



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

1200 New Jersey Avenue, SE
Washington, D.C. 20590

OCT 9 2012

Mr. Michael A. Creel
President and CEO
Enterprise Products Operating, LLC
1100 Louisiana Street
Houston, Texas 77002-5227

Re: CPF No. 1-2012-5001

Dear Mr. Creel:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$67,400, and specifies actions that need to be taken by Enterprise Products Operating, LLC, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Eastern Region, this enforcement action will be closed. 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,

for: Jeffrey D. Wiese
Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Byron E. Coy, Director, Eastern Region, OPS
Mr. Kevin C. Bodenhamer, Sr. Vice-President, Liquid Pipeline Operations, Enterprise
Products Partners, LP
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 Products Operating, LLC,))
))
Respondent.))
_____)

CPF No. 1-2012-5001

FINAL ORDER

On August 27, 2010, pursuant to 49 U.S.C. § 60117, a representative of the New York State Department of Public Service (NYSDPS), as agent for 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 Enterprise Products Operating, LLC (Enterprise or Respondent) in Gilboa, New York (Schoharie County). Enterprise is a subsidiary of Enterprise Products Partners, LP, which transports natural gas, NGL crude oil, refined products, and petrochemicals through more than 50,000 miles of pipeline in North America.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated February 2, 2012, a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Enterprise had violated 49 C.F.R. §§ 195.412(a), 195.54(b), 195.406(b), 195.402(a), and 195.402(c)(3) and proposed assessing a civil penalty of \$67,400 for the alleged violations. The Notice also proposed that Respondent be required to take certain measures to correct the alleged violations.

Enterprise responded to the Notice by letter dated March 1, 2012 (Response). The company contested one of the allegations of violation, provided an explanation of its actions, and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

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

¹ <http://www.enterpriseproducts.com/corpProfile/businessProfile.shtm> (last accessed September 24, 2012).

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 inspect the surface conditions on or adjacent to the pipeline rights-of-way (ROW) on Line-P41. Specifically, the Notice alleged that Enterprise used aerial patrol as its sole method of inspecting the ROW, yet areas on or adjacent to these pipelines were not visible from the air because vegetation and tree canopy obscured the ROW.² PHMSA submitted photographs of the overgrown vegetation and tree canopy.³ Enterprise did not contest the allegation but explained that it would complete mowing and side cutting at the locations in question. Accordingly, I find that Respondent violated 49 C.F.R. § 195.412(a) by failing to inspect the surface conditions on the portions of its Line-P41 ROW, as more fully described in the Notice and Violation Report.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.54(b), which states:

§ 195.54 Accident reports.

(a) Each operator that experiences an accident that is required to be reported under § 195.50 shall as soon as practicable, but not later than 30 days after discovery of the accident, file an accident report on DOT Form 7000-1, or a facsimile.

(b) Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000-1, it shall file a supplemental report within 30 days.⁴

The Notice alleged that Respondent violated 49 C.F.R. § 195.54(b) by failing to file a supplemental accident report within 30 days of receiving changes in the information originally reported on DOT Form 7000-1 (Report #20100220-15325).⁵ Specifically, the Notice alleged

² Inadequate ROW inspections due to overgrown conditions occurred at the following locations: Dig sites 12 and 13 (dig sites related to Corrective Action Order, CPF 1-2010-5008H); Route 30 to Dave Brown Mountain; ROW immediately downstream of Valve 102; Near West Kill Stream Crossing; Dave Brown Mountain to Valve 102; and Downstream of Keyserkill Road. Pipeline Safety Violation Report (Violation Report) (February 2, 2012) at 2 and Exhibit 1.

³ Violation Report at 5 and Exhibit 1.

⁴ 49 C.F.R. § 195.54 was amended, effective November 26, 2011, but the amendment did not affect paragraph (b) or the substance of this allegation of violation. See 75 FR 72907.

⁵ On September 2, 2010, PHMSA issued TEPPCO a Corrective Action Order [CPF No. 1-2010-5008H], to address a hazardous condition arising out of a failure on Line P-41 on August 27, 2010. As of the date of the failure, TEPPCO was a subsidiary of Enterprise.

that Enterprise failed to update the cause of the accident after receiving a laboratory analysis on November 12, 2010, identifying the cause of the accident as a circumferential leak that originated at a circumferentially-oriented stress corrosion crack adjacent to the toe of a girth weld on the upstream pipe joint.⁶

The original report, filed on October 7, 2010, indicated that the cause of the accident was unknown. The company subsequently filed two supplemental reports (Report #s 20100220-15326, dated October 7, 2010, and 20100220-15327, dated October 8, 2010), yet provided no updated information on the cause of the accident. According to the Notice, PHMSA contacted Enterprise on March 17, 2011, and on May 9, 2011, about supplementing its report on the cause of the accident. As of May 11, 2011, Enterprise had still not submitted a supplemental report that identified the cause of the accident.

In its Response, Enterprise argued that it had been unable to complete accident report Form F7000-1 electronically because its operator pipeline safety identification (OPSID) number had been suspended by PHMSA due to a change in operator from the former TE Products Pipeline, LLC, to Enterprise. The company contended that “[T]hrough continuous correspondence with PHMSA Washington personnel, starting in March 2011, the form was updated and finalized with PHMSA on May 17, 2011.”⁷

A change in OPSID, however, does not relieve an operator of its obligations under § 195.54(b) to file timely supplemental reports. PHMSA regulations provide for alternative reporting methods if an operator is unable to submit an accident report electronically, but there is no indication that Enterprise attempted or requested any alternative filing method.⁸

Written accident reports provide important information to PHMSA and the public on the nature and cause of accidents. Analyzing the facilities involved, the accident type, and the extent of harm to public and property, PHMSA is able to determine whether there is a need to take a closer look at the operations and maintenance of a particular pipeline facility and whether to evaluate and update current safety regulations or issue new ones. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.54(b) by failing to submit a supplemental accident report (DOT Form 7000-1), with an updated cause of the accident, within 30 days of receiving changes in the information originally reported.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b), which states:

§ 195.406 Maximum operating pressure.

(a)

⁶ Violation Report, Exhibit 2 at 6.

⁷ Response at 2.

⁸ Prior to November 26, 2010, 49 C.F.R. § 195.58 provided for filing reports by U.S. mail. After such date, § 195.58 as amended to require electronic filing, or, if electronic filing presented an undue burden and hardship, by alternative methods. An operator must request permission to use an alternate method in advance of the filing deadline.

(b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b) by permitting the pressure in its pipeline during surges or other variations from normal operations to exceed 110 percent of the established operating pressure limit. Specifically, the Notice alleged that the pressure in Enterprise's Line-P41 exceeded the established temporary maximum pressure of 600 psig by 15 psig when the pressure peaked at 675 psig on October 5, 2010. According to the Notice, Enterprise had established a procedure for the evacuation of propane in Line-P41 that included an established temporary maximum pressure of 600 psig at the Selkirk Station.

Respondent did not contest this allegation of violation. Accordingly, I find that Respondent violated 49 C.F.R. § 195.406(b) by permitting the pressure on its Line-P41 during surges or other variations from normal operations to exceed 110 percent of the established operating pressure limit.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states, in relevant part:

§ 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. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal operations and maintenance (O&M) activities. Specifically, it alleged that Enterprise failed to follow its *Construction Specification, SPEC LP-9.1*, which required that 50% of the root bead of a weld be completed before removal of the line-up clamps. According to the Notice, PHMSA inspectors observed Respondent's welder, during the replacement of Valve MOV97A, remove a line-up clamp prior to completing 50% of the root bead. The PHMSA inspector immediately notified Enterprise's on-site welding inspector, who inspected the partial root bead and ordered the weld to be cut out.

Respondent did not contest the allegation of violation but described a plan to modify its welding procedures to address smaller-diameter pipe where it is not practical to obtain 50% of the root bead with the line-up clamp still in its original position. Accordingly, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its manual of written procedures by removing line-up clamps prior to completing 50% of the root bead during welding.

Item 5: 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. . . .

(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 maintenance and normal operations. Specifically, it alleged that Enterprise failed to insure that repairs were made in a safe manner and so as to prevent damage to persons or property, in accordance with 49 C.F.R. § 195.422(a). It alleged that, during a PHMSA inspection, Enterprise personnel were observed performing welding operations to replace Valve MOV97A while manning two fully-discharged fire extinguishers. PHMSA immediately notified Respondent's on-site inspector, who ordered that all welding operations stop until the discharged extinguishers were replaced with charged ones.

Respondent did not contest this allegation of violation. 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 prepare and follow a manual of written procedures for conducting maintenance and normal operations, to insure that welding operations were performed in a safe manner and so as to prevent damage to persons or property, in accordance with 49 C.F.R. § 195.422(a).

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 \$67,400 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$18,700 for Respondent's violation of 49 C.F.R. § 195.412(a), for failing to inspect the surface conditions on or adjacent to portions of its Line-P41 ROW. Enterprise neither contested the allegation nor presented any evidence or argument justifying reduction or elimination of the proposed penalty. Maintaining an effective system of inspections ensures reasonable promptness in the detection of all surface conditions on and adjacent to the pipeline right-of-way. Patrolling also alerts the operator to any indication of pipeline leaks and the detection of excavation activity that could affect the safe operation of the pipeline. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$18,700 for violation of 49 C.F.R. § 195.412(a).

Item 2: The Notice proposed a civil penalty of \$12,500 for Respondent's violation of 49 C.F.R. § 195.54(b), for failing to submit a timely supplemental accident report (DOT Form 7000-1) with an updated cause of the accident. Enterprise argued that the civil penalty should be eliminated because the company had made diligent attempts to supplement the accident reporting form but could not file electronically due to circumstances beyond its control. Respondent contended that its OPSID number had been suspended, thus preventing the company from entering the "Online Data Entry" segment of the PHMSA website to update Form F7000-1. Enterprise contended that, starting in March 2011, it had entered into correspondence with PHMSA personnel and had updated and finalized the report on May 17, 2011.

I find the company's argument unconvincing. Between the date that the company received the laboratory analysis and the date PHMSA contacted Enterprise about supplementing its report, approximately four months passed. As I found above, § 195.58 provides for alternative reporting methods if an operator is unable to submit an accident report electronically, provided a proper request is made in advance for alternative filing. As the operator of Line-P41, Enterprise was responsible for compliance with the reporting requirements outlined under 49 C.F.R. § 195.54 but failed to do so.⁹ In terms of culpability, Respondent knew of its responsibility to submit a supplemental accident report within 30 days of receiving changes in the information originally reported; therefore, elimination of the civil penalty is not warranted. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$12,500 for violation of 49 C.F.R. § 195.54.

Item 3: The Notice proposed a civil penalty of \$7,500 for Respondent's violation of 49 C.F.R. § 195.406(b), by permitting the pressure on Line-P41 during surges or other variations from normal operations to exceed 110 percent of the established operating pressure limit. Enterprise neither contested the allegation nor presented any evidence or argument justifying elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$7,500 for violation of 49 C.F.R. § 195.406(b).

⁹ In 1994, PHMSA issued an advisory bulletin reminding pipeline facility owners and operators to submit supplements to gas pipeline incident and hazardous liquid pipeline accident reports as required by the regulations. The advisory bulletin stated that "after the initial report has been submitted, the operator is required to submit a supplemental written report whenever additional relevant information is obtained concerning the particular incident or accident. The submittal must be no later than 30 days after acquiring the additional information." See "Certain Requirements Applying to Supplemental Incident/Accident Reports and Estimated Property Damage Totals," Advisory Bulletin (ADB-94-01), dated January 13, 1994.

Item 4: The Notice proposed a civil penalty of \$16,200 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its manual of written procedures by removing a line-up clamp prior to completing 50% of the root bead during welding. Enterprise neither contested the allegation nor presented any evidence or argument justifying a reduction or elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$16,200 for violation of 49 C.F.R. § 195.402(a).

Item 5: The Notice proposed a civil penalty of \$12,500 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 maintenance and normal operations. Specifically, it alleged that Enterprise failed to insure that repairs were made in a safe manner and so as to prevent damage to persons or property, in accordance with 49 C.F.R. § 195.422. Enterprise neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. The gravity of the violation and the degree of Respondent's culpability support the proposed penalty. While this incident did not result in damage to persons or property, such consequences may have been largely fortuitous. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$12,500 for violation of 49 C.F.R. § 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 **\$67,400**.

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 \$67,400 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. § 195.412(a). 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. Pursuant to the

authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.412(a) (**Item 1**), Enterprise must perform a right-of-way assessment to identify areas that have excessive ground vegetation and/or overhanging tree canopy.
 - a. Enterprise must perform the right-of-way assessment sometime during the months of July, August, and/or September when vegetation is the heaviest. The right-of-way assessment must be completed within the time interval that occurs immediately after receipt of the Final Order.
 - b. Enterprise must develop a plan to remediate each location identified in Item 1 above.
 - c. Enterprise must implement and complete the remediation plan within 120 days after completion of the right-of-way assessment.
2. Enterprise must make all related records and documentation of the completed items available for review by the Director upon request.
3. Enterprise must provide a summary report to demonstrate completion of Item 1 to the Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration, 820 Bear Tavern Rd, Suite 103, West Trenton, NJ 08628 within 30 days after completion of Item 1.
4. It is requested (not mandated) that Enterprise maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Byron Coy, Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration, Eastern Region, 820 Bear Tavern Road, Suite 103, W. Trenton, NJ, 08628. Please refer to **CPF 1-2012-5001** on each document you submit. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.215, Respondent has a 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 this 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. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

per: 

Jeffrey D. Wiese

Associate Administrator
for Pipeline Safety

OCT 9 2012

Date Issued