OCT 12 2010

Mr. Michael A. Creel
President and Chief Executive Officer
Enterprise Products Partners, LP
1100 Louisiana Street, 10th Floor
Houston, TX 77002

Re: CPF No. 3-2005-5018

Dear Mr. Creel:

Enclosed please find the Decision on the Petition for Reconsideration filed by TE Products Pipeline Company, LLC, (TEPPCO) now part of Enterprise Products Partners, in the above-referenced case. The Decision grants TEPPCO's petition in part, denies it in part, and reduces the total civil penalty to $325,000. The terms of the Final Order are now in effect, including the assessment of the reduced penalty. Pipeline and Hazardous Materials Safety Administration (PHMSA) also acknowledges receipt of a check from TEPPCO in the amount of $345,903.25 on June 2, 2009.

By copy of this letter, I have informed the Federal Aviation Administration (FAA), Financial Operations Division, of the reduction in the penalty and the need for the FAA to refund $20,000, plus any applicable penalty and interest paid by TEPPCO in this case. If you should have any questions about this, please contact the FAA at (405) 954-8893 or (405) 954-2685.

Service of this document by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. David Barrett, Director, Central Region, PHMSA
Mr. Vincent Atriano, Esq., Squire, Sanders & Dempsey L.L.P.,
2000 Huntington Center, 41 South High Street, Columbus, OH 43215

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [70051160000100456808]

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

In the Matter of	)	
Enterprise Products Partners, LP (f/n/a Texas Eastern Petroleum Products Company),	)	**CPF No. 3-2005-5018**
Petitioner.	)	

DECISION ON PETITION FOR RECONSIDERATION

On February 27, 2009, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Final Order in this case, finding that TE Products Pipeline Company, LLC, formerly known as Texas Eastern Petroleum Products Company (TEPPCO or Petitioner), had committed 10 violations of the hazardous liquid pipeline safety regulations and assessing civil penalties for nine of the violations. This proceeding arose out of a June 28, 2002 incident at Petitioner's Todhunter facility in Middletown, Ohio (Todhunter Accident). The incident involved the release of butane vapors during the course of a header piping modification tie-in project that exposed several workers to toxic butane vapors. One of the workers was overcome by fumes and subsequently died from butane asphyxiation.

PHMSA initiated an investigation of the Todhunter Accident and subsequently issued a Notice of Probable Violation and Proposed Civil Penalty to Petitioner by letter dated April 25, 2005 (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Petitioner had committed violations of 49 C.F.R. Part 195 and assessing a total civil penalty of $350,000. Petitioner responded to the Notice by letters dated June 30, 2005, and March 17, 2006 (collectively, Response) and waived its right to an informal hearing. By merger effective October 26, 2009, TEPPCO became a wholly owned subsidiary of Enterprise Products Partners, LP, the current owner and operator of the pipeline facilities that are the subject of this proceeding.[1]

[1] 2009 Annual Report, Enterprise Products Partners, LP (http://www.epplp.com/pdf/epd-ar-2009.pdf) (last accessed 9/22/10).

The Final Order found Petitioner in violation of all 10 Items alleged in the Notice and assessed a total civil penalty of $345,000.[2] TEPPCO responded to the Final Order, as permitted under § 190.215, by submitting a petition for reconsideration dated April 1, 2009 (Petition).[3] In its Petition, TEPPCO did not challenge the findings of violation in the Final Order but requested reconsideration of the penalty amounts assessed for four of the nine violations. These four violations are as follows:

- (Item 2C) TEPPCO's violation of 49 C.F.R. § 195.402(a), for failing to follow its own written procedures providing Emergency Plan training to the three workers involved in the Todhunter Accident. The Final Order assessed a penalty of $60,000 for this Item;

- (Item 2D-1) TEPPCO's violation of 49 C.F.R. § 195.402(a), for failing to follow its own written procedures for utilizing Section 3.2(e) of API Publication 2200, *"Repairing Crude Oil, LPG and Products Pipelines,"* that required the development of a written work plan for conducting repairs. The Final Order assessed a penalty of $60,000 for this Item;

- (Item 2D-2) TEPPCO's violation of 49 C.F.R. § 195.402(a), for failing to follow its own written procedures for utilizing Section 6.2(k) of API Publication 2200 for combustible gas testing and monitoring at the worksite. The Final Order assessed a penalty of $40,000 for this Item; and

- (Item 3B) TEPPCO's violation of 49 C.F.R. § 195.403(c), for failing to verify that the supervisor involved in the Todhunter Accident had maintained a thorough knowledge of the company's applicable operations, maintenance, and emergency procedures. The Final Order assessed a penalty of $60,000 for this Item.

Petitioner asserts that the penalties cited above are excessive because the Notice only alleged violations occurring on June 28, 2002, the day of the Todhunter Accident, but that PHMSA was limited as of the date of the accident to imposing penalties of not more than $25,000 per day of violation. TEPPCO therefore contends that each of these penalties should be reduced to an amount not exceeding the $25,000 per-day limit.[4]

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[2] In the Final Order, the penalty for Item 2A of the Notice was reduced from the proposed amount of $30,000 to $25,000. This was because the Notice had only alleged a single-day violation (i.e., June 28, 2002) and therefore the penalty was limited to the $25,000 per-day cap discussed more fully below. This reduced penalty for Item 2A served to reduce the total penalty assessed from $350,000 to $345,000.

[3] Section 190.215 provides that a petitioner may request the Associate Administrator to reconsider a final order. Under such review, the Associate Administrator does not consider repetitious information, arguments, or petitions, but may consider additional facts or arguments, provided that the petitioner submits a valid reason why such information was not presented prior to issuance of the final order. The Associate Administrator may grant or deny, in whole or in part, a petition for reconsideration without further proceedings.

[4] *Petition* at 1. The maximum statutory penalties were raised to $100,000 per day for each day of violation, up to a maximum of $1,000,000 for any related series of violations by the Pipeline Safety Improvement Act of 2002, Pub. L. 107-355, § 8(b)(1), 116 Stat. 2992 (December 17, 2002). Petitioner urges PHMSA to reduce the total penalty in this case from $345,000 to $205,000. This is apparently based on the fact that the Final Order stated the penalties for Items 2C/3A, 2D-1, 2D-2 and 3B were for multiple-day violations and calculated at a rate of $20,000 per day for each violation. *Final Order* at 10-11.

Discussion

In its Petition, TEPPCO makes two related arguments for a reduction in the four penalties. First, it asserts that the Notice alleged only single-day violations and that any suggestion in the Final Order to convert them into multiple-day or continuing violations "would have constituted 'new material allegations' to which [TEPPCO] would have been entitled to formally respond under [49 C.F.R.] § 190.207(c)." To support its argument, Petitioner points to the Violation Report prepared by the PHMSA Central Region, the document that served as the principal evidence in the case file and the basis for the Notice and the proposed penalties.

Petitioner relies largely upon a sentence in Section 23b of the Violation Report, "Analysis of Proposed Remedy," where it states: "Fines: Other than the Accident Report, the durations are one (1) day."[5] Petitioner contends that this statement, along with the failure of the Notice to specifically allege multiple-day violations, precludes PHMSA from finding TEPPCO in violation of each of the four Items for more than a single day and from imposing more than a total of $25,000 per violation.

Petitioner asserts that the statement quoted above from the Violation Report shows that, except for Item 1 dealing with TEPPCO's alleged failure to file a timely Accident Report after the accident, the Violation Report and the Notice only encompassed single-day violations. In order for the agency to impose penalties for multiple-day violations in the Final Order, TEPPCO asserts that it either had to allege multiple-day violations in the Notice or, under 49 C.F.R. § 190.207(c), provide TEPPCO with fair notice of such "new" allegations and "increased" penalties. Section 190.207(c) states:

> (c) The Associate Administrator, OPS may amend a notice of probable violation at any time prior to issuance of a final order under § 190.213. If an amendment includes any new material allegations of fact or proposes an increased civil penalty amount or new or additional remedial action under § 190.217, the respondent shall have the opportunity to respond under § 190.209.

According to Petitioner, because PHMSA never amended the Notice "to allege that these Items were continuing, multiple-day violations prior to issuance of the Final Order, [TEPPCO] was never given an opportunity to respond to any such allegations."[6]

Petitioner is partially correct. First, PHMSA acknowledged in the Final Order that all of the proposed penalties at issue in this case were subject to the $25,000 per-day limit in effect at the time of the Todhunter Accident.[7] In addition, the agency acknowledges that it is unclear from

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[5] Office of Pipeline Safety, Hazardous Liquid Pipeline Safety Violation Report, CPF No. 3-2005-5018 (Violation Report), at 13.

[6] *Petition* at 5 (unnumbered).

[7] *Final Order* at 9.

the record how the proposed penalties in the Violation Report were actually calculated or why the Violation Report contained the statement, insofar as the penalties were concerned, that "[o]ther than the Accident Report, the durations are one (1) day."[8] It is unclear whether this statement was meant to characterize the duration of the violations themselves or whether it was meant to describe the methodology by which the penalties were calculated.

Regardless, Petitioner contends that the four penalties are contrary to law and should be reduced. Petitioner is correct that 49 C.F.R. § 190.207(c) requires that if new factual allegations, penalties or compliance terms are added after issuance of a Notice of Violation, then it must be amended or re-issued. The initial question, however, is whether the quoted statement from the Violation Report, in conjunction with the allegations of violation in the Violation Report and Notice, constitute allegations of single-day or multiple-day violations. Petitioner argues that the Final Order, by imposing multiple-day penalties for single-day violations described in the Violation Report and Notice, violates the notice provisions of 49 C.F.R. § 190.207(c).

In order to evaluate Petitioner's argument, it is necessary to consider the facts alleged in the Notice and the Violation Report for each of the four Items. Each is discussed separately below.

Item 2C. The Violation Report and Notice alleged that TEPPCO violated 49 C.F.R. § 195.402(a) by failing to follow its own written procedures for providing Emergency Plan training to the contract workers involved in the Todhunter Accident. The Violation Report alleged that TEPPCO's procedures called for such training to take place as soon as reasonably possible after an employee commenced work or was transferred. It is apparent from the facts alleged in the Notice that the violation was not limited to a single day and that TEPPCO had adequate notice the alleged violation was ongoing from the time the contract employees were hired for this project. In addition, both documents proposed a penalty of $60,000 for the violation, an amount no higher than what was ultimately assessed. At no time did PHMSA allege any new material allegations of fact or propose any new penalties or corrective actions that would necessitate an amended Notice or an additional opportunity for TEPPCO to respond, as required under § 190.207(c). Accordingly, I find that the penalty assessed in the Final Order for Item 2C does not violate 49 C.F.R. § 190.207(c).

Item 2D-1. The Violation Report and Notice alleged that TEPPCO violated 49 C.F.R. § 195.402(a) by failing to utilize Section 3.2(e) of American Petroleum Institute (API) Publication 2200, entitled "Repairing Crude Oil, LPG and Products Pipelines," as required by Procedure M-245 of TEPPCO's own Operating and Maintenance Procedures. The API standard requires the development of a written work plan for repairs, including proper drain-down procedures and equipment. Petitioner has not disputed the fact that the project was commenced on June 26, 2002, two days prior to the accident, that the company failed to establish or follow the required procedures from the time the work commenced, and that the noncompliance continued during the days of June 26, June 27, and June 28 (the day of the incident). The Violation Report and Notice are worded in such a way that it is clear the alleged violation was not limited to a single day and that Petitioner's failure to develop a written work plan continued over multiple days of construction. In addition, both documents proposed a penalty of $60,000

[8] Office of Pipeline Safety, Hazardous Liquid Pipeline Safety Violation Report, CPF No. 3-2005-5018 (Violation Report), at 13.

for the violation, an amount no higher than what was ultimately assessed. At no time did PHMSA allege any new material allegations of fact or propose any new penalties or corrective action that would necessitate an amended Notice or an additional opportunity for TEPPCO to respond, as required under § 190.207(c). Accordingly, I find that the penalty assessed in the Final Order for Item 2D-1 does not violate 49 C.F.R. § 190.207(c).

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Item 2D-2. The Violation Report and Notice alleged that TEPPCO violated 49 C.F.R. § 195.402(a) by failing to utilize Section 6.2(k) of API Publication 2200, as required by Procedure M-245 of TEPPCO's own Operating and Maintenance Procedures. Section 6.2(k) requires that an excavation and its surrounding area be tested and continuously monitored with a combustible gas indicator, an oxygen monitor, or both, to determine whether the atmosphere is safe in which to work. The Notice and Violation Report both alleged that at the time of the Todhunter Accident, neither a combustible gas indicator nor an oxygen monitor was in use at the worksite.

The Violation Report and Notice further alleged that on Friday, June 28, 2002, combustible gas indicator and oxygen monitor readings were taken at the site, that TEPPCO subsequently suffered a butane release later that day, and that the company failed to follow its procedure requiring continuous gas monitoring. Neither document states or implies that the failure to monitor continuously extended throughout the project or for multiple days. No evidence was provided by OPS to show a continuing violation. While both documents state that readings were taken on June 28,[9] this is insufficient information to provide Petitioner with adequate notice that OPS considered the violation to be continuing in nature and extending over multiple days.

In its Petition, TEPPCO argues that the penalty for Item 2D-2 should be reduced to $20,000 since the Final Order stated that the proposed penalty of $40,000 was based upon a two-day violation at $20,000 per day.[10] While it is possible that the violation did continue for two or more days and that the larger penalty is warranted, I consider it appropriate under the circumstances to leave the Final Order intact on this issue. Accordingly, I find that the penalty assessed in the Final Order for Item 2D-2 is contrary to 49 C.F.R. § 190. 207(c) and therefore I reduce the penalty to $20,000, the amount assessed in the Final Order for a single-day violation.

Item 3B. The Violation Report and Notice alleged that TEPPCO violated 49 C.F.R. § 195.403(c) by failing to verify that the supervisor involved in the Todhunter Accident had maintained a thorough knowledge of the applicable operations, maintenance, and emergency procedures established under § 195.402 for which he was responsible. The two documents alleged that TEPPCO was unable to produce any records, upon request, to demonstrate that the supervisor had received any training in applicable TEPPCO operations, maintenance and emergency procedures. Such training, by its very nature, would continue over an extended period of time, and not be limited to the day of the accident. In addition, both documents proposed a penalty of $60,000 for the violation, an amount no higher than what was ultimately

[9] The Violation Report refers to the date of the readings as "Friday, June 26, 2002," but the Notice and Exhibit 8 of the Violation Report refer to the date as "Friday, June 28, 2002," the date of the accident. The Final Order correctly stated the date of the accident as being June 28, 2002.

[10] *Final Order* at 11.

assessed. At no time did PHMSA allege any new material allegations of fact or propose any new penalties or corrective action that would necessitate an amended Notice or an additional opportunity for TEPPCO to respond, as required under § 190.207(c). Accordingly, I find that the penalty assessed in the Final Order for Item 3B does not violate 49 C.F.R. § 190.207(c).

Petitioner's second argument in the Petition is that PHMSA's failure to provide TEPPCO with adequate notice of the duration of four of the alleged violations constitutes a "denial of TE's right to due process."[11] Since I have already agreed that the penalty imposed for Item 2D-2 should be reduced, there is no need to address the due process argument relating to that Item.

As for the other three penalties, I disagree with Petitioner that its due process rights have been violated. Petitioner never cited any legal authority to support its claim that it was deprived of due process and I am unaware of any case law that would mandate such a conclusion. The due process principles embodied in the Administrative Procedure Act and the Constitution require that persons alleged to have committed violations receive adequate notice of the allegations and of the potential penalties that may be imposed against them, in order that they have an adequate opportunity to defend themselves.[12] In this case, as noted above, the Violation Report and Notice both set forth the basic facts constituting the three alleged violations and that they were continuing in nature.

Furthermore, both documents stated that the proposed penalty for Item 2C was $60,000, that the proposed penalty for Item 2D-1 was $60,000, and that the proposed penalty for Item 3B was $60,000. Under due process and notions of fundamental fairness, PHMSA could not have properly imposed penalties higher than the amounts proposed for each Item in the Notice without re-issuing or amending the Notice and giving the operator a full opportunity to prepare an adequate defense against the new charges. However, in this case, Petitioner had full and adequate notice of the substantive violations and the maximum penalties for which it could potentially be held liable and had ample opportunity to defend itself. The company filed and later withdrew a request for an informal hearing, at which time it could have more fully presented its objections to the proposed penalties. In addition, the petition for reconsideration process, of which TEPPCO has availed itself here, provides Petitioner with still another opportunity to present evidence and legal argument showing that the violations were limited to the day of the Todhunter Accident and were not continuing in nature. Petitioner, however, has failed to present any evidence showing that it did not, in fact, commit ongoing violations.

Accordingly, I find that Petitioner had fair notice of both the alleged violations and the proposed penalty amounts and that it has not suffered a violation of its right of due process.

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[11] *Petition* at page 5.

[12] *E.g., In the Matter of Enbridge Energy Company, Inc.*, Decision on Petition for Reconsideration, C.P.F. No. 4-2005-8004 (Oct. 2, 2009) (available at www.phmsa.dot.gov/pipeline/enforcement).

Conclusion

In conclusion, I have reconsidered the entire record in this proceeding in light of TEPPCO's Petition. I find that the Violation Report and Notice alleged facts that constituted continuing violations with respect to Items 2C, 2D-1, and 3B and that Petitioner has been provided with fair and adequate notice of the proposed penalty levels and the basis for those levels, in accordance with both the administrative procedures in 49 C.F.R. Part 190 and principles of due process.

As for Item 2D-2. I find that TEPPCO violated 49 C.F.R. § 195.402(a), as alleged in the Notice, on June 28, 2002, and that the maximum potential penalty for such single-day violation was $25,000. I hereby reduce the assessed penalty for this Item to $20,000, the amount attributed to a single-day violation for this Item in the Final Order. Since the assessed penalty of $40,000 has been already paid by Petitioner, I order that the difference of $20,000 be refunded to Petitioner. All other provisions of the Final Order, including the findings of violation and the total reduced penalty of $325,000, which amount has already been paid, will remain in effect as set forth therein. This Decision on the Petition for Reconsideration is the final administrative action in this proceeding.

_____ _____

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued