

September 16, 2019

Mr. A.J. Teague  
Director and Chief Executive Officer  
Enterprise Products Partners, LP  
1100 Louisiana Street, 10<sup>th</sup> Floor  
Houston, Texas 77002

**Re: CPF No. 4-2018-5011**

Dear Mr. Teague:

Enclosed please find the Final Order issued to your subsidiary, Enterprise Crude Pipeline, LLC, in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$58,700. 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 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 W. Bacon, Executive Vice President, Operations and Engineering,  
Enterprise Products Partners, LP, 1100 Louisiana Street, 10<sup>th</sup> Floor, 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**

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**In the Matter of** )

**Enterprise Crude Pipeline, LLC,** )  
**a subsidiary of Enterprise Products Partners, LP,** )

**Respondent.** )  
\_\_\_\_\_ )

**CPF No. 4-2018-5011**

**FINAL ORDER**

From January 9 through September 29, 2017, 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 Crude Pipeline, LLC (ECP or Respondent), in New Mexico, Texas, and Oklahoma. ECP is a wholly-owned subsidiary of Enterprise Products Partners, LP (Enterprise), which operates approximately 5,300 miles of on-shore crude oil pipeline and other hazardous liquid facilities.<sup>1</sup>

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated November 20, 2018, a Notice of Probable Violation and Proposed Civil Penalty (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 ECP had violated 49 C.F.R. § 195.56(a) and proposed assessing a civil penalty of \$58,700 for the alleged violation. The warning items required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

After requesting and receiving an extension of time to respond, Enterprise responded to the Notice by letter dated February 12, 2019 (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. The company also contested two of the warning items and requested that the items be withdrawn. However, pursuant to 49 C.F.R. § 190.205, PHMSA does not adjudicate warning items. Respondent did not request a hearing and therefore has waived its right to one.

<sup>1</sup> Enterprise Products Partners, LP website, available at <https://www.enterpriseproducts.com/operations/crude-oil-pipelines-services> (last accessed July 17, 2019).

## **FINDING OF VIOLATION**

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

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.56(a), which states:

**§ 195.56 Filing safety-related condition reports.**

(a) Each report of a safety-related condition under §195.55(a) must be filed (received by OPS) within five working days (not including Saturday, Sunday, or Federal Holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. Reports may be transmitted by electronic mail to InformationResourcesManager@dot.gov, or by facsimile at (202) 366-7128.

The Notice alleged that Respondent violated 49 C.F.R. § 195.56(a) by failing to file safety-related condition reports with PHMSA within 5 working days, but not later than 10 working days, after determining that safety-related conditions existed on its pipeline. Specifically, the Notice alleged that on August 3, 2015, ECP performed an integrity assessment on its Hobbs to Midland pipeline using a deformation and magnetic flux leakage (MFL) in-line-inspection (ILI) tool. On September 17, 2015, ECP received the preliminary ILI report for one segment, AID 7363-Cowboy Station to Midland Station (AID 7363), of the pipeline. The ILI report showed four anomalies on AID 7363 located within high consequence areas (HCAs) and categorized the four anomalies as “immediate” conditions due to physical damage to the pipeline. The same day, ECP implemented a 20 percent reduction in operating pressure for the AID 7363 segment due to the anomalies. Pursuant to 49 C.F.R. § 195.55(a)(6), reportable safety-related conditions include those “that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a 20 percent or more reduction in operating pressure.”

Thus, on September 17, 2015, ECP determined that four reportable safety-related conditions existed on the AID 7363 segment. Under § 195.56(a), ECP should have filed a report(s) for the safety-related conditions that resulted in a 20 percent reduction in operating pressure of its pipeline within 5 working days, but not later than 10 working days from September 17, 2015. However, ECP never filed a safety related condition report for any of the four anomalies on the AID 7363 segment.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.56(a) by failing to file safety-related condition reports with PHMSA within 5 working days, but no later than 10 working days, after determining that safety-related conditions existed on its pipeline.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.<sup>2</sup> 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; 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 \$58,700 for the violation cited above.

**Item 2:** The Notice proposed a civil penalty of \$58,700 for Respondent's violation of 49 C.F.R. § 195.56(a), for failing to file safety-related condition reports with PHMSA within 5 working days, but not later than 10 working days, after determining that safety-related conditions existed on its pipeline. In its Response, Enterprise argued that PHMSA should reduce the proposed civil penalty by finding that ECP provided a reasonable justification for its non-compliance with § 195.56(a) under the good-faith assessment criterion. Respondent's argument for such a good-faith reduction is premised on the fact that, during ECP's inspection of the Hobbs to Midland pipeline, it also discovered other anomalies that either did not constitute safety-related conditions or were exempt from the requirement to report safety-related conditions. Respondent concedes that the anomalies on AID 7363 were misidentified as non-reportable, but asserts that a good-faith penalty reduction is warranted because ECP had regulatorily-required procedures in place and had followed those procedures to implement a reduction in operating pressure. As noted in the Pipeline Safety Violation Report,<sup>3</sup> a good-faith reduction for a proposed civil penalty is not a gauge of an operator's system-wide approach to regulatory compliance, but instead it focuses solely on efforts taken to comply with the requirements of the violated regulation. Here, the Respondent has not demonstrated any action taken by ECP to comply with § 195.56(a). Regardless of whether ECP had or generally followed compliant procedures, in this case the company failed to report four safety-related conditions discovered in HCAs. The record contains no justification for a reduction in the proposed civil penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$58,700** for violation of 49 C.F.R. § 195.56(a).

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

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<sup>2</sup> These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223; Revisions to Civil Penalty Amounts, 83 Fed. Reg. 60732, 60744 (Nov. 27, 2018).

<sup>3</sup> Pipeline Safety Violation Report (Violation Report), (Nov. 20, 2018) (on file with PHMSA), at 19.

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 \$58,700 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.

### **WARNING ITEMS**

With respect to Items 1, 3, and 4, the Notice alleged probable violations of Parts 194 and 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. § 194.107(c)(1)(x) (**Item 1**) — Respondent's alleged failure to follow Section 1.4 of its Oil Spill Response Plan, which required annual reviews and, if necessary, revision of the plan;

49 C.F.R. § 195.452(h)(1) (**Item 3**) — Respondent's alleged failure to notify PHMSA of a pressure restriction exceeding 365 days; and

49 C.F.R. § 195.432(b) (**Item 4**) — Respondent's alleged failure to conduct adequate monthly inspections of two breakout tanks and failing to incorporate its inspection checklist into the inspection report.

Enterprise presented information in its Response showing that ECP had taken certain actions to address Item 1. Enterprise requested withdrawal of Item 3, alleging that all pressure restrictions were removed within 365 days. It also requested withdrawal of Item 4, alleging that PHMSA misunderstood the manner in which ECP marked its tank inspection reports. As noted above, under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred. 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, 2<sup>nd</sup> 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 the Final Order by Respondent. Any petition submitted must contain a brief 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 any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. 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.

September 16, 2019

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued