

**Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety**

_____	)	
In the Matter of	)	
	)	
Enterprise Products Operating, LLC	)	CPF 1-2018-5003
	)	
Respondent	)	<u>Request for Hearing</u>
	)	
_____	)	

The Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) issued the above referenced Notice of Proposed Violation, Proposed Civil Penalty and Proposed Compliance Order (collectively, the NOPV) dated January 29, 2018, to Enterprise Operating Products LLC (Enterprise or the Company). The enforcement action followed a series of inspections of various Enterprise facilities in seven (7) states, between March 21, 2016 and December 2, 2016. The NOPV sets out eighteen (18) alleged violations, proposes a civil penalty of \$703,900 and proposes a compliance order related to four (4) of the alleged violation items.

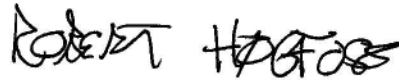
Due to the length of the underlying inspections in various locations, and the number of violations alleged, Enterprise requested and was granted an extension of time in which to review the NOPV and Request a Hearing, until April 23, 2018. Accordingly, this Request is timely.

Pursuant to 49 C.F.R. Parts 190.208 and 190.211, Enterprise respectfully requests an in person hearing on the NOPV's alleged violations, the proposed civil penalty and proposed compliance order. As required by 49 C.F.R. Part 190.211(b), this Request for Hearing includes a Statement of Issues (attached), which incorporates by reference the Company's Written Response to the NOPV. Pursuant to 49 C.F.R. Part 190.211(b), please be advised that Enterprise will be represented by counsel at any hearing scheduled for this matter.

In light of the large number of documents and potential witnesses involved in this matter, Enterprise respectfully requests that the Hearing be scheduled for PHMSA's Southwest Region Offices in Houston, as that is where Enterprise headquarters is located. This is a multi-region NOPV and a majority of the alleged violations in the NOPV, including a majority of the violations that are being contested by Enterprise, are founded at least in part on inspections that took place in the Southwest Region and/or facilities located in the Southwest Region. Pursuant to PHMSA regulations, please be advised that at the hearing Enterprise intends to present materials, testimony, and other items relevant to the issues. *49 C.F.R. Parts 190.211(e)*.

Enterprise believes that the parties could narrow, if not resolve, the issues in advance of a Hearing on this matter. For that reason, we would welcome an opportunity to meet with the relevant PHMSA officials from the Eastern Region before any Hearing is scheduled. At a minimum, that could help streamline any Hearing on this matter.

Respectfully Submitted,



TROUTMAN SANDERS LLP

Catherine A. Little, Esq.

Robert E. Hogfoss, Esq.

Annie Cook, Esq.

600 Peachtree Street NE, Suite 3000

Atlanta, GA 30308

(404) 885-3055

**ENTERPRISE PRODUCTS
OPERATING LLC**

1100 Louisiana Street, 24th Floor

Houston, Texas 77002

(713) 381-6500

Date: April 20, 2018

**Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety**

	)	
In the Matter of	)	
	)	
Enterprise Products Operating, LLC	)	CPF 1-2018-5003
	)	
Respondent	)	<u>Statement of Issues</u>
	)	
	)	

Pursuant to 49 C.F.R. Part 190.211(b), Respondent Enterprise Products Operating, LLC (Enterprise or the Company) submits the following statement of issues to be presented at a Hearing scheduled for the above referenced matter. Enterprise reserves the right to add to or amend this list of issues in advance or during the Hearing, as facts or other developments require.

Statement of Issues

1. Whether the Agency's failure to comply with its obligations under the PIPES Act of 2016 should result in dismissal of this NOPV.

Prior to conclusion of the inspections underlying this proceeding, and long prior to issuance of this NOPV, Congress passed the Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act, which became effective on June 22, 2016. That law added a new provision to the Pipeline Safety Act (PSA) that requires the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) and certified State agencies to provide operators with a 30 day post-inspection briefing outlining any concerns following an inspection and, to the extent practicable, written preliminary findings within 90 days. *See 49 U.S.C. § 60108(e)(1) - (2)*. The purpose of the provision is to ensure that any safety issues are flagged as quickly as possible, and to ensure that the inspector was made aware of all relevant information. *Id.*

Enterprise was not provided with a post-inspection briefing or written preliminary findings from any of the inspections underlying this NOPV, as required by law. Instead, more than a year passed before PHMSA issued this lengthy NOPV, which in several instances relies on a misunderstanding or misapplication of the facts or the law.

Because the Agency failed to comply with its obligations under the PIPES Act of 2016, this matter should be dismissed in its entirety.

2. Whether PHMSA has failed to state a claim in a number of Items.

Even assuming this matter is allowed to proceed, PHMSA failed to state an actionable claim in some of the violations alleged, either (1) due to incorrect or incomplete facts, or (2) because the elements to establish a violation do not correspond to the facts relied upon.

In nearly half of the eighteen (18) Items in the NOPV, PHMSA based its allegations on Part 195.402(a). Most of those Items actually refer to and state claims under different rules, however, other than Part 195.402. As such, the Agency failed to properly allege a claim for which relief could be granted.

In many of the other violations alleged, PHMSA based its allegations on missing data that was in fact available or already provided to the Agency. Had that information been reviewed, it would have demonstrated compliance. Similarly, had the inspector provided the Company with the post inspection briefings and reports required by the PIPES Act of 2016, that would have been an opportunity to address any misunderstandings or confusion, which was the intent of the PIPES Act directive.

Other alleged violations fail to state a claim because of factual or legal inaccuracies. For example, Item 1 alleges recordkeeping violations under Part 195.310(b) regarding tanks, but the regulation cited and violation alleged only applies to pipelines, not tanks. In addition, four of the Items allege violations as to pipelines that have been idled, but those regulations only apply to active pipelines, in accordance with PHMSA's own regulations and Advisory Bulletins.

Federal law, both judicial and administrative, requires specificity in pleadings. Vague reliance on general theories or rules is not sufficient. PHMSA's own rules of procedure for hearings caution respondents to identify issues and defenses with specificity, or risk waiving those rights. See Part 190.211(b) ("*...failure to specify...may result in waiver...of the right*"). The same requirements for specificity should apply to the Agency.

3. Whether PHMSA has met its burden of proof.

For any claims asserted that survive dismissal for the above reasons, PHMSA bears the burden of proof. The Agency's own prior decisions state clearly that the Agency must establish all elements of a proposed violation in an enforcement proceeding. See *e.g.*, *In re ANR Pipeline Co, Final Order, CPF No. 3-2011-1011 (Dec. 31, 2012)*. If PHMSA "*does not produce evidence supporting the allegation [which] outweighs the evidence and reasoning presented by Respondent in its defense,*" the allegation of violation must be withdrawn. *Id.* (emphasis added).

As set forth in the Written Response, which is incorporated by reference, PHMSA has not met its burden of proof in this NOPV, for many of the Items contested.

4. Whether PHMSA has complied with its own enforcement procedures.

Even where the Agency properly alleged a claim, the Agency violated its own Pipeline Safety Enforcement procedures by including minor data omissions which had no impact on pipeline safety or integrity as part of NOPV allegations. Instead, such issues should be addressed in Warning Letters or Notices of Amendment (NOAs) pursuant to the Agency's own internal procedures. *PHMSA Pipeline Safety Enforcement Procedures, Sections 3.1.2, 3.1.3 (Jun. 29, 2017)* ("Warning Letter/Item is generally used for lower risk items;" "[a] Notice of Amendment is used to notify an operator that its plans or procedures...are 'inadequate'...").

The Agency did issue both a Warning Letter (WL) and a Notice of Amendment (NOA) from these same inspections, nearly a year before the NOPV was issued. A comparison of the Items included in the WL or NOA, to the NOPV, show that a number of NOPV Items clearly should have been addressed through a WL or NOA.

5. Whether the Proposed Civil Penalty should be withdrawn or significantly reduced.

As set forth in the attached Written Response, for the majority of the NOPV Items that Enterprise contests in whole as a matter of fact and/or law, the proposed civil penalty should be withdrawn entirely. Further, PHMSA should reduce the proposed civil penalty for several other Items, which are either contested in part or only contested as to the penalty. In the alternative, PHMSA should significantly reduce the Proposed Civil Penalty for all of the Items to properly account for statutory and regulatory civil penalty factors of (1) nature, (2) gravity, (3) culpability, and/or (4) other matters as justice may require.

6. Whether the Proposed Compliance Order should be withdrawn in its entirety.

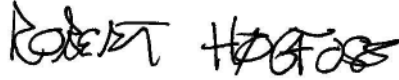
The Proposed Compliance Order contains provisions associated with Items 3, 7, 16 and 18. For reasons of both fact and law, and as further explained in the attached Written Response, the Proposed Compliance Order should be dismissed in its entirety, or is already moot.

7. Whether PHMSA has abused its discretion under the Administrative Procedure Act in issuing this NOPV.

The federal Administrative Procedure Act (APA) directs agencies to be reasonable in their decision making. 5 U.S.C. § 706(2)(A). More specifically, the APA directs reviewing courts to vacate an agency decision if it is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1238 (9th Cir. 2005) (quoting 5 U.S.C. § 706(2)(A)). As detailed in the attached Written Response, the underlying rationale and factual assertions for the majority of the alleged NOPV Items are unreasonable on their face, and therefore should be set aside as a result of the Agency's abuse of discretion.

Finally, to the extent not already subsumed in the issues set forth above, the attached Written Response sets forth additional factual and legal issues for each specific NOPV Item.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert Hogfoss". The signature is stylized with a large "R" and "H".

TROUTMAN SANDERS LLP

Catherine Little, Esq.

Robert E. Hogfoss, Esq.

Annie Cook, Esq.

600 Peachtree Street NE, Suite 3000

Atlanta, GA 30308

(404) 885-3055

ENTERPRISE PRODUCTS OPERATING LLC

1100 Louisiana Street, 24th Floor

Houston, Texas 77002

(713) 381-6500

Date: April 20, 2018

**Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety**

_____	)	
In the Matter of	)	
	)	
Enterprise Products Operating, LLC	)	CPF 1-2018-5003
	)	
Respondent	)	<u>Written Response</u>
	)	
_____	)	

Enterprise Products Operating, LLC (Enterprise or the Company), pursuant to 49 C.F.R. Part 190.211, responds with this pleading to the allegations of violation in the above referenced Notice of Probable Violation (NOPV). The inspections that gave rise to this enforcement action took place between March 21, 2016 and December 2, 2016 across seven (7) states and three (3) PHMSA regions, for a total of more than eight (8) months.

As outlined below and in the Statement of Issues, PHMSA did not follow its own statutory and regulatory procedures and policies in conducting these inspections and in issuing the NOPV. As such, this entire proceeding is not in accordance with law, and *ultra vires*. If the matter is not dismissed out right, Enterprise contests, in whole or in part, each of the 18 Items, either on incorrect facts, inapplicable legal premise and/or amount of penalty. The Company also notes that one of the Compliance Order Items is now moot, and another will be before any Hearing. The Company's response to each contested alleged violation is set forth below. Where relevant, this Response addresses the alleged violation, the proposed civil penalty and/or the proposed compliance order, by Item.

INTRODUCTION

Prior to conclusion of the inspections and issuance of this NOPV, Congress passed the Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act, which became effective on June 22, 2016. That law added a new provision to the Pipeline Safety Act (PSA), requiring PHMSA and certified State agencies to provide operators with a thirty (30) day post-inspection briefing outlining any concerns following an inspection and, to the extent practicable, written preliminary findings within ninety (90) days, in order to ensure that any safety issues are flagged as quickly as possible, and to ensure that the inspector was made available or aware of all relevant information. *See 49 U.S.C. § 60108(e)(1) - (2).*

PHMSA began complying with its newly established statutory obligation in 2016, as reflected in its report to Congress on October 18, 2017. *See PHMSA October 18, 2017 Report: Inspection Finding Notifications, PIPES Act of 2016, Section 7 Requirements.* In that report, PHMSA

provided an update of the status of its compliance and reported the number of times the 30-day verbal post-inspection briefing and 90-day written preliminary post-inspection findings were exceeded in time or not provided. *Id.* Notably, although the Agency reported on inspections occurring between October 1, 2016 and May 31, 2017, there is no reference whatsoever to the Enterprise inspection which was occurring during that timeframe and concluded on December 2, 2016.

Enterprise was not provided with a post-inspection briefing or written preliminary findings from any of these inspections, as required by law. Instead, more than a year passed before PHMSA issued this lengthy NOPV, which in several instances relies on a misinterpretation of Enterprise procedures, incomplete documentation and/or a misunderstanding of the facts or the law.

PHMSA bears the burden of proof of all elements of a proposed violation in an enforcement proceeding. *See e.g., In re ANR Pipeline Co, Final Order, CPF No. 3-2011-1011 (Dec. 31, 2012).* If PHMSA “does not produce evidence supporting the allegation [which] outweighs the evidence and reasoning presented by Respondent in its defense,” the allegation of violation must be withdrawn. *Id.* As set forth below and in the attached documentation, PHMSA has not met its burden in this NOPV.

Nearly half of the eighteen (18) alleged violations rely on 49 C.F.R. Part 195.402. Several of those alleged violations sound in other regulations, however. Federal law generally, both judicial and administrative, requires specificity in pleadings. Vague reliance on general theories or rules is not sufficient. PHMSA’s own rules of procedure for hearings caution respondents to identify issues and defenses with specificity, or risk waiving those rights. *See* Part 190.211(b) (“...*failure to specify...may result in waiver...of the right*”). The same requirements for specificity should apply to the Agency as apply to respondents.

Further, PHMSA violated its own Pipeline Safety Enforcement procedures by including minor data omissions and alleged violations regarding inadequate procedures which have no impact on pipeline safety or integrity as part of the NOPV allegations. In addition, many of these allegations are inappropriately applied to idled pipelines. The Agency’s own internal procedures and policies dictate that such issues should be addressed, if at all, in Warning Letters or Notices of Amendments (NOAs), stating for example that

If an inspection or investigation identifies both probable violations and inadequate plans/procedures, based on the criteria in Section 3, the latter must be documented in a separate Notice of Amendment. *Inadequate procedure items and probable violations are not to be combined in the same letter.*

See PHMSA Pipeline Safety Enforcement Procedures, Section 4.1.3, p. 22 (Jun. 28, 2017) (emphasis added).

The Agency did in fact issue both a WL and a NOA, roughly nine months before issuing this NOPV. All of those actions arose from the same multi-Region inspection. A comparison of the items in the WL and NOA to the items in the NOPV, along with reference to the Agency’s enforcement policy, underscore the fact that many more of the NOPV items should have been addressed through either a WL or NOA.

This NOPV is also contrary to recent policy statements made by PHMSA headquarters, which announce a focus of Agency resources on areas of greatest risk to pipeline safety. For example, PHMSA Administrator Skip Elliott recently explained that industry and the Agency, “can work together to meet the goals of simplifying rules and investing resources where they are needed most and have the greatest safety impact.” *PHMSA Advisory Committee Meeting Remarks*, p. 22 (Dec. 13, 2017). Comments by Alan Mayberry, PHMSA Deputy Administrator for Pipeline Safety, echoed this policy stance, stating that the Agency should “double-down on the focus of making sure resources are being put to where they’re most effective.” *Id.* PHMSA Pipeline Enforcement Director Rod Dyck further stated, “We want to, we’re trying to better understand the riskiest violations, and once we understand a little bit better about them, extra attention may be given to the activities and regulations associate[ed] with these riskiest violations.” *Id.*

Failure to comply with the PIPES Act post inspection briefing requirement is grounds alone for dismissal in its entirety, as that violates a clear directive from Congress. Other alleged violations involving idled lines or tank issues should be dismissed for misapplication of the law and/or misunderstanding of the facts. Many of the alleged violations were also so minor as to contradict the Agency’s own enforcement policy and procedural rules. Overall, this NOPV was inconsistent with Agency policy and precedent, not in accordance with law and therefore *ultra vires*, requiring dismissal.

Enterprise Responses to the NOPV, Item by Item

Enterprise provides additional responses to the Items alleged in the NOPV, as follows:

NOPV Item 1: §195.310 Records.

- (a) **A record must be made of each pressure test required by this subpart, and the record of the latest test must be retained as long as the facility tested is in use.**
- (b) **The record required by paragraph (a) of this section must include:**
 - (1) **The pressure recording charts;**
 - (2) **Test instrument calibration data;**
 - (3) **The name of the operator, the name of the person responsible for making the test, and the name of the test company used, if any;**
 - (4) **The date and time of the test;**
 - (5) **The minimum test pressure;**
 - (6) **The test medium;**
 - (7) **A description of the facility tested and the test apparatus;**
 - (8) **An explanation of any pressure discontinuities, including test failures, that appear on the pressure recording charts; and,**
 - (9) **Where elevation differences in the section under test exceed 100 feet (30 meters), a profile of the pipeline that shows the elevation and test sites over the entire length of the test section.**
 - (10) **Temperature of the test medium or pipe during the test period.**

“Enterprise failed to maintain a record of each pressure test required by this subpart. Specifically, Enterprise failed to maintain hydrostatic test records for 4 breakout tanks (PHMSA Unit 12232), per the requirements of §195.310(b).

§195.305 states, each pressure test under §195.302 must test all pipe and attached fittings, including components, unless otherwise permitted by paragraph (b) of this section. §195.310 states, a record must be made of each pressure test required by this subpart, and the record of the latest test must be retained as long as the facility tested is in use.

During the inspection of inspection unit 12232-AR1 in Little Rock, Arkansas, the PHMSA inspector requested hydrostatic testing records for breakout tanks at the McRae and North Little Rock, Arkansas facilities. Enterprise provided records for tanks DOT-T_1301, DOT-T-1302, DOT-T-1304, and DOT-T-1305 as follows:

- 1. Tank 1301 Hydro Email, dated 07/19/2007*
- 2. Tank 1302 Hydro Email, dated 07/26/2007*
- 3. Tank 1304 Testing Form dated 3/30/2007*
- 4. Tank 1304 hydro information email dated 7/2/2007*
- 5. Tank 1305 Elevations – undated*
- 6. Tank 1305 Settlement results dated 4/3/2008*

None of the records provided by Enterprise included the information below that is required by §195.310(b):

- 1. Pressure recording charts*
- 2. Test instrumentation calibration data*
- 3. Date and time of the test*
- 4. Minimum test pressure*
- 5. Test medium*
- 6. A description of the facility tested and the test apparatus*
- 7. An explanation of any pressure discontinuities, including test failures, that appear on the pressure recording charts*
- 8. Where elevation differences in the section under test exceed 100 feet (30 meters), a profile of the pipeline that shows the elevation and test sites over the entire length of the test section.*

Temperature of the test medium or pipe during the test period.”

Enterprise's Response to Item 1

Subpart E of 49 C.F.R. Part 195 requires pressure testing of pipelines. The Subpart establishes requirements for testing of pipelines, pipeline components and breakout tanks. The requirements for conducting a pressure test differ depending on whether the item tested is a pipeline, a component or a tank. Part 195.310(b) requires operators to maintain relevant records of the various pressure tests.

Item 1 of the NOPV asserts that Enterprise failed to retain all records required by Part 195.310(b) for four (4) breakout tank tests. The requirements for pressure testing breakout tanks are set forth in Part 195.307. That rule in turn requires compliance with API Standard 650. The tanks in issue were constructed prior to the 11th edition of API Standard 650 which is currently incorporated by reference to the rules (and has been since August 11, 2010). At the time of construction or modification of the four breakout tanks at issue, PHMSA rules incorporated the 10th Edition of API Standard 650 by reference, which did not include an express hydrostatic testing requirement for tanks (just testing of the shell). *49 C.F.R. Part 195.307(c) (2007); API 650 10th ed., Section 5.3.5.*

Although not expressly stated in the rule, certain records noted in Part 195.310(b) are not created for tank pressure testing as required by Part 195.307(c). When 49 C.F.R. Part 195.310 was originally promulgated in 1981, pressure testing of breakout tanks was not contemplated. *46 Fed. Reg. 38,357 (July 27, 1981)*. The final rule promulgating the tank testing requirements at 49 C.F.R. Part 195.307 was not issued for nearly two decades, in 1999, and PHMSA has yet to formally clarify that many of the test records specified in Part 195.310 are inapplicable to tank testing. *64 Fed. Reg. 15,926 (Apr. 2, 1999)*. The pressure test record requirements at Part 195.310 are not applicable to aboveground atmospheric storage breakout tanks constructed to API Standard 650. Instead, at the time of construction of the tanks at issue, Section 5.3.5. of API 650 10th Ed. required testing of the shell only.

Item 1 fails to state a claim because the regulation it relies on applies to pipelines, not breakout tanks. The alleged violation asserts that Enterprise failed to retain copies of certain hydrotest records required under 49 C.F.R. Part 195.310(b), but no such records were required or created in compliance with breakout tank testing under Part 195.307(c), API Standard 650 (10th Edition). Item 1 of the NOPV, and the associated Proposed Civil Penalty of \$27,500, should be dismissed for failure to state a claim. Specifically, the records alleged to be missing were not required to be created or maintained by applicable law.

NOPV Item 2: §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.

“Enterprise failed to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, Enterprise failed to follow its computational pipeline monitoring (CPM) manual for providing a means of leak detection on its pipeline system.

During the inspection of Enterprise procedures in Houston, Texas, the PHMSA inspector reviewed Enterprise’s CPM O&M Manual, dated 03/01/11, and “Audit List of Lines” record which showed Enterprise pipelines with leak detection.

The Enterprise procedure stated, “...All regulated pipelines operated by Enterprise Products control centers will be targeted for implementation of this baseline CPM system. If this baseline leak detection application cannot be implemented on targeted line, then alternative technologies will be evaluated...”

The “Audit List of Lines” record showed four pipelines with no leak detection in high consequence areas (HCAs).

- 1. Line ID P84, PODS ID 1357, total miles 0.945, HCA miles 0.047*
- 2. Line ID P79, PODS ID 6427, total miles 0.409, HCA miles 0.409*
- 3. Line ID P29B, PODS ID 7201936, total miles 0.53, HCA miles 0.53*
- 4. Line ID P29A, PODS ID 7201937, total miles 0.53, HCA miles 0.53*

The PHMSA inspector asked why these pipelines were not covered by the Enterprise leak detection program and Enterprise stated, “they observe leaks by means of the normal patrolling activities on these lines.”

The PHMSA inspector asked Enterprise for relevant records regarding alternative technologies used for these pipelines. Enterprise was not able to provide any records. In an email dated 1/12/17, Enterprise stated, “The technology review (LDCE study) for the 2.41 miles not currently in CPM is budgeted and scheduled to be performed in 2017.” Thus, Enterprise failed to follow its procedures for leak detection.”

Enterprise’s Response to Item 2

Item 2 of the NOPV alleges that Enterprise failed to comply with Part 195.402(a) (which requires pipeline operators to develop written procedures in an operation and maintenance (O&M) manual). The specific allegation is that Enterprise violated Part 195.402(a) by not following the Company’s O&M procedures for computational pipeline monitoring (CPM) for leak detection. PHMSA cites as a basis for this conclusion the assertion that Enterprise did not have leak detection documentation for segments of four (4) lines, totaling approximately one and one-half miles located in a high consequence area (HCA).

Enterprise contests this alleged violation as a matter of law and fact. Legally, Item 2 alleges that Enterprise failed to follow its own internal procedures as contained in its O&M Manual (*i.e.*, PHMSA does not allege that Enterprise violated a specific PHMSA regulation). PHMSA misconstrues the Company’s O&M Manual, however. The allegation quotes the Company’s CPM

procedure in its O&M manual, noting that “if baseline leak detection application cannot be implemented on targeted lines, *then alternative technologies will be evaluated.*” (emphasis added). The procedure requires Enterprise to perform an *evaluation*, but neither it nor the PHMSA regulation specify the type or timeline for when such an evaluation will take place. See Exhibit 1, *Enterprise CPM O&M Manual*. Note again that these are small segments, totaling only approximately one and one-half HCA miles in length.

At the time of the inspection, Enterprise had existing leak detection in place on these small segments by various means, including aerial patrol, visual right-of-way inspection, in line inspection, its public awareness program, and pressure/flow monitoring. In compliance with its O&M procedures, the Company has been conducting Leak Detection Capability Evaluations (LDCEs) on these small segments, and those efforts are nearly complete. In addition, note that one of the small line segments identified in Item 2 of the NOPV is exempt from Part 195 per 195.1(b)(3)(ii) and another segment was idled. The remaining two line segments represent less than 1 mile of the 4,269.4 miles included in this inspection, the remainder of which have CPM.

In short, Enterprise complied with its internal written procedures for implementation of CPM/leak detection for these short segments (totaling approximately one and one-half HCA miles in length), as those procedures expressly stated that where baseline CPM implementation was not available, the Company would evaluate alternative methods or technologies. Moreover, two of the four small segments were not subject to Part 195.

PHMSA should withdraw or dismiss Item 2 as an alleged violation and withdraw or dismiss the Proposed Civil Penalty of \$53,600. In the alternative, PHMSA should greatly reduce the amount of penalty, because two of the line segments were not jurisdictional, and the other two were minor under the Agency’s own enforcement policy guidelines.

NOPV Item 3: § 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.

“Enterprise failed to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, Enterprise failed to follow its manual of written procedures for its leak detection measures.

During the inspection of Enterprise procedures in Houston, Texas, the PHMSA inspector reviewed Enterprise procedure – CPM O&M manual – Liquid Pipelines Operated by Houston OCC, dated 3/1/11. The procedure states in part that:

“Performance Evaluations – Annual analysis of existing pipeline CPM systems will be performed to determine if a pipeline system is meeting appropriate leak detection targets as defined in the company leak detection strategy (Appendix A) ...”

Appendix A states that:

“Risk ranking and target threshold (60 min):

Pipelines will be ranked into three (3) tiers based upon HCA impact and the Pipeline Integrity Risk model ‘consequence score’. Pipeline systems that include multiple line assessments with different rankings will assume the highest ranking. Tier III lines will be lines that have “No HCA Impact”. Tier III target leak threshold will be 12% leak detection in 60 minutes. Tier II lines will be lines that have “HCA Impact”. Tier III [sic] target leak threshold will be 5% leak detection in 60 minutes. Tier I lines will be lines that have “HCA Impact” and consequence score above TBD. Tier I target leak threshold will be 2% leak detection in 60 minutes.”

*Risk Level of Pipeline Target
Threshold Tier I 2% leak detection
in 60 minutes Tier II 5% leak
detection in 60 minutes Tier III
12% leak detection in 60 minutes*

The PHMSA inspector requested the 2014, 2015 and 2016 CPM performance evaluation records for the following inspection units:

- 1. IU 3051 – Greensburg (Greensburg, Pennsylvania office)*
- 2. IU 3071 – Dubois (Watkins Glen, New York office)*
- 3. IU 4213 – Allegheny (Lebanon, Ohio office)*
- 4. IU 3061 – Eagle (Morgantown, Pennsylvania Office)*
- 5. IU 2464 – Lou Tex (Sorrento, Louisiana Office)*
- 6. IU 18043 – TEPPCO Chicago (Monee, Illinois Office)*
- 7. IU 12232 – AR1 (Little Rock, Arkansas Office)*

Enterprise provided leak detection budget request emails for 2014, 2015 and 2016. Each of the emails stated in part:

“We have developed the attached Leak Detection Budget Request items for the liquid pipelines in your area...”

To prepare this budget we have:

- 1. Reviewed our current leak detection implementation status*
- 2. Pulled the latest pipeline data from the Asset Integrity PODS database*
- 3. Performed a high-risk/low-performing analysis of our current implementation*
- 4. Established budgetary plan for implementation of Enhanced Leak Detection Systems*

5. *Identified all the “orphan laterals” which are not covered by leak detection today.*

Attached is the budget request for your area, as well as a list of orphan laterals where the Control Center is unable to perform leak detection because of a lack of sufficient instrumentation. The orphan laterals need to be monitored by Field Operations until we can address the instrumentation deficiency.”

The emails provided by Enterprise did not provide any details to support that Pipelines were ranked into three tiers or that target thresholds were met.

Therefore, Enterprise failed to follow its manual of written procedures.”

Enterprise’s Response to Item 3

Similar to Item 2 of the NOPV, Item 3 alleges that the Company failed to follow its own written O&M procedures for leak detection. Whereas Item 2 alleged that Enterprise failed to implement leak detection procedures for several small segments of line (roughly one and a half HCA miles in total) – which Enterprise contests – Item 3 alleges that the Company failed to follow its annual performance evaluation procedures for CPM in various inspection units.

Contrary to the allegations in the NOPV, Enterprise did fully comply with its written procedures for annual CPM review. The documents provided to the PHMSA inspector for the requested lines showed that the relevant CPM review had been completed. The NOPV alleges those documents showed insufficient detail. In prior PHMSA inspections, that documentation was deemed sufficient. Had the inspector requested more detail, during or at any time after the inspection as required by the PIPES Act, or at any time before the NOPV issued, the Company would have provided it.

Documentation fully demonstrating that annual CPM review was conducted for the inspection units and years in question was available during the inspection and would have been provided to the Agency then or at any time before the NOPV issued, had the inspector requested additional documentation. *See Exhibit 2, Enterprise CPM Performance Reviews, 2014-2016.*

The Company submits that NOPV Item 3 and the associated provision in the Proposed Compliance Order should be dismissed because it fails to state a claim. Specifically, the factual allegations in the NOPV are incorrect, and that mistake could have been remedied by the Agency at the time of or following the inspection. Enterprise requests that Item 3, the associated Proposed Civil Penalty of \$72,000 and provision in the Proposed Compliance Order be withdrawn or dismissed. In the alternative, the amount of penalty should be dramatically reduced.

NOPV Item 4: §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.

“Enterprise failed to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, Enterprise failed to follow its abnormal operation procedure (AOC) O&M Manual requirements for documenting any AOC actions taken, prior to a supervisory close out of the AOCs.

During the inspection of inspection unit 12232-AR1 in Little Rock, Arkansas, the PHMSA inspector requested AOC records for the McRae and North Little Rock, Arkansas terminals. The PHMSA inspector reviewed, “TEC AOC RESPONDER” report that provided 10 records from January through November 2016. One Enterprise McRae terminal record, contained no information under the subheadings – “AOC conditions found” and “AOC actions taken.” The “Manager Review” and “Manager Confirmed AOC” were both closed out with no indications of what AOC condition was found or AOC actions were taken.

Furthermore, Enterprise O&M Manual Abnormal Operation Procedures Section 801, dated 11/12/13 states, “Control Room Operations Supervision and/or the Location Supervisor will retain any available records that may be used to reconstruct the sequence of events surrounding an abnormal operation as defined in this section.” The PHMSA inspector asked for additional information on the AOC record, but Enterprise was not able to provide any. The Enterprise Location Supervisor responded, “this was a glitch in the system and we are working to fix it.”

Therefore, Enterprise failed to follow its abnormal operation procedures in their O&M Manual.”

Enterprise’s Response to Item 4

Enterprise contests this alleged violation, which states that the Company failed to produce records for a single abnormal operating condition (AOC). The AOC report produced during the inspection noted the event, but due to a programming/software issue the NOPV alleges that the log did not show “*what AOC condition was found or AOC actions were taken*” in the typical fields, although these entries were included in the notes section of the AOC work order. See Exhibit 3, *Enterprise Work Order 1782248 (with attachments)*.

Had the inspector conducted the PIPES Act-mandated follow up to the inspection, it would have been clear that the Company did indeed have documentation showing both the AOC condition found and actions taken. *Id.* The condition was a temporary loss of power which was corrected, and the alarms were cleared. The fields in the AOC report were present in the work order attachments section of the AOC work order, but they did not display on the report pulled during the initial inspection. The Supervisor had completed review of the action and closed out the AOC work order.

Enterprise complied with the requirement to document the AOC event and actions taken – pursuant to the AOC procedure in its O&M Manual, including Section 801 to retain available records – even though that information was included in the attachments section of the work order, instead of on the report. Since 2016, Enterprise’s software has been updated to account for this programming issue.

For the above reasons, Item 4 of the NOPV and the associated Proposed Civil Penalty of \$27,300 should be withdrawn or dismissed because Enterprise complied with 49 C.F.R. Part 195.402(a).

NOPV Item 5: §195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:

Then the frequency of inspection is:

Onshore

At least once every 3 calendar years, but with intervals not exceeding 39 months

“Enterprise failed to conduct an inspection of each pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every 3 calendar years, but with intervals not exceeding 39 months.

During the inspection, the PHMSA inspector reviewed Enterprise’s “EPROD Survey Report Atmospheric” atmospheric corrosion records from 1/1/11 to 12/30/15. The records for the pipeline segments below show that the interval between inspections exceeded the 39-month interval in two instances.

- 1. Segment Code: 03 Mundys to Duncansville” with the following inspection dates: 6/18/11 and 9/25/14 – 6 days’ past due*
- 2. Segment Code: 04 Duncansville to Jacks” with the following inspection dates: 6/25/12 and 10/6/15 – 10 days’ past due*

Therefore, Enterprise failed to inspect each pipeline for atmospheric corrosion, per §195.583(a).”

Enterprise’s Response to Item 5

This Item in the NOPV cites the Company for missing two atmospheric corrosion inspections on above ground pipe, by 6 and 10 days, respectively. When the inspections were conducted, no corrosion was found. As a result, no safety related issue occurred since no atmospheric deficiencies were identified at any of these locations. The Proposed Civil Penalty associated with this Item is relatively low (\$8,800), which is essentially the lowest penalty possible under the Agency’s guidelines. Consistent with that fact, the Agency’s own enforcement policy indicates that minor violations like this should be addressed through a Warning Letter, not a NOPV. This Item should be dismissed or converted to a Warning Letter item as a matter of policy.

NOPV Item 6: §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.

“Enterprise failed to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Enterprise failed to follow its written procedures for performing its pressure limiting and relief device inspections, per §195.428(a).

Enterprise O&M Miscellaneous Operating Procedures – Over Pressure Safety Devices Section 1305, dated 11/12/13 states, “In addition, the overpressure protection system must be inspected and tested, either actual or simulated, at the required overpressure protection set point...”

During the inspection of inspection unit 2464- Lou Tex, in Sorrento, Louisiana, the PHMSA inspector reviewed Enterprise TEC PSV INSP – Fagus Pressure Safety records, dated 2014 and 2015. The records showed the pressure relief valve data did not indicate a “Set Pressure (PSI)” for (9) pressure relief valves in 2014 and (6) in 2015. The PHMSA inspector asked Enterprise why the data was blank on the applicable records and Enterprise did not have a response.

Additionally, Enterprise failed to adequately document the “set pressure (PSI)” for relief valve settings on its 2015 and 2016 pressure safety valve (PSV) inspection records on the ATEX pipeline segments.

During the inspection of inspection unit 3051-Greensburg in Greensburg, Pennsylvania, the PHMSA inspector reviewed Enterprise O&M section 1305 – Miscellaneous Operating Procedures (Procedure) and “TEN PSV Insp” records for 2015 and 2016 (Records).

The Records did not record a “set pressure (PSI)” for the PSVs. Additionally, these records were not consistent with Enterprise A1 and A3 PSV inspection records reviewed during the inspection as they did not contain all data per the record forms. During the inspection, Enterprise was unaware of what value (PSI) these PSVs were tested at, or what pressure values these PSVs were left at.

During the inspection of inspection unit 3071-Dubois, in Watkins Glen, New York, the PHMSA inspector reviewed the following:

- 1. Enterprise O&M section 1305 – Miscellaneous Operating procedure, dated 11/12/13. (Procedure)*

2. *Enterprise 2014 through 2016 overpressure protection records for Moshannon, PA pump station*
3. *Enterprise “Maintenance Work Order Detail Report” for the spring 2014 inspection interval*

The Procedure states in part:

“...each inspection and repair is documented on the appropriate form to determine that it is functioning properly, in good mechanical/electrical condition, adequate from the standpoint of capacity and reliability of operation for the service in which it is used, set to function at the correct pressure and properly installed and protected from foreign materials or other conditions that might prevent proper operation.”

Neither the overpressure protection record nor the “Maintenance Work Order Detail Report” provided the following information required by the Procedure:

1. *Valve mechanical/electrical condition*
2. *Adequacy of capacity and reliability of operation*
3. *Functionality at the correct pressure*
4. *Proper installation and protection from foreign materials or other conditions that might prevent proper operation*
5. *Set pressure of device and set pressure as found*

Enterprise stated, “we are unable to produce a copy of the formal report (as shown in other pump stations/years) but the record is shown on the Maintenance Work Order Detail Report.”

Therefore, at inspection unit 2464-Lou Tex, inspection unit 3051-Greensburg, and inspection unit 3071-Dubois, Enterprise failed to follow its written procedures for performing inspections of overpressure protection devices.”

Enterprise’s Response to Item 6

The allegation in this Item is that field representatives could not produce all records requested during the inspections, in regard to pressure settings. The Company does have records associated with the Greensburg, Pennsylvania inspection unit, which represent 4 of the alleged 23 instances of violation. See Exhibit 4, *PSV Inspection Records, Greensburg, PA, Supporting Documents (2015-2016)*. The Company also has a portion of the records associated with the Watkins Glen, New York inspection unit, which represent 2 of the 23 alleged instances of violation. See Exhibit 5, *2015 Moshannon-Launching Barrel, Receiving Barrel-Inspection Reports*.

In addition, the allegations in this Item sound under PHMSA rule Part 195.428(a), not Part 195.402(a) as stated. The legal issue presented here is deficiency in the specificity of pleadings. Items 13 and 14 rely expressly on Part 195.428, showing that the Agency knew how to plead with specificity in this NOPV when it wanted to.

This Item also significantly overlaps with allegations in Item 7, which similarly sounded under Part 195.428 but did not propose a penalty. Items 6 and 7 should be combined as a NOA, without any assessed penalty.

Item 6 of the NOPV should be withdrawn, dismissed or converted to a NOA, with no civil penalty. Alternatively, the amount of penalty should be reduced in accordance with records produced and the Agency's proper application of its enforcement and civil penalty policy.

NOPV Item 7: §195.402 Procedural manual for operations, maintenance, and emergencies.

(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.

“Enterprise’s procedures for operating, maintaining and repairing the pipeline system in accordance with the requirements of this subpart and subpart H of this part are inadequate. Specifically, Enterprise procedures fail to provide sufficient guidance on how to conduct and document relief valve inspections as per §195.428(a).

During the inspection, the PHMSA inspector reviewed Enterprise’s Miscellaneous Operating Procedures Section 1305 Over Pressure Safety Devices, dated 11/12/13 (Procedure), and their pressure control inspection and testing records.

The Procedure states in part that:

“Each pressure limiting device, relief valve, pressure regulator, and other types of pressure control equipment (pressure transmitters, switches, PCVs) shall be inspected and tested at intervals not exceeding 15 months, but at least once each calendar year for crude oil and other non-HVL products and not exceeding seven and a half months, but at least twice each calendar year for HVL products, and each inspection and repair is documented on the appropriate form to determine that it is:

- 1. Functioning properly*
- 2. In good mechanical/electrical condition*
- 3. Adequate from the standpoint of capacity and reliability of operation for the service in which it is used.*
- 4. Set to function at the correct pressure*
- 5. Properly installed and protected from foreign materials or other conditions that might prevent proper operation.”*

Enterprise’s procedure Miscellaneous Operating Procedures Section 1305 does not provide sufficient guidance on conducting and documenting a relief valve inspection.

In order to ensure that a relief valve will relieve at the specified set pressure when needed, data is necessary on the condition of the valve prior to the inspection (“as found”), as well

as on the condition of the valve after the inspection is completed (“as left”). Information typically documented includes:

1. Relief pressure of the valve in the “as found” condition
2. Relief pressure of the valve in the “as left” condition
3. The “set pressure”

The Procedure did not include any requirements for capturing either the “as found” or “as left” pressure of a relief device. In addition, the procedure lacked details such as:

1. The criteria for determining acceptable “as-found” / “as left” relief pressures
2. The actions that must be taken if the relief valve “as-found” pressure does not meet the criteria
3. The definition of the term “set pressure”
4. The documentation required and where it must be recorded, for example:
 - a. The information that must be captured in the records
 - b. here the “as-found” and “as-left” pressures are recorded
5. How to ensure that the MOP will not be exceeded during testing of the relief device

Additionally, Enterprise failed to include guidance in its written procedures for overpressure safety devices. During the inspection of inspection unit 3071-Dubois, in Watkins Glen, New York, the PHMSA inspector reviewed Enterprise overpressure protection records for Gaines, PA pump station from 2014 through 2016. The records for the (2) overpressure valves inspections that were conducted in May and October, 2014 were inadequate as the set pressure was approximately +/-200 PSI higher/lower than the set pressure as found.

Enterprise O&M section 1305 – Miscellaneous Operating Procedures states, “...the overpressure protection system must be inspected and tested, either actual or simulated, at the required overpressure protection set point.” Enterprise records stated, all overpressure protection valves were marked “Y” for “Set Pressure Good” on the 2014 records.

The procedure, however, provided no guidance as to the criteria for determining the set pressure as well as the “as found” / “as left” relief pressures to assure the valves are in good mechanical condition and functioning properly.

Therefore, Enterprise procedure failed to provide sufficient guidance on how to conduct and document relief valve inspections as per §195.428(a).”

Enterprise’s Response to Item 7

There is no Proposed Civil Penalty attached to this Item, although it is subject to the Proposed Compliance Order. Similar to Item 6, although this Item is pleaded as a violation of Part 195.402, it relies on a different regulation: Part 195.428(a).

Enterprise believes that its current Quality Plan and corresponding procedure, which were in place prior to the issuance of this NOPV, satisfy PHMSA rules, including Part 195.428. See Exhibit 6, *Enterprise Quality Plan Form 1401*; Exhibit 7, *Enterprise Quality Plan Procedure EPC-MN-INS-1401*.

Items 6 and 7 should have been combined and converted to a NOA, with no penalty. To this end, the Company updated and revised its O&M written procedure 1305 to reference the inspection procedure and recordkeeping requirements. See Exhibit 8, *Enterprise O&M L1305 Overpressure Safety Devices*. Alternatively, Items 6 and 7 should be withdrawn or dismissed for failure to state a claim, since the Agency showed with Items 13 and 14 in this NOPV that it knew how to allege a violation of Part 195.428 when it wanted to.

NOPV Item 8: §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

“Enterprise failed to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, Enterprise failed to follow its Pipeline Hydrostatic Testing procedure for conducting pressure testing according to the requirements of §195.305.

During the inspection of inspection unit 2703-Seymour, in Seymour, Indiana, the PHMSA inspector reviewed the following:

- 1. Enterprise’s procedure for pressure testing (Pipeline Hydrostatic Testing - Standard 4507, dated November, 2012 (Procedure)*
- 2. Pipeline Hydrostatic Testing Documentation- Form 4507 Hydrostatic Test Report, for project name “P/L Integrity Assessment – AID 2453, LID P84- 4” Seymour to HWRT.” (Form 4507)*

The Procedure states in part:

Section 11.1 (6):

“All data shall be recorded on Form 4507. Pressures, temperatures, stroke counts, time, and all other data on the test section shall be clearly recorded, legible, and understandable...”

Section 15.1:

“(2) The following information shall be included and clearly labeled with the test report:

...

h. End time and date of “off” test with final pressure.

...

m. The name of the operator, the name of the person responsible for making the test and the name of the test company used (contractor – where applicable).”

Enterprise’s Hydrostatic Test Report, Form 4507, with a Start of Test Period dated 4/4/2013 failed to include the following:

- 1. End time and date of “off” test with final pressure*
- 2. The name of the person responsible for making the test*
- 3. The Company Representative who recorded the test and date*
- 4. The Test Director who approved the test and date*

Therefore, Enterprise failed to follow its written procedure.”

Enterprise’s Response to Item 8

The PHMSA inspector alleged in this Item that Enterprise failed to maintain unofficial handwritten field notes of a hydrostatic test on a small (less than one mile) segment of pipe in Indiana. The allegation is that the Company failed to comply with its internal procedure, Pipeline Hydrostatic Testing Procedure Standard 4507 (and thus Parts 195.402(a) and 195.305) by not including certain information from the hydrotest. Although not expressly stated in the above allegation, the issue raised by the inspector during the inspection was that all of the relevant information was not located in the field office; some of it was available at central offices and/or online.

There is nothing in Part 195 that requires all hydrotest information to be maintained at field locations. There is nothing in Enterprise’s internal written procedures that require all hydrotest information to be maintained in the field notes. Notably, the above allegation does not even expressly state that the concern was failure to retain hydrotest information at a field office.

Enterprise transcribed relevant field notes to its final hydrotest documentation, all of which was presented to the PHMSA inspector prior to issuance of the NOPV. This documentation contained the four items which PHMSA alleged were missing. *See Exhibit 9, May 23, 2013, Hydrostatic Testing Acceptance Letter from Kiefner to Enterprise for P84, attaching Pipeline Hydrostatic Testing Document Form 4507* (with information alleged to be missing by PHMSA highlighted on pp. 5-6).

Accordingly, Item 8 of the NOPV and the associated Proposed Civil Penalty of \$33,100 should be withdrawn or dismissed because Enterprise complied with Part 195.402(a), as a matter of fact and law.

NOPV Item 9: §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

“Enterprise failed to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, Enterprise failed to follow its procedure for maintaining records for emergency response training conducted in accordance with § 195.403(b)(1).

During the inspection of inspection unit 3051-Greensburg, Pennsylvania, the PHMSA inspector reviewed the following:

- 1. Enterprise’s O&M manual Section 905 – Emergency Procedures (Procedure)*
- 2. Emergency response training performance records for Greensburg, PA personnel for 2014 and 2015.*

The Procedure states in part that:

“The Company provides emergency response training utilizing internally approved instructors and/or approved third party emergency response training instructors/schools... This review is documented on form 905A and retained by Local Area Operations.”

The emergency response training for 2014 was documented in a spreadsheet and did not include the following information that is required on Form 905A:

- 1. Training topics*
- 2. Employee signature and date*
- 3. Supervisor signature and date*

Form 905A requires the following information to be completed:

- 1. Employee’s emergency response training checkboxes for (5) topical areas*
- 2. Employee signature and date*
- 3. Supervisor signature and date*

In email communication dated June 1, 2016, Enterprise stated, “Training form 905A and 905B are not available for IU 3051 for 2014. The Oracle Learning Management report is the only available record of the employees completing the annual emergency response training.

Therefore, Enterprise failed to follow its Procedure.”

Enterprise’s Response to Item 9

This Item alleges failure to produce records of emergency response training for two years at the Greensburg, PA facility, as required by Part 195.403(b)(1) and the Company’s written procedure for Emergency Response Training. Enterprise believed this issue had been resolved through the records produced during the inspection and communications with PHMSA following the inspection. Nevertheless, Enterprise is providing the 905A records with this Written Response. See Exhibit 10, *Training Forms 905A for Greensburg, PA personnel*. Training Form 905B records are for supervisors, and the individuals whose training records were requested were technicians, not supervisors, thus there was no relevant 905B records.

As noted elsewhere in this Response and the associated Statement of Issues, PHMSA should have pleaded this Item with more specificity (*i.e.*, as a violation under Part 195.403(b)(1), instead of Part 195.402(a)). The allegation does not go to the O&M Manual required by Part 195.402, but to the specific requirements of Part 195.403. If the concern was with the Company’s O&M Manual itself, then this should have been a NOA, not part of an NOPV.

Enterprise requests that this violation and the associated proposed civil penalty be withdrawn or dismissed.

NOPV Item 10: § 195.402(a) 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.

“Enterprise failed to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, Enterprise failed to follow its procedures for maintaining records for fire extinguisher inspections conducted in accordance with §195.430.

During the inspection of inspection unit 2464- Lou Tex in Sorrento, Louisiana, the PHMSA inspector reviewed the following:

- 1. Enterprise’s procedure, “EH&S Management System – Safety Policies Manual Section 5.2 – Fire Protection”, dated 3/9/12 (Procedure)*
- 2. Annual and monthly fire extinguisher records from 2013-2015 for the Laplace, LA. pump station.*

The Procedure states in part that:

*“a. ...Arrange for a State licensed contractor/representative to perform annual maintenance and recharging of fire extinguishers...
b. The annual inspection shall be documented on the "Annual Fire Extinguisher Guidelines" (SF01) form or an equivalent report provided by outside service.”*

The annual fire extinguisher inspections were documented as follows:

- 1. 1/4/2013 and 3/8/2015 - Form SF01.*
- 2. 12/4/2013 – United Fire and Safety Form.*

The United Fire and Safety form (UFS Form) was used to document the December 2013 inspections was not equivalent to the Enterprise Form SF01 that is required by the procedure. The UFS Form did not include the following information that was included on form SF01.:

- 1. Last hydrostatic testing date*
- 2. Next hydrostatic testing date*

In addition, the UFS Form dated 12/4/2013 did not include United Fire and Safety technician signature, or the Customer representative signature.

Therefore, Enterprise failed to follow its procedures for maintaining records for fire extinguisher inspections conducted in accordance with §195.430 for its 2014 annual fire extinguisher records.”

Enterprise’s Response to Item 10

Item 10 of the NOPV alleges that there was incomplete information recorded on a United Fire and Safety Form, concerning fire extinguisher inspections, and that the form used to document the December 2013 inspections was not “equivalent” to the Company’s SF01 form guidelines. The information that PHMSA alleges is missing on annual fire extinguisher inspection records is not required under PHMSA rules, including Part 195.430. Specifically, PHMSA rules do not require that the last or next hydrostatic testing date, nor the technician or customer representative signature, be included. *See 49 C.F.R. Part 195.430.* The third party inspector sends these forms in electronic format, without signature, and that is common. Thus, Enterprise requests that this violation and the associated proposed civil penalty be withdrawn.

As with several other Items in this NOPV, the alleged violation is trivial, and should have been addressed as a Warning Letter, not an NOPV, consistent with the Agency’s own enforcement guidelines and policy.

NOPV Item 11: § 195.404(a)(3) Maps and records.

(a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information;

...

(3) The maximum operating pressure of each pipeline

“Enterprise failed to maintain records of its pipeline systems that include the maximum operating pressure (MOP) of each pipeline.

During the inspection of Enterprise records and procedures in Houston, Texas and at field locations, the PHMSA inspector reviewed records for the MOP of jurisdictional pipeline segments. Enterprise’s idle line list dated 1/9/2017 included 32 pipelines.

- 1. The “Last Known MOP” was missing for 13 pipelines*
- 2. The “Install Date” was missing for 5 pipelines*

Enterprise stated, “the MOP is not calculated for idle pipelines.” Enterprise provided, “Idle Pipeline List”, dated 01/09/17. The record showed that there were 32 different pipeline line IDs identified as idle. The record stated, the “Last Known MOP”, “Install Date” and “Date Idle” were unknown for several pipeline segments. Furthermore, 13/32 pipeline line IDs have an unknown/missing MOP.

In an email dated 1/13/17, the PHMSA inspector requested a data list related to the MOP of all affected idle pipelines within the system inspection. Enterprise stated, “There are no further updates available to the Enterprise Idle Pipeline List provided on 1/10/17.”

Therefore, Enterprise failed to maintain records of its pipeline systems that included the MOP of each pipeline.”

Enterprise’s Response to Item 11

Enterprise contests this alleged violation, on the ground that Part 195.404(a)(3) does not require operators to conduct or maintain records of hydrotesting on idled lines. Item 11 alleges that Part 195.404(a)(3) requires pipeline operators to maintain records of maximum operating pressure (MOP) for idled lines; it does not.

Part 195.404 is about Maps and Records generally, and applicable to “*pipeline systems.*” That term is defined in the Agency’s regulations to mean those parts of a pipeline facility “...*through which hazardous liquids or carbon dioxide move in transportation....*” 49 C.F.R. Part 195.2. The term does not include idled or abandoned pipelines, no longer used in transportation. Recent PHMSA interpretive guidance emphasizes this point, explaining that “only pipelines that meet the applicability provisions in 195.1 are subject to Part 195” and finding that a pipeline that has been disconnected and purged with nitrogen “does not meet the applicability provisions of 195.1 and would not be subject to Part 195.” See *PHMSA Interpretation to Equistar Chemicals, LP* (Apr. 6, 2009).

The Company provided the PHMSA inspector with its list of idled lines, which included thirty-two separate line segments, thirteen of which did not list the pipeline MOP. The Company also provided the inspector with its internal procedures for abandonment of lines. See *PHMSA NOPV Pipeline Safety Violation Report (PSVR) Exhibits A08-A10*. Nowhere in those internal procedures is there a requirement to maintain MOP or hydrotest records for an abandoned or idled line. Enterprise further provided the PHMSA inspector with correspondence explaining the status of

the idled lines at issue and explaining why they do not require this information as supported by relevant PHMSA guidance and Enterprise procedures. That correspondence was notably not included nor acknowledged in the Agency's PSVR. See Exhibit 11, *Email from Enterprise (B. Yeung Vee Kao) to PHMSA (M. Valerio) (Jan. 17, 2017)*.

Although not cited in Item 11 of the NOPV, PHMSA's regulations at Part 195.59 and Part 195.402(c)(10) govern the abandonment of pipelines. There is no express requirement in those regulations for MOP to be maintained as a record for an idled or abandoned line. In 2016, the Agency issued an Advisory Bulletin "...to clarify the regulatory requirements for...abandonment of pipelines." See 81 Fed. Reg. 54512 (Aug. 16, 2016) (issued in response to directives from Congress in the PIPES Act of 2016, which is discussed at the outset of this Written Response). Significantly, PHMSA's Advisory Bulletin on abandoned or idled lines notes that "[a] purged pipeline presents different risks [than active or unpurged inactive lines], and different regulatory treatment may be appropriate.... PHMSA will accept deferral of certain activities for purged but still active pipelines." *Id.* (emphasis added). Consistent with this Advisory, Enterprise's O&M Procedure 5222 outlines the multiple reviews and actions required to ensure the integrity of a pipeline before an idled pipeline is returned to service, including verification of MOP. See Exhibit 12, *Enterprise O&M Procedure 5222. (Idling and Abandonment of Pipeline and Facilities)*

Most of the thirteen pipelines at issue were acquired in an idled state, already isolated, purged and physically disconnected from transportation systems. As such, these lines are not currently part of a "pipeline system" in transportation, subject to the requirements of Part 195.404(a)(3). As the Agency's Advisory Bulletin recommends and Enterprise's own internal O&M procedures require, various tests and confirmation of MOP would be conducted before any of these lines were returned to active service.

Item 11 of the NOPV and its proposed civil penalty should be withdrawn or dismissed as a matter of law and fact.

NOPV Item 12: § 195.420(b) Valve Maintenance.

(b) Each operator shall, at intervals not exceeding 7¹/₂ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

"Enterprise failed to inspect each mainline valve at intervals not exceeding 7¹/₂ months, but at least twice each calendar year, to determine that it is functioning properly.

During the inspection of inspection unit 2464-Lou Tex in Sorrento, Louisiana and inspection unit 12232-AR1 in Little Rock, Arkansas, the PHMSA inspector reviewed mainline valve records for the years 2013 – 2016. The records show that in 6 instances, Enterprise failed to inspect mainline valves twice per year and in 2 instances failed to inspect mainline valves at intervals not exceeding 7¹/₂ months.

Details for the mainline valve inspections conducted by Enterprise are as follows:

Inspection Unit 2464-Lou Tex (PHMSA inspection conducted on 9/15/16). Beaumont 6” Lateral 155MLV4-2B (152142): 4 instances

1. *2013 and 2014 – No records – Enterprise failed to inspect twice in 2013 and twice in 2014*
2. *Inspections were completed on the following dates*
 - a. *3/20/2015*
 - b. *9/17/2015*
 - c. *3/19/2016*
 - d. *9/15/2016*

Inspection Unit 12232-AR1 (PHMSA inspection conducted on 12/1/16). P77 VA04: 2 instances

1. *Inspections were completed on the following dates*
 - a. *4/15/2014*
 - b. *11/5/2014*
 - c. *5/7/2015*
2. *Inspection Due in 7.5 months from 5/7/2015 = 12/22/2015 – No Record – Therefore they failed to inspect twice in 2015*
3. *Inspection Due in 7.5 months from 1/1/2016 = 8/16/2016 – No Record – Therefore they failed to perform the first inspection of 2016*
4. *During the inspection, Enterprise stated, “the mainline valves were removed from service in July, 2016 however we do not have inspection records for missing 2015 and 2016 time periods*

P77 VA05: 2 instances (Unit 12232-AR1)

1. *Inspections were completed on the following dates*
2. *4/15/2014*
3. *11/5/2014*
4. *5/7/2015*
5. *Inspection Due in 7.5 months from 5/7/2015 = 12/22/2015 – No Record – Therefore they failed to inspect twice in 2015*
6. *Inspection Due in 7.5 months from 1/1/2016 = 8/16/2016 – No Record – Therefore they failed to perform the first inspection of 2016.*
7. *During the inspection, Enterprise stated, “the mainline valves were removed from service in July, 2016 however we do not have inspection records for missing 2015 and 2016 time periods*

Therefore, Enterprise failed to inspect its mainline valves per the requirements of §195.420(b).”

Enterprise’s Response to Item 12

Item 12 alleges that the Company violated mainline valve inspection intervals on eight occasions over a three-year period. Part 195.420(b) requires mainline valve inspections be conducted at least

twice each calendar year, not exceeding 7 and 1/2 month intervals. Enterprise advised the inspector that some of these valves were located on idled or abandoned lines, and the others were not mainline valves but hand valves inspected on a different inspection frequency. Thus, there was no violation evident in fact or law, as alleged. This NOPV Item and the associated proposed civil penalty should be withdrawn or dismissed in full.

Similar to Item 11, most of the valves referenced in the NOPV's Item 12 were on P77, an idled line. The remainder were not 'mainline' valves under the rule and the Company's written procedure. See Exhibit 13, *Enterprise O&M Procedure 1303 – Valves (Liquid)*; Exhibit 14, *PID Flow Diagram of Meter Skid Lateral Connection and Metering Station for Loutex Propylene Pipeline, Beaumont, Texas*. Specifically, Enterprise defines "DOT 195 Mainline Valves" as "[v]alves 3 inches or greater located on 49 CFR 195 jurisdictional hazardous liquids pipelines for isolation and use in the event of an emergency." *Id.* at 2.1. Likewise, Enterprise defines "DOT 195 Non-Mainline Valves" as "[v]alves 3 inches or greater located on 49 CFR 195 regulated piping, whose functionality is necessary for the continued safe operation of the pipeline but that are not used for isolation of pipeline segments or facilities in the event of an emergency." *Id.* at 2.2. Valve 155MLV4-2B is a hand valve, falling within the definition of a DOT 195 Non-Mainline Valve, and as such, the inspection frequency is only every two years, which Enterprise has met. See Exhibit 15, *Beaumont Non-Mainline Valve Inspections (2013-2016)*. Further, Enterprise provided the PHMSA inspector with the records demonstrating that it has conducted the 6-month inspections for the relevant mainline valves, particularly valve 155MOV7301. See Exhibit 16, *Beaumont Mainline Valve Inspections (2013-2016)*. Valve 155MOV7301 should have been shown originally as the mainline valve instead of 155MLV4-2B.

Item 12 of the NOPV and the associated proposed civil penalty should be dismissed or withdrawn in their entirety.

NOPV Item 13: §195.428 Overpressure safety devices and overfill protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

"Enterprise failed to conduct an inspection and test of each overpressure protection device at intervals not to exceed 7 ½ months, but at least twice each calendar year, as specified per §195.428. Specifically, Enterprise did not conduct an inspection and test of its HVL overpressure protection valves at Moshannon, PA pump station during the following periods:

- 1. Device # MOS377 Thermal bypass valve 001 receiving barrel – 1st inspection 2014, 1st inspection 2015, 2nd inspection 2015*

2. *Device # MOS377 Thermal bypass valve 002 launching barrel – 1st inspection 2014, 1st inspection 2015, 2nd inspection 2015*

During the inspection of inspection unit 3071-Dubois, in Watkins Glen, New York, the PHMSA inspector reviewed Enterprise 2014 through 2016 overpressure protection records for Moshannon, PA pump station. Enterprise was not able to provide any documentation of an inspection or test on each of the (2) overpressure protection valves for the 1st 2014 inspection, 1st 2015 inspection and 2nd 2015 inspection time intervals. The PHMSA inspector requested records and Enterprise stated, “Due to an issue with the work order system, the system failed to produce reports for the fall.” Enterprise provided, “Maintenance Work Order Detail Report” for the Moshannon, PA pump station overpressure protection valves; however, these records were dated March, 2016 and April, 2014, and therefore were not applicable to the time periods requested. Enterprise had no records which detailed the inspection and testing of the overpressure protection devices.

Therefore, Enterprise failed to conduct an inspection and test of each overpressure protection valve at intervals not to exceed 7 1/2 months but at least twice each calendar year, per the requirements of §195.428.”

Enterprise’s Response to Item 13

The allegation in Item 13 is that the Company failed to produce records of overfill protection device inspections twice a year (not to exceed 7 1/2 months), for a total of 6 inspections at the Moshannon PA pump station during 2014-2015. Some records were produced during the inspection. The Agency’s civil penalty worksheet for this Item does not reflect that, nor does it properly categorize the facts associated with this Item. Subsequent to the inspection, the Company located records associated with the Moshannon Station, which represent 2 of the alleged 6 instances of violation. See Exhibit 17, *2015 Moshannon-Launching Barrel, Receiving Barrel-Inspection Reports*. As such, the amount of proposed penalty for Item 13 should be reduced significantly.

NOPV Item 14: §195.428 Overpressure safety devices and overfill protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7 1/2 months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

“Enterprise failed to inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment at intervals not exceeding 15 months, but at least once each calendar year to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of

operation for the service in which it is used. Specifically, Enterprise failed in 11 instances to inspect and test pressure relief valves in 2015.

During the inspection of inspection unit 12232-AR1 in Little Rock, Arkansas, the PHMSA inspector reviewed P77 pressure relief valve inspections for 2013 and 2014. Enterprise did not have records for P77 for 2015. In an email dated 1/10/2017 PHMSA requested pressure relief records for 2015. Enterprise stated, “There are no PSV records for the P77 pipeline for 2015...” and “Enterprise does not have PSV inspection records for the P77 pipeline for 2015...”

Therefore, Enterprise failed to inspect and test each pressure relief valve in accordance with §195.428.”

Enterprise’s Response to Item 14

The allegation in Item 14 is that Enterprise failed to conduct timely inspections on pressure limiting devices on eleven occasions in 2015. The Item is based on the same regulation as Item 13 (Part 195.428), so a threshold issue is why these two sets of allegations were not combined as one, which should have resulted in a greatly reduced penalty computation. In addition, all alleged instances of violation in Item 14 related to an idled line, P77 – the same idled pipeline addressed in Items 11 and 12, which does not require valve inspections for the obvious reason that the lines were not in use. Item 14 of the NOPV and the associated proposed civil penalty should be withdrawn or dismissed in full.

NOPV Item 15: §195.404(c)(3) Maps and Records.

(c) Each operator shall maintain the following records for the periods specified:

...

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

“Enterprise failed to maintain a record of each inspection and test for at least 2 years or until the next inspection or test is performed. Specifically, Enterprise failed to maintain its monthly breakout tank records per the requirements of API Standard 653 Section 6.3.1.2, incorporated by reference §195.3(b)(19).

API Standard 653 Section 6.3.1 provides requirements for conducting Routine In-Service Inspections and Section 6.3.1.2 states that “The interval of such inspections shall be consistent with conditions at the particular site, but shall not exceed one month.”

During the inspection of inspection unit 12232-AR1 in Little Rock, Arkansas, the PHMSA inspector reviewed breakout tank monthly inspection records for the years 2013 to 2016 for the McRae, Arkansas breakout tank facility. There were no monthly inspection records for DOT-T1301 for January, February, March and April 2014. In an email dated December 20, 2016, the PHMSA inspector asked Enterprise to provide the missing records.

Enterprise responded in an email, dated January 3, 2017, stating “These records are missing.”

Enterprise failed to maintain documentation of monthly tank inspections for breakout tank DOT-T-1301 during March 2014, April 2014, and April 2015.

Therefore, Enterprise failed to inspect its breakout tanks per the requirements of API Standard 653 Section 6.3.1.2, incorporated by reference §195.3(b)(19).”

Enterprise’s Response to Item 15

The alleged violation in Item 15 is that Enterprise failed to comply with the requirements of Part 195.404, “Maps and Records.” That same regulation was relied on for the allegations in Item 11, but using a different subpart. The difference between the two different subsections of Part 195.404 is that subpart (a)(3) (Item 11) specifically requires retention of records regarding MOP (but does not apply to idled lines, which Item 11 mistakenly does), while subpart (c)(3) is a more general requirement to retain all records of inspections for at least two years – or until the next required inspection – whichever is longer.

PHMSA alleges in Item 15 that the Company failed to maintain records for Tank 1301 in McRae, Arkansas on several occasions in 2014 and once in 2015. As noted above, however, the applicable rule clearly states that such records only need to be maintained for two years or until the next tank inspection, whichever is longer. At the time of the PHMSA inspection, more than two years had passed for the two tank inspections referenced that occurred in 2014.

Accordingly, Item 15 of the NOPV should be revised to withdraw or dismiss all but one alleged violation of monthly tank inspection record retention in 2015, and the proposed civil penalty should be significantly adjusted downward for that reason.

NOPV Item 16: §195.432 Inspection of in-service breakout tanks.

...

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks according to API Std 653 (except section 6.4.3, *Alternative Internal Inspection Interval*) (incorporated by reference, see §195.3). However, if structural conditions prevent access to the tank bottom, its integrity may be assessed according to a plan included in the operations and maintenance manual under §195.402(c)(3). The risk-based internal inspection procedures in API Std 653, section 6.4.3 cannot be used to determine the internal inspection interval.

“Enterprise failed to inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks in accordance with API Standard 653, - Tank Inspection, Repair, Alteration, and Reconstruction, incorporated by reference in §195.3(b)(19). Specifically, Enterprise failed to inspect seven breakout tanks (BOTs) in accordance with API Standard 653.

API Standard 653 Section 6.4.2 provides requirements for conducting Internal Inspections. Section 6.4.2.2, “When corrosion rates are not known and similar service experience is not available to estimate the bottom plate minimum thickness at the next inspection, the internal inspection interval shall not exceed 10 years.”

During the inspection the PHMSA inspector reviewed Enterprise records and procedures for internal inspections of breakout tanks located at Texas, Illinois and Indiana facilities. Enterprise provided a spreadsheet titled PHMSA Break-Out Tank Data Form V3 which showed that seven tanks below were not internally inspected since the date of construction according to the table below:

<u>Tank Location</u>	<u>Tank Number</u>	<u>Date of Construction</u>
1. Baytown, TX	#DOT-T-643	1/1/2000
2. Beaumont, TX	#752	1/1/2002
3. Beaumont, TX	#757	1/1/2003
4. Creal Springs, IL	#DOT-T-17213	1/1/2001
5. Creal Springs, IL	#DOT-T-17261	1/1/2001
6. Creal Springs, IL	#DOT-T-17262	1/1/2001
7. Indianapolis, IN	#DOT-T-5106	10/12/2004

During the inspection, the PHMSA inspector asked for the internal inspection records for the seven specified breakout tanks. Enterprise stated, “there are no records for these breakout tanks as they are part of the final rule tanks.” Enterprise cited information from a prior PHMSA case, CPF #42012-5008M. From CPF #4-2012-5008M Enterprise’s amended procedure, “STD. 9503 – Inspection and Testing of Atmospheric and Low-Pressure DOT Breakout Tanks, dated October 2014”, as part of the Final Order, Enterprise stated it is following in accordance with Section 8.4(7) - “NOTE: All existing tanks for which the Enterprise Risk Based Inspection Program (RBIP) had previously been used to determine inspection intervals will be assessed for conversion to time/condition based intervals.”

In subsequent follow-up communication with Enterprise, Enterprise stated:

“In reference to the tanks in question, at the time of their construction (2000 – 2004) they were incorporated into the Enterprise RBI program as described in API Standard 653, 3rd Edition, Section 6.4.3, which states, ‘As an alternative to the procedures in 6.4.2, an owner-operator may establish the internal inspection interval using risk-based inspection (RBI) procedures.’ Accordingly, Enterprise did not plan a 10-year interval (as referenced in API Standard 653, 3rd Edition, Section 6.4.2.2) for the initial internal inspection. As a result of the Final Order negotiated with PHMSA, Enterprise transitioned to the non-RBI approach described in API 653, 3rd Edition, Section 6.4.2 and the tanks were assigned the maximum initial interval (10 years) permitted by API 653, 3rd Edition, Section 6.4.2.2, for tanks with unknown corrosion rates and no similar service experience. In all cases, the new 10-year interval resulted in internal inspection due dates being past due. The tentative inspection schedule below represents the feasible operational availability of the tanks and will be adhered to as closely as possible...”

The seven specified breakout tanks are neither included, nor related to the final order (Order Directing Amendment) referenced by Enterprise (CPF #4-2012-5008M). Enterprise failed to conduct the initial internal inspection on the seven breakout tanks within the required timeframe. The seven breakout tanks are out-of-compliance by a range of 2 – 7 years.

<u>Tank Number</u>	<u>Date of Construction</u>	<u>Time Out of Compliance</u>
#DOT-T-643	1/1/2000	>7 years
#752	1/1/2002	>5 years
#757	1/1/2003	>4 years
#DOT-T-17213	1/1/2001	>6 years
#DOT-T-17261	1/1/2001	>6 years
#DOT-T-17262	1/1/2001	>6 years
#DOT-T-5106	10/12/2004	>2 years

Thus, Enterprise failed to inspect seven breakout tanks at the required intervals, per the requirements of API Standard 653, 3rd Edition, Section 6.4.2.”

Enterprise’s Response to Item 16

Item 16 of the NOPV is completely unfounded. It alleges a failure by Enterprise to inspect 7 breakout tanks (3 in Texas, 3 in Illinois and 1 in Indiana) within the time frame established by the recent rule change moving from a risk based tank inspection schedule to 10 year intervals.

In fact, the Company completed inspections of the 4 tanks in Illinois and Indiana within the new timeframes or otherwise decommissioned those tanks prior to the deadline. See Exhibits 18 and 19, *Tank Consultants, Inc. Inspection Reports for Creal Springs, IL and Indianapolis, IN tanks, respectively*. The 3 tanks in Texas are subject to an inspection schedule agreed to with PHMSA’s Southwest Region Director before this NOPV issued. See Exhibit 20, *SW Region Tank Schedule*. In addition, as will be shown at the Hearing, the Inspector failed to recognize which versions of API Standard 653 (incorporated by reference to Part 195.432), were applicable to the tanks identified (the standards vary by time of construction).

Notably, the majority of the tanks referenced in the NOPV have either already been tested or decommissioned; the only remaining tanks in issue are located within PHMSA’s Southwest Region. As stated in the NOPV itself, prior to the inspections giving rise to this NOPV, Enterprise approached PHMSA’s Southwest Region about the effect of the Agency’s change to the incorporation by reference to the 3rd Edition of API Standard 653, at Part 195.432. Prior to that rule change, Part 195.432 allowed pipeline operators to schedule internal testing of breakout tanks under Part 195.432 on a risk based interval, which allowed new tanks to deviate from the initial 10 year inspection per section 6.4.3 in reliance on a prior version of API Standard 653, 2nd Edition. When the Agency changed the incorporation by reference to the 3rd version of API 653, it abandoned risk based testing schedules in favor of rigid timetables. That change in rule caught large operators with numerous tanks by surprise, creating a significant challenge to schedule testing in a short time frame. Those pipeline operators with large numbers of breakout tanks were suddenly subject to a very accelerated schedule of tank inspections, to be concluded no later than

January 5, 2017. *49 C.F.R. Part 195.432(b)(1)(i)*. Enterprise was one of several such operators with a large number of tanks in issue.

For reasons of product flow demand, and due to limited contractor availability, operators such as Enterprise simply could not schedule all breakout tanks for testing after the rule change, to complete all testing by January 5, 2017. As a result, Enterprise and other operators discussed these impacts with PHMSA Headquarters and several PHMSA Regions. More specifically, Enterprise voluntarily and proactively approached the Regional Director of PHMSA's Southwest Region on October 19, 2015 – prior to the January 2017 deadline – about the tank testing issue and a revised schedule of testing. As the government's own Exhibits to the NOPV show, the Company produced records of testing, risk assessments and a proposed schedule to complete tank testing by end of year 2019. The Regional Director of the Southwest Region agreed to that approach. *See Exhibit 21, Email from PHMSA (R. Seeley, Regional Director of Southwest Region) to Enterprise (J. Morton) (Dec. 28, 2015)*. Significantly, Enterprise put all other tanks in its system on an accelerated inspection schedule.

In May of 2016, while the inspection underlying this NOPV was in progress, Enterprise management voluntarily flew to New Jersey to meet with the then Director of the Eastern Region to discuss the agreement with the Southwest Region, regarding the negotiated schedule for completing tank testing. The Enterprise representatives who attended those meetings were assured that the tanks that were addressed in the agreement with the Southwest Region should be out of the scope of this inspection, but did request a high level schedule to understand the master plan. The Eastern Region Director also acknowledged that integrated inspections can create a gray area since they cross multiple regions.

Courts have reversed agencies where they have invoked rules inconsistently. *See e.g., Green Cty. Mobilephone, Inc. v. FCC*, 765 F.2d 235, 237 (D.C. Cir. 1985) (“We reverse...because the Commission has invoked the rule inconsistently...[O]nce an agency agrees to allow exceptions to a rule, it must provide a rational explanation if it later refuses to allow exceptions in cases that appear similar.”).

Item 16 of the NOPV ignores the record by failing to note those tanks that had been inspected consistent with the revised rule, by neglecting to acknowledge the agreement with the Southwest Region on this issue, and by ignoring voluntarily discussions and understandings reached between Enterprise and the Eastern Region.

For these reasons, as a matter of law and fact, PHMSA should withdraw or dismiss Item 16, the associated proposed penalty and proposed Compliance Order in their entirety

NOPV Item 17: §195.579 What must I do to mitigate internal corrosion?

...

(d) Breakout tanks. After October 2, 2000, when you install a tank bottom lining in an aboveground breakout tank built to API Spec 12F (incorporated by reference, see §195.3), API Std 620 (incorporated by reference, see §195.3), API Std 650 (incorporated by reference, see §195.3), or API Std 650's predecessor, Standard 12C, you must install the lining in accordance with API RP 652 (incorporated by reference, see §195.3). However, you don't need to comply with API RP 652 when installing any tank for which you note in the corrosion control procedures established under §195.402(c)(3) why compliance with all or certain provisions of API RP 652 is not necessary for the safety of the tank.

“Enterprise failed to demonstrate that its breakout tank linings were installed, per the requirement §195.579(d). Enterprise did not maintain records and documentation that showed compliance with the requirement.

During the inspection of inspection unit 12232-AR1, in Little Rock, Arkansas, the PHMSA inspector requested records for breakout tank lining installations for all applicable McRae and North Little Rock, Arkansas breakout tanks. Enterprise provided, PHMSA breakout tank data form, received 05/21/16. The record showed the following breakout tanks with a thin-film lining:

- 1. DOT-T-1301*
- 2. DOT-T-1302*

The regulation §195.579(d) states, “when you install a tank bottom lining in an aboveground breakout tank built to API Spec 12F, API Std 620, API Std 650, or API Std 650's predecessor, Standard 12C, you must install the lining in accordance with API RP 652.”

Enterprise provided, “McRae Tank 1302 INT Lining” record, dated 2006. Additionally, Enterprise provided, “Tank 1301 API-653 Post Job Inspection Report”, dated 6/25/07 and “Tank 1301 Recommended Repair Checklist”, dated 6/14/06.

These records however, failed to provide any documentation that the installation was performed in accordance with API RP 652. In an email dated 10/21/16, Enterprise stated, “There is no additional documentation related to determining the suitability of the breakout tank lining installation for breakout tank 1301 (IU 12232 McRae facility).”

Therefore, Enterprise failed to provide adequate records to demonstrate that the tank linings on breakout tanks DOT-T-1301 and DOT-T-1302 were installed, per the requirement of §195.579(d).”

Enterprise's Response to Item 17

Enterprise contests this alleged violation because the Company fully complied with 49 C.F.R. Part 195.579(d) for relevant internal corrosion requirements for aboveground breakout tank liner installations. With respect to the two instances of alleged violation in the NOPV, breakout Tank 1301 did not require a tank liner, and in regard to Tank 1302 the Company maintains all records required by API 652. *See Exhibits 22 and 23, McRae Tank 1301 and McRae Tank 1302 records.*

In 2007, Enterprise replaced the full tank bottom of Tank 1301 which contained diesel product, and conducted an initial ten year inspection. Pursuant to the API 652 version incorporated at the time, a tank bottom liner was not required for the storage of diesel product. *API 652 2nd Ed.* In addition, no credit for a liner was given or taken in the establishment of a next inspection interval; *API 652 2nd Ed.* requires a 10 year inspection interval for situations where corrosion rates are unknown, such as when a new bottom is installed. *Id. at 6.4.2.2.* As such, the replacement meets the criteria of API 652, and is consistent with Part 195.579(d) regarding what records are required to be retained. *See Exhibit 24, McRae Tank 1301 records.*

With respect to Tank 1302, Enterprise installed the liner in 2006 and complied with all *requirements* (as opposed to non-binding recommendations) of API 652 specific to a 15 year liner as demonstrated by the documentation provided to the PHMSA inspector. *See Exhibit 25, McRae Tank 1302 records* (including the use of abrasive blasting to achieve a surface profile for coating, use of thin film epoxy liners as coating, etc.); *API 652 2nd Ed. at 6.2, 7.1, 8.2, 8.4, 8.5, 9.3.1.2, and 9.3.1.3.*

For these reasons, NOPV Item 17 and the associated proposed penalty should be withdrawn or dismissed.

NOPV Item 18: §195.402 Procedural manual for operations, maintenance, and emergencies. **(excerpt below from NOPV)**

(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.

“Enterprise failed 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, Enterprise failed to provide adequate guidance to inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion as per §195.583(a) and provide records of each atmospheric corrosion inspection in sufficient detail to demonstrate the adequacy of corrosion control measures as per §195.589(c).

...

After the inspection, Enterprise provided remedial action taken based on their atmospheric inspection conducted on 4/27/2016 (email correspondence dated December 19, 2016). The three pipe segments connected to breakout tank 3013 were also coated during the remedial

action. Enterprise did not provide information that addressed atmospheric corrosion of the two pipe segments connected to breakout tank 3014.

Therefore, Enterprise failed to prepare and follow a manual of written procedures for conducting normal operations and maintenance activities, specifically pipeline segments that were exposed to the atmosphere.”

Enterprise’s Response to Item 18

Contrary to the allegations in NOPV Item 18, Enterprise’s corrosion control procedures comply with PHMSA regulations regarding atmospheric corrosion control inspections and associated documentation, at 49 C.F.R. Parts 195.583 and 195.589. *See Exhibit 26, Atmospheric Corrosion Inspection Procedure CPP-PCL-01 (rev. 12/3/15).* Further, the procedures provide sufficient guidance and detail regarding atmospheric corrosion inspections of aboveground facilities and exceed the minimum regulatory requirements in certain respects. *Id.* The alleged deficiencies in the NOPV are not something required by PHMSA rules, which leave it to an operator’s discretion to prepare corrosion control procedures to meet the rule’s minimum requirements. The alleged deficiencies are likewise not found in any PHMSA guidance.

The inspector misinterpreted both the applicable law and Enterprise’s written procedures regarding Item 18. PHMSA should withdraw or dismiss NOPV Item 18 and the associated proposed compliance order item. At most, this NOPV Item should have been brought as a Notice of Amendment as provided under PHMSA’s internal enforcement procedures, which state that a NOA is appropriate where “PHMSA has identified apparent inadequacies in the operator’s plans or procedures, and advises the operator to correct them.” *See Pipeline Safety Enforcement Procedures, Section Sec. 3.1.3.1, p. 5 (Jun. 29, 2017).* Similar to PHMSA’s alleged deficiency in NOPV Item 18 that the procedures “failed to provide adequate guidance,” the Agency’s internal procedures clarify that procedural deficiencies appropriate for an NOA include procedures which provide instructions for compliance in a “vague, general or conflicting manner that offers little or no practical or meaningful guidance.” *Id.*

SUMMARY

The Eastern Region of PHMSA issued this 18 Item NOPV to Enterprise in January of 2018, based on multi-state and cross-Region inspections conducted over eight months in 2016. The Agency also issued a multi-itemed Warning Letter (WL) and a multi-itemed Notice of Amendment (NOA) to the Company in 2017, based on the very same inspections.

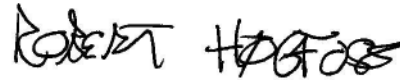
As issued, the NOPV is surprising in that it relies on numerous misunderstandings about applicable law or material facts. As such, many Items in the NOPV fail to meet the Agency’s burden of proof, on matters such as alleging violations on idled lines which are not subject to the claims asserted, ignoring applicable law regarding tank standards and failing to note other critical information and facts presented or made available. Pursuant to the Agency’s own enforcement policies, many of the items should have been included in a WL or NOA, not a NOPV.

The most egregious failing in the issuance of this NOPV is that it failed to comply with a clear directive issued by Congress in the PIPES Act amendments of 2016. Those amendments require the Agency to conduct a post inspection briefing within 30 days after inspection, and provide a

written report of recommendations within 90 days. That requirement became effective while these inspections were ongoing, and the Agency provided other operators with the required briefings and reports while the Enterprise inspections were underway. Enterprise was entitled to such a briefing and report, but none was provided. Had that occurred, many, if not all, of the allegations contained in this NOPV could have been resolved, as Congress intended. That would have saved all parties considerable time and resources. The parties have an opportunity to redress that omission through this Hearing, however, and Enterprise is hopeful that can be done in a cooperative and efficient manner.

For the reasons set forth in the Statement of Issues and the above Written Response, Enterprise requests that a number of the Items in this NOPV be withdrawn or dismissed, along with associated proposed penalties and proposed compliance orders. Where withdrawal or dismissal is not warranted, Enterprise requests a downward adjustment of penalties, and recognition that come of the proposed compliance order items are now moot.

Respectfully Submitted,



TROUTMAN SANDERS LLP

Catherine Little, Esq.
Robert E. Hogfoss, Esq.
Annie Cook, Esq.
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308
(404) 885-3055

**ENTERPRISE PRODUCTS
OPERATING LLC**

1100 Louisiana Street, 10th Floor
Houston, Texas 77002
(713) 381-6500

Date: April 20, 2018

List of Exhibits

1. *Enterprise CPM O&M Manual*
2. *Enterprise CPM Performance Reviews, 2014-2016*
3. *Enterprise Work Order 1782248 (with attachments)*
4. *PSV Inspection Records, Greensburg, PA, Supporting Documents (2015-2016)*
5. *2015 Moshannon-Launching Barrel, Receiving Barrel-Inspector Reports*
6. *Enterprise Quality Plan Form 1401*
7. *Enterprise Quality Plan Procedure EPC-MN-INS-1401*
8. *Enterprise O&M L1305 Overpressure Safety Devices Procedure*
9. *May 23, 2013, Hydrostatic Testing Acceptance Letter from Kiefner to Enterprise for P84, attaching Pipeline Hydrostatic Testing Document Form 4507*
10. *Training Forms 905A for Greensburg, PA personnel*
11. *Email from Enterprise (B. Yeung Vee Kao) to PHMSA (M. Valerio) (Jan. 17, 2017)*
12. *Enterprise O&M 5222*
13. *Enterprise O&M Procedure 1303 – Valves (Liquid)*
14. *PID Flow Diagram of Meter Skid Lateral Connection and Metering Station for Loutex Propylene Pipeline, Beaumont, Texas*
15. *Beaumont Non-Mainline Valve Inspections (2013-2016) (Beaumont 6 Lateral 155-MVL4-2B)*
16. *Beaumont Mainline Valve Inspections (2013-2016) (Arkema 155MOV730)*
17. *2015 Moshannon-Launching Barrel, Receiving Barrel-Inspector Reports*
18. *Tank Consultants, Inc. Inspection Reports for Creal Springs, IL*
19. *Tank Consultants, Inc. Inspection Reports for Indianapolis, IN tanks*
20. *SW Region Tank Schedule*
21. *Email from PHMSA (R. Seeley, Regional Director of the Southwest Region) to Enterprise (J. Morton) (Dec. 28, 2015)*
22. *McRae Tank 1301 records*
23. *McRae Tank 1302 records*
24. *Enterprise Atmospheric Corrosion Inspection Procedure CPP-PCL-01 (rev. 12/3/15)*