

June 30, 2023

VIA ELECTRONIC MAIL TO: gregory.mcilwain@energytransfer.com

Gregory McIlwain
Executive Vice President, Operations
Permian Express Partners, LLC
1300 Main Street
Houston, Texas 77002

Re: CPF No. 4-2022-040-NOPV

Dear Mr. McIlwain:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, withdraws one alleged violation, assesses a civil penalty of \$22,800, and specifies actions that need to be taken by Permian Express Partners, LLC, 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 completed, as determined by the Director, Southwest 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

cc: Mr. Bryan Lethcoe, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Todd Nardozzi, Director, Regulatory Compliance, Permian Express Partners, LLC,
todd.nardozzi@energytransfer.com

CONFIRMATION OF 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)

Permian Express Partners, LLC,)
a subsidiary of Energy Transfer, LP,)

Respondent.)
_____)

CPF No. 4-2022-040-NOPV

FINAL ORDER

From March 1, 2021, through November 16, 2021, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected Permian Express Partners, LLC's (Permian Express or Respondent) Patoka Pipeline system in Illinois, Missouri, Arkansas, and Texas. The Permian Express pipelines consist of approximately 1,700 miles of crude oil pipeline extending from producing areas in the Permian Basin of Texas through Louisiana, Arkansas, Missouri, and Illinois.¹ Permian Express is a subsidiary of Energy Transfer, LP.²

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated October 11, 2022, 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 Permian Express committed three violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$22,800 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional three warning items pursuant to 49 C.F.R. § 190.205, which warned the operator to correct the probable violations or face possible future enforcement action.

Permian Express requested an extension of time to respond to the Notice on November 9, 2022. PHMSA granted this request. Respondent responded to the Notice by letter dated November 18, 2022 (Response). Permian Express contested several of the allegations, offered additional information in response to the Notice, and requested that PHMSA find that it satisfied the proposed compliance order associated with one of the alleged violations. Respondent did not request a hearing and therefore has waived its right to one.

¹ *Crude Oil*, ENERGY TRANSFER, <https://energytransfer.com/crude-oil/> (last accessed June 27, 2023).

² *Id.*

FINDINGS OF VIOLATION

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

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(i)(1), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a)....

(i) *What preventative and mitigative measures must an operator take to protect the high consequence area?*

(1) *General requirements.* An operator must take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. These measures include conducting a risk analysis of the pipeline segment to identify additional actions to enhance public safety or environmental protection. Such actions may include, but are not limited to, implementing damage prevention best practices, better monitoring of cathodic protection where corrosion is a concern, establishing shorter inspection intervals, installing EFRDs on the pipeline segment, modifying the systems that monitor pressure and detect leaks, providing additional training to personnel on response procedures, conducting drills with local emergency responders and adopting other management controls.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(i)(1) by failing to conduct a risk analysis for its pipeline facilities located in Beaumont and Nederland, Texas, in accordance with § 195.452(i)(1) and its written procedures. Specifically, Respondent's written pipeline integrity management plan section 4.6, Facility Threat/Risk Analysis and Preventative and Mitigative Measures, requires a facility risk analysis (HAZOP) and mitigative study to be performed for the facilities in Beaumont and Nederland, Texas.

In its Response, Respondent did not contest the allegation of violation and provided additional information regarding its corrective actions. Accordingly, after considering all of the evidence, I find that Permian Express violated 49 C.F.R. § 195.452(i)(1) by failing to conduct a risk analysis for its pipeline facilities located in Beaumont and Nederland, Texas, in accordance with § 195.452(i)(1) and its written procedures.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a)....

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by § 195.401(b). However, if the deficiency involves a pipeline in an integrity management program under § 195.452, you must correct the deficiency as required by § 195.452(h).

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e) by failing to correct identified corrosion control deficiencies. Specifically, the Notice alleged that Permian Express

failed to correct three identified corrosion control deficiencies within one calendar year, as required by its procedure;³ failed to correct deficiencies at 13 test stations in 2018, 2019, and 2020 where it identified low pipe-to-soil readings for cathodic protection; and failed to remediate depleted groundbeds and deficiencies that were needed to ensure the proper performance of rectifiers on its cathodic protection system within one calendar year in 2018, 2019, and 2020.

In its Response, Respondent did not contest the allegation of violation and provided additional information regarding its corrective actions.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(e) by failing to correct identified corrosion control deficiencies.

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

WITHDRAWAL OF ITEM

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.589(c), which states:

§ 195.589 What corrosion control information do I have to maintain?

(a)....

(c) You must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. You must retain these records for at least 5 years, except that records related to §§ 195.569, 195.573(a) and (b), and 195.579(b)(3) and (c) must be retained for as long as the pipeline remains in service.

The Notice alleged that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain corrosion control records in accordance with § 195.589(c) for Tank 348. Specifically, the Notice alleged that a record of an atmospheric corrosion inspection carried out on April 3, 2019, on Tank 348 failed to indicate any items of concern or items requiring follow-up regarding corrosion on the tank shell. The Notice further stated that an external inspection report carried out for the same tank from February 18, 2014, indicated that there was corrosion on the shell and roof areas.

In its Response, Permian Express argued that it complied with § 195.589(c) by maintaining records of the February 18, 2014 and April 3, 2019 inspections of Tank 348 and providing those records to PHMSA.⁴ Respondent noted that corrosion was reported in both inspection reports

³ Section 4.0 of the *Corrosion Control Remedial Action, HLD.40* (Effective Date 04/01/2018).

⁴ Permian Express Partners, LLC, CPF No. 4-2022-040-NOPV Written Response to Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order, dated November 18, 2022 (hereinafter “Response”) (on file with PHMSA), at 12.

and that “at no time was [the corrosion] determined to have deteriorated to the degree of being out of compliance with API 650 / 653 standards and requiring immediate remediation in order to continue service.”⁵

After considering all of the evidence, I find that the allegation of violation should be withdrawn because the evidence fails to sufficiently establish that Respondent failed to maintain a record of each atmospheric corrosion inspection of Tank 348 to demonstrate the adequacy of corrosion control measures. Although the Notice alleged that Respondent’s record from the 2019 atmospheric corrosion inspection failed to indicate any items of concern or items requiring follow-up, the report in question did record several items of note. For example, the report noted the external shell coating was weathered, that the condition should be monitored for continued deterioration, and that consideration should be given to properly cleaning and re-coating. The report recorded there was coating failure on the shell stiffener but that based on ultrasonic thickness readings this was noted for information only. The report noted corrosion located at the nine o'clock position of a nozzle that should be replaced the next time the tank has major repairs. These and other conditions were documented with photographs.⁶

Because I find there is insufficient evidence to find a violation of § 195.589(c) for failure to maintain a record of each atmospheric corrosion inspection of Tank 348, I hereby order that Item 6 be withdrawn.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.⁷

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent’s culpability; the history of Respondent’s prior offenses; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 \$22,800 for the violations cited above.

⁵ *Id.*, at 13.

⁶ Item 6 did not allege a violation for failing to remediate atmospheric corrosion as may be required pursuant to §§ 195.401 or 195.583. This Final Order does not preclude potential future enforcement if the Director finds Respondent failed to remediate identified atmospheric corrosion. The allegation in Item 6 is limited to the alleged failure to maintain records.

⁷ These amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223 for adjusted amounts.

Item 4: The Notice proposed a civil penalty of \$22,800 for Respondent's violation of 49 C.F.R. § 195.573(e), for failing to correct identified corrosion control deficiencies. Respondent neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$22,800** for violation of 49 C.F.R. § 195.573(e).

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the 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 3, 4, and 6 in the Notice for violations of 49 C.F.R. §§ 195.452(i)(1), 195.573(e), and 195.589(c), 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. As discussed above, Item 6 has been withdrawn. Therefore, the compliance terms proposed in the Notice for Item 6 are not included in this Order. The Director has indicated that Respondent has taken the following actions to address Item 3:

Permian Express has completed HAZOP assessments of the pipeline facilities located in Beaumont and Nederland, Texas, in accordance with § 195.452(i)(1) and its written procedures.

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice for Item 3 are not included in this Order.

Respondent did not contest the proposed compliance terms for Item 4. 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:

1. With respect to the violation of § 195.573(e) (**Item 4**), Respondent must submit a plan to have the cathodic protection remediated at the 13 identified locations within **90** days of

receipt of the Final Order. Permian Express must also submit a plan to remediate any identified corrosion control deficiencies from the calendar year 2021 annual pipe-to-soil survey remediated within **90** days of receipt of the Final Order. Respondent must also submit a remediation plan for all rectifier systems where there has not been current output following the calendar years 2020 and 2021 inspections completed within **90** days of receipt of the Final Order. Permian Express shall provide records showing completion of remedial activities and inspections within the submitted remedial action plans for this Item within **60** days of the completion of the inspections and remediations carried out following 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 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.

WARNING ITEMS

With respect to Items 1, 2, and 5, the Notice alleged probable violations of Part 195, but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 195.52(a) (**Item 1**) — Respondent's alleged failure to provide notification within one hour after confirmed discovery of an accident where the estimated property damage exceeded \$50,000;

49 C.F.R. § 195.412(a) (**Item 2**) — Respondent's alleged failure to conduct right-of way (ROW) inspections capable of observing the surface conditions on or adjacent to each pipeline; and

49 C.F.R. § 195.583(a) (**Item 5**) — Respondent's alleged failure to inspect its pipeline exposed to the atmosphere for evidence of atmospheric corrosion in accordance with § 195.583(a).

Permian Express requested withdrawal of Item 1, because it believes it complied with the reporting requirements of § 195.52(a). Under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred. Respondent provided additional

information regarding its actions to address Items 2 and 5. If OPS finds a violation of these provisions in a subsequent inspection, Permian Express may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 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 corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

June 30, 2023

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued