

October 17, 2023

VIA ELECTRONIC MAIL TO: mhurley@expl.com

Mark A. Hurley
President and Chief Executive Officer
Explorer Pipeline Company
P.O. Box 2650
Tulsa, Oklahoma 74136

Re: CPF No. 3-2022-062-NOPV

Dear Mr. Hurley:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions that need to be taken to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Central Region, this enforcement action will be closed. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure (Final Order)

cc: Mr. Gregory A. Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Kevin Brown, Manager, DOT and Regulatory Compliance, Explorer Pipeline Company,
kbrown@expl.com
Ms. Celeste Johnson, Vice President and General Counsel, Explorer Pipeline Company,
cjohnson@expl.com
Ms. Lauren Sanders, Vice President, HSSE, Explorer Pipeline Company, lsanders@expl.com

CONFIRMATION OF RECEIPT REQUESTED

	)	
In the Matter of	)	
	)	
Explorer Pipeline Company,	)	CPF No. 3-2022-062-NOPV
	)	
Respondent.	)	
	)	

From June 7 through September 20, 2021, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an inspection of Explorer Pipeline Company's (Explorer or Respondent) hazardous liquid pipeline system inspection system in Illinois, Missouri, Oklahoma, and Texas. Explorer operates over 1,800 miles of pipeline transporting petroleum products from the Gulf Coast to the Midwest.

Explorer responded to the Notice by letter dated October 14, 2022 (Response) contesting one item in the Notice, and requesting a settlement conference. Explorer and OPS engaged in informal discussions in December 2022, and Explorer later submitted an additional written response (Supplemental Response) on December 30, 2022, continuing to contest Item 1 in the Notice.

FINDINGS OF VIOLATION

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.264(b)(1)(i), which states:

§ 195.264 Impoundment, protection against entry, normal/emergency

venting or pressure/vacuum relief for aboveground breakout tanks.

(a)

(b) After October 2, 2000, compliance with paragraph (a) of this section requires the following for the aboveground breakout tanks specified:

(1) For tanks built to API Spec 12F, API Std 620, and others (such as API Std 650 (or its predecessor Standard 12C)), the installation of impoundment must be in accordance with the following sections of NFPA-30 (incorporated by reference, see §195.3);

(i) Impoundment around a breakout tank must be installed in accordance with section 22.11.2;

The Notice alleged Explorer failed to install impoundment around breakout tanks in accordance with Section 22.11.2 of NFPA-30. Specifically, the Notice alleged NFPA-30 Section 22.11.2.7.1 requires that “[c]ontrol of drainage shall be accessible under fire conditions from outside the dike.” In the diked area with tanks 423, 424, and 433 at the Wood River tank facility, the dike drainage valve was placed within the diked area rather than having it accessible from outside the diked area. These tanks were constructed in 2003 and, therefore, construction was required to follow NFPA-30 under § 195.264(b)(1)(i).

Respondent contested Item 1, stating it complied with requirements cited in the Notice, and requested withdrawal of the Proposed Compliance Order. Respondent also indicated it was determining the best solution to address relocating dike drain valves located within dike impoundments and that it was amending its procedures to further clarify tank dike valve location requirements per NFPA-30.

In its Supplemental Response, Respondent stated it was not contesting the applicability of § 195.264 and the incorporation by reference of NFPA-30 (1996) for Tanks 423, 424 and 433 cited in the Notice. Rather, Respondent explained it was contesting the reference to Section 22.11.2 in the 2012 version of NFPA-30 instead of the corresponding requirement that was numbered differently in the 1996 edition of NFPA-30.

Respondent also argued that it interpreted NFPA-30 in its entirety in its Dike Drain Plan, not just the clause that indicates control of drainage shall be accessible under fire conditions from outside the dike. Respondent states that any tank dike discharges from Tanks 423, 424 and 433 “(1) do not drain off the property, (2) do not enter natural water courses, (3) do not enter public sewers, and (4) do not enter public drains.” In addition, Respondent believes that the location of the “Exterior Tank Dike Valve” as illustrated in its Dike Drain Plan provides for control of water drainage off Explorer’s property and under fire conditions from outside the dike. Finally, Respondent asserts that in prior PHMSA enforcement proceedings, operators were permitted to control water drainage from inside the tank dike.¹

First, with regard to the version of NFPA-30 that is applicable to the facility at issue, I agree with Respondent that the 1996 version of NFPA-30 was incorporated by reference under

¹ Explorer cites *In the Matter of Flint Hills Resources, LLC*, CPF-3-2021-032-NOPV and *In the Matter of DAPL-ETCO Operation Management, LLC*, CPF-3-2021-049-NOPV (available online at: <https://primis.phmsa.dot.gov/comm/reports/enforce/EnfHome.html?nocache=1846>).

§ 195.264(b)(1)(i) at the time of construction of the assets described in Item 1, and should have been cited to in the Notice. The requirement of NFPA-30 at issue here and incorporated by reference at the time of construction was Section 2-3.4.3. That same requirement, however, is also present in the 2012 edition of NFPA-30, which was cited to in the Notice. Both editions of NFPA-30 reflect the same language: “[c]ontrol of drainage shall be accessible under fire conditions from outside the dike.” The only relevant distinction here is that the section numbering in the 1996 version of NFPA-30 (Section 2-3.4.3) was later changed in the 2012 version of NFPA-30 (22.11.2.7.1).² While the Notice should have referenced the section numbering in the 1996 version of NFPA-30, the substantive requirements of the section are exactly the same.

With regard to the requirements in the regulation, I find Respondent violated § 195.264(b)(1)(i). NFPA-30, Section 2-3.4.3, requires that “[c]ontrol of drainage shall be accessible under fire conditions from outside the dike.” The facts here indicate it is undisputed that the current drain valve for the dike containing tanks 423, 424, and 433 is not able to be operated during a fire event from outside the dike.³ Respondent appears to argue that NFPA-30 requires only the last dike drain valve at a facility containing multiple tank impoundment to be accessible from outside the dike. I disagree. The language in NFPA-30 (in both editions discussed above) immediately preceding the requirement violated here uses the plural term “diked areas” – indicating multiple areas anticipated by NFPA-30 in a location may need drainage. In addition, the language in NFPA-30 (in both editions discussed above) preceding the requirement violated here states this requirement is applicable to dike “drains,” meaning that dike drain controls, including multiple dike drain valves, must be accessible from outside a diked area during a fire. Further, the reading proposed by Respondent is not consistent with the purpose of the section of NFPA-30 at issue.⁴ The plain language of NFPA-30 requires the drains for a diked area to be accessible from outside of the dike, not only the last dike drain valve at a facility that is connected to separate dikes.

Respondent cited to two PHMSA enforcement cases in support of its argument that the drainage control at the last dike area is sufficient to meet the requirements of § 195.264(b)(1)(i). However, the enforcement documents in those respective matters do not mention the location of the dike drain valve in relation to the last drain valve that leaves the facility, and in both cases, PHMSA found the operators violated the requirement that “[c]ontrol of drainage shall be accessible under fire conditions from outside the dike.” Further, in both enforcement cases cited,

² Section 195.264(b)(1)(i) was amended in 2015 to reflect this updated section numbering. 80 Fed. Reg. 168 (Jan. 5, 2015).

³ The Response explains the tank cell for Tanks 423, 424 and 433 were subdivided (located within their own, separate, dike) from an existing cell when those tanks were built in 2003. Explorer explains that if the dike in which Tanks 423, 424 and 433 reside in needs water discharged, the dike drain located within that dike is opened for brief periods to gravity feed water to an adjoining tank cell at the facility, and the separate tank cell has its own dike drain valve located on the outside of that separate dike.

⁴ If the drain for a diked area cannot be operated from outside of the dike, then control of the last drain valve at a separate dike at a facility is obviously irrelevant. The diked area (where control of the valve is located within the dike) could overflow if unable to be drained down under fire conditions. The ability to safely operate drains from outside the dike is necessary to avoid an impounded area around the tank(s) filling with water (floated or damaged tanks), and in the event of a fire as part of firefighting and/or spill containment efforts in an emergency.

the operators later installed equipment making the valves operable from outside the impoundment area. PHMSA has consistently taken the position that under the plain language of NFPA-30, dike drainage must be accessible from outside the diked areas under fire conditions.⁵

Finally, Respondent argues it is compliant with NFPA-30 because the drainage for the tanks at issue do not discharge off Explorer property and, as such, prevent flammable and combustible liquids from entering natural water courses or public sewers or drains.

First, the language of § 195.264 is not permissive as to operator discretion regarding the installation of impoundment infrastructure. That section states the installation of impoundment around breakout tanks “must be” in accordance with NFPA-30 requirements. Further, the actual language of the NFPA provision at issue here is also not permissive in the manner asserted in the Response. Rather, the control of drainage “. . . shall be accessible under fire conditions from outside the dike”, in order to indeed prevent discharges from occurring that would leave an operator’s property or enter natural water courses or drains. The plain language of NFPA-30 does not support the assertion that an operator’s belief as to whether discharge may ultimately enter one of those described areas is a discretionary pre-condition addressing whether control of drainage must be accessible from outside of the dike. Rather, the requirements addressing control of drainage NFPA-30 are to prevent discharge from leaving an operator’s property and affecting water sources and systems during a fire situation. In sum, the requirement to control drainage for Tanks 423, 424 and 433 from outside the impoundment dike is mandatory.

Finally, even if Explorer’s assertion as to the meaning of NFPA-30’s requirements were accepted, I note that the facility in question here is in very close proximity to the Mississippi River, is located in a high consequence area under Part 195, and is adjacent to public roads and nearby residential neighborhoods and parks. Absent the ability to control drainage from outside the dike containing the tanks in question during a fire or accident scenario or otherwise, Explorer’s assertion that discharge could not leave its property and subsequently somehow enter natural water courses or drains lacks merit.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.264(b)(1)(i) when it failed to make the dike drainage valve accessible from outside the diked area for the tanks listed in the Notice.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.581(a), which states:

§ 195.581 Which pipelines must I protect against atmospheric corrosion and what coating material may I use?

(a) You must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

⁵ See e.g., *In the Matter of Tallgrass Powder River Gateway, LLC*, CPF-3-2021-088-NOPV and *In the Matter of Enbridge Energy, LP*, CPF-3-2020-5006 (available online at: <https://primis.phmsa.dot.gov/comm/reports/enforce/EnfHome.html?nocache=1846>). These two PHMSA enforcement matters supporting the allegation in Item 1 are in addition to the enforcement matters cited by Explorer in its written responses.

The Notice alleged Explorer failed to provide protection against atmospheric corrosion as required by § 195.581. Specifically, the Notice alleged that in two locations (Port Neches Station and Wood River Terminal) it appeared pipe was installed uncoated and in several other locations it appeared pipe-to-soil transitions had dis-bonded and flaking paint along with bare steel.

In the Response, Explorer stated it was not contesting Item 2 and provided additional information regarding corrective actions it had taken. Explorer explained it conducts atmospheric inspections of its assets every three years as required by §§ 195.581 and 195.583 and uses a four-point grading system for determining when mitigation measures are necessary prior to the next regularly scheduled inspections. The Response explained that as to the Port Neches and Wood River Stations, the uncoated pipe described in Item 2 has now been coated. Explorer also stated its Cathodic Protection Department is actively addressing pending air-to-soil transitions. Explorer is also amending its corrosion procedures and the grading system to ensure that all air-to-soil interfaces are appropriately coated.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.581(a) provide protection against atmospheric corrosion.

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

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 2 for violations of 49 C.F.R. § 195.264(b)(1)(i) and § 195.581(a), 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. The Director has indicated that Respondent has already completed the actions proposed in the Notice to correct the violation described in Item 2. Therefore, it is not necessary to include the proposed compliance terms for Item 2 in this Final Order.

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

With respect to the violation of § 195.264(b)(1)(i) (**Item 1**) - Respondent must be able to operate the dike drainage valve outside the diked area within ninety (90) days of receipt of the Final Order. Documentation that remediation has been completed shall be submitted to the Central Region Director within one hundred twenty (120) days of the Final Order.

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.

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

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

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective actions, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

October 17, 2023

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued