

**VIA EMAIL TO: ajteague@eprod.com, zlcraft@eprod.com, gbacon@eprod.com, and robert.hogfoss@troutman.com**

Mr. A. J. Teague  
Director and Co-Chief Executive Officer  
Enterprise Products Partners, LP  
1100 Louisiana Street, 10<sup>th</sup> Floor  
Houston, Texas 77002

**Re: CPF No. 1-2018-5003**

Dear Mr. Teague:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Enterprise Products Operating, LLC (Enterprise). It withdraws seven of the 18 original allegations of violation, reduces two allegations of violation to warning items, makes nine other findings of violation, assesses a reduced civil penalty of \$286,600, and specifies actions that need to be taken by Enterprise 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 e-mail is effective upon the date of mailing, as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough. Director, Easter Region, Office of Pipeline Safety, PHMSA  
Mr. Zachary Craft, Counsel, Enterprise Products Operating, LLC  
Mr. Graham Bacon, Executive Vice President and Chief Operating Officer, Enterprise Products Operating, LLC  
Mr. Robert E. Hogfoss, Counsel for Respondent, Troutman Sanders, LLP

**VIA EMAIL – CONFIRMATION OF RECEIPT REQUESTED**

**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** )

**Enterprise Products Operating, LLC,** )  
**a subsidiary of Enterprise Products Partners, LP,** )

**Respondent.** )

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**CPF No. 1-2018-5003**

**FINAL ORDER**

From March 21, 2016, through December 2, 2016, 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 Enterprise Products Operating, LLC (Enterprise or Respondent), in Houston, Texas; Greensburg, Pennsylvania; Dubois, Pennsylvania; Lebanon, Ohio; Morgantown, Pennsylvania; Sorrento, Louisiana; Monee, Illinois; Seymour, Illinois; and Little Rock, Arkansas. Respondent is a wholly-owned subsidiary of Enterprise Products Partners, LP, which operates approximately 49,200 miles of natural gas, natural gas liquid, crude oil, refined products, and petrochemical transmission and gathering pipelines throughout the United States.<sup>1</sup>

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated January 29, 2018, 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 committed 18 violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$703,900 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

After requesting and receiving an extension of time to respond, Enterprise responded to the Notice by letter dated April 20, 2018 (Response). Enterprise contested all of the allegations and requested a hearing, but asked that it not be scheduled until the parties could informally meet in an attempt to resolve or narrow the issues of the Notice. On July 31, 2018, Enterprise met with PHMSA personnel in Trenton, New Jersey. The informal meeting resulted in a tentative agreement, subject to PHMSA's review of additional documentation to be provided by Enterprise, of the issues raised in the Notice. Enterprise memorialized this tentative agreement by letter to PHMSA dated August 28, 2018. Enterprise and PHMSA subsequently engaged in

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<sup>1</sup> Enterprise Products Partners, LP website, available at <https://www.enterpriseproducts.com/about-us/business-profile> (last accessed February 26, 2020).

further discussions regarding the additional documentation provided by Enterprise and further narrowed the issues. On May 23, 2019, Enterprise filed a “Joint Status Report” with the PHMSA hearing official, stating that the parties had resolved 12 of the 18 issues presented in the Notice and that it expected “to confirm shortly whether there will be a need for a hearing on the remaining six items.” By letter dated July 22, 2019, to the Director, Enterprise withdrew its request for a hearing, thereby authorizing the entry of this Final Order without further proceedings (Amended Response).

### **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. § 195.310(a), which states:

**§ 195.310 Records.**

(a) A record must be made at each pressure test required by this subpart, and the record of the latest test must be retained as long as the facility tested is in use.

The Notice alleged that Enterprise violated 49 C.F.R. § 195.310(a) by failing to maintain a record of each pressure test required by Subpart E, “Pressure Testing,” of Part 195. Specifically, the Notice alleged that Enterprise failed to maintain hydrostatic test records for four breakout tanks (PHMSA Unit 12232) in Little Rock, Arkansas, per the requirements of § 195.310(b). Paragraph (b) of § 195.310 requires that an operator’s records include the following information: pressure-recording charts; test-instrument calibration data; date and time of the test; minimum test pressure; test medium; a description of the facility tested and the test apparatus; an explanation of any pressure discontinuities, including test failures, that appear on the pressure-recording charts; where elevation differences in the section under test exceed 100 feet (30 meters), a profile of the pipeline that shows the elevation and test sites over the entire length of the test section; and the temperature of the test medium or pipe during the test period. None of the records provided by Enterprise for the referenced units contained this information.

In its Amended Response, Enterprise withdrew its objection to this item. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.310(a) by failing to maintain a record of each pressure test required by Subpart E.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), 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, and appropriate changes made as necessary to

insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Enterprise violated 49 C.F.R. § 195.402(a) by failing to follow for each pipeline system 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 follow its computational pipeline monitoring (CPM) manual for providing leak detection on four pipelines located in High Consequence Areas (HCAs).

During the inspection of Enterprise's written procedures in Houston, Texas, the PHMSA inspector reviewed Enterprise's *CPM Operations and Maintenance Manual (O&M Manual)*, dated 3/1/11. The *O&M Manual* stated: "...[A]ll regulated pipelines operated by Enterprise Products control centers will be targeted for implementation of this baseline CPM system. If this baseline leak detection application cannot be implemented on targeted line, then alternative technologies will be evaluated ...." The PHMSA inspector noted that four Enterprise pipelines located in HCAs lacked leak-detection systems:

1. Line ID P84, PODS ID 1357, total miles 0.945, HCA miles 0.047;
2. Line ID P79, PODS ID 6427, total miles 0.409, HCA miles 0.409;
3. Line ID P29B, PODS ID 7201936, total miles 0.53, HCA miles 0.53; and
4. Line ID P29A, PODS ID 7201937, total miles 0.53, HCA miles 0.53.

By email dated January 12, 2017, Enterprise acknowledged that it did not have records regarding an evaluation of alternative leak-detection technologies for these pipelines. As a result, the Notice alleged that Enterprise failed to follow its own procedures for leak detection for each of the four referenced pipelines.

In its Amended Response, Enterprise withdrew its objection to Item 2 with respect to two of the four instances of violation, i.e., violations relevant to Line ID P79 and Line ID P29A. With regard to the other two instances (Line ID P84 and Line ID P29B), Enterprise provided information regarding the operational status of these two segments but that had not been previously submitted to PHMSA. Upon review of this additional material, the Region concluded that the lines were exempt from leak detection, as one was a low-stress line and the other was idled, and therefore not subject to the company's procedures for leak detection.<sup>2</sup>

Accordingly, after considering all of the evidence, I find that Enterprise violated 49 C.F.R. § 195.402(a) by failing to follow a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies with respect to Line ID P79 and Line ID P27A.

**Item 5:** The Notice alleged that Respondent violated 49 C.F.R. § 195.583(a), which states in relevant part:

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<sup>2</sup> Region Recommendation, at 2 (on file with PHMSA).

**§ 195.583 What must I do to monitor atmospheric corrosion control?**

(a) You must inspect each pipeline or portion that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.583(a) by failing to conduct an inspection of each pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every three calendar years, but with intervals not exceeding 39 months. Specifically, the Notice alleged that Enterprise’s atmospheric corrosion records, titled “EPROD Survey Report Atmospheric,” from 1/1/11 to 12/30/15, revealed that the inspection interval exceeded 39 months in two instances for the following pipelines:

1. Segment Code: 03 Mundys to Duncansville with the following inspection dates: 6/18/11 and 9/25/14 – six days past due; and
2. Segment Code: 04 Duncansville to Jacks with the following inspection dates: 6/25/12 and 10/6/15 – 10 days past due.

In its Amended Response, Enterprise withdrew its objection to Item 5.<sup>3</sup> Accordingly, after considering all of the evidence, I find that Enterprise violated 49 C.F.R. § 195.583(a) by failing to conduct an inspection of each pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every three calendar years, but with intervals not exceeding 39 months.

**Item 6:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), as quoted above, by failing to follow for each pipeline system 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 follow its own written procedures for performing inspections of overpressure-protection devices for inspection Unit 2464-Lou Tex in Sorrento, Louisiana (Unit 2464); Unit 3051-Greensburg in Greensburg, Pennsylvania (Unit 3051); and Unit 3071-Dubois in Watkins Glen, New York (Unit 3071).

Enterprise’s *O&M Miscellaneous Operating Procedures – Over Pressure Safety Devices, Section 1305*, dated 11/12/13 (*Section 1305*) stated: “In addition, the overpressure protection system must be inspected and tested, either actual or simulated, at the required overpressure protection set point...”

The records reviewed during the PHMSA inspection of Unit 2464, dated 2014 and 2015, showed that the pressure-relief valve data did not indicate a “Set Pressure (PSI)” for nine pressure-relief valves in 2014 and six in 2015. According to the Notice, Enterprise was unable to justify why the data was missing from these records.

<sup>3</sup> Amended Response, at 2 (on file with PHMSA).

In addition, the Notice alleged that Enterprise failed to adequately document the “set pressure (PSI)” for relief valve settings on its 2015 and 2016 pressure safety valve (PSV) inspection records on its Appalachia-to-Texas (ATEX) pipeline segments.

The Notice further alleged that records reviewed during the inspection of Unit 3051 did not record a “set pressure (PSI)” for the pressure safety valves (PSVs). According to the Notice, Enterprise was unaware of what value (PSI) at which these PSVs were tested, or at what pressure values these PSVs were left. The PHMSA inspector noted two instances of violation in 2015 and two instances of violation in 2016 for this inspection unit.

Finally, during the inspection of Unit 3071, the PHMSA inspector reviewed *Section 1305*, which stated in relevant part: “...[E]ach inspection and repair is documented on the appropriate form to determine that it is functioning properly, in good mechanical/electrical condition, adequate from the standpoint of capacity and reliability of operation for the service in which it is used, set to function at the correct pressure and properly installed and protected from foreign materials or other conditions that might prevent proper operation.” Overpressure-protection records from 2014 through 2016 for the Moshannon, Pennsylvania pump station and the “Maintenance Work Order Detail Report” for the spring 2014 inspection interval were reviewed during the inspection. According to the Notice, these records failed to contain specific information required by *Section 1305*. Specifically, the following information was omitted: valve mechanical/electrical condition; adequacy of capacity and reliability of operation; functionality at the correct pressure; proper installation and protection from foreign materials or other conditions that might prevent proper operation; and the set pressure of the device and set pressure as found. The PHMSA inspector noted two instances of violation in 2015 and two instances of violation in 2016 for this inspection unit.

In its Response, Enterprise contested this item and stated that it had records associated with Unit 3051 and a portion of the records associated with Unit 3071. In addition, Enterprise challenged the item on the grounds that it should have been brought as an alleged violation of § 195.428(a), and the violation therefore failed as a matter of law for a lack of specificity in the pleadings. Finally, Enterprise argued that this item should have been combined with Item 7 of the Notice, as there was significant overlap in the allegations, and should be converted to a Notice of Amendment without any assessed penalty.

Subsequent to the inspection, Enterprise engaged in informal discussions with PHMSA on this item and provided additional records for review. As a result of those discussions and a review of the additional records, the Director agreed that six of the instances of alleged violation should be withdrawn. Specifically, the Director reviewed the records associated with Units 3051 and 3071 and agreed that the alleged violations for those units should be withdrawn. Respondent thereupon withdrew its challenge to this item and requested that the civil penalty associated with this item be reduced to reflect 17, rather than 23, instances of violation. Because Enterprise withdrew its challenge to this item, I need not decide the legal issues raised by Enterprise in its Response.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow for each pipeline system a manual of written procedures for

conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

**Item 7:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c), which states, in relevant part:

**§ 195.402 Procedural manual for operations, maintenance, and emergencies.**

(a) ....

(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: . . .

(3) Operating, maintenance, 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 ensure that its written procedures were adequate for operating, maintaining and repairing its pipeline system in accordance with the requirements of Subparts F and H of Part 195. Specifically, it alleged that Enterprise's procedures failed to provide sufficient instructions on how its employees were to conduct and document relief-valve inspections under § 195.428(a).

In its Amended Response, Enterprise withdrew its challenge to this item.<sup>4</sup> Accordingly, after considering all of the evidence, I find that Enterprise violated 49 C.F.R. § 195.402(c)(3) by failing to ensure that its written procedures were adequate for operating, maintaining and repairing its pipeline system in accordance with the requirements of Subparts F and H of Part 195.

**Item 13:** The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

**§ 195.428 Overpressure safety devices and overflow protection systems.**

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good working condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a) by failing to conduct an inspection and test of each overpressure-protection device at intervals not to exceed 7½ months, but at least twice each calendar year. Specifically, the Notice alleged that Enterprise failed to conduct an inspection and test of its highly volatile liquid (HVL) overpressure-protection valves at its Moshannon, Pennsylvania pump station during the following periods:

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<sup>4</sup> *Id.*, at 3 (on file with PHMSA).

1. Device # MOS377 Thermal bypass valve 001 receiving barrel – 1<sup>st</sup> inspection 2014, 1<sup>st</sup> inspection 2015, and 2<sup>nd</sup> inspection 2015; and
2. Device # MOS377 Thermal bypass valve 002 launching barrel – 1<sup>st</sup> inspection 2014, 1<sup>st</sup> inspection 2015, and 2<sup>nd</sup> inspection 2015.

In its Response, Enterprise challenged two of the six instances of violation alleged in this Item. Enterprise stated that it had produced certain records of inspection during the PHMSA inspection and, subsequent to the inspection, had located other records associated with the 2015 inspections at the Moshannon, Pennsylvania pump station. As an exhibit to its Response, Enterprise provided documentation of the 2015 inspections that PHMSA alleged had not occurred. In its Amended Response, Enterprise stated that it did not contest the four allegations of violation associated with the 2014 inspections.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.428(a) by failing to conduct an inspection and test of its HVL overpressure-protection valves at its Moshannon, Pennsylvania pump station during the first and second inspections of 2014, for a total of four instances of violation.

**Item 15:** The Notice alleged that Respondent violated 49 C.F.R. § 195.404(c), which states, in relevant part:

**§ 195.404 Maps and records.**

- (a) ....
- (c) Each operator shall maintain the following records for the period specified: . . .
  - (3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(c)(3) by failing to maintain a record of each inspection and test required under Subpart F of Part 195 for at least two years or until the next inspection or test is performed, whichever is longer. Specifically, the Notice alleged that Enterprise failed to maintain its monthly breakout-tank records for breakout tank DOT-T-1301 during March 2014, April 2014, and April 2015, per the requirements of API Standard 653, Section 6.3.1.2, which is incorporated by reference into Subpart F under § 195.3(b)(19).

In its Response, Enterprise contested two of the three instances of alleged violation. Specifically, Enterprise argued that the two alleged instances from 2014 should be withdrawn because the regulation requires retention of records until the time of the next inspection or two years, whichever is longer, and that two years had already passed as of the time of the PHMSA inspection.

Enterprise is correct that it was required to retain the inspection records from 2014 for a period of two years, and that such period had expired at the time of the PHMSA inspection. Enterprise did not challenge the alleged violation for 2015 and has therefore waived its right to do so.

Accordingly, after considering all of the evidence, I find that Enterprise violated 49 C.F.R. § 195.404(c)(3) by failing to maintain a record of its April 2015 monthly breakout tank inspection for breakout tank DOT-T-1301 for at least two years or until the next inspection or test was performed, whichever is longer.

**Item 17:** The Notice alleged that Respondent violated 49 C.F.R. § 195.579(d), which states:

**§ 195.579 What must I do to mitigate internal corrosion?**

(a) ....

(d) *Breakout tanks.* After October 2, 2000, when you install a tank bottom lining in an aboveground tank built to API Spec 12F (incorporated by reference, *see* 195.3), API Std 620 (incorporated by reference, *see* 195.3), or API Std 650's predecessor, Standard 12C, you must install the lining according to API RP 652 (incorporated by reference, *see* 195.3). However, you don't need to comply with API RP 652 when installing any tank in which you note for the corrosion control procedures established under § 195.402(c)(3) why compliance with all or certain provisions of API RP 652 is not necessary for the safety of the tank.

The Notice alleged that Respondent violated 49 C.F.R. § 195.579(d) by failing to install certain breakout-tank linings in accordance with API RP 652, as required by the regulation. Specifically, Enterprise failed to produce any records or documentation showing compliance with the requirement for the following breakout tanks with a thin-film lining, namely, tank DOT-T-1301, and tank DOT-T-1302.

In its Response, Enterprise contested the allegation of violation for both tanks. Enterprise stated that it had fully complied with all requirements of API RP 652. In its Amended Response, however, Enterprise withdrew its challenge to the allegation of violation with respect to tank DOT-T-1301, but still challenged the allegation of violation with respect to tank DOT-T-1302.

In subsequent discussions between Enterprise and the Director, Enterprise provided PHMSA with additional breakout tank-lining installation records for tank DOT-1-1302, which were not provided at the time of the PHMSA inspection. The additional records provided evidence of compliance with the regulation for tank DOT-1-1302, and the Director has recommended that the allegation of violation for that tank be withdrawn.

Accordingly, after considering all of the evidence, I find that Enterprise violated 49 C.F.R. § 195.579(d) by failing to install certain breakout-tank linings for tank DOT-1-1302 in accordance with API RP 652.

**Item 18:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), as quoted above, by failing to 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. Specifically, the Notice alleged that Enterprise failed to provide instructions to its employees on how to inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion pursuant to § 195.583(a), and to maintain

sufficient records of each atmospheric-corrosion inspection to demonstrate the adequacy of corrosion-control measures pursuant to § 195.589(c).

The Notice stated that a PHMSA inspector had reviewed an Enterprise document, titled “*Enterprise’s Atmospheric Corrosion Inspection Procedure CPP-PCL-01, Revision date 12/3/15*” (*Procedure CPP-PCL-01*), and had identified numerous deficiencies. According to the Notice, sections 1.1, 3.2.1, 3.3.1, 3.3.2, 3.3.3, 3.3.3.1, 3.3.3.6, 3.3.4, 3.3.8, 3.3.8.1, 3.3.8.3, and 3.4.2 failed to contain sufficient information or instructions to ensure that *Procedure CPP-PCL-01* could be followed properly by Enterprise personnel to address operations and maintenance activities on pipeline segments that were exposed to the atmosphere. The Notice further alleged that the PHMSA inspector verified the deficiencies by reviewing records from 2013 and 2016 associated with breakout tanks 3013 and 3014 that were inconsistent with the requirements of the procedure.

In its Amended Response, Enterprise stated that it did not object to the finding of violation alleged in this Item, but noted that since the date of the PHMSA inspection, it had provided the agency with updated procedures and revised records sufficient to satisfy the proposed compliance terms.

Upon review of Enterprise’s revised procedures and records, I find that the allegations regarding the deficiencies in sections 1.1, 3.2.1, 3.3.4, 3.3.8, 3.3.8.3, and 3.4.2 of *Procedure CPP-PCL-01* should be withdrawn. The remaining allegations of the Notice regarding this Item are not challenged by Enterprise.

Accordingly, after considering all of the evidence, I find that Enterprise violated 49 C.F.R. § 195.402(a) by failing to 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. I further find that Enterprise has completed all proposed compliance order actions set forth in the Notice for this Item and that no further action is required.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

### **WITHDRAWAL OF ALLEGATIONS OF VIOLATIONS**

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 194.402(a), as quoted above, by failing to follow for each pipeline system 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 follow its manual of written procedures, *CPM O&M Manual – Liquid Pipelines Operated by Houston OCC*, dated 3/1/11, which required, *inter alia*, that “[p]ipelines will be ranked into three (3) tiers based upon HCA impact and the Pipeline Integrity Risk model ‘consequence score.’”

During the inspection, the PHMSA inspector requested copies of the company's 2014, 2015, and 2016 CPM performance-evaluation records for the following inspection units:

1. IU 3051 – Greensburg o(Greensburg, Pennsylvania office);
2. IU 3071 – Dubois (Watkins Glen, New York office);
3. IU 4213 – Allegheny (Lebanon, Ohio office);
4. IU 3061 – Eagle (Morgantown, Pennsylvania Office);
5. IU 2464 – Lou Tex (Sorrento, Louisiana Office);
6. IU 18043 – TEPPCO Chicago (Monee, Illinois Office); and
7. IU 12232 – AR1 (Little Rock, Arkansas Office).

The records provided by Enterprise, however, did not show that the pipelines had been ranked into the tiers as required by Enterprise's procedure.

In its Response, Enterprise contested this Item on the grounds that the records provided showed that the relevant CPM reviews had been completed. Enterprise further stated that the Notice had alleged that the records provided to the PHMSA inspector had shown insufficient detail, notwithstanding the fact that the documentation was deemed sufficient in prior PHMSA inspections. Enterprise stated that it would have provided additional detail during or at any time after the inspection before the Notice was issued had the inspector requested such additional documentation.

In follow-up discussions with the Director, Enterprise provided CPM Performance Review records for years 2014 through 2016 for the relevant inspection units, which had not previously been provided to PHMSA inspectors. In its Amended Response, Enterprise stated that PHMSA had reviewed the additional documentation provided and agreed to withdraw this item. The record supports Enterprise's statement in its Amended Response that PHMSA had reviewed the additional documentation and that the Director had informally agreed to withdraw this item.

Accordingly, after considering all of the evidence, I hereby order that Item 3 be withdrawn.

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), as quoted above, by failing to follow for each pipeline system 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 follow its abnormal operating condition (AOC) procedure for documenting AOC actions taken prior to a supervisory close-out of the AOCs.

During the inspection of Unit 12232-AR1 in Little Rock, Arkansas, the PHMSA inspector noted that one record for Enterprise's McRae terminal contained no information for "AOC conditions found" and "AOC actions taken." Enterprise's *O&M Manual Abnormal Operation Procedures Section 801*, dated 11/12/13, required the retention of records that could be used to reconstruct the sequence of events surrounding an abnormal operating condition. According to the Notice, Enterprise was unable to provide any such additional records upon request from the PHMSA inspector.

In its Response, Enterprise contested this allegation of violation and stated that the information alleged to be missing from the records was contained in the notes section of the AOC work order. Enterprise further stated that the information allegedly missing would have been brought to the attention of the PHMSA inspector had the PIPES Act-mandated follow-up to the inspection occurred. Enterprise noted that in this particular instance, the AOC was a temporary loss of power that had been corrected and the alarms cleared. Enterprise subsequently provided PHMSA with the work orders showing the missing information. In its Amended Response, Enterprise stated that PHMSA had informally agreed to withdraw this Item based upon its review of the additional information provided. The record supports Enterprise's statement in its Amended Response that the Director had reviewed the additional documentation and tentatively agreed to withdraw this Item.

Accordingly, after considering all of the evidence, I hereby order that Item 4 be withdrawn.

**Item 8:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), as quoted above, by failing to follow for each pipeline system 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 follow its *Pipeline Hydrostatic Testing* procedure for conducting pressure testing according to the requirements of § 195.305.

The Notice alleged that Enterprise's *Hydrostatic Test Report, Form 4507*, with a Start of Test Period dated 4/4/2013 for inspection Unit 2703-Seymour, in Seymour, Indiana, failed to include the following information:

1. End time and date of "off" test with final pressure;
2. The name of the person responsible for making the test;
3. The Company Representative who recorded the test and date; and
4. The Test Director who approved the test and date.

In its Response, Enterprise contested this item and stated that the documentation alleged to be missing was located either in a central office or online, and not at the field office where the inspection occurred, and that nothing in the regulations or in its procedures required all of this information to be stored in a single location. Enterprise stated that it had provided the missing information to PHMSA prior to the Notice being issued and requested that the item be withdrawn.

The additional information provided by Enterprise was reviewed by the Director, who confirmed that it contained the four categories of information at issue in this item and requested that the item be withdrawn.

Accordingly, after considering all of the evidence, I hereby order that Item 8 be withdrawn.

**Item 9:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), as quoted above, for failing to follow for each pipeline system 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 follow its own procedure for maintaining records for emergency-response training conducted in accordance with § 195.403(b)(1).

The Notice alleged that the records for Unit 3051 failed to contain certain information regarding emergency-response training that had been conducted for two years at that facility, as required by both § 195.403(b)(1) and Enterprise's own written procedures.

In its Response, Enterprise contested this Item and stated that it believed this issue had been resolved through the records produced during the PHMSA inspection and in communications with PHMSA following the inspection. The company nevertheless provided the Form 905A records that had been allegedly missing and requested that this Item be withdrawn.

The Director reviewed the additional documentation and concluded that it provided sufficient evidence to demonstrate compliance with Enterprise's procedures and requested that this Item be withdrawn.

Accordingly, after considering all of the evidence, I hereby order that Item 9 be withdrawn.

**Item 12:** The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b), which states:

**§ 195.420 Valve maintenance.**

(a) ....

(b) Each operator shall, at intervals not exceeding 7½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect each mainline valve at intervals not exceeding 7½ months, but at least twice each calendar year, to determine that it is functioning properly. Specifically, the Notice alleged that Enterprise's records for the mainline valves for 2013-2016 for inspection Unit 2464 and PHMSA Unit 12232-AR1 in Little Rock, Arkansas, showed that in six instances, Enterprise failed to inspect mainline valves twice per year, and in two instances failed to inspect mainline valves at intervals not exceeding 7½ months.

In its Response, Enterprise contested this Item and stated that some of the valves identified in the Notice were located on idled or abandoned lines, and that others were not mainline valves but hand valves inspected on a different inspection frequency. Further, Enterprise provided records demonstrating that the relevant mainline valves had been inspected in accordance with the regulation. On these grounds, Enterprise requested that the Item be withdrawn.

Subsequent to the inspection, the Director reviewed the additional information provided by Enterprise and determined that the Item should be withdrawn.

Accordingly, after considering all of the evidence, I hereby order that Item 12 be withdrawn.

**Item 14:** The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), as quoted above, for failing to inspect and test each pressure-limiting device, relief valve, pressure regulator, or other item of pressure-control equipment at intervals not exceeding 15 months, but at least once each calendar year to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used. Specifically, the Notice alleged that Enterprise failed in 11 instances to inspect and test pressure-relief valves in 2015.

During the inspection of PHMSA Unit 12232-AR1 in Little Rock, Arkansas, the PHMSA inspector reviewed Line P77 pressure-relief valve inspection records for 2013 and 2014. Enterprise did not have records for P77 for 2015.

In its Response, Enterprise contested this Item, arguing that it was based on the same regulation as Item 13 (§ 195.428), so the two sets of allegations were not combined as one, which would have resulted in a greatly reduced penalty computation. In addition, Enterprise stated that all alleged instances of violation in Item 14 related to an idled line, namely, Line P77 – the same idled pipeline addressed in Items 11 and 12. For these reasons, Enterprise requested that Item 14 be withdrawn.

During discussion with the Director after the inspection, Enterprise provided additional records showing that it had acquired Line P77 in a non-operative state and that it was formally abandoning the pipeline. Based on this, the Director recommended that this Item be withdrawn.

Accordingly, after considering all of the evidence, I hereby order that Item 14 be withdrawn.

**Item 16:** The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), which states:

**§ 195.432 Inspection of in-service breakout tanks.**

(a) ....

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks according to APT Std 653 (except section 6.4.3, *Alternative Internal Inspection Interval*) (incorporated by reference, *see* § 195.3). However, if structural conditions prevent access to the tank bottom, its integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3). The risk-based internal inspection procedures in API Std 653, section 4.3.2 cannot be used to determine the internal inspection interval.

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks in accordance with API Standard 653, Tank Inspection, Repair, Alteration, and Reconstruction, incorporated by reference in § 195.3(b)(19). Specifically, the Notice alleged that Enterprise failed to inspect seven breakout tanks (BOTs) in accordance with the intervals required by API Standard 653 (API 653). The Notice stated that at the time of construction (2000-2004) of the tanks in question, they were all initially incorporated into Enterprise's Risk Based Inspection

Program (RBIP), which is permitted under API 653, Section 6.4.3, as an alternative approach to API 653, Section 6.4.2, which requires inspection intervals of not more than 10 years. However, according to the Notice, Enterprise claimed that as a result of a previous enforcement proceeding arising out of PHMSA's Southwest Region (CPF 4-2012-5008M), Enterprise had transitioned to the non-risk-based approach for certain BOTs, and instead followed API 653, Section 6.4.2, to establish inspection intervals of 10 years for each of the BOTs. The Notice alleged, on the contrary, that none of the BOTs at issue in this Item were included in or related to the prior enforcement proceeding. As a result, the Notice alleged the seven BOTs were out of compliance by a range of two to seven years because they had not been inspected within 10 years from the relevant construction dates (2000-2004).

In its Response, Enterprise contested the allegation of violation, stating that four of the BOTs in question were inspected or decommissioned within the applicable intervals under API 653, and that the three remaining tanks were subject to an inspection-interval schedule that had been previously negotiated with PHMSA's Southwest Region Director in the earlier enforcement proceeding. Enterprise further stated that the agreed-upon schedule for the inspection of the remaining three BOTs was discussed, in person, with the Director and representations were made to Enterprise personnel that those tanks would be outside the scope of the inspection at issue in this case. Finally, Enterprise argued that PHMSA was precluded, as a matter of law, from invoking the regulation inconsistently across regions.

I find that Enterprise did not violate the regulation as alleged in the Notice. First, PHMSA does not rebut Enterprise's defense that four of the seven BOTs in question were inspected or decommissioned within the requisite inspection intervals. Second, the alleged violation is based on an allegation that Enterprise was required to complete inspection intervals not later than 10 years from the date of construction of each of the seven BOTs, which were all constructed between January 1, 2010, and October 10, 2004. Based on these dates of construction, and the maximum inspection interval of 10 years permitted under API 653, Section 6.4.2, the Notice alleged that Enterprise was out of compliance for a period of two to seven years for the relevant BOTs.

However, on April 2, 1999, the Research and Special Programs Administration (RSPA), PHMSA's predecessor agency, amended 49 CFR § 195.432(b) to require integrity inspection under Section 4 of API 653 for all breakout tanks.<sup>5</sup> All of the relevant BOTs were constructed after this amendment to § 195.432(b). On August 11, 2010, PHMSA again amended § 195.432(b) to delete references to Section 4 of API 653 and instead incorporated by reference all sections of API 653 relating to the inspection of in-service atmospheric and low-pressure steel aboveground breakout tanks, like the ones in question in this case.<sup>6</sup> Finally, on January 5, 2015, PHMSA further amended § 195.432(b) to eliminate use of API 653, section 6.4.3, when establishing inspection intervals. Further, the amended (and current) rule states that if internal inspection intervals were established prior to March 6, 2015, by using the risk-based approach

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<sup>5</sup> Pipeline Safety: Adoption of Consensus Standards for Breakout Tanks, 64 Federal Register 15,936 (April 2, 1999).

<sup>6</sup> Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Edits, 75 Federal Register 48,607 (August 11, 2010).

permitted by API 653, section 6.4.3, the operator must re-establish the intervals pursuant to API 653, section 6.4.2, which caps intervals at 10 years, and complete the inspection by January 5, 2017. The record reflects that Enterprise established the inspection intervals prior to March 6, 2015, using API 653, section 6.4.3, and later re-established 10-year inspection intervals under API 653, section 6.4.3.

The allegation in this case is that Enterprise should have completed its inspections not more than 10 years from the date of construction. Enterprise, however, was not required to establish inspection intervals of not more than 10 years until the most recent amendment to the regulation, which was January 5, 2015. Further, although Enterprise was required to complete a new internal inspection on the BOTs at issue prior to January 5, 2017, the Notice in this case does not allege a failure to do so as the basis for the alleged violation. Accordingly, I find that PHMSA failed to meet its burden of proving the violation alleged in the Notice.

I need not reach the legal question presented of whether PHMSA is precluded from making a finding of violation where the finding could be viewed as contrary to an agreement made between the operator and a PHMSA regional director because this allegation of violation is withdrawn on separate grounds.

Based upon the foregoing, I hereby order that Item 16 be withdrawn.

### **WARNING ITEMS**

With respect to Items 10 and 11, the Notice alleged probable violations of Part 195 but, for the reasons summarized below, the Director requested that the proposed civil penalty for each Item be withdrawn and that the Items be reduced to warning items. Based on the Director's request, and my review of the evidence, I hereby order that Items 10 and 11 be reduced to warning items, as follows:

49 C.F.R. § 195.402(a) (**Item 10**) — Respondent's alleged failure to follow for each pipeline system 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 follow its procedures for maintaining records for fire-extinguisher inspections conducted in accordance with § 195.430; and

49 C.F.R. § 195.404(a)(3) (**Item 11**) — Respondent's alleged failure to maintain records of its pipeline systems that include the maximum operating pressure (MOP) of each pipeline.

Enterprise presented information in its Response, and during follow-up meetings with the Director, showing that it had taken certain actions to address the cited items.

In response to Item 10, Enterprise explained that a third-party inspector performs its annual fire-extinguisher inspections and uses its own forms to record the results that are not always identical to the form identified in Enterprise's procedures. Further, Enterprise provided records of the last

and next hydrotest dates for the four fire extinguishers addressed in Item 10, which had not previously been provided to PHMSA

In response to Item 11, Enterprise provided records showing that it had acquired the pipelines at issue in a non-operational status, and that it had properly abandoned two of the 13 lines prior to the PHMSA inspection, and seven of the 13 lines were properly abandoned after the inspection. OPS requests that, in the future, Enterprise coordinate deferral of maintenance activities on any lines that are purged and considered “idle” in advance of such work, as detailed in PHMSA’s Advisory Bulletin, *Pipeline Safety: Clarification of Terms Relating to Pipeline Operational Status*, 81 Fed. Reg. 54,512 (August 16, 2016).

If OPS finds a violation of any of these provisions in a subsequent inspection, Enterprise may be subject to future enforcement action.

### **ASSESSMENT OF PENALTY**

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 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; 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 \$703,900 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$27,500 for Respondent’s violation of 49 C.F.R. § 195.310(a), for failing to maintain a record of each pressure test required by Subpart E. In its Amended Response, Enterprise waived its objection to the proposed penalty. I find that the record shows that the civil penalty was appropriately calculated based on the assessment considerations set forth in § 190.225. Based upon the foregoing, I assess Respondent a civil penalty of \$27,500 for violation of 49 C.F.R. § 195.310(a).

**Item 2:** The Notice proposed a civil penalty of \$53,600 for Respondent’s violation of 49 C.F.R. § 195.402(a), for failing to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. In its Amended Response, Enterprise stated that it was withdrawing its challenge to two of the four instances of violation for this Item and that it had provided evidence to the Director demonstrating that two of the identified segments were not subject to regulation under Part 195 at the time of the PHMSA inspection. The Director agreed with this assertion after reviewing the records and requested that the civil penalty be reduced to reflect two, rather than four, instances of violation. I find that the record reflects that Enterprise violated the regulation in two instances, not four as alleged in the Notice, and that the civil penalty was otherwise

appropriately calculated based on the assessment considerations set forth in § 190.225. Based upon the foregoing, I assess Respondent a reduced civil penalty of \$51,400.

**Item 3:** The Notice proposed a civil penalty of \$72,000 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. For the reasons set forth above, this Item is withdrawn, along with the proposed penalty.

**Item 4:** The Notice proposed a civil penalty of \$27,300 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. For the reasons set forth above, this item is withdrawn, along with the proposed penalty.

**Item 5:** The Notice proposed a civil penalty of \$8,800 for Respondent's violation of 49 C.F.R. § 195.583(a), for failing to conduct an inspection of each pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every three calendar years, but with intervals not exceeding 39 months. In its Amended Response, Enterprise withdrew its objection to the proposed civil penalty for this Item. I find that the record shows that the proposed penalty was appropriately calculated based on the assessment considerations set forth in § 190.225. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$8,800 for violation of 49 C.F.R. § 195.583(a).

**Item 6:** The Notice proposed a civil penalty of \$72,500 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. As stated above, Enterprise withdrew its objection to 17 of the 23 instances of violation as alleged in the Notice. With respect to the remaining six, Enterprise stated that it had records demonstrating compliance. Those records were provided to the Director subsequent to the inspection, and, after reviewing them, the Director agreed that six of the instances of alleged violation associated with the Greensburg, Pennsylvania and Watkins Glen, New York inspection units should be withdrawn.<sup>7</sup> Accordingly, I find that the record supports a reduction in the number of instances of violation from 23 to 17 but that the proposed civil penalty was otherwise appropriately calculated based on the assessment considerations set forth in § 190.225. Based upon the foregoing, I assess Respondent a reduced civil penalty of \$67,600.

**Item 8:** The Notice proposed a civil penalty of \$33,100 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. For the reasons set forth above, this item is withdrawn, along with the proposed penalty.

**Item 9:** The Notice proposed a civil penalty of \$27,300 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow for each pipeline system a manual of written procedures for

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<sup>7</sup> Region Recommendation, at 3 (on file with PHMSA).

conducting normal operations and maintenance activities and handling abnormal operations and emergencies. For the reasons set forth above, this item is withdrawn, along with the proposed penalty.

**Item 10:** The Notice proposed a civil penalty of \$12,900 for Respondent's violation of 49 C.F.R. § 194.402(a), for failing to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. For the reasons set forth above, this item is converted to a Warning Item and the proposed penalty withdrawn.

**Item 11:** The Notice proposed a civil penalty of \$60,400 for Respondent's violation of 49 C.F.R. § 195.404(a)(3), for failing to maintain records of its pipeline systems that include the MOP of each pipeline. For the reasons set forth above, this item is converted to a Warning Item and the proposed penalty withdrawn.

**Item 12:** The Notice proposed a civil penalty of \$55,800 for Respondent's violation of 49 C.F.R. § 195.420(b), for failing to inspect each mainline valve at intervals not exceeding 7½ months, but at least twice each calendar year, to determine that it is functioning properly. For the reasons set forth above, this item is withdrawn and the proposed penalty withdrawn.

**Item 13:** The Notice proposed a civil penalty of \$55,800 for Respondent's violation of 49 C.F.R. § 195.428(a), for failing to conduct an inspection and test of each overpressure-protection device at intervals not to exceed 7½ months, but at least twice each calendar year, as specified per § 195.428. In its Amended Response, Enterprise withdrew its challenge to this item but reaffirmed its challenge to the number of instances of alleged violation, and requested that the penalty be reduced to reflect the four, not six, instances of violation. Specifically, Enterprise stated that subsequent to the inspection, it located records associated with the Moshannon Station, which represent two of the alleged six instances of violation. I find that the record supports Enterprise's position that the instances of violation be reduced from six to four. I further find that the record shows that the civil penalty was otherwise appropriately calculated based on the assessment considerations set forth in § 190.225. Based upon the foregoing, I assess Respondent a reduced civil penalty of \$53,600.

**Item 14:** The Notice proposed a civil penalty of \$61,200 for Respondent's violation of 49 C.F.R. § 195.428(a), for failing to inspect and test each pressure-limiting device, relief valve, pressure regulator, or other item of pressure-control equipment at intervals not exceeding 15 months, but at least once each calendar year, to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used. For the reasons set forth above, this item is withdrawn, along with the proposed penalty.

**Item 15:** The Notice proposed a civil penalty of \$27,500 for Respondent's violation of 49 C.F.R. § 195.404(c)(3), for failing to maintain a record of each inspection and test for at least two years or until the next inspection or test is performed. In its Amended Response, Enterprise withdrew its challenge to one of the three instances of violation alleged in the Notice. With respect to the other two, Enterprise argued that it was not required to maintain its 2014 tank-

inspection records for more than two years, as alleged in the Notice. For the reasons described more fully above, I agree with Enterprise and find that the record reflects only one instance of violation and that the civil penalty was otherwise appropriately calculated based on the assessment considerations set forth in § 190.225. Based upon the foregoing, I assess Respondent a reduced civil penalty of \$27,300.

**Item 16:** The Notice proposed a civil penalty of \$56,800 for Respondent's violation of 49 C.F.R. § 195.432(b), for failing to inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks in accordance with API Standard 653, Tank Inspection, Repair, Alteration, and Reconstruction, incorporated by reference in § 195.3(b)(19). For the reasons set forth above, this item is withdrawn, along with the proposed penalty.

**Item 17:** The Notice proposed a civil penalty of \$51,400 for Respondent's violation of 49 C.F.R. § 195.579(d), for failing to demonstrate that its breakout-tank linings were installed in accordance with API RP 652, as required by the regulation. In its Amended Response, Enterprise withdrew its challenge to one of the two instances of violation alleged in the Notice for this item. With respect to the one remaining allegation of violation, Enterprise relied on additional breakout-tank liner installation records, which had not been provided to PHMSA until after the inspection, to demonstrate compliance for tank DOT-T-1302. I find that the record reflects that Enterprise did not violate the regulation with regard to tank DOT-T-1302. I further find that the record shows that the civil penalty was otherwise appropriately calculated based on the assessment considerations set forth in § 190.225. Based upon the foregoing, I assess Respondent a reduced civil penalty of \$50,400.

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 **\$286,600**.

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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$286,600 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 Items 3, 7, and 18 in the Notice for

violations of 49 C.F.R. §§ 195.402(a), 195.402(c)(3), and 195.402(a), respectively. 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.

With regard to the violation of § 195.402(a) (**Item 3**), this item was withdrawn and therefore the proposed compliance terms associated with this item are also hereby withdrawn.

With regard to the violation of § 195.402(c)(3) (**Item 7**), Enterprise withdrew its challenge to this item and associated proposed compliance order.<sup>8</sup>

With regard to the violation of § 195.402(a) (**Item 18**), Enterprise argued that the proposed compliance terms should be withdrawn because the company had already provided amended procedures to the Director relative to this item, and the amended procedures had been deemed adequate by the Director. I find that compliance has been achieved with respect to this item.

For the above reasons, the Compliance Order is modified as set forth below.

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 § 195.402(a) (**Item 7**), Respondent must:
  - a. Amend its procedures to include sufficient guidance per § 195.428(a) within 60 days of receipt of the Final Order.

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.

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), 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. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of

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<sup>8</sup> Amended Response, at 3 (on file with PHMSA).

Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

April 6, 2020

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued