August 14, 2012

Mr. Michael A. Creel
President and CEO
Enterprise Products Operating, LLC
1100 Louisiana Street
Houston, TX 77002

Re: CPF No. 3-2009-5022

Dear Mr. Creel:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of $466,200. It further specifies actions that need to be taken by Enterprise to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order satisfied, as determined by the Director, Central Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure
cc: Mr. David Barrett, Director, Central Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Edward C. Lewis, Esquire, Fulbright & Jaworski, LLP, Counsel for Enterprise Products Operating, LLC

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of	)	
Enterprise Products Operating, LLC,	)	**CPF No. 3-2009-5022**
Respondent.	)	

FINAL ORDER

In September 2007, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), opened an investigation of an incident involving the hazardous liquid pipeline system operated by Enterprise Products Operating, LLC (Enterprise or Respondent), in Clark County, Kansas. Respondent is a subsidiary of Enterprise Products Partners, LP, which transports natural gas, NGL crude oil, refined products, and petrochemicals through more than 50,000 miles of pipeline in North America.[1]

The investigation arose out of an incident that occurred on Enterprise's 12-inch "Brown" line (Brown Pipeline) in Clark County, Kansas, approximately three miles north of Englewood, Kansas, at Mile Post (MP) 362, on September 11, 2007 (Incident). The Brown Pipeline begins in Skellytown, Texas, and runs through Conway, Kansas; the total system is approximately 1,150 miles. The Incident resulted in the release of approximately 14,763 barrels of a highly volatile liquid (HVL), specifically, Y-grade de-methanized NGL mix. Due to its proximity to the Brown Pipeline and the continuing release of flammable product, State Highway 283 was closed for five days.[2]

As a result of the investigation, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated October 28, 2009, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Enterprise had committed various violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of $466,200 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations.

Enterprise responded to the Notice by letter dated November 25, 2009 (Response). The

[1] http://www.enterpriseproducts.com/corpProfile/businessProfile.shtm (last accessed December 27, 2011).

[2] *Pipeline Safety Violation Report (Violation Report), CPF 3-2009-5022*, October 28, 2009 (on file with PHMSA).

company contested the allegations and requested a hearing, which was subsequently held on May 11, 2010, in Kansas City, Missouri, with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Enterprise was represented by counsel. After the hearing, Enterprise provided a post-hearing statement for the record by letter dated June 18, 2010 (Closing).

FINDINGS OF VIOLATION

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

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.422(a), which states:

> **§ 195.422 Pipeline repairs.**
>
> (a) Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.

The Notice alleged that Enterprise violated 49 C.F.R. § 195.422(a) by failing to insure, during the repair of its pipeline system, that the repairs were made in a safe manner and so as to prevent damage to persons or property. Specifically, it alleged that on the day before the Incident, bypass piping was installed as part of an effort to remove a maintenance "pig" that had become lodged in the pipeline. The Notice further alleged that the company's own post-incident failure analysis concluded that the failure was caused by the incorrect installation of the connection of a two-inch ball valve to a two-inch fitting on the bypass piping, resulting in damage to the threads.[3]

In its Response, at the hearing, and in its Closing, Enterprise maintained that the repair had been made correctly and safely, and asserted that the fact that an incident occurred did not mean that the repair had not been made in a safe manner. As stated in the job plan for the repair project, Enterprise contended that it had taken "extensive steps to ensure that the bypass project 'was performed in a good and workmanlike manner enforcing all company policies, procedures, specifications, and guidelines.'"[4] Enterprise also stated that it had taken "every reasonable precaution to ensure that the bypass project was performed safely," even listing some of the precautionary measures it had taken in preparation for the project.[5] The company further asserted that "under PHMSA's analysis, any accident following a pipeline repair would constitute a violation of 49 C.F.R. § 195.422," and that such a conclusion was "inappropriate, arbitrary, and capricious."[6]

Enterprise is correct that the mere fact an incident occurs following an accident does not constitute a violation *per se* of the regulation. The heart of the alleged violation, however, is that

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[3] *Notice* at 2.

[4] *Response* at 3.

[5] *Id.* at 3-4

[6] *Response* at 3, *Closing* at 3.

the company failed to conduct the repair in a safe manner and so as to prevent damage to persons or property. Over-tightening a threaded connection can easily damage the threads on the pipe, resulting in threads that are either not fully engaged or are over-engaged when assembled. This can lead to a failure at the pipe connection or excessive stress on the connection. In this case, the record shows that Enterprise had no procedures in its Operations and Maintenance Manual (O&M Manual) or in the Job Plan for this specific repair on how to make a threaded connection safely. Enterprise employees who were interviewed after the Incident reported that they had simply tightened the fitting as hard as they could, using the largest wrench they had available.

According to Enterprise's own report, the most probable cause of the failure was incorrect installation of the 2" ball valve. The report states: "Overall damage to the TOR [thread-o-ring] external threads indicated that the valve was improperly placed on the TOR and tightened, resulting in damage to the internal valve threads and external TOR threads."[7] This conclusion is further supported by the "out-of-roundness of the TOR threads" and "statements from field personnel noting that the plug separated from the pilot of the removal tool when extracted."[8]

The cause of the Incident was the failure of the threaded connection, which was an element of the repair.[9] That the repair itself caused the failure is a strong indication that the repair work was not performed in a safe manner and so as to prevent damage to persons or property. Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.422(a) by failing to insure that the installation of the bypass was made in a safe manner and so as to prevent damage to persons or property.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(3), which states:

> **§ 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….
>
> (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:
>
> (1) ….
>
> (3) Operating, maintaining, and repairing the pipeline system in accordance

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[7] *Violation Report, Exhibit A, Description of Bypass Failure, MAPL South Leg (12" Brown Line)*, Derek Gilboe, PEng, February 14, 2008, at 4.

[8] *Id.*

[9] *Id.*

with each of the requirements of this subpart and subpart H of this part….

The Notice alleged that Enterprise violated 49 C.F.R. § 195.402(c)(3) by failing to include procedures in its O&M Manual for adequate safety during maintenance and normal operations. Specifically, the manual had no written procedures for installing threaded pipefittings in connection with repairs made in accordance with the requirements of Subpart F.[10]

In its Response, Enterprise stated that its O&M Manual and Operator Qualification (OQ) Documentation complied with § 195.402(c)(3) by requiring that all repairs "be made in a manner that is safe and will prevent injury to persons or damage to property," that "no valve, pipe or fitting… be used… unless it is designed, constructed and tested as required in the Company Engineering Design Standards," and that repairs "be made in accordance with ANSI B31.4, Paragraph 434.5…."[11] However, at the hearing and in its Closing, Enterprise admitted that it had no detailed procedures in its O&M Manual for making threaded connections and did not contest the alleged violation.[12]

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(3) by failing to include procedures in its O&M Manual for adequate safety in repairing its pipeline system in accordance with the requirements of Subpart F.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(a), which states:

> **§ Sec. 195.505 Qualification program.**
> Each operator shall have and follow a written qualification program. The program shall include provisions to:
> (a) Identify covered tasks….

The Notice alleged that Enterprise violated 49 C.F.R. § 195.505(a) by failing to have and follow a written qualification program that included adequate provisions to identify "covered tasks," as that term is defined under § 195.501(b). Specifically, it alleged that Enterprise did not include pipefitting in its list of covered tasks even though § 195.422 requires all repairs to be "made in a safe manner" and "so as to prevent damage to persons or property." The Notice explained that pipefitting, as a covered task, would include the assembly of threaded pipe connections and that it met the four-part test for covered tasks under § 195.501(b) for making repairs on Enterprise's pipeline system.

Throughout this proceeding, Enterprise has argued that pipefitting is not a covered task because it does not meet the four-part test in § 195.501(b). That regulation defines a covered task as any activity that (1) is performed on a pipeline facility, (2) is an operations or maintenance task, (3) is performed as a requirement of Part 195, and (4) affects the operation or integrity of the pipeline. Specifically, the company contends that pipefitting does not satisfy the third prong of

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[10] *Notice* at 2.

[11] *Response* at 4.

[12] *Closing* at 3.

the test because Part 195 "must include a requirement specifically regulating the activity" but there is no specific requirement in Part 195 regarding the use of pipefitting in making safe repairs.[13]

As a preliminary matter, it may be helpful to describe generally the role of pipefitting in the operations and maintenance of pipelines. Pipefitting is the work of fabricating, constructing, operating, and maintaining piping systems in many industries, and most pipeline repair operations involve a pipefitting task of some kind. In this particular case, the repair involved the assembly of threaded steel pipe. Pipefitting that is not performed correctly can cause safety and integrity risks to a pipeline. A pipefitting task that does not follow all the required procedures can cause a future failure or a condition that would require a pipeline to be shut down for further repair.

Enterprise presented three main arguments why it believes pipefitting does not meet the third prong of the test for covered tasks. First, the company argues that the rulemaking history of Subpart G of Part 195, Qualification of Pipeline Personnel, indicates that the intent of the rule is to include only those tasks "specifically regulated through very specific requirements" in Part 195.[14]

According to Enterprise, the preamble of the final rule provides five examples of activities that qualify as covered tasks, and each one represents a task that is specifically required by a particular regulation.[15] In contrast, PHMSA has relied in this case upon a "general provision" in § 195.422 that repairs be made "in a safe manner." The company argues that the lack of a specific regulation about the installation of threaded pipe in Part 195 indicates a conscious decision by PHMSA not to make pipefitting a covered task. If PHMSA had wanted to regulate the joining of threaded steel pipe, it could have easily done so, just as it had done for certain welding practices.[16]

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[13] *Closing* at 5.

[14] *Id.* at 6.

[15] *Closing* at 5-6; 64 FR 46860. Enterprise cites five examples from the preamble of the rule: purging a pipeline; leakage surveys of distribution lines; starting, operating and shutting down gas compressor units; inspection of navigable water crossings; and inspection of breakout tanks.

[16] *Id.* at 10-11. Enterprise further argues that the omission of any specific regulation in Part 195 about pipefitting should be interpreted in the same way as an omission in a statute. *Roberto v. Department of Navy*, 440 F.3d 1341, 1350 (Fed. Cir. 2006). That case, however, states: "When construing a regulation or statute, it is appropriate first to examine the regulatory language itself to determine its plain meaning…. If the regulatory language is clear and unambiguous, the inquiry ends with the plain meaning. However, if the regulation is silent or ambiguous, the court then gives deference to the agency's own interpretations." [Citations omitted].

The company also finds significance in the removal of certain language from the final rule that had appeared in the proposed rule. The proposed rule proposed that activities conducted "pursuant to requirements" in Part 195 satisfied the third prong of the four-part test; the final rule substituted the phrase "performed as a requirement of this Part." Enterprise argues this change demonstrates an intent on the part of the agency to limit covered tasks only to those specifically required by a particular regulation. The final rule, however, indicated that the regulatory text was changed simply as a clarification and gave no indication it was intended as a substantive revision. I would also note that the heading in the preamble of the final rule still retained the phrase, "Tasks Performed Pursuant to a Requirement in 49 CFR Part 192 or 195." *Id.* at 7-8; FR 46860.

I do not read the final rule so narrowly. If Part 195 requires an operator to perform a certain activity, then an operator is obliged to identify the specific covered tasks it performs as part of carrying out that required activity. In this case, Respondent concedes that making repairs in a safe manner, as required by § 195.422, constitutes a covered task.[17]

Making pipeline repairs in a safe manner involves myriad tasks that may vary from one job to another or from one operator to another. The regulation provides flexibility for each operator to identify those particular repair tasks that meet the four-part test and to ensure that individuals performing such covered tasks are properly qualified.

Many of the pipeline safety regulations, including § 195.422, contain performance-based, rather than prescriptive, requirements. Unlike the latter, performance-based regulations require proactive planning, operations, and accountability by an operator for its own unique systems. If covered tasks only include those activities that are specifically regulated by Parts 192 and 195, no performance-based regulation would ever constitute an OQ "requirement" since, by definition, a performance-based requirement (e.g., that a repair be made "in a safe manner") does not consist of specific, detailed procedures that must be followed by each operator.

I interpret § 195.505 more broadly. The OQ regulations require operators to identify covered tasks for all of their operations and maintenance activities that are required by Parts 192 and 195, regardless of whether such activities arise from performance-based regulations or from more prescriptive requirements. For those that are performance-based regulations, such as § 195.422, this means determining which tasks are so integral to meeting the requirements of the regulations that they need to be treated as separate covered tasks under the third prong of the test.

In this case, Enterprise asserts that pipefitting should not be considered a separate covered task under the requirement of making repairs safely under § 195.422. However, a careful review of the record shows that for this particular repair, Enterprise itself identified *multiple* separate covered tasks, including "Install Mechanical Bolt on Clamp," "Install Full Encirclement Weld Sleeve," "Install Composite Repair Sleeve," "Operate/Maintain Stopple Equipment," and "Operate/Maintain Hot Tapping Equipment," and explicitly referenced the general safe-repair requirement found in § 195.422 as constituting the regulatory basis for each task.[18] Therefore, by its own actions and treatment of other repair-related activities related to this particular project, Enterprise recognized that other critical activities were covered tasks, even though they were not "specifically required" by particular regulations in Part 195. Pipefitting is no different.[19]

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[17] *Response* at 5.

[18] *Response* at Section 5.

[19] Both Enterprise and OPS cited the positions taken by different trade and standards-setting organizations to support their respective positions. OPS cited the position of the ASME B31Q Committee's Pipeline Personnel Qualification Standard (PPQ Standard) that the joining of threaded pipe constitutes a covered task. Enterprise countered that the PPQ Standard defines the term "covered task" more broadly than § 195.501(b), and that therefore the B31Q Committee's position is irrelevant. Enterprise also pointed out that the American Petroleum Institute (API) Operator Qualification Workgroup Committee concluded that joining threaded pipe is not a covered task. I would note that neither the API nor the ASME definition of "covered task" is incorporated by reference into the

In this case, it is undisputed that § 195.422 requires repairs to be made safely and that Enterprise properly treated the regulation as a regulatory requirement. The company also prepared a detailed job plan that identified various sub-tasks for this particular repair project that included separate and discrete covered tasks, ostensibly because they were integral to the more general repair requirement and met the four-part test. It failed, however, to identify pipefitting as a separate task even though it too was an essential part of safely repairing the line.

Second, Enterprise argued that it would be overly broad to treat each separate and discrete element of performing pipeline repairs, such as joining threaded pipe, as a covered task. The company contended that if covered tasks were defined so broadly, it would "bootstrap all pipeline maintenance and repair activities as 'covered tasks'" and render the third prong of the four-part test "superfluous."[20]

I disagree. Any maintenance or repair task must satisfy all four prongs of the test in § 195.501(b) to be considered a covered task. Certain common tasks involved in making safe repairs would not be considered covered tasks if they failed to satisfy each of the other three prongs. For example, reading a voltmeter is a common task involved in making many pipeline repairs, but since it is not an operations and maintenance activity, it would not constitute a covered task in and of itself.

PHMSA explained in the preamble of the final rule that the four-part test should not be read too broadly. It used the activity of welding as an example of an activity that might sometimes be a covered task and sometimes not, depending upon the circumstances under which it was performed. If welding were performed as an operations and maintenance activity, such as when installing a weld-over sleeve to repair an anomaly, then it would be considered a covered task. On the other hand, if welding were performed during the fabrication of new installations, then it would not be an operations and maintenance activity and therefore not a covered task.[21]

In similar fashion, pipefitting may be considered a covered task under certain circumstances but not others. Just because pipefitting should have been included as a covered task in performing the repair in question does not mean that it always needs to be in all situations. I therefore reject Respondent's argument that the inclusion of pipefitting as a covered task in meeting the requirements of § 195.422 in this case renders the third prong of the test overly broad or "superfluous."

