

February 24, 2020

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

Re: CPF No. 3-2019-5019

Dear Mr. Teague:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Enterprise Products Operating, LLC. It makes a finding of violation and assesses a reduced civil penalty of \$19,354. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by certified mail is 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. Alan Beshore, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Graham Bacon, Executive Vice President, Operations and Engineering, Enterprise
Products Partners, LP, 1100 Louisiana Street, 10th Floor, Houston, Texas 77002

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,
a subsidiary of Enterprise Products Partners, LP,**

Respondent.

CPF No. 3-2019-5019

FINAL ORDER

On January 3, 2019, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), reviewed and inspected the supplemental final Accident Report DOT Form 7000-1 (DOT No. 20160413-21972), that Enterprise Products Operating, LLC (Enterprise), filed electronically on January 2, 2019. Enterprise submitted the original Accident Report DOT Form 7000-1 on December 19, 2016, following a rupture and fire on Enterprise's East Red Pipeline (Line ID 603) on November 29, 2016, in Platte County, Missouri (Original Accident Report). The rupture resulted in the release of approximately 5,000 barrels of highly volatile liquid.¹ Respondent is a wholly-owned subsidiary of Enterprise Products Partners, LP, which operates approximately 50,000 miles of natural gas, natural gas liquid, crude oil, refined products, and petrochemical pipelines throughout the United States.²

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated May 28, 2019, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Enterprise had violated 49 C.F.R. § 195.54(b) and proposed assessing a civil penalty of \$36,600 for the alleged violation.

Enterprise responded to the Notice by letter dated July 15, 2019 (Response). The company contested the allegation, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

¹ As a result of the accident, PHMSA issued a Corrective Action Order to Enterprise on December 6, 2016 (CAO).

² Enterprise Products Partners, LP website, available at www.enterpriseproducts.com (last accessed January 16, 2020).

FINDING 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. § 195.54(b), which states:

§ 195.54 Accident reports.

(a)

(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.

The Notice alleged that Respondent violated 49 C.F.R. § 195.54(b) by failing to file a supplemental accident report with PHMSA within 30 days of receiving changes in the information reported or additions to the original report. Specifically, the Notice alleged that Enterprise submitted its Original Accident Report in 2016 but did not file any supplemental accident report until January 2, 2019 (Supplemental Report). However, a review of the Supplemental Report allegedly showed that Enterprise had received a significant amount of additional information regarding the reportable accident on various occasions between the date of the Original Accident Report in December 2016 and the date of the Supplemental Report in January 2019, but failed to file any additional reports as required by the regulation.

For example, the Notice alleged that Enterprise had stated in a quarterly report³ submitted to PHMSA on April 13, 2017, under the CAO that "[p]ipeline repairs and startup were completed on December 6, 2016." Therefore, by April 13, 2017, Enterprise had received additional information to report under "Part D — Additional Consequence Information Question & Estimated Cost to Operator" of DOT Form 7000-1. However, Enterprise failed to report this information to PHMSA, as required, until January 2, 2019, over 20 months after Enterprise received this additional information.

Additionally, Enterprise allegedly received information from a metallurgical analysis report prepared by Kiefner & Associates, Inc., dated March 28, 2017, related to the reportable accident. Information from the Kiefner report was also incorporated into Enterprise's Failure Analysis Report dated June 14, 2017. These reports stated that "[t]he pipe rupture was due to external near-neutral stress corrosion cracking (SCC) along and adjacent to the Electronic Resistance Welded (ERW) seam."⁴ Accordingly, the information included in these reports would necessitate Enterprise filing a supplemental report on DOT Form 7000-1 within 30-days of receiving this information because it addressed questions under Part G of Form 700-1, Apparent Cause, in particular G5 — Material Failure of Pipe or Weld. However, Enterprise first included this additional information in the Supplemental Report on January 2, 2019, more than 18 months after Enterprise first received it.

³ The quarterly report was required to be submitted to PHMSA pursuant to the CAO.

⁴ See Failure Analysis Report, Enterprise Products Operating, LLC (June 6, 2017) (on file with PHMSA).

In its Response, Enterprise contested the allegation of violation and stated that it complied with the intent of the regulation through its ongoing communications and reports to PHMSA under the CAO. Enterprise “acknowledge[d] that the first DOT Form 7000-1 containing the metallurgical and cost information at issue was filed on January 2, 2019,”⁵ and that a supplemental report containing the additional information identified in the Notice was not filed with PHMSA within 30 days of receiving such information. However, Enterprise argued that all of the information identified in the NOPV had been provided to PHMSA during the course of its reporting obligations under the CAO, and that it “reasonably relied on the CAO reporting framework and discussions under it as the proper means for keeping PHMSA staff updated regarding the incident, and ... that this met the intent of the § 195.54(b) reporting requirement.”⁶ Enterprise further argued that even if it were found to be in violation of the regulation, the facts warranted a reduction in the civil penalty. Enterprise’s argument regarding the civil penalty is addressed below in the Assessment of Penalty section.

Although it is undisputed that Enterprise provided PHMSA with additional information about the reportable incident in the context of its reporting requirements under a CAO, it is also clear that Enterprise did not file a supplemental report within 30 days of receiving such information, as required by the regulation. Section 195.54(b) imposes a mandatory obligation on operators to submit a supplemental report within 30 days of receiving additional information from what was reported in an original accident report on DOT Form 7000-1. The regulation neither permits nor contemplates that an operator may comply with this requirement by providing PHMSA with such information outside of filing a supplemental report to an original DOT Form 7000-1 accident report within the requisite timeframe.

This is because the reporting requirement in § 195.54, as well as other reports such as safety-related condition reports required under § 195.55, serve an entirely different purpose than the reporting requirements imposed under a unique CAO or compliance order tailored to a specific accident or violation. The former reports provide important statistical information used by PHMSA to identify industry-wide safety concerns and trends, as well as responses to specific questions designed to provide useful quantitative data to PHMSA and the public. Accident reports are separate reports serving separate purposes.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.54(b) by failing to file a supplemental accident report with PHMSA within 30 days of receiving changes or additions to the original report.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

⁵ *Id.*

⁶ Response, at 3 (on file with PHMSA).

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.⁷ 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 \$36,600 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$36,600 for Respondent's violation of 49 C.F.R. § 195.54(b), for failing to file a supplemental accident report with PHMSA within 30 days of receiving changes or additions to the original report. Enterprise initially argued that it was not in violation of the regulation and that the proposed civil penalty should be withdrawn in its entirety. In the alternative, it argued that if it were found in violation, then the penalty should be reduced.

Having found Enterprise in violation of the regulation as alleged in the Notice, I next address each of Enterprise's arguments in support of its position that the civil penalty should be eliminated. Enterprise presented three arguments in support of its position. First, the company relied on sections from *PHMSA's Pipeline Safety Enforcement Procedures* to argue that imposing a civil penalty for this type of violation would be inconsistent with PHMSA policy because none of the criteria for applying a civil penalty applied in this case. Second, Enterprise argued that the proposed civil penalty and enforcement action in this case should be addressed through a warning letter because the failure to report is a low-risk violation that does not affect pipeline safety. Finally, Enterprise cited to a public statement made recently by PHMSA Administrator Skip Elliott that industry and PHMSA could work together to meet the goals of simplifying rules and investing resources where they are needed most and have the greatest safety benefit. According to Enterprise, the proposed enforcement action and civil penalty in this case "do not have a pipeline safety implication in the specific facts of this matter" and therefore the penalty should be withdrawn.⁸

I reject each of Enterprise's arguments. First, PHMSA's procedures, while useful as guidance to regional directors in evaluating an enforcement action, are not mandatory and do not have the force of regulations. The Director in this case clearly acted within his discretion to bring this case as an alleged violation and not as a warning, and properly exercised his discretion to request a civil penalty. Second, Enterprise failed to comply with an explicit regulatory requirement, and such violation lasted for over 20 months before it was cured by the filing of the Supplemental Report. Third, the Violation Report, which was used to calculate the proposed civil penalty in this case, noted that the alleged violation minimally impacted pipeline safety and was therefore

⁷ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

⁸ Response, at 4.

taken into account in calculating the proposed penalty.

Finally, Enterprise's reliance on a statement purportedly made by Administrator Elliott is misplaced. While it is true that PHMSA is committed to acting in concert with the pipeline industry to direct their combined resources to promoting safety, simplifying burdensome rules, and investing resources where they are needed most, it is inaccurate to suggest that there are no safety implications arising out of this violation. As noted above, the filing of accident reports and supplemental reports serves an important purpose in providing tangible safety benefits to operators and the public. With data compiled from the reports, PHMSA is able to determine which violations are commonly associated with accidents and to dedicate appropriate resources to reduce their occurrence. For these reasons, I find that a civil penalty is appropriate in this case.

On the other hand, I find merit in Enterprise's alternative argument that the proposed penalty should be reduced under the "good faith" criteria. Enterprise argued that its good faith in attempting to comply with the intent of the regulation is evidenced by its communications with PHMSA in the context of the CAO, which related to the same accident that required the filing of the Original Accident Report and the Supplemental Report. The record reflects that although Enterprise violated the regulation at issue, this is not a case where an operator failed entirely to provide PHMSA with supplemental information relevant to an accident report. Enterprise is correct that certain information that should have been provided to PHMSA in the context of a supplemental accident report was otherwise provided to PHMSA in a timely manner through the CAO correspondence. There is nothing in the record suggesting that Enterprise withheld or failed to provide the information at issue, but merely failed to provide it in the prescribed time and format that would serve the purposes of § 195.54(b). For this reason, I find that the civil penalty should be reduced under the good faith criteria to reflect that Enterprise had a reasonable justification for its non-compliance.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of **\$19,354** for violation of 49 C.F.R. § 195.54(b).

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 \$19,354 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.

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, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of the Final Order by Respondent. Any petition submitted must contain a brief 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 any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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

February 24, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued