

**DECEMBER 31, 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. 4-2010-5015**

Dear Mr. Hurlburt:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$200,000. This is also to acknowledge receipt of payment of the full penalty amount, by wire transfer, dated July 9, 2012. 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: Byron J. Walker, Esquire, Rose Law Firm, 120 East Fourth Street, Little Rock,  
Arkansas 72201-2893, Counsel for Respondent  
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. 4-2010-5015</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, Tank 1303 (Tank), operated by TE Products Pipeline, 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, L.P., which is a subsidiary of Enterprise Products Partners, L.P.<sup>1</sup> In its correspondence with PHMSA throughout the course of this case, Respondent has referred to itself as “TEPPCO.”

The explosion of the 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 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.

As a result of the investigation, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated August 27, 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. § 195.402, and proposed assessing a civil penalty of \$200,000 for the alleged violations.

TEPPCO responded to the Notice by letter dated September 28, 2010 (Response). TEPPCO contested the allegations, presented information seeking elimination of the proposed penalty, and requested a hearing. By letter dated May 21, 2012, Respondent withdrew its request for a hearing. On July 7, 2012, Respondent paid the proposed civil penalty of \$200,000.

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<sup>1</sup> See Dun & Bradstreet Comprehensive Report, TE PRODUCTS PIPELINE COMPANY, LIMITED PARTNERSHIP, D-U-N-S # 744-1138, December 17, 2012.

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\wrongful death 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 proposed civil 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 specific regulatory violations alleged in the Notice.

### **FINDINGS 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. § 195.402, which states, in relevant part:

**§ 195.402 Procedural manual for operations, maintenance, and emergencies.**

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted. . .

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations: . . .

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402 by failing to operate, maintain, and repair its pipeline facilities in accordance with its Operations and Maintenance (O & M) manuals, “EPCO Procedure.” Specifically, the Notice alleged that TEPPCO failed to follow *EPCO Procedure 6.2, Job Planning Process*, which requires “all personnel to have the tools and resources to prevent accidents, injuries, and losses during non-routine work through a detailed

and effective job planning process.” PHMSA noted that for the Tank’s cleaning to take place before any welding/hot work was to begin, the TEPPCO contract only ordered the contractor to vacuum all sludge out of the Tank and wash and dry the floor of the Tank. PHMSA contended that TEPPCO did not properly plan to ensure the cleaning of the entire Tank, including the roof and pontoons.

Respondent did not contest the proposed penalty for this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402 by failing to follow its O & M procedures by properly planning for proper cleaning of the Tank prior to the gauge pole installation that required welding/hot work.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402, as quoted above, by failing to operate, maintain, and repair its pipeline facilities in accordance with its O & M manuals, “EPCO Procedure” and procedures specifically created for the project. Specifically, the Notice alleged that although TEPPCO’s procedures (*EH&S 3.8 Permit Required Confined Space Entry*) and the specific job plan (*EPCO-SF20*) both required continuous atmospheric monitoring inside the Tank during the gauge pole installation project, continuous monitoring was not performed. PHMSA alleged that this failure to monitor atmospheric conditions inside the Tank was established by the following: 1) the atmospheric monitoring form required that the monitoring frequency be recorded, but the contents of the form did not make it clear what monitoring had taken place since an initial test at 7:00 am prior to the start of the work; and 2) after the explosion, the atmospheric monitoring equipment was found in a truck, not the Tank.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402 by failing to continuously monitor the atmosphere inside the Tank.

These findings of violation will be considered prior offenses 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 \$200,000 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$100,000 for Respondent’s violation of

49 C.F.R. § 195.402, for failing to follow its procedures and properly plan a thorough tank cleaning in preparation for the installation of a gauge pole. TEPPCO paid the proposed civil penalty in full, which closes this case with prejudice to the Respondent. Although TEPPCO did take other steps to make the Tank safe for the installation project, it is alleged that failure to properly clean the Tank contributed to the accident and three fatalities. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$100,000 for this violation of 49 C.F.R. § 195.402.

**Item 2:** The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § § 195.402, for failing to follow its procedures and the specific job plan by failing to conduct continuous atmospheric monitoring of the Tank during the installation project. TEPPCO paid the proposed civil penalty in full, which closes the case with prejudice to the Respondent. Although TEPPCO did take other steps to make the Tank safe for the installation project, it is alleged that failure to continuously monitor the Tank contributed to the accident and three fatalities. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$100,000 for this violation of 49 C.F.R. § 195.402.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$200,000**.

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