Third, Enterprise argued that PHMSA had been inconsistent in its treatment of pipefitting as a covered task. The company cited a Notice of Amendment case, Valero Terminaling and Distribution Company, CPF No. 4-2008-5003M, as showing that PHMSA had not consistently

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pipeline safety regulations. While the positions of industry groups are useful and relevant in the interpretation of PHMSA regulations, they are not determinative.

[20] *Closing* at 7.

[21] 64 FR 46860.

considered the joining of threaded pipe as a covered task under Part 195.[22] Enterprise claimed that the case "addressed an alleged failure of Valero to include joining of threaded pipe as a covered task under Part 195 in its OQ manual."[23] However, PHMSA alleged only that Valero needed to finalize the development of internal training modules for the task of threaded pipe; the case did not address the need to identify pipefitting as a covered task.[24] While Valero stated that it did not consider the joining of threaded pipe to be a covered task, it did not explain which element of the four-part test was not met, and the communications between PHMSA and Valero did not address this issue.

In rebuttal, the agency cited several other Notices of Amendment (NOAs) issued to other pipeline operators on this issue. While Enterprise noted that none of these NOAs set forth a legal rationale for PHMSA's position,[25] these NOAs still demonstrate that the agency has considered both pipefitting[26] generally and the assembly of threaded connections[27] specifically as covered tasks for other operators and has required operators to be more specific than simply listing repairs as a single task.

In summary, upon consideration of all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.505(a) by failing to properly identify pipefitting, when performed during pipeline repairs as required by § 195.422, as a covered task in its written qualification program. In reaching this conclusion, I reject Enterprise's various arguments that pipefitting does not satisfy the third prong of the four-part test used to determine whether a particular activity qualifies as a covered task.

I would note this finding does not reach the larger issue of whether pipefitting must always be treated as a covered task for other operators or for all repairs. Each operator needs to review its own operations and maintenance activities in light of the regulatory requirements, including § 195.422, to determine whether pipefitting is an integral component of meeting such requirements and whether it satisfies each prong of the four-part test. If so, it should be included as a covered task.

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

§ Sec. 195.505 Qualification program.

[22] *Closing* at 12.

[23] *Id.*

[24] Notice of Amendment, Valero Terminaling and Distribution Company, CPF No. 4-2008-5003M, Jan. 28, 2008.

[25] *Closing* at 9.

[26] SemCrude L.P., CPF No. 3-2006-5013M, February 26, 2006; Center Terminal Company – Toledo, CPF No. 3-2006-5019M, March 3, 2006; Ergon Trucking, Inc., CPF No. 3-2006-5023M, March 6, 2006; Jayhawk Pipeline, LLC, CPF No. 3-2006-5022M, March 6, 2006.

[27] Buckeye Pipeline Company, CPF No. 1-2005-5007M, March 28, 2005; Bridger Pipeline LLC, CPF No. 3-2008-5016M, Dec. 23, 2008; Magellan Pipeline Company, LP, CPF No. 3-2009-5017M, October 8, 2009.

> Each operator shall have and follow a written qualification program. The program shall include provisions to:
>
> (a) ….
>
> (b) Ensure through evaluation that individuals performing covered tasks are qualified….

The Notice alleged that Enterprise violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified. Specifically, the Notice alleged that Enterprise failed to evaluate company personnel who installed the two-inch bypass to ensure that they were qualified to perform the task of joining pipe using threaded connections.

In its Response and at the hearing, Enterprise did not contest the allegation that its personnel had not been qualified to perform pipefitting but, as in the preceding Item, asserted that pipefitting was not a covered task. Given my decision that Enterprise failed to include pipefitting as a covered task to meet the requirements of § 195.422, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 199.105(b), which states:

> **§ 199.105 Drug tests required.**
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> Each operator shall conduct the following drug tests for the presence of a prohibited drug:
>
> (a) ….
>
> (b) *Post-accident testing.* As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

The Notice alleged that Enterprise violated 49 C.F.R. § 199.105(b) by failing to drug test, as soon as possible after the accident, nine employees whose performance could not be completely discounted as a contributing factor to the accident. Specifically, the Notice alleged that Respondent did not conduct post-accident drug testing of the nine employees who had been involved with the installation of the bypass repair, that the performance of these employees could not be completely discounted as a contributing factor to the Incident, and that it was possible a drug test could have revealed whether employee performance had been affected by drug use.

In its Response, Enterprise stated that it was not required to conduct drug testing on the individuals involved in the bypass project due to the circumstances of the Incident.[28] At the

[28] *Response* at 7.

hearing and in its Closing, however, Enterprise did not contest the alleged violation, but challenged the alleged number of employees who should have been drug tested.[29]

Enterprise claimed that because only one employee performed the actual work of joining the threaded pipe, he was the only individual who should have been subject to drug testing. However, the company offered no evidence, based on the best information available immediately after the accident, that the performance of the other employees could have been completely discounted as a contributing factor to the accident. Since Enterprise had not yet conducted its own accident investigation and determined that the threaded connection was the cause of the Incident, it could not have concluded that the performance of the other employees could not have contributed to the accident. Therefore, the employees who should have been drug tested included all who were involved in the installation of the bypass piping

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 199.105 by failing to drug test, as soon as possible after the Incident, each of the nine employees whose performance could not be completely discounted as a contributing factor to the accident.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed $100,000 per violation for each day of the violation, up to a maximum of $1,000,000 for any related series of violations. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of $466,200 for the violations cited above.

Item 1: The Notice proposed a civil penalty of $100,000 for Respondent's violation of 49 C.F.R. § 195.422(a), for failing to insure that repairs were made in a safe manner and so as to prevent damage to persons or property. As noted above, I found that Enterprise failed to insure that the installation of the bypass was made in a safe manner and so as to prevent damage to persons or property. Respondent requested a reduction of the proposed penalty to "reflect the proactive measures Enterprise took to prevent the Incident and its quick response to minimize the amount of the release" and to "recognize that the incident did not result in any damages to persons or property."[30] However, it is undisputed that Enterprise's "proactive measures" were

[29] *Closing* at 13.

[30] *Closing* at 3.

not sufficient to ensure the repairs were made safely in the first place.

Given the damage that could have resulted from the Incident, Enterprise is fortunate that the release caused no fatalities or catastrophic property damage. Safety is compromised when an unintended release of HVL occurs, whether or not damages actually result. Respondent's quick response to minimize the amount of the release was prudent, insofar as it was in the company's best interest to contain the product and to mitigate any damage, but it does not affect the circumstances or gravity of the violation itself. None of Respondent's arguments warrants a reduction of the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $100,000 for violation of 49 C.F.R. § 195.422(a).

Item 2: The Notice proposed a civil penalty of $133,100 for Respondent's violation of 49 C.F.R. § 195.402(c)(3), for failing to include procedures in its O&M Manual providing for adequate safety during maintenance and normal operations. As noted above, I found that Respondent failed to include procedures providing adequate safety in the installation of threaded connections in performing general repairs in accordance with Subpart F.

Enterprise asserted that "the proposed penalty should be reduced to reflect the steps taken to prevent the incident and to recognize the measures taken by Enterprise to modify its internal procedures in an effort to ensure the incident does not occur again."[31] While Enterprise made an effort to install the bypass safely, it did not have specific procedures for installing threaded pipefittings. The other steps Enterprise took to ensure safety during this repair did not make up for a lack of adequate procedures in its O&M Manual.

While the modifications made to the procedures after the Incident will undoubtedly be useful in preventing future incidents, they do not mitigate the gravity or circumstances of the violation. None of Respondent's arguments warrant a reduction of the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $133,100 for violation of 49 C.F.R. § 195.402(c)(3).

Item 4: The Notice proposed a civil penalty of $133,100 for Respondent's violation of 49 C.F.R. § 195.505(b), for failing to ensure through evaluation that individuals performing covered tasks were qualified. As noted above, I found that Respondent failed to evaluate the company personnel who installed the two-inch bypass to ensure they were qualified to perform the task of joining pipe using threaded connections. The company's own post-incident failure analysis concluded that the failure of this threaded connection resulted in the release of 14,763 barrels of highly volatile liquid. Given the damage that could have resulted from the Incident, Respondent is fortunate that the release caused no fatalities or catastrophic property damage. Safety is compromised when an unintended release of HVL occurs, whether or not damages actually result. Respondent's quick response to minimize the amount of the release was prudent, but does not mitigate the circumstances or the gravity of the violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $133,100 for violation of 49 C.F.R. § 195.505(b).

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[31] *Closing* at 3.

Item 5: The Notice proposed a civil penalty of $100,000 for Respondent's violation of 49 C.F.R. § 199.105, for failing to drug test as soon as possible after the accident each employee whose performance could not be completely discounted as a contributing factor. Respondent contested the amount of the proposed penalty on the basis that there was only one employee who performed work to join the threaded pipe, and therefore only that particular employee should have been subject to drug testing.[32]

As discussed above, Enterprise was not in a position to have known all of the factors contributing to the cause of the accident immediately following the failure. Therefore none of the nine employees who were involved in the installation of the bypass piping could have been completely discounted as a contributing factor to the accident. That Enterprise failed to drug test *any* of its employees after the accident indicates that Enterprise failed to consider the possibility that employee performance was a contributing factor, even though employees were making repairs at the site of the accident only hours before the accident occurred. Respondent's argument does not warrant a reduction of the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $100,000 for violation of 49 C.F.R. § 199.105.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **$466,200**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the $466,200 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 2, 3 and 4 in the Notice for violations of 49 C.F.R. §§ 195.402(c)(3), 195.505(a), and 195.505(b) respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance

[32] *Closing* at 13.

with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.402(c)(3) (**Item 2**), Respondent must prepare and submit written procedures for pipefitting. Pipefitting includes, but is not limited to: making and connecting threaded pipe and components; assembling flanged pipe and components and coupled connections; bending and connecting instrument and control tubing; and inspecting completed pipefitting assemblies. The procedures shall also include, but not be limited to, descriptions of the following: minimum pipe and component strength; minimum pressure ratings and dimensions of pipe and components; maximum unsupported length of completed assemblies; and other requirements necessary to assure that completed assemblies conform to 49 CFR Part 195. This must be completed and documentation submitted for approval by the Director within 30 days of receipt of the Final Order.

2. With respect to the violation of § 195.505(a) (**Item 3**), Respondent must identify and add to its covered task list any and all operations and maintenance requirements associated with pipefitting. Pipefitting tasks are those described in Item 1 above. The identification of pipefitting tasks must be in conformance with the requirements of 49 CFR Part 195, Subpart G – Qualification of Pipeline Personnel. This must be completed and documentation submitted for approval by the Director within 30 days of receipt of the Final Order.

3. With respect to the violation of § 195.505(b) (**Item 4**), Respondent must prepare and submit to the Director a written evaluation and qualification program for pipefitting tasks in conformance with the requirements of 49 CFR Part 195, Subpart G – Qualification of Pipeline Personnel, within 30 days of receipt of the Final Order. In addition, Respondent must complete the training, evaluation, and qualification of all personnel performing covered pipefitting tasks on its pipeline, and submit documentation of this to the Director within 90 days after receipt of the Final Order.

4. It is requested that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that costs be reported in two categories: (1) the total cost associated with preparing revised plans, procedures, and programs; and (2) the total cost associated with training, evaluating, and qualifying personnel.

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

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed $100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

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Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued