



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

DEC - 1 2005

Mr. Terry Hurlburt
Vice President, Eastern Operations
Enterprise Products Operating, LP
2727 North Loop West
Houston, TX 77210

RE: CPF No. 2-2005-5003

Dear Mr. Scott:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$10,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Mr. Joel E. Kohler, PE, Manager Pipeline Compliance, Enterprise Products
Ms. Linda Daugherty, Director, Southern Region, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of

**Enterprise Products Operating, LP,
Respondent.**

CPF No. 2-2005-5003

FINAL ORDER

From November 15-18, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS), Southern Region conducted an on-site pipeline safety inspection of Respondent's Chunchula pipeline facilities and records in Alabama and Mississippi. As a result of the inspection, the Director, Southern Region, OPS, issued to Respondent, by letter dated January 25, 2005, a Notice of Probable Violation and Proposed Civil Penalty (Notice)¹. In accordance with 49 C.F.R. §190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §195.402 and proposed assessing a civil penalty of \$10,000 for the alleged violations.

Respondent responded to the Notice by letter dated February 18, 2005 (Response). Respondent contested the allegations of violation, offered an explanation to explain the allegations and provided information concerning the corrective actions it has taken. Respondent also requested that the proposed civil penalty be eliminated. Respondent did not request a hearing, and therefore has waived the right to one.

FINDINGS OF VIOLATION

Item 1 of the Notice alleged that Respondent violated 49 C.F.R §195.402 (a) and (c)(4), by not identifying or designating in its manual of written procedures which pipeline facilities are located in areas that would require an immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned. At the time of the inspection, Respondent did not provide records to demonstrate compliance but stated that it would respond immediately to failures along the pipeline.

¹This case, however, is no longer before RSPA for decision. Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) was created to further the highest degree of safety in pipeline transportation and hazardous materials transportation. See, section 108 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). See also, 70 Fed. Reg. 8299 (February 18, 2005) re delegating the pipeline safety functions to the Administrator, PHMSA.

In Response, Respondent asserted that based upon a recommendation from an OPS Team during an April 2004 Operations and Maintenance Manual (O&M) inspection, it inserted language into its O&M under "Investigation of Failures" to address the subject of areas for immediate response. In support of its position, Respondent submitted a copy of its Procedure 5.1 "Investigation of Failures," which it argued has been in the manual effective June 2004 and was available before and during the November 15-18, 2004 OPS inspection. Respondent further asserted that its immediate response areas are linked to its high consequence areas (HCA) and strip maps, which were and are available within its pipeline integrity department and local offices.

Although, Respondent argued that the subject compliance language has been in its manual since June 2004 and available before and during the OPS inspection, the OPS inspector was unable to find any such language in Respondent's O&M manual after a thorough review. Nevertheless, in the interest of good faith, the OPS inspector gave Respondent three (3) days to research the O&M manual and show that the subject compliance language was contained within.

After three days, Respondent failed to demonstrate that the O&M manual contained any language that addressed immediate response areas. Respondent also acknowledged during its exit interview that it had not provided the OPS inspector the O&M language referencing its immediate response areas. Federal regulations require that Respondent maintain and follow its manual of written procedures which must include which pipeline facilities are located in areas that would require an immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned. At the time of the inspection, Respondent failed to provide or demonstrate that its O&M manual contained the requisite compliance language. Accordingly, I find that Respondent violated 49 C.F.R. §195.402 (a) and (c)(4) by failing to include in its manual of written procedures which pipeline facilities are located in areas that would require an immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned.

Item 2 of the Notice alleged that Respondent violated 49 C.F.R §195.402 (a) and (c)(13), by not providing records to demonstrate that it periodically reviews the work done by its personnel to determine the effectiveness and adequacy of the procedures used in normal operations and maintenance.

In Response, Respondent submitted language from its O&M procedures that it argued addressed this requirement. Respondent further argued that the procedures and relevant forms have been used since its manual review in 2003. Respondent explained that a standard form is used to address each area of O&M and to document the performance of these reviews. For operations personnel, the employee's supervisor reviews normal, abnormal, and emergency procedures annually. The results are documented as Satisfactory, Unsatisfactory, or Not Applicable. For maintenance personnel, the employee's supervisor reviews routine maintenance, mechanical troubleshooting, I/E, meter proving/repair, corrosion protection, lock-out/tag-out, and excavation procedures. The same criteria are used as with operations to document the results. Respondent further explained that for field verification of the performance of a task, it utilizes the performance-based evaluations required by Operator Qualification rule and a part of its Operator Qualification Program. Each person is qualified to perform a covered task must complete a performance-based evaluation of the elements of the covered tasks.

A review of the forms submitted by Respondent are clearly labeled "Pipeline Employee Evaluation" and are used to document the training performance of their employees. The O&M excerpt submitted by Respondent to demonstrate compliance actually refers to employee training and the annual review of written procedures by employees and contractors. However, the alleged violation has nothing to do with training or the performance of the employee.

