



ENTERPRISE PRODUCTS PARTNERS L.P.
ENTERPRISE PRODUCTS HOLDINGS LLC
(General Partner)

ENTERPRISE PRODUCTS OPERATING LLC

July 15, 2019

Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
901 Locust Street, Suite 462
Kansas City, Missouri 64106-2641

Attn: Mr. Allan C. Beshore
Director, Central Region, OPS

Re: Notice of Probable Violation and Proposed Civil Penalty
CPF 3-2019-5019
Enterprise Products Operating, LLC

Dear Mr. Beshore,

Enterprise Products Operating, LLC (Enterprise or the Company) is in receipt of the above referenced Notice of Probable Violation (NOPV) and Proposed Civil Penalty (PCP) dated May 28, 2019 and received June 4, 2019. On June 12, 2019 Enterprise requested a copy of the Pipeline Safety Violation Report, Proposed Civil Penalty Worksheet, and a time extension in responding to the NOPV. Enterprise received the requested information and was granted an extension to respond by July 17, 2019; accordingly, this letter constitutes Enterprise's timely response to the Alleged Violation.

This response is submitted under 49 C.F.R. § 190.208(a)(3), because Enterprise is contesting the alleged violations by submitting a written response but is not requesting a hearing.

Item 1:

§ 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.**

Enterprise failed to file a Supplemental Accident Report on DOT Form 7000-1 to PHMSA within 30 days of receiving changes or additions to the original report submitted using DOT Form 7000-1 related to the Accident. Enterprise submitted the original Accident Report on DOT Form 7000-1 to PHMSA on December 19, 2016, and then filed a Supplemental and Final DOT Form 7000-1 filed on January 2, 2019. However, a review of the Supplemental and Final Report DOT Form 7000-1 showed that Enterprise

had received a significant amount of additional information regarding the Accident, which Enterprise failed to file in a supplement report within 30 days of receipt.

Specifically, Enterprise stated in a Quarterly Report submitted to PHMSA on April 13, 2017, 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 first included this additional information in the Supplemental and Final Report filed on January 2, 2019, which was over 20 months after Enterprise received it.

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

In summary, Enterprise failed to submit a Supplemental Accident Report within 30 days, as required under § 195.54(b) after the pipeline repairs and start-up repairs were completed in December 2016, as well as after receiving Kiefner's metallurgical analysis report dated March 28, 2017.

Enterprise Response to Item 1:

Enterprise is committed to public safety, protecting the environment, and operating its pipeline facilities safely. The Company takes all PHMSA allegations of violation seriously, and endeavors to file Supplemental Accident Reports under all appropriate circumstances; however, Enterprise contests the allegations in Item 1 for the following three reasons:

1.a. Enterprise's reports to PHMSA under the CAO met the intent of § 195.54(b).

Although Enterprise acknowledges that the first DOT Form 7000-1 containing the metallurgical and cost information at issue was filed on January 2, 2019, Enterprise respectfully suggests that the intent of the regulatory requirement to update Form 7000-1 was met by Enterprise's ongoing communications with PHMSA under the Corrective Action Order, CPF No. 3-2016-5010H. The following facts support Enterprise's position that PHMSA in fact received the information in question:

- As noted in the NOPV, Enterprise provided quarterly reports to the Agency. These reports were submitted directly to the Regional Director in accordance with CAO Item 11.b, “Describe the progress of the repairs or other remedial actions being undertaken. The first quarterly report covering the period from December 2, 2016 through March 31, 2016, shall be due by April 15, 2017”. Quarterly reports were submitted to the Region April 13, 2017 – January 15, 2018.
- Enterprise submitted to the Regional Director a Post Release Startup Plan dated December 1, 2016 and received the Region’s approval December 8, 2016, per items 2 and 3 of the CAO.
- Enterprise arranged for the metallurgical analysis report prepared by Kiefner, dated March 28, 2017, to be sent to PHMSA directly and immediately by Kiefner in accordance with item 6.d of the CAO, which stated: “Ensure that the testing laboratory distributes all resulting reports in their entirety (including all media), whether draft or final, to the Director at the same time as they are made available to Respondent”. PHMSA received this information from Kiefner at the same time Enterprise received the information. In addition, the Region received draft reports from Kiefner January 20, 2017 and February 20, 2017.
- Enterprise submitted to PHMSA a Metallurgical Test Protocol/Lab Selection on December 9, 2016; the Region approved this submittal on December 12, 2016.
- Enterprise and PHMSA staff met at PHMSA Central Region’s office on April 12, 2017, May 16, 2017, and August 30, 2018, regarding the incident.
- Enterprise and PHMSA staff held conference calls on March 30, April 6, June 6, June 23, and June 30, 2017, regarding the incident.
- Enterprise submitted its Remedial Work Plan in July 2017, which the Region approved on July 31, 2017.
- Enterprise submitted its Request for Pressure Restriction Removal on August 14, 2017, which the Region approved on August 25, 2017.
- PHMSA closed the CAO on September 7, 2018.

While the above list is not all-inclusive, it demonstrates the ongoing and comprehensive nature of Enterprise’s communications with PHMSA relating to the incident. Enterprise reasonably relied on the CAO reporting framework and discussions under it as the proper means for keeping PHMSA staff updated regarding the incident, and we believe that this met the intent of the § 195.54(b) reporting requirement.

1.b. PHMSA policy does not support imposition of a civil penalty for an administrative oversight that did not affect pipeline safety and did not prevent the agency from obtaining the information to which it is entitled.

In addition to Enterprise's position above that the information in question was in fact reported to PHMSA, Enterprise objects to the proposed penalty as inconsistent with PHMSA policy, based on the following:

- *PHMSA's Pipeline Safety Enforcement Procedures*, Section 3.1.1.3 lists characteristics of a probable violation when a civil penalty should be issued, none of which apply to this alleged violation.
- Section 3.1.2.1 of the same document specifically recommends that low risk violations (such as this one, a reporting issue that does not affect pipeline safety and did not prevent PHMSA from obtaining the information it sought) should be addressed through a Warning Letter.
- PHMSA Administrator Skip Elliott recently explained that industry and the Agency, "can work together to meet the goals of simplifying rules and investing resources where they are needed most and have the greatest safety benefit." *PHMSA Advisory Committee Meeting Remarks, p. 8/11 (Dec. 13, 2017)*. This proposed enforcement action and civil penalty, which relate solely to an administrative oversight in reporting, do not have a pipeline safety implication in the specific facts of this matter, and therefore are not consistent with the focus on pipeline safety that is suggested by the Administrator's statement.

1.c. In the alternative, PHMSA should reduce the penalty amount.

Without conceding the underlying alleged violation, Enterprise respectfully suggests that PHMSA should reduce the penalty amount even if PHMSA ultimately determines that there is a violation warranting enforcement. In this alternative, PHMSA should reduce the amount of the penalty and assign a penalty credit of 10 points under Good Faith, in light of the additional facts presented in this response which demonstrate that Enterprise had reasonable justification for its mode and timing of reporting.

In summary, Enterprise in fact reported the information in question to PHMSA and complied with the formal requirements of the CAO associated with this accident; at most, Enterprise's violation was that the information in question was not simultaneously submitted on DOT Form 7000-1. Enterprise reasonably relied upon the circumstances of the CAO, which suggested a more specific and ongoing mode of communication with the Central Region, and satisfied the intent of 49 CFR § 195.54(b). Enterprise's course of action also did not implicate pipeline safety and is not the type of circumstance that supports a civil penalty under PHMSA's policies. As such, Enterprise formally requests that PHMSA withdraw or convert the NOPV to a Warning Letter and withdraw or dismiss the Proposed Civil Penalty of \$36,600. In the alternative, even if PHMSA did not agree with Enterprise's position that the information in question was timely reported to PHMSA in an acceptable format, PHMSA should reduce the penalty substantially in

light of the circumstances. Notwithstanding the above, and without conceding our position, Enterprise will continue to endeavor to periodically update Supplemental Accident Reports under all appropriate circumstances.

Should you have any questions, require further information in connection with the above or wish to discuss this matter in greater detail, please do not hesitate to contact our office. Enterprise welcomes the opportunity to work with PHMSA regarding the safe operation of our pipelines.

Sincerely,



Graham Bacon
Executive Vice President, Operations & Engineering