

**Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety**

In the Matter of)	
)	
Enterprise Products Operating, LLC)	NOPV: CPF 1-2018-5003
)	
Respondent)	<u>Amended Written Response</u>
)	<u>and Withdrawal of Hearing Request</u>
)	

Enterprise Products Operating, LLC (Enterprise or the Company) hereby amends its prior response to the allegations of violation in the above referenced Notice of Probable Violation (NOPV). Enterprise originally responded to the NOPV on April 20, 2018, with a request for hearing under 49 C.F.R. § 190.211, and included with the hearing request a statement of issues, a written response, and supporting attachments (collectively, the First Response). Enterprise is now amending the First Response as the result of discussions with representatives of the PHMSA Eastern Region (the Region) that will narrow the issues that are being contested by the parties. These changes to the First Response are consistent with the parties' Joint Status Report filed on May 23, 2019, although this amended response clarifies Enterprise's positions on the items for which the Joint Status Report indicated that the parties remained in discussion. We have conferred with the Region's counsel, who are in agreement that this Amended Written Response and Withdrawal of Hearing Request should replace the First Response, despite the time that has passed since issuance of the NOPV.

This Amended Response and Withdrawal of Hearing Request has the following elements:

1. Withdrawal of Hearing Request
2. Response to NOPV Item 16
3. Amended Responses to All Other NOPV Items

Each element above is explained in greater detail below.

1. Withdrawal of Hearing Request

Enterprise is no longer requesting a hearing with respect to the NOPV. Thus, Enterprise respectfully suggests that its response to the NOPV should now be regarded as a written response under 49 C.F.R. § 190.208(a)(3) and (b)(3),¹ and that the recommended decision should be

¹ For certain (but not all) NOPV items, as explained in this Amended Written Response and Withdrawal of Hearing Request, Enterprise is no longer contesting the alleged violation, and so Enterprise's response as to those specific items is similar to a response under 49 C.F.R. § 190.208(a)(1) or (2) or (b)(1). With respect to the NOPV as a whole,

therefore be prepared by in the manner set forth in the first sentence of 49 C.F.R. § 190.213(a). Notwithstanding the foregoing, Enterprise does not object if PHMSA determines that the Presiding Official (or the individual who would have served as the Presiding Official) will prepare the recommended decision.

2. Response to NOPV Item 16

Notwithstanding the withdrawal of Enterprise’s hearing request (and consistent with footnote 1), Enterprise continues to contest NOPV Item 16 because of our concern that the Region’s proposed penalty and compliance order, if included in the Final Order in this matter, would undermine Enterprise’s ability to rely on prior agreements with other PHMSA Regions. As outlined in the First Response, Enterprise believes that the Eastern Region’s proposed enforcement measures would overrule the tank testing schedule on which Enterprise received agreement from the Southwest Region, even though the Southwest Region recommended that Enterprise continue to follow the same testing schedule after PHMSA amended the rule relating to tank inspections. Enterprise believes that such an outcome is contrary to PHMSA’s broader goals relating to open and proactive communication between pipeline operators and regional staff. PHMSA agrees that 4 of the 7 subject tanks were in fact inspected or decommissioned in compliance with applicable regulations. PHMSA also agrees that the remaining 3 tanks, all located in the Southwest Region, were subject to an agreement between Enterprise and the Southwest Region on an alternative test schedule; Enterprise has complied with the tank testing deadlines established in this agreement. In addition, Enterprise incorporates by reference its First Response to the extent relevant to NOPV item 16 as if expressly stated herein.

3. Amended Responses to All Other NOPV Items

Enterprise’s amended responses to the specific items in the NOPV are outlined in the following table. Please refer to the referenced Appendix Note(s) for clarification of Enterprise’s procedural posture with respect to each item.

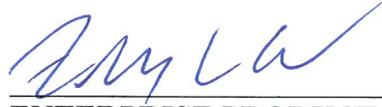
NOPV Item	Enterprise Response
1	Enterprise no longer objects to this item, and waives its objection to the \$27,500 proposed civil penalty.
2	Enterprise withdraws its challenge to 2 of the 4 instances of alleged violation, and respectfully requests that PHMSA reduce the civil penalty based on the reduced instances of alleged violation and based on the legal arguments presented in the First Response. See Appendix, Note A.
3	The Region will withdraw the alleged violation. See Appendix, Note B.
4	The Region will withdraw the alleged violation. See Appendix, Note B.
5	Enterprise no longer objects to this item, and waives its objection to the \$8,800 proposed civil penalty.

because Enterprise “is contesting one or more allegations of probable violation [or compliance terms,] but is not requesting a hearing,” Enterprise’s response is now of the type described in 49 C.F.R. § 190.208(a)(3) and (b)(3).

NOPV Item	Enterprise Response
6	Enterprise withdraws its challenge to 17 of the 23 instances of alleged violation, and respectfully requests that PHMSA reduce the civil penalty based on the reduced instances of alleged violation. See Appendix, Note A.
7	Enterprise no longer objects to this item, and waives its objection to the applicable portion of the proposed compliance order (para. 2.a).
8	The Region will withdraw the alleged violation. See Appendix, Note B.
9	The Region will withdraw the alleged violation. See Appendix, Note B.
10	The Region will convert to a warning item. See Appendix, Note C.
11	The Region will convert to a warning item, and the Region has indicated that it will ask the adjudicator to include language requesting information on Enterprise's actions to idle lines. See Appendix, Note C.
12	The Region will withdraw the alleged violation. See Appendix, Note B.
13	Enterprise withdraws its challenge to 4 of the 6 instances of alleged violation, and respectfully requests that PHMSA reduce the civil penalty based on the reduced instances of alleged violation. See Appendix, Note A.
14	The Region will withdraw the alleged violation. See Appendix, Note B.
15	Enterprise withdraws its challenge to 1 of the 3 instances of alleged violation, and respectfully requests that PHMSA reduce the civil penalty based on the reduced instances of alleged violation. See Appendix, Note A.
16	Enterprise continues to object to NOPV item 16. Please see Section 2 of this Amended Written Response and Withdrawal of Hearing Request.
17	Enterprise withdraws its challenge to 1 of the 2 instances of alleged violation, ² and respectfully requests that PHMSA reduce the civil penalty based on the reduced instances of alleged violation and based on the legal arguments presented in the First Response. See Appendix, Note A.
18	Enterprise will not object to a modified proposed compliance order and associated language noting that Enterprise has complied with the requirements of such proposed compliance order in relation to this item. See Appendix, Note D.

² Enterprise is withdrawing its challenge to the alleged violation insofar as it relates to Tank 1301; the Region will be withdrawing the alleged violation insofar as it relates to Tank 1302.

Respectfully Submitted,



**ENTERPRISE PRODUCTS
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Date: July 22, 2019

APPENDIX – NOTES

Note A: As indicated in the May 23, 2019 Joint Status Report, the Region will be withdrawing a number of instances of alleged violation. Once this occurs, the parties will be in agreement as to the number of instances of alleged violation at issue. Enterprise will be pleased to provide additional clarification if necessary. In general, the basis for the reduced instances of violation is indicated in Enterprise’s First Response.

Note B: As indicated in the May 23, 2019 Joint Status Report, the Region will be withdrawing these alleged violations in full. Thus, although Enterprise hereby reasserts its First Response as to these specific NOPV items, we do so with the expectation that it will preserve the contested status of these items until such time as the Region causes them to become moot by withdrawing them.

Note C: As indicated in the May 23, 2019 Joint Status Report, the Region will be converting these items to a warning item. PHMSA regulations provide that “[a]n adjudication to determine whether a violation occurred is not conducted for warnings” (49 C.F.R. § 190.205). Thus, although Enterprise hereby reasserts its First Response as to these specific NOPV items, we do so with the expectation that it will preserve the contested status of these items until such time as the Region causes them to become moot by converting them to warning items.

Note D: With respect to NOPV item 18, as indicated in the May 23, 2019 Joint Status Report, Enterprise and the Region have agreed that the proposed compliance order and associated language should recognize the adequacy of Enterprise’s procedures in question as they have been amended subsequent to issuance of the NOPV, and thus that Enterprise should be regarded as compliant with the proposed compliance order terms relating to this subject. Enterprise anticipates that this alternative language will be presented in a subsequent filing by the Region. Accordingly, although at this time, Enterprise hereby reasserts its First Response to the extent relevant to NOPV item 18, we do so with the qualification that Enterprise will not object to a modified proposed compliance order as described immediately above.