

DEC 19 2011

Mr. Kevin C. Bodenhamer
Sr. Vice-President, Liquid Pipeline Operations
Enterprise Products Partners, LP
1100 Louisiana Street
Houston, TX 77210-4735

Re: CPF No. 4-2011-5012

Dear Mr. Bodenhamer:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$10,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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. R.M. Seeley, Director, Southwest Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Ms. Danika Yeager, Enterprise Products
Brigham McCown, Esq., Langley Weinstein, counsel for Respondent

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164203015300]

**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,)	CPF No. 4-2011-5012
)	
Respondent.)	
)	

FINAL ORDER

In June 2011, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted follow-up investigations of three hazardous liquid accidents on Enterprise Products Partners, LP’s (Respondent or Enterprise) pipeline systems. The accidents occurred in Texas City, Texas, on May 16, 2010; in Chico, Texas, on November 6, 2010; and in Cushing, Oklahoma, on February 21, 2011. In addition to its approximately 16,900 miles of natural gas pipelines, Enterprise owns interests in approximately 4,700 miles of onshore crude oil pipelines and 11 MMBbls of above-ground storage tank capacity. The company’s pipeline systems gather and transport crude oil primarily to refineries, centralized storage terminals and connecting pipelines in Oklahoma, New Mexico, and Texas, as well as crude oil terminal facilities in Cushing, Oklahoma, and Midland, Texas.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated August 9, 2011, a Notice of Probable Violation and Proposed Civil Penalty (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Enterprise had violated 49 C.F.R. § 195.54(a) and proposed assessing a civil penalty of \$10,000 for the alleged violation. The warning item required no further action, but warned the operator to correct the probable violation.

Enterprise responded to the Notice by letter dated September 10, 2011 (Response). The company did not contest the allegation of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

¹ <http://www.enterpriseproducts.com> (last accessed 11/10/ 2011).

FINDING OF VIOLATION

In its Response, Enterprise did not contest the allegation in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.54(a), which states:

§ 195.54 Accident reports.

(a) Each operator that experiences an accident that is required to be reported under § 195.50 shall as soon as practicable, but not later than 30 days after discovery of the accident, prepare and file an accident report on DOT Form 7000–1, or a facsimile.

(b) Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000–1, it shall file a supplemental report within 30 days.

The Notice alleged that Respondent violated 49 C.F.R. § 195.54(a) by failing to file an accident report within 30 days after discovery of a reportable accident. Specifically, the Notice alleged that, on February 21, 2011, an accident occurred on Enterprise’s hazardous liquid pipeline in Cushing, Oklahoma, but Respondent did not file an accident report on DOT Form 7000-1, until June 27, 2011, four months later.²

In its Response, Enterprise did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.54(a) by failing to file an accident report on DOT Form 7000–1, as soon as practicable, but not later than 30 days after discovery of an accident.

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 \$10,000 for the violation cited above.

² Violation Report Exhibit A, Liquid Accident Report #20110206, at 1.

Item 2: The Notice proposed a civil penalty of \$10,000 for Respondent's violation of 49 C.F.R. § 195.54, for failing to file an accident report, as soon as practicable, but not later than 30 days after discovery of