed finding that Respondent had violated the terms of the January 2007 Order and proposed assessing a civil penalty of \$200,000 for the alleged violations.

Respondent failed to respond within 30 days after it received the November 2007 Notice. Sunoco’s failure to respond within 30 days constitutes a waiver of its right to contest the allegations in the Notice and authorizes the entry of this Final Order.² Sunoco eventually responded to the Notice by letter dated February 28, 2008 (February 2008 Response).

¹ In the Matter of Sunoco Pipeline, L.P., Final Order, CPF No. 4-2006-5005, 2007 WL 1202573 (Jan. 9, 2007) (also available at www.phmsa.dot.gov/pipeline/enforcement).

² 49 C.F.R. § 190.209(c).

Respondent did not contest the allegations of violation but offered an explanation for its delayed response to the January 2007 Order, submitted information to demonstrate that it had complied with the terms of that Order, and requested the proposed civil penalty be reduced. Respondent did not request a hearing.

FINDINGS OF VIOLATION

Pursuant to 49 U.S.C. § 60122 and 49 C.F.R. § 190.213, I find that Respondent violated the terms of the January 2007 Order, as follows:

Item 1 of the January 2007 Order, which related to 49 C.F.R. § 195.118(c), required Respondent to:

Review each meter facility fitting to determine if it is suitable for its intended service and is at least as strong as the pipe and other components of the pipeline facility to which it is attached. Perform corrective action necessary to ensure that each fitting complies with 49 C.F.R. § 195.118(c). Demonstrate compliance by documenting that each fitting is suitable for its intended service and is at least as strong as the pipe and other components of the pipeline facility to which it is attached and that MOP does not exceed the design pressure of each fitting [S]ubmit documentation of completion to the Director, Southwest Region, within 30 days of receipt of this Final Order.

Sunoco received the Order on January 17, 2007, as documented by an official return receipt. Therefore, the deadline for compliance with Item 1 was February 16, 2007. As of the date of the November 2007 Notice, PHMSA had not received any documentation from Sunoco demonstrating compliance with Item 1.

Respondent's failure to respond within 30 days after it received the November 2007 Notice constitutes a waiver of Respondent's right to contest these allegations. Furthermore, in its late-filed February 2008 Response, Sunoco did not contest these allegations. In its Response, however, the company submitted documentation demonstrating corrective measures that had been taken to comply with Item 1 of the January 2007 Order.

Accordingly, after considering all of the evidence, I find Respondent violated Item 1 of the January 2007 Order by failing to complete the required actions listed therein and to submit documentation of compliance by February 16, 2007.

Item 2 of the January 2007 Order, which related to 49 C.F.R. § 195.404(a)(3), required Respondent to:

Review each meter facility system map, drawing, and record to determine if it is current and includes the correct MOP of each pipeline. Perform corrective action necessary to ensure that each meter facility system map,

drawing, and record complies with 49 C.F.R. § 195.404(a)(3). Demonstrate compliance by documenting that each meter facility system map, drawing, and record is current and includes the correct MOP of each pipeline [S]ubmit documentation of completion to the Director, Southwest Region, within 30 days of receipt of this Final Order.

Sunoco was required to complete the terms of Item 2 by February 16, 2007. As of the date of the November 2007 Notice, PHMSA had not received any documentation from Sunoco demonstrating compliance with Item 2.

Respondent's failure to respond within 30 days after it received the November 2007 Notice constitutes a waiver of Respondent's right to contest these allegations. Furthermore, in its late-filed February 2008 Response, Sunoco did not contest these allegations. In its Response, however, the company submitted documentation demonstrating corrective measures that had been taken to comply with Item 2 of the January 2007 Order.

Accordingly, after considering all of the evidence, I find Respondent violated Item 2 of the January 2007 Order by failing to complete the required actions listed therein and to submit documentation of compliance by February 16, 2007.

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 a 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. The Notice proposed a total civil penalty of \$200,000 for the violations.

In determining the amount of the civil penalty 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; the 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.

Respondent's failure to comply with a Final Order issued by PHMSA is a very serious violation. When PHMSA finds noncompliance with the pipeline safety regulations and takes official action to order compliance, PHMSA expects, and federal law mandates, that the operator adhere to the terms of that Order. An operator's failure to comply with an agency Order poses an unacceptable risk to public safety, property, and the environment.

I have reviewed the company's late-filed February 2008 Response, in which Sunoco requested the civil penalty be reduced on the grounds that the company had moved offices in January 2006, which led to a "lack of continuity in responding to the [January 2007 Order]." ³ Respondent expressed a commitment to ensuring this would not happen again and indicated that it had created an audit tracking system. For these reasons, and the company's history of being "very responsive to PHMSA," Sunoco requested a reduction to the civil penalty. ⁴

The evidence in the record demonstrates that Sunoco ignored a Final Order and its compliance terms until long after the specified deadlines. ⁵ Staff of the Southwest Region, OPS, had contacted Sunoco on several occasions after the company first missed its compliance deadline to inquire about the status of the company's efforts to comply, but Sunoco was unresponsive. While Respondent has now taken actions to comply with the January 2007 Order, those actions were completed long after the specified deadlines and only in response to the November 2007 Notice, which proposed civil penalties for the company's ongoing noncompliance. For these reasons, upon a review of all the evidence, I find that the nature, circumstances, and gravity of the violations support the proposed civil penalty, and that the other assessment criteria do not justify any reduction to the civil penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$200,000.

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. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$200,000 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.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. If submitting a petition, 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, and a copy sent to the Chief Counsel, PHMSA, at the same address.

³ Response at 2.

⁴ Id.

⁵ Sunoco never submitted a request for an extension of time to comply with the terms of the January 2007 Order, even though the Order expressly provided that an extension may be granted for good cause.

The petition must be received within 20 days of service, but may be considered timely if received within 20 days of Respondent's receipt of this Final Order. The petition must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of the petition automatically stays the payment of any civil penalty assessed. If Respondent submits payment for 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