

JUNE 25, 2014

Mr. Michael A. Creel
Chief Executive Officer
Enterprise Products Partners, LP
1100 Louisiana Street
Houston, TX 77002

Re: CPF No. 4-2013-5018

Dear Mr. Creel:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Enterprise Products Operating, LLC. It makes a finding of violation and assesses a civil penalty of \$100,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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: Mr. Rodrick M. Seeley, Director, Southwest Region, OPS
Mr. Terry Hurlburt, Enterprise, Group Sr. Vice President, Operations & Environmental,
Health, Safety & Training, 1100 Louisiana Street, Houston, Texas 77002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

)	
In the Matter of)	
)	
Enterprise Products Operating, LLC,)	CPF No. 4-2013-5018
)	
Respondent.)	
)	

FINAL ORDER

From December 28, 2011 – December 17, 2012, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an investigation of an accident involving the pipeline system operated by Enterprise Products Operating, LLC (Enterprise or Respondent), in Loving County, Texas. Enterprise is a wholly-owned subsidiary of Enterprise Products Partners, LP, which operates roughly 50,000 miles of natural gas, natural gas liquid, crude oil, refined products and petrochemical pipelines throughout the United States.¹

The investigation arose out of an accident that occurred when Enterprise personnel, attempting to repair a failed weld, were injured in a flash fire. As a result of the investigation, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated September 20, 2013, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Enterprise had violated 49 C.F.R. § 195.402 and proposed assessing a civil penalty of \$100,000 for the alleged violation.

On October 21, 2013, Enterprise requested an extension of the response filing deadline. The Director granted this request. Enterprise subsequently submitted a timely response to the Notice by letter dated December 3, 2013 (Response). The company did not contest the allegation of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

¹ <http://www.enterpriseproducts.com/corpProfile/businessProfile.shtm> (last accessed May 6, 2014).

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

(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.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to 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. Specifically, the Notice alleged that Enterprise failed to establish a job plan and obtain a safe work permit, as required by its own written procedures,² when repairing a failed weld. On December 28, 2011, Enterprise confirmed a complete weld seam failure on an 8-inch butane/propane pipeline. Two Enterprise personnel and four contractors began repairing the weld failure on the same day, but without first establishing a job plan. At approximately 5:00 p.m., a hydrocarbon mixture exceeding the Lower Flammability Limit concentrated in the trench where the workers were stationed, resulting in a flash fire. The flash fire burned three workers, one of whom required inpatient hospitalization.³

Respondent did not contest this allegation of violation but requested that PHMSA reconsider the company's culpability for the accident and reduce the proposed penalty. Since this argument relates to the penalty amount, it will be addressed in the "Assessment of Penalty" section below.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to 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 finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

² Pipeline Safety Violation Report (Violation Report), (September 20, 2013), (on file with PHMSA). *Enterprise Safety Policies Manual, 6.2 Job Planning Process.*

³ Violation Report, Enterprise Incident Investigation Report, 1.

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, I 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, I 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 \$100,000 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to 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. As noted above, Enterprise did not contest this allegation of violation but requested a penalty reduction.

In its December 3, 2013 letter, Enterprise argued that the Violation Report, in the "Culpability" section, incorrectly stated that "[t]he operator failed to take appropriate action to comply with a requirement that was clearly applicable." Enterprise argues that its culpability for the accident is diminished by the fact that it used its best efforts to promulgate and promote the procedures required by § 195.402(a), but that its personnel simply failed to follow through. Enterprise argues that it took "significant steps" through the implementation of policies, procedures, and training, to ensure that the company achieved compliance. In addition, Enterprise contends that following the accident, it has conducted additional employee training and instituted safety action plans to improve its safety culture. Accordingly, Enterprise requests that PHMSA reconsider the proposed penalty.

I have reviewed the case file and considered Respondent's arguments for a penalty reduction, but reject the notion that an operator may separate its own conduct from that of its employees, and thereby diminish its culpability for an accident such as the one that occurred here. Enterprise personnel were well aware that a job plan and safety permit were required, but failed to take any steps to secure them. The failure of Enterprise's employees to follow procedures was a causal factor in this accident, which weighs in favor of the proposed penalty. In addition, there was a serious injury resulting from this accident, one that required inpatient hospitalization.⁴

Without employee compliance and proper supervision, Respondent's past efforts at training and the institution of new safety controls cannot offset the seriousness of the accident or the overall responsibility of the company to ensure safety. While Enterprise's post-accident remedial actions are commendable, they only occurred after the accident and therefore do not impact the penalty assessment in this case.

⁴ Violation Report at 3.

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 **\$100,000**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$100,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

Under 49 C.F.R. § 190.215, Respondent has the right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of the Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued