

MAY 6, 2013

Mr. Michael A. Creel
President and Chief Executive Officer
Enterprise Crude Pipelines, LLC
1100 Louisiana Street
Houston, TX 77002

Re: CPF No. 4-2012-5023

Dear Mr. Creel:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$143,700. 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 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. Kevin C. Bodenhamer, Senior Vice President, EHS&T, Enterprise Crude
Pipelines, LLC
Mr. Rodrick M. Seeley, Director, Southwest Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

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)	
)	
Enterprise Crude Pipelines, LLC,)	CPF No. 4-2012-5023
)	
Respondent.)	
)	

FINAL ORDER

From February 21 to March 21, 2011, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), investigated a failure that occurred on a crude oil pipeline known as the 8” Shell Line and operated by Enterprise Crude Pipelines, LLC (Enterprise or Respondent), at the Cushing East Terminal in Lincoln County, Oklahoma, on February 21, 2011 (Failure). The Failure resulted in a release of approximately 600 barrels of crude oil.

Enterprise, a subsidiary of Enterprise Products Partners, LP, operates a pipeline system consisting of approximately 4,700 miles of crude oil pipelines and 11 million barrels of crude oil storage. The system gathers and transports crude oil primarily to refineries, centralized storage terminals and connecting pipelines in Oklahoma, New Mexico, and Texas, and to crude oil terminal facilities in Cushing, Oklahoma, and Midland, Texas.¹

As a result of the investigation, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated June 7, 2012, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Enterprise had violated 49 C.F.R. §§ 195.303 and 195.402 and proposed assessing a civil penalty of \$143,700 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct one of the alleged violations.

Enterprise responded to the Notice by letter dated July 9, 2012 (Response). The company contested one of the allegations of violation, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced.

Respondent did not request a hearing and therefore has waived its right to one.

¹ <http://www.enterpriseproducts.com> (last accessed 1/10/ 2013).

FINDINGS 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. § 195.303(c), which states:

§ 195.303 Risk-based alternative to pressure testing older hazardous liquid and carbon dioxide pipelines.

(a) . . .

(c) The program under paragraph (a) of this section shall provide for pressure testing for a segment constructed of electric resistance-welded (ERW) pipe and lapwelded pipe manufactured prior to 1970 susceptible to longitudinal seam failures as determined through paragraph (d) of this section. The timing of such pressure test may be determined based on risk classifications discussed under paragraph (b) of this section. For other segments, the program may provide for use of a magnetic flux leakage or ultrasonic internal inspection survey as an alternative to pressure testing and, in the case of such segments in Risk Classification A, may provide for no additional measures under this subpart.

The Notice alleged that Respondent violated 49 C.F.R. § 195.303(c) by failing to pressure test the pre-1970 pipe segment designated as the 8” Shell Line that failed on February 21, 2011. The segment was constructed of electric resistance-welded (ERW) pipe manufactured prior to 1970 and was therefore considered susceptible to longitudinal seam failures, as determined through paragraph (d) of § 195.303. The Notice further alleged that Enterprise had acknowledged it had not performed a pressure test on the line.

In its Response, Enterprise did not contest the allegation but provided the following information about the Failure:

The 8” Shell crude pipeline was approximately 150 feet in length and configured to transport product from an Enterprise operated manifold at Cushing East storage to a Shell operated manifold also located on Cushing East storage property. At the time of the release, this pipeline was idle. Immediately following the release, the pipeline was purged, capped on one end and securely isolated from the rest of the system. Enterprise had no business plans to return this line to service, thus did not initiate actions to complete a hydrostatic test of the 8” Shell crude pipeline following this incident. On June 21, 2012, the 8” Shell crude pipeline was completely disconnected, excavated and removed from the ground in its entirety.²

Enterprise requested that since the line had been idle at the time of the Failure and the company had taken the line completely out of service following the 2011 accident, this allegation should be eliminated and the proposed compliance order rescinded.

² Response at 2.

I disagree that this Item should be eliminated. If a pipeline has not been abandoned in accordance with 49 C.F.R. § 195.59, then it is considered to be active and an operator must ensure that the pipeline complies with all applicable requirements of Part 195. Considering that Enterprise did not abandon this line until after the Failure, Enterprise failed to comply with the regulations applicable to active lines for more than five years, or 1,825 days.³ Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.303(c) by failing to properly conduct a pressure test of a pipe segment constructed of ERW pipe manufactured prior to 1970.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(3), which states:

§ 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. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year. . .

(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:

(1) . . .

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(3) by failing to prepare and follow a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, the Notice alleged that Enterprise failed to prepare and follow a procedure for properly performing a “line wash” or purging of the pipeline that failed on February 21, 2011. The Notice further alleged that the company’s failure to have such a procedure in place on the day of the Failure resulted in Enterprise lining up the delivery piping system incorrectly and oil being pumped against a closed valve, which led to the Failure and subsequent spill.

Respondent did not contest this allegation of violation, but provided information that it had developed the requisite procedures after receiving the Notice. Given the expense it had incurred in developing procedures for its Cushing East and Cushing West facilities, Enterprise requested that the civil penalty be removed or reduced. Since this argument relates to the assessment of a civil penalty, it is addressed in the Assessment of Penalties section below.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(3) by failing to have and follow a manual of written procedures for the operation, maintenance, and repair of its pipeline system.

³ Pipeline Safety Violation Report (Violation Report), (June 7, 2012) (on file with PHMSA), at 4.

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 \$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; 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. The Notice proposed a total civil penalty of \$143,700 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$43,700 for Respondent's violation of 49 C.F.R. § 195.303(c), for failing to perform a pressure test on its 8" Shell Line. As discussed above, I found that Enterprise failed to properly conduct a pressure test of this pipe segment constructed of ERW pipe manufactured prior to 1970. Respondent requested mitigation of the proposed civil penalty on the basis that the pipeline had been idled for an unspecified period of time prior to the Failure and that the company had subsequently abandoned and removed the line from the ground following the accident. Notwithstanding these contentions, the Respondent was clearly out of compliance at the time of the Failure and had been for over five years. As for the gravity of the violation, Respondent compromised pipeline integrity within a terminal facility and 600 barrels of crude oil were released. Finally, the Respondent was aware of its regulatory responsibility but failed to make any attempt at compliance until after the Failure occurred. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$43,700 for violation of 49 C.F.R. § 195.303(c).

Item 2: The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 195.402(c)(3), for failing to prepare and follow a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. As discussed above, I found that Enterprise failed to have and follow a procedure for performing a "line wash" of the 8" Shell Line that failed within the Cushing Terminal.

Enterprise argued for mitigation of the proposed civil penalty under basis that the company had made good-faith efforts to develop the myriad procedures required to bring its facilities into compliance and that it had willingly assumed those costs. Notwithstanding Respondent's remedial efforts following the Failure, this violation was a causal factor in the accident. By not having the required written procedures in place to conduct a line wash properly, the resulting misalignment allowed product to flow into the wrong pipeline and precipitated the release.

In its Response, Enterprise offered no reason as to why it did not have a procedure in place.

Therefore, I find it appropriate, given the causal nature of the noncompliance, to uphold the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.402(c)(3).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$143,700**.

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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$143,700 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 195.303(c). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director has indicated that Respondent has taken the following actions to address the cited violation:

With respect to the violation of 49 C.F.R. § 195.303(c) (**Item 1**), Enterprise provided information that it had abandoned the 8" Shell Line.

Accordingly, the compliance terms proposed in the Notice for Item 1 are not included in this Order.

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 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. § 190.215. 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