The requisite review is of the procedures, not the employee. For example, an employee may complete a procedure in an excellent manner but the procedure itself could be flawed. Conversely, the employee's performance could be unsatisfactory but the procedure used could be found to be very effective. Federal regulations require that Respondent periodically *review the work* done by its personnel to *determine the effectiveness and adequacy of the procedures used* and to take corrective action where deficiencies are found. The forms submitted by Respondent labeled "Pipeline Employee Evaluation" failed to demonstrate compliance. Accordingly, I find that Respondent violated 49 C.F.R. §195.402 (a) and (c)(13) by failing to provide records to demonstrate that it periodically reviews the work done by its personnel to determine the effectiveness and adequacy of the procedures used.

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 \$10,000 civil penalty for violations of 49 C.F.R. § 195.402.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

The Notice in **Item 1** proposed a civil penalty of \$5,000, as Respondent failed to include in its manual of written procedures designations for which pipeline facilities are located in areas that would require an immediate response by the operator to prevent hazards to the public if the facilities failed or malfunctioned. Respondent argued that the civil penalty should be eliminated because it inserted language to address areas for immediate response into its O&M under "Investigation of Failures" effective June 2004 and that it was available before and during the November 15-18, 2004 OPS inspection.

Along with the Response, Respondent submitted its Procedure 5.1 "Investigation of Failures," which it contended referenced its immediate response areas and was in the manual effective June 2004 and that it was available before and during the November 15-18, 2004 OPS inspection. Respondent argued that it has and continues to achieve compliance with the regulations and seeks elimination of the proposed civil penalty.

At the time of the inspection, Respondent failed to provide or demonstrate that the requisite compliance language was in its O&M manual, even after being given an additional three days to do so. Respondent's submission raised more questions than provided answers. It is interesting that after the Respondent was given three (3) days to research its O&M manual Respondent was unable to show that the subject compliance language was contained therein. Also of interest is the fact that the records show, during the exit interview, two of Respondent's employees concurred with the inspector's findings that Respondent had not provided the O&M language. After receipt of the Notice, Respondent submitted documents which it contended was in the manual at the time of the inspection. However, the appearance of the submission differs from the photostatic copies taken of Respondent's O&M manual at the Chunchula, Alabama office during the inspection. The documents copied during the inspection showed Respondent's logo at the top of each page, a page number at the bottom center of each page and a date in the lower left of each page. The response submission does not have Respondent's logo, a page number or a date. Also of interest is the fact that the date on the photocopies is not June 2004. Even if Respondent changed its O&M manual in June 2004 as it contended, that change was not shown in the O&M manual being use in the field during the November 15-18, 2004 OPS inspection.

An objective of the regulation is to assure that operators are prepared to recognize pipeline facilities located in areas that would require an immediate response to prevent hazards to the public if the facilities failed or malfunctioned in an expeditious and safe manner. When an operator fails to include such language in its O&M, the proper procedures and techniques to follow may not be clear to those responsible for responding to immediate response areas. At the time of the inspection, Respondent failed to provide or demonstrate that the requisite compliance language was in its O&M manual. Respondent has not provided any evidence that would justify elimination of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000, for violation of 49 C.F.R. §195.402(a) and (c)(4).

The Notice in **Item 2** proposed a civil penalty of \$5,000, as Respondent failed to provide records to demonstrate that it periodically reviews the work done by its personnel to determine the effectiveness and adequacy of the procedures used in normal operations and maintenance. In response, Respondent advised that it has corrected its O&M procedures manual, developed applicable documents to record the requirement and submitted copies of several completed forms. Respondent argued that it has and continues to achieve compliance with the regulations and seeks elimination of the proposed civil penalty.

Federal regulations require that Respondent periodically review the work done by its personnel to determine the effectiveness and adequacy of the procedures used in normal operations and maintenance. During the exit interview, Respondent's employees acknowledged and concurred with the inspector's findings that they had not periodically reviewed and documented the work done by the it's personnel to determine the effectiveness of the procedures used in normal operations and maintenance. In furtherance, Respondent's submission failed to demonstrate compliance. Respondent has not provided any evidence that would justify elimination of the proposed civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000, for violation of 49 C.F.R. §195.402(a) and (c)(13).

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25770, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this 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-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

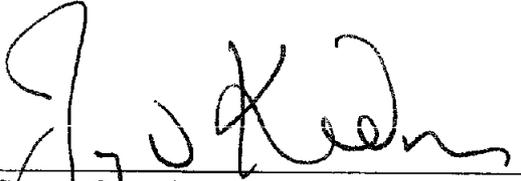
Failure to pay the \$10,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not 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 an United States District Court.

WARNING ITEM

The Notice did not propose a civil penalty or corrective action for Item 3 in the Notice; therefore, this is considered warning item. Respondent is warned that if it does not take appropriate action to correct this item, enforcement action will be taken if a subsequent inspection reveals a violation. The warning was for -

49 C.F.R. §195.402(a) – failing to update the alignment sheets in the Chunchula field office where operations and maintenance activities are conducted, as the alignment sheets did not reflect any changes that have occurred on the pipeline since the system was built in 1979.

Under 49 C.F.R. § 190.215, Respondent has a right to Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of a petition automatically stays the payment of any civil penalty assessed. However, 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 receipt.



 Stacey Gerard
 Associate Administrator
 for Pipeline Safety

DEC - 1 2005

 Date Issued