

**PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
WASHINGTON, D.C. 20590**

In the Matter of)	
)	CPF-3-2020-5005
Express Holdings (USA), LLC,)	Notice of Probable Violation
)	
Respondent.)	

Respondent’s Petition for Reconsideration of Final Order

Express Holdings (USA), LLC (“Express”), pursuant to 49 CFR § 190.243, petitions the Associate Administrator for Pipeline Safety for reconsideration of certain limited rulings in the Final Order in this proceeding, issued on May 20, 2021, as set forth herein.

I. Background

Safety is a fundamental value and the number one priority of Express, a subsidiary of Enbridge Inc. (“Enbridge”), and compliance with the Pipeline and Hazardous Materials Safety Administration’s (“PHMSA”) standards and regulations is a foundational principle. Express appreciates that it had an opportunity to meet and confer with PHMSA and to submit evidence that documents its position demonstrating compliance with the standards referenced herein. At this time, Express respectfully files this limited, focused Petition for Reconsideration on two narrow points set forth in the Final Order.

By way of background, on March 19, 2020, PHMSA issued the above-referenced Notice of Probable Violation (“NOPV”) to Express that included six alleged Violations and two alleged Warnings. The NOPV proposed assessing a civil penalty of \$346,400 for the six alleged Violations. On July 3, 2020, Express submitted a Request for Hearing and Statement of Issues. Express accepted three of the Violations (Items 3, 6, and 7) and the two Warnings (Items 4 and 5). On October 23, 2020, a virtual hearing was held on Items 1, 2, and 8 of the NOPV. Express submitted its Post Hearing Brief on November 23, 2020. PHMSA submitted its Recommendations on December 23, 2020. On May 20, 2021, PHMSA entered its Final Order, assessing a civil penalty of \$264,500. The deadline to file a Petition for Reconsideration of the Final Order is June 9, 2021.

As set forth herein, Express respectfully requests that PHMSA reconsider its determination related to Item 1. Express also requests that PHMSA reconsider its determination of the portion of Item 8 related to the sufficiency of the atmosphere corrosion inspections of the two spans with child guards; namely, Span 9-1446+87-9350 in Lincoln County, MO (inspection conducted by Spectra on January 16, 2014, documented in atmospheric corrosion report dated April 28, 2014) and Span 6-5526+67-5260 in Buchanan County, MO (inspection conducted by Spectra on April 7, 2015, documented in atmospheric corrosion report dated April 7, 2015).

Express specifically does not request reconsideration of Item 2. Express also does not request reconsideration of the portion of Item 8 related to the interpretation of the standard

(atmospheric corrosion inspection “at” versus “under” the pipe support), nor does Express request reconsideration of the finding that it complied with the standard as to the Meng Span in Hiawatha, KS (inspection conducted by Acuren on March 12, 2014).

Express requests that PHMSA withdraw Item 1 or, in the alternative, reduce Item 1 from a Violation to a Warning with no penalty. Express also requests that PHMSA withdraw Item 8 as to atmospheric corrosion inspection of Span 9-1446+87-9350 in Lincoln County, MO and Span 6-5526+67-5260 in Buchanan County, MO, or, in the alternative, reduce the portion of Item 8 as to Span 9-1446+87-9350 in Lincoln County, MO and Span 6-5526+67-5260 in Buchanan County, MO from Violation to Warning with no penalty.

II. Item 1 – Express Did Not Violate Section 195.401(b)(1)

The Final Order highlights that a Transient Study, performed by a previous operator, placed Express on notice of a potential adverse condition, and that Express violated the Section 195.401(b)(1) by failing to make non-integrity repairs within a reasonable time after discovering this potential adverse condition. The Transient Study recommended, but did not mandate, the installation of an Automated Pipeline Shutdown (“APS”) to guard against surges exceeding 110% of MOP during abnormal operations.

While the Final Order addressed certain evidence presented by Express and the Region at the hearing, the Final Order failed to address the testimony of two employees (Terry Delong, Manager Systems Integrity, and Stan Ziemniak, Technical Services Operations Specialist) who worked for the original pipeline owner during the time that the Transient Study was commissioned, and continued to work for the pipeline when it was owned and operated by Spectra, and continues to work for the pipeline under Enbridge’s ownership. The Final Order also fails to consider certain practical implications of its decision.

The factual background was thoroughly addressed in the post-hearing submissions and does not need to be repeated in detail. However, Mr. Delong and Mr. Ziemniak both provided unrebutted testimony, which was not addressed in the Final Order, as follows:

- Mr. Delong testified that the APS was merely a recommendation; it was not considered mandatory because the original pipeline operator and Spectra both had implemented multiple measures to guard against surges exceeding 110% of MOP. Mr. Delong specifically testified that the APS was considered a “belts and suspenders” approach to provide an additional layer of surge protection. Indeed, Mr. Delong emphasized that the additional control measures were not accounted for in the original Transient Study.
- Mr. Delong and Mr. Ziemniak both testified that Spectra, after it took over operation of the pipeline, implemented multiple operating and maintenance procedures, including procedures that addressed the risk identified in the Transient Study. Mr. Delong explained why those procedures protected against surges exceeding 110% of MOP.
- Mr. Delong explained that the original pipeline operator installed the APS at the end of the system because there were no tanks at the end of the Platte Pipeline, so Control Center Operators needed to rely on an open flow path to customers’ tanks when flow was directed to them. Mr. Delong further explained that although there is a small relief tank at the end

of the pipeline, the installation of APS provided an additional layer of protection for the end of the system. Mr. Delong explained that this was not required at the other pipeline segments.

The Final Order also failed to address key additional evidence and information, including that the Transient Study was based on a 2007 model, which was prior to the Control Room Management standard set forth in Section 195.446 that PHMSA adopted on December 3, 2009. In essence, the Transient Study was out of date.

In short, Mr. Delong testified that the original pipeline operator elected to implement certain recommendations but not all recommendations, and the next pipeline operator, Spectra, also elected not to implement the remaining recommendations. However, Spectra did implement operating and maintenance procedures that addressed the risk. After Enbridge assumed ownership and operational control of the pipeline, Enbridge commissioned its own Transient Study and implemented the recommendation to install an APS. Enbridge has always agreed that it was a good business practice to install the APS to provide an additional layer of overpressure protection in the pipeline. Enbridge, however, has also always maintained that it was not necessary and not required under the standard.

The testimony and background provided by Mr. Delong and Mr. Ziemniak are unrebutted. They were employees of the original pipeline operator that commissioned the first Transient Study, remained employees under Spectra's ownership, and continued as employees under Enbridge's ownership, so they were in a unique position to address the issue.

The practical implication of this ruling is profound. Simply stated, a pipeline operator is not required to implement recommendations that were provided in a study commissioned by a previous operator. While the Transient Study did place the original pipeline operator and Spectra on notice of a potential risk, Mr. Delong provided clear testimony that the operators addressed those risks in a different manner than implementing the recommendations in the study. Assuming *arguendo* for purposes of this Petition for Reconsideration that Enbridge may be considered responsible for violations of the predecessor operators, it is unfair to impose a violation of a standard – in this case a *general duty standard* under Section 195.401(b)(1) – when the predecessor operators acknowledged the recommendations and addressed the risks in a different manner. This is buttressed by the fact that the Transient Study was outdated.

Enbridge respectfully requests the withdrawal of Item 1. In the alternative, under the circumstances, and for purposes of this Petition for Reconsideration, Enbridge believes that a reduction from Violation to Warning, with no penalty, would be appropriate based on the facts above.

III. Item 8 – Express Did Not Violate Section 195.583(b) Regarding Span 9-1446+87-9350 in Lincoln County, MO and Span 6-5526+67-5260 in Buchanan County, MO

The Final Order provided that Express correctly interpreted Section 195.583(b) with regard to conducting atmospheric corrosion inspections “at” versus “under” pipe supports, and that Express complied with the atmospheric corrosion inspection of the Meng Span in Hiawatha, KS,

which had nine pipe supports, on March 12, 2014. Express does not seek reconsideration of this portion of the Final Order.

The Final Order also provided, however, that Express violated Section 195.583(b) with regard to Span 9-1446+87-9350 in Lincoln County, MO on January 16, 2014, documented in an atmospheric corrosion report dated April 28, 2014, and Span 6-5526+67-5260 in Buchanan County, MO on April 7, 2015, documented in an atmospheric corrosion report dated April 7, 2015. In support of this determination and referencing Exhibit C of PHMSA’s Violation Report, the Final Order provided as follows: “Color photographs of these child supports presented at the hearing clearly showed staining from atmospheric corrosion was present at the interface between the guards and the pipe.” Express disagrees with this determination. There is no evidence of staining at the interface of the guards and the pipe in the photographs referenced in Exhibit C of the Violation Report. Furthermore, Express respectfully avers that it was not proper to rely on the photographs in Exhibit C of the Violation Report, as those photographs were taken during PHMSA’s inspection in late 2016 and early 2017, which was well after the atmospheric corrosion inspections that were the subject of the NOPV. The pertinent photographs are those contained in Spectra’s atmospheric corrosion inspection reports, which were taken at the time of the atmospheric corrosion inspections for the two spans in 2014 and 2015, respectively.

The relevant photograph of Span 9-1446+87-9350 in Lincoln County, MO was taken on January 16, 2014 and is depicted in Spectra’s atmospheric corrosion inspection report dated April 28, 2014. This report was introduced into evidence as Express’s Exhibit 8-C. Photograph 1 (below), taken from this report, does not show staining at the pipe support. The discoloration reflected in this photograph is not evidence of staining or corrosion, but it does show age and mold. Age and mold are not unexpected and are not evidence of corrosion. This photograph confirms there was no violation during the relevant period that was the subject of the NOPV.



Photograph 1: Photograph of Span 9-1446+87-9350 in Lincoln County, MO, taken on January 16, 2014, showing no sign of staining.

For this span, the Final Order relied on photographs taken during PHMSA's onsite inspection in late 2016 or early 2017, which was 3 years after the alleged violation set forth in the NOPV. It was improper to rely on those photographs as they were no longer relevant to an alleged violation that took place 3 years earlier. Furthermore, the photographs taken during the PHMSA inspection, copies of which are attached as Attachment 1 to this Petition, do not depict staining at the pipe support.

The relevant photograph of Span 6-5526+67-5260 in Buchanan County, MO was taken on April 7, 2015 and is depicted in Spectra's atmospheric corrosion inspection report dated April 7, 2015. This report was introduced into evidence as Express's Exhibit 8-D. Photograph 2 (below), taken from this report, does not show staining at the pipe support and confirms there was no violation during the relevant period that was the subject of the NOPV.



Photograph 2: Photograph of Span 6-5526+67-5260 in Buchanan County, MO, taken on April 7, 2015, showing no sign of staining.

For this span, the Final Order relied on photographs taken during PHMSA's onsite inspection in late 2016 or early 2017, which was more than 1-1/2 years after the alleged violation set forth in the NOPV. Again, it was improper to rely on those photographs as they were no longer relevant to an alleged violation that took place 1-1/2 years earlier. Furthermore, the photographs taken during the PHMSA inspection, copies of which are attached as Attachment 2 to this Petition, do not depict staining at the pipe support.

In both cases, there was no visible evidence of staining or corrosion at the pipe support that would have necessitated looking under the pipe support. Brenden Jehlicka, Regional Compliance Advisor for Express, who is also a NACE CP-3 Cathodic Protection Technologist, provided testimony explaining the process that Spectra conducted atmospheric corrosion inspections for Span 9-1446+87-9350 in Lincoln County, MO and Span 6-5526+67-5260 in Buchanan County, MO. Based on his subject matter expertise, experience, and review of the records, including the atmospheric corrosion inspection reports, Mr. Jehlicka testified that there was no visible evidence of corrosion or staining at the child guards. He also reviewed the entire atmospheric corrosion

reports, which showed that the spans passed the inspections. In its post-hearing Recommendations, the Region incorrectly stated that there was metal-to-metal contact for these spans. The Final Order did not reference the alleged metal-to-metal contact, as that representation was incorrect, but rather relied exclusively on the after-the-fact photographs taken during the PHMSA inspection. In Mr. Jehlicka's review of the reports, he explained there was no staining, no corrosion, and no metal-to-metal contact.

Express respectfully requests that Item 8 be withdrawn in its entirety. In the alternative, Express requests that the portion of Item 8 related to Span 9-1446+87-9350 in Lincoln County, MO and Span 6-5526+67-5260 in Buchanan County, MO be reduced from a Violation to Warning, with no penalty. This reduction is justified based on the reliance on after-the-fact photographs rather than the pertinent photographs taken at the time of the inspection.

IV. Request for Relief

For the reasons set forth in this Petition for Reconsideration of Final Order and on the record, Express respectfully requests that PHMSA reconsider its Final Order in a limited capacity only as to Item 1 and the specified portion of Item 8, and enter a revised order:

- 1) Withdrawing Item 1, or, in the alternative, reducing Item 1 from a Violation to a Warning, with no penalty; and
- 2) Withdrawing the portion of Item 8 as to Span 9-1446+87-9350 in Lincoln County, MO and Span 6-5526+67-5260 in Buchanan County, MO, or, in the alternative, reducing the portion of Item 8 as to Span 9-1446+87-9350 in Lincoln County, MO and Span 6-5526+67-5260 in Buchanan County, MO from Violation to Warning, with no penalty.

Respectfully Submitted,

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