



August 28, 2013

Mr. Rodrick M. Seeley
Director, Southwest Region
Pipeline and Hazardous Materials Safety
Administration
Office of Pipeline Safety
8702 S. Gessner, Suite 1110
Houston, Texas 77074

Via Email: Rodrick.M.Seeley@dot.gov
Via FedEx: 796490894879



Re: Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order
CPF 4-2013-5011
Enterprise Products Operating LLC
Request for Hearing

Dear Mr. Seeley:

This letter serves a request for a hearing in response to the referenced Notice of Probable Violation dated May 1, 2013, which includes proposed civil penalties and a proposed compliance order (the "NOPV"). By letter dated July 10, 2013, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") granted an extension of time to respond to the NOPV, directing a response on or before September 1, 2013.

Enterprise Products Operating LLC ("Enterprise"), pursuant to 49 C.F.R. §§ 190.209 and 190.211, hereby requests a hearing on the NOPV with respect to alleged violation Items 5, 8, and 9, the associated proposed civil penalties, and the proposed compliance order. Enclosed herewith please find Enterprise's Statement of Issues which it serves pursuant to 49 CFR § 190.211(a). Enterprise will be represented by the undersigned counsel at the hearing. Enterprise requests that said hearing be held at PHMSA's Southwest Region office in Houston, Texas.

Enterprise requests that a transcript of the hearing be prepared by a certified court reporter. Enterprise will be pleased to arrange for the transcript and bear the cost of same. Enterprise will provide a copy of said transcript to PHMSA and the presiding official.

Enterprise further requests that PHMSA promptly provide all materials in the case file which are not contained within the Violation Report and accompanying exhibits which were previously provided to Enterprise.





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Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'V. Murchison', written over a light blue rectangular background.

Vince Murchison

Enclosure

cc: Phu Phan, Enterprise



PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
WASHINGTON, DC 20590

In the matter of:	§	
	§	
Enterprise Products Operating LLC	§	CPF No. 4-2013-5011
	§	
Respondent	§	
	§	

**STATEMENT OF ISSUES
OF
ENTERPRISE PRODUCTS OPERATING LLC
TO
NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
AND
PROPOSED COMPLIANCE ORDER**

Enterprise Products Operating LLC (“Enterprise”) submits this Statement of Issues in connection with its request for a hearing pursuant to 49 C.F.R. § 190.209 and 49 C.F.R. § 190.211(a).

By letter dated May 1, 2013, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) served on Enterprise a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (collectively, the “NOPV”), CPF No. 4-2013-5011, which was received by Enterprise on May 2, 2013. By letter dated July 10, 2013, the Director, Southwest Region, Office of Pipeline Safety, PHMSA, granted an extension of time to respond to the NOPV and directed that Enterprise respond on or before September 1, 2013. By separate writing, Enterprise has requested a hearing in this matter, and this Statement of Issues is submitted therewith.

BACKGROUND

The NOPV issued following a series of PHMSA inspections of numerous Enterprise facilities located in Texas, Louisiana, and Arkansas during April through August 2012. In the NOPV, PHMSA seeks to find violations of certain of the pipeline safety regulations promulgated at 49 C.F.R. Part 195 (“Part 195”), to impose civil penalties and to order compliance, all pursuant to the procedural and enforcement regulations promulgated at 49 C.F.R. Part 190, Subparts A and B, as to each of which Enterprise states the following issues.

STATEMENT OF ISSUES

The Alleged Violations

As to each alleged violation of the NOPV for which PHMSA has proposed a civil penalty, Enterprise states factual, legal, and regulatory issues to such alleged violations in the following paragraphs which are numbered to correspond with the numbered Items of the NOPV. Each paragraph begins with the cited regulation and a summary of the allegations.

Item 5: 49 C.F.R. § 195.402(a) Procedural manual for operations, maintenance, and emergencies; by failing to follow Section 702 of the Enterprise procedural manual providing for investigation of operational failures and accidents in regard to a release at Sulphur, Louisiana, which release occurred on November 22, 2011.

1. Contrary to the allegations of the NOPV, Enterprise performed an appropriate investigation of the Sulphur, Louisiana, accident; determined the cause; and reviewed the information gained with operating personnel; all toward minimizing the possibility of a recurrence;
2. The alleged violation is not supported by the evidence in the case file; and
3. PHMSA has failed to meet its burden of proof that a violation occurred.

Item 8: 49 CFR § 195.505 Qualification program; by failing to ensure that individuals performing covered tasks had the necessary knowledge and skills by failing to “provide a written qualification program specifically dealing with the measurement of cathodic protection systems which utilize zinc reference electrodes.”

1. The alleged violation is not supported by the evidence in the case file;
2. The NOPV fails to establish a rational connection between the facts alleged and the conclusions reached, or between the record and the agency’s conclusions;
3. PHMSA has failed to meet its burden of proof that a violation occurred;
4. The NOPV fails to discuss or explain its conclusions in a manner that is sufficient to allow Enterprise a reasonable opportunity to prepare an adequate defense;
5. Enterprise has developed and implemented an operator qualification program pursuant to 49 C.F.R. Part 195, Subpart G;
6. The NOPV cites a regulatory provision, 49 C.F.R. § 195.505(h), which addresses activities that have been determined to be covered tasks pursuant to 49 C.F.R. § 195.501(b); however, the NOPV fails to establish that the activity of which PHMSA complains, converting cathodic protection data, is a covered task;
7. The NOPV fails to apply, explain or discuss the four-point test of whether or not the subject activity, converting cathodic protection data, constitutes a covered task, a condition precedent to requiring that an activity be included in an operator qualification program (49 C.F.R. § 195.501(b)); and
8. The appropriate enforcement mechanism to address the inadequacy of procedures is a Notice of Amendment pursuant to 49 C.F.R. § 190.237.

Item 9: 49 CFR § 195.573 What must I do to monitor external corrosion control? By failing properly to inspect the cathodic protection system of breakout tanks for three years, by failing properly to consider IR drop when monitoring corrosion control on breakout tanks at six locations.

1. Contrary to the allegations of the NOPV, in 2010, Enterprise considered IR drop in connection with structure-to-soil potentials measured at its Baytown facility in 2010.

PROPOSED CIVIL PENALTIES

PHMSA proposes a total of \$106,100 in civil penalties in connection with alleged violation Items 5, 8 and 9, as to which Enterprise states the following issues:

1. As to each and all proposed civil penalties, the NOPV and the underlying Violation Report provide insufficient evidentiary basis for, and no discussion, explanation or analysis of, the manner in which the penalty amounts were determined, and thus Enterprise has no reasonable opportunity to prepare an adequate defense to contest the proposed civil penalties.
2. As to each and all proposed civil penalties, the NOPV provides insufficient evidentiary basis for, and no discussion, explanation or analysis of, the penalty assessment considerations of 49 CFR §190.225, in support of the proposed civil penalties, and thus Enterprise has no reasonable opportunity to prepare an adequate defense to contest any of the proposed civil penalties.
3. As to each and all proposed civil penalties and application of the penalty assessment considerations of 49 CFR §190.225, the NOPV provides no discussion, explanation or analysis of the weight accorded each such consideration, nor the relative weighting among all such considerations, and thus Enterprise has no reasonable opportunity to prepare an adequate defense to contest the proposed civil penalties.
4. The instructions and guidance of the PHMSA form Violation Report relating to the penalty assessment considerations lack the specificity and degree of explanation found in agency policy statements which define the application of the penalty assessment considerations; as such, the inspector cannot have considered adequately the penalty assessment factors, and thus the findings based upon the underlying Violation Report and based upon conclusory statements of fact must be found insufficient to satisfy the Congressional directive in the Pipeline Safety Act that the Secretary of Transportation “shall” consider such factors (49 U.S.C. § 60122(b)(1)).
5. As to each proposed civil penalty, to the extent that the related alleged violation is not supported by substantial evidence, a rational connection between facts found and conclusions drawn, regulation, or law, such proposed civil penalty may not be imposed and must be withdrawn in its entirety.
6. As to each and all proposed civil penalties, Enterprise objects to the magnitude of the proposed penalties as: unreasonable; disproportional to any of the penalty assessment

considerations of 49 C.F.R. Part 190.225; unsupported by any evidence that supports, or any analysis that applies, the penalty assessment considerations; arbitrary, capricious or otherwise not in accordance with law; and an abuse of discretion.

PROPOSED COMPLIANCE ORDER

PHMSA has proposed to order Enterprise to perform the following action, as to which Enterprise states the following issues:

Item 1: “Develop a written program specifically for testing and maintenance of the zinc reference electrodes,” including “taking steps to qualify the individuals to ensure that each individual understands the zinc reference electrodes, instead of the copper/copper sulfate electrode and the conversion factor equivalent to copper/copper sulfate reference electrode.”

1. In the absence of a finding of violation, a compliance order may not be supported;
2. PHMSA has neither proffered any evidence, made any factual findings, nor provided any explanation, discussion or analysis of the manner in which the alleged violations or the public interest warrant issuance of the proposed compliance order; *see* 49 C.F.R. § 190.217. On those grounds, Item 1 of the proposed compliance order must be withdrawn in its entirety for failure to fulfill a regulatory requirement;
3. The proposed compliance order is vague, ambiguous, and overbroad, and would compel actions that exceed PHMSA’s authority under Part 195, in that it seeks to order Enterprise to develop an operator qualification program for the purpose of treating one activity as a covered task, which activity does not constitute a covered task under 49 C.F.R. § 195.501(b); and
4. In the alternative to the foregoing arguments, to the extent the Associate Administrator finds that Enterprise violated 49 C.F.R. § 195.505, the proposed compliance order must be revised to provide that Enterprise determine whether or not the activity of converting cathodic protection data is a covered task; demonstrate its findings to the Regional Director; and, to the extent the Regional Director finds that conversion of cathodic protection data constitutes a covered task, incorporate that activity into Enterprise’s OQ Program upon a reasonable schedule.

CONCLUSION

At the hearing in this matter, Enterprise intends to bring forth evidence in the form of documents and/or witness testimony, as well as to present its arguments, in support of the issues stated

heretofore. Enterprise reserves the right to supplement this Statement of Issues at or before the hearing.

COUNSEL FOR ENTERPRISE PRODUCTS OPERATING LLC

August 28, 2013



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