

October 15, 2018

Mr. A. J. Teague
Director and Chief Executive Officer
Enterprise Products Partners, LP
1100 Louisiana Street, 10th Floor
Houston, TX 77002

Re: CPF No. 4-2017-5019

Dear Mr. Teague:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$70,800, and specifies actions that need to be taken by Enterprise Products Mid-America Pipeline Company, a subsidiary of Enterprise Products Partners, LP, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by certified mail is effective upon the date of mailing, as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Graham Bacon, Executive Vice President-Ops and Engineering, Enterprise Products
Partners, LP, 1100 Louisiana Street, Houston, TX 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 Mid-America Pipeline Company,)
a subsidiary of Enterprise Products Partners, LP,)

Respondent.)

CPF No. 4-2017-5019

FINAL ORDER

From October 27, 2014, until November 20, 2015, 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 on-site pipeline safety inspection of the facilities and records of Enterprise Products Mid-America Pipeline Company (Enterprise or Respondent), a subsidiary of Enterprise Products Partners, LP, in Illinois, Wisconsin, Iowa, Missouri, Minnesota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, New Mexico, Colorado, Utah, and Wyoming. Enterprise Products Partners, LP owns interests in natural gas liquids (NGL) pipelines that transport mixed NGLs and other hydrocarbons from natural gas processing facilities, refineries and import terminals to fractionation plants, petrochemical plants, export facilities and refineries, and that deliver propane to customers along the company's Dixie Pipeline and certain sections of the Enterprise Products Mid-America Pipeline Company.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated May 10, 2017, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included warnings pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Enterprise had violated 49 C.F.R. §§ 195.432(c) and 195.505(a) and proposed assessing a civil penalty of \$70,800 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning items required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

Enterprise Products Partners, LP, responded to the Notice on behalf of Respondent by letter dated August 9, 2017 (Response). The company contested the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

¹ Enterprise Products Partners, LP website at <https://www.enterpriseproducts.com/operations/ngl-pipelines-services/ngl-pipelines> (last accessed on May 3, 2018).

FINDINGS 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. § 195.432(c), which states:

§ 195.432 Inspection of in-service breakout tanks.

(a)

(c) Each operator must inspect the physical integrity of in-service steel aboveground breakout tanks built to [American Petroleum Institute (API) Standard (Std)] 2510 (incorporated by reference, *see* §195.3) according to section 6 of API Std 510 (incorporated by reference, *see* 195.3).

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(c) by failing to inspect the physical integrity of its in-service steel aboveground breakout tanks built to API Standard 2510, as required by section 6 of API Standard 510. The Notice quoted API Standard 510, section 6.4, which states:

6.4 External Inspection

6.4.1 Unless justified by an RBI [Risk Based Inspection] assessment, each aboveground vessel shall be given a visual external inspection at an interval that does not exceed the lesser of five years or the required internal/on-stream inspection. It is preferred to perform this inspection while the vessel is in operation. The interval is established by the inspector or engineer in accordance with the owner/user's quality assurance system.

Specifically, the Notice alleged that Enterprise failed to comply with the required five-year interval for performing the visual external inspections on 11 “bullet-style” aboveground breakout tanks. Enterprise allegedly did not use the RBI assessment on the breakout tanks and therefore was required to use the standard five-year inspection interval. According to the Notice, all 11 of the “bullet-style” breakout tanks exceeded the five-year inspection interval by 73 days. The inspection dates for all the tanks were June 23, 2008, and September 4, 2013.

In its Response, Enterprise contested this allegation, stating that it had “discovered records to support the 11 breakout tanks were inspected within the five-year interval per API STD 510 Section 6.4 based on the previous inspection date of June 23, 2008.”² It attached a December 13, 2012 invoice from its contractor, Applied Technical Services, stating that “This invoice reflects 100% total completion of API-510 External Inspections and Fitness For Service Evaluations on 18 Fixed Equipment Assets located at the Pine Bend, MN Facility.”³ On this basis, Enterprise requested that the item be converted to a Warning Item and the proposed penalty withdrawn.

Having considered the evidence submitted by Respondent, I am unpersuaded that the Enterprise invoice provides adequate proof that the subject tanks were indeed inspected in accordance with

² Response, at 2.

³ Response, Ex. Invoice.

§ 195.432(c). The invoice contains no direct correlation with the eleven breakout tanks listed in the Violation Report.⁴ The statement in the invoice regarding the evaluation of “18 Fixed Equipment Assets” is the full extent of the invoice and the only evidence presented by Enterprise. It does not identify which assets were included in the evaluations or whether any of the at-issue tanks were evaluated. Likewise, the invoice contains insufficient detail to conclude that a proper inspection occurred.⁵ For example, the invoice contains no information on what activities were included in the evaluations to demonstrate that a proper inspection took place.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.432(c) by failing to inspect the physical integrity of the in-service steel aboveground breakout tanks built to API Standard 2510, as required by section six of API Standard 510.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(a), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program.

The program shall include provisions to:

(a) Identify covered tasks;

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(a) by failing to have and follow a written qualification program that included provisions to identify “covered tasks,” as that term is defined under § 195.501(b).⁶ Specifically, Enterprise allegedly failed to identify as a covered task the repair method of buffing/grinding out a pipeline defect. During the inspection, Enterprise’s Supervisor Pipeline Integrity Engineering confirmed that grinding out the following defects is a repair method used by Enterprise for: (1) stress corrosion cracking; (2) dents with metal loss; and (3) cracking. Enterprise did not, however, consider the process of buffing/grinding to be a covered task and failed to identify it in its operator qualification (OQ) program.

The Notice alleged that buffing/grinding out a pipeline defect meets the four-part test for covered tasks under § 195.501(b) for making repairs on Enterprise’s pipeline system, and, therefore should be classified as a covered task. The pipeline repair process is: (1) performed on a pipeline facility; (2) an operations or maintenance task pursuant to § 195.422(a); (3) performed as a requirement of §§ 195.422(a) and 192.452(h); and (4) affects the operation or integrity of the pipeline. The Notice also noted that the voluntary consensus standard of the American Society of Mechanical Engineers (ASME), *B31Q - Pipeline Personnel Qualification*, considers grinding out pipeline defects to be a covered task.

In its Response, Enterprise contested this allegation on several grounds. First, it argued that buffing/grinding out a pipeline defect is not a covered task because it does not meet the four-part

⁴ Response, Ex. Invoice.

⁵ Pipeline Safety Violation Report (Violation Report), (May 10, 2017) (on file with PHMSA), at 47-173.

⁶ A covered task “is an activity, identified by the operator, that: (1) Is performed on a pipeline facility; (2) Is an operations or maintenance task; (3) is performed as a requirement this part; and (4) Affects the operation or integrity of the pipeline.” 49 C.F.R. § 195.501(b).

test in § 195.501(b). Specifically, the company contended that buffing/grinding out a pipeline defect does not satisfy the third prong of the test because Part 195 “must include a requirement specifically regulating the activity,” yet there is no specific requirement in Part 195 regarding the use of buffing/grinding out a pipeline defect in making safe repairs. Second, it argued that the company does not permit grinding to be performed when repairing pipeline defects. Third, Respondent argued that the Notice’s reference to ASME B31Q was misplaced because that standard has not been incorporated by reference into Part 195.

Taking the arguments in reverse order, Enterprise is correct that ASME B31Q is not mandatory and has not been incorporated by reference into Part 195. While this consensus standard is useful to demonstrate that the industry as a whole considers buffing/grinding to be a covered task, it is not determinative of the issue presented here.

As for the argument that Enterprise does not permit grinding to be performed when repairing pipeline defects, I find that the record in this case does not support such a conclusion. During that inspection, Enterprise’s Supervisor Pipeline Integrity Engineering stated to the PHMSA inspector that buffing/grinding out of pipeline defects was indeed a process used by company employees to repair certain anomalies.⁷

As for the argument that the buffing/grinding out of pipeline defects does not meet the third prong of the four-part test for identifying covered tasks under § 195.501(b), I also find this unpersuasive. If Part 195 requires an operator to perform a certain activity, then an operator is obliged to identify the specific covered task or tasks it performs as part of carrying out that required activity. Section 195.422 requires that operators ensure all repairs are made in a safe manner. Section 195.452(h) further requires that operators make repairs to address integrity issues on pipelines that could affect High Consequence Areas. Integrity issues that must be repaired include, but are not limited to, certain types of corrosion, dents with metal loss, and cracking. A pipeline repair affects the operation and integrity of the pipeline, particularly when a safe repair is necessary to remediate an integrity issue. Therefore, because Enterprise uses the buffing/grinding out of certain pipeline defects in conducting required repairs, it is a covered task.

I would also note that PHMSA has decided this same issue, under only slightly different circumstances, in a previous final order issued to Enterprise in 2012.⁸ In that case, Enterprise failed to include pipefitting as a covered task in making pipeline repairs and PHMSA held that under the particular facts of that case, pipefitting should have been classified as a covered task because it was an integral part of performing a safe repair. The final order reasoned:

Many of the pipeline safety regulations, including § 195.422, contain performance-based, rather than prescriptive, requirements. Unlike the latter, performance-based regulations require proactive planning, operations, and

⁷ Violation Report, at 29.

⁸ See *Enterprise Product Partners, L.P.*, CPF No. 3-2009-5022, Final Order, at 8, 2012 WL 4846327, at *6 (issued Aug. 14, 2012) (holding that “Any maintenance or repair task must satisfy all four prongs of the test in § 195.501(b) to be considered a covered task.”).

accountability by an operator for its own unique systems. If covered tasks only include those activities that are specifically regulated by Parts 192 and 195, no performance-based regulation would ever constitute an OQ “requirement” since, by definition, a performance-based requirement (e.g., that a repair be made “in a safe manner”) does not consist of specific, detailed procedures that must be followed by each operator. . . . The OQ regulations require operators to identify covered tasks for all of their operations and maintenance activities that are required by Parts 192 and 195, regardless of whether such activities arise from performance-based regulations or from more prescriptive requirements. For those that are performance-based regulations, such as § 195.422, this means determining which tasks are so integral to meeting the requirements of the regulations that they need to be treated as separate covered tasks under the third prong of the test.⁹

Since Enterprise itself has identified the buffing/grinding out of pipeline defects as a repair method it uses for anomalies involving stress corrosion cracking, dents with metal loss, and cracking, then that task must be considered an “integral part” of repairs required by Part 195 and considered a “covered task” under the company’s written OQ program.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.505(a) by failing to have and follow a written qualification program that included provisions to identify “covered tasks,” as that term is defined under § 195.501(b).

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.¹⁰ 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; 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 \$70,800 for the violations cited above.

⁹ *Id.*, at 6.

¹⁰ These amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

Item 1: The Notice proposed a civil penalty of \$70,800 for Respondent's violation of 49 C.F.R. § 195.432(c), for failing to inspect the physical integrity of in-service steel aboveground breakout tanks built to API Standard 2510, as required by section 6 of API Standard 510.

In its Response, Enterprise contested the violation but argued, in the alternative, that the proposed penalty be reduced. According to the company, the "Nature" component of the proposed penalty should be changed from "Activities" to "Records" on the basis that its attached invoice "confirms that the inspections were performed on the 11 breakout tanks."¹¹ Enterprise also requested that the "Number of Instances of Violation" under the "Gravity" component of the proposed penalty be changed from 11 to zero on the same basis.

I have already found that the invoice did not provide sufficient evidence to prove that the inspections were ever performed on these particular tanks. Therefore, I find no basis to modify the nature or number of instances of violation components of the proposed penalty. The proposed penalty was properly based on 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; any effect that the penalty might have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations.

In summary, having reviewed the record and considered the assessment criteria for the Item cited above, I assess Respondent a total civil penalty of **\$70,800** for violation of 49 C.F.R. § 195.432(c).

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, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$70,800 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 4 in the Notice for violation of 49 C.F.R. § 195.505(a). 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. In its Response,

¹¹ Response at 2.

Respondent stated that even though it contested the alleged violation, it would nevertheless modify its OQ program to include “Sanding and Buffing for Repairs of Pipeline Defects” as a covered task.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.505(a) (**Item 4**), Respondent must revise its Operator Qualification (OQ) Plan to include a covered task for the process of buffing/grinding out a pipeline defect as a repair method, as follows:

(a) Within 30 days of receipt of the Final Order, revise its OQ Plan and the plan’s referenced written procedures and training materials as applicable to include a procedure and training materials addressing the process of buffing/grinding out a pipeline defect as a repair method. Provide the revised documents to the PHMSA Southwest Region Office for approval.

(b) Within 90 days of receipt of the Final Order, train and qualify all of the individuals who perform the procedure of buffing/grinding out a pipeline defect as a repair method, in accordance with the written procedures and training materials described in (b) above. Provide to the PHMSA Southwest Region Office the list of all individuals who perform the procedure of buffing/grinding a pipeline defect as a repair method, and the date that the training and qualification of each individual was completed.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

It is requested that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 2, 3, and 5, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.436 (**Item 2**) — Respondent’s alleged failure to provide adequate protection to the pump station from vandalism and unauthorized entry;

49 C.F.R. § 195.452(h)(4)(i)(C) (**Item 3**) — Respondent’s alleged failure to calculate the 20% reduction in operating pressure at the point of the anomaly, rather than at the upstream pump station; and

49 C.F.R. § 195.581(a) (**Item 5**) — Respondent’s alleged failure to ensure that each pipeline or portion of pipeline that is exposed to the atmosphere is protected against atmospheric corrosion.

In accordance with § 190.205, an operator may submit a response to a warning, but is not required to do so. An adjudication under this subpart to determine whether a violation occurred is not conducted for warnings.

Enterprise responded to the warning items and requested withdrawal of Items 2 and 3. Respondent also stated, incorrectly, that warning items become “part of an operator’s record and prior enforcement history.”¹² PHMSA does not take into consideration warning items when calculating civil penalties for future violations. For this reason, under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred or not. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

October 15, 2018

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

¹² Response at 1.