

**DECEMBER 14, 2012**

Mr. Terry Hurlburt  
Group Senior Vice President, Operations & EHS&T  
TE Products Pipeline Company, LLC  
1100 Louisiana Street  
Houston, TX 77002-5227

**Re: CPF No. 4-2010-5011**

Dear Mr. Hurlburt:

Enclosed please find the Final Order issued for the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$22,500. This letter acknowledges receipt of payment of the full penalty amount, by wire transfer, dated July 9, 2012. It further finds that TE Products Pipeline Company, LLC has completed the actions specified in the Notice to comply with the pipeline safety regulations. This enforcement action is now closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: BJ Walker, Esq., Rose Law Firm, 120 East Fourth Street, Little Rock, Arkansas 72201-2893  
Mr. R. M. Seeley, Director, Southwest Region, OPS  
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

**CERTIFIED MAIL - RETURN 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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<b>In the Matter of</b>	)	
	)	
<b>TE Products Pipeline Company, LLC,</b>	)	<b>CPF No. 4-2010-5011</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

Pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), initiated an investigation of an accident involving the explosion of an out-of-service breakout tank operated by TE Products Pipeline Company, LLC (TEPPCO or Respondent) at the McRae Product Terminal near Garner, Arkansas on May 12, 2009. Respondent owns and operates refined products and liquefied petroleum gas pipelines in the United States. TE Products Pipeline Company, LLC is a subsidiary of TEPPCO Partners LP. In its correspondence with PHMSA throughout the course of this case, Respondent has referred to itself as “TEPPCO.”

The explosion of the out-of-service breakout tank occurred during the installation of a gauge pole in the tank. Gauge poles are intended to reduce emissions and product loss from aboveground storage tanks and breakout tanks. After the tank was emptied and cleaned, hazardous vapors were ignited when a welder used a flame cutter to cut the internal floating roof. The explosion and destruction of the tank resulted in three fatalities of contract personnel working inside the tank.

The Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated June 22, 2010, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that TEPPCO had violated 49 C.F.R. § 195.54, and proposed assessing a civil penalty of \$22,500 for the alleged violation.

TEPPCO responded to the Notice by letter dated July 22, 2010. Respondent contested the allegation, presented information seeking mitigation and/or elimination of the proposed penalty, and requested a hearing. The hearing was to include discussion of this case and also a follow up case related to the May 12, 2009 incident concerning TEPPCO’s alleged failure to follow its own procedures, C.P.F. 4-2010-5015.

By letter dated May 21, 2012, Respondent withdrew its request for a hearing and thereby authorized entry of this Final Order without further notice. On July 7, 2012, Respondent paid the proposed civil penalty of \$22,500. Notwithstanding its payment of the civil penalty, TEPPCO asked for permission to submit a formal response and documentation for consideration of the hearing officer prior to preparation of this Final Order. On July 30, 2012, TEPPCO submitted said document, which included deposition testimony related to ongoing litigation for tortious suits, documents concerning the cleaning and planning for the gauge pole installation, and contracts between Respondent and its contractors for the project. Respondent also requested that PHMSA “acknowledge all that TEPPCO did to ensure the work was done safely, in accordance with regulations and guiding safety principles.” Under 49 C.F.R. § 190.209(a)(1), however, payment of the penalty serves to close the case with prejudice to Respondent. Therefore, the additional information provided and the defenses asserted by Respondent are neither discussed nor considered in this Order. The findings and conclusions set forth below are based entirely on the information referenced in the Notice and discussed in this Order, insofar as such information relates to the specific regulatory violations alleged in the Notice.

### **FINDING OF VIOLATION**

The Notice alleged that Respondent violated 49 C.F.R. Part 195.54, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.54, which states:

#### **§ 195.54 Accident reports.**

(a) Each operator that experiences an accident that is required to be reported under §195.50 shall as soon as practicable, but not later than 30 days after discovery of the accident, prepare and file an accident report on DOT Form 7000-1, or a facsimile.

(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 by failing to file a supplemental report after it received updated information about the cause of the May 12, 2009 incident. Specifically, the Notice alleged that TEPPCO failed to file a supplemental report within 30 days after it obtained a failure investigation report from Baker Engineering and Risk Consultants, Inc. (BakerRisk) on March 5, 2010.<sup>1</sup> The report concluded that the probable cause of the explosion was ignition of a flammable gasoline/air mixture inside the floating roof pontoons, created by leakage of gasoline vapors into the pontoons. As of May 19, 2010, a supplemental PHMSA 7000-1 report still had not been filed by Respondent to update the original report with the information included in the BakerRisk report.

By May 19, 2010, Respondent had also not reported estimated losses as a result of the accident in the PHMSA 7000-1 report on file (20090164-8872).

Respondent did not contest this allegation of violation. Accordingly, I find that Respondent

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<sup>1</sup> See The BakerRisk Report # 01-02565-001-09, as included in the Violation Report.

violated 49 C.F.R. § 195.54 by failing to file a supplemental report after it received changes in the information reported in the original report.

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

### **ASSESSMENT OF PENALTY**

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 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, PHMSA 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; the Respondent's ability to pay the penalty and 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, PHMSA 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 \$22,500 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$22,500 for Respondent's violation of 49 C.F.R. § 195.54, for failing to file a supplemental report after it received changes in the information reported in the report. Accordingly, I assess Respondent a civil penalty of **\$22,500** for violation of 49 C.F.R. § 195.54.

TEPPCO paid the proposed penalty, which serves to close the case with prejudice to Respondent.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 195.54. 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. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 195.54 (Item 1), Respondent filed a supplemental report on May 26, 2011.

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice are not included in this Order.

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

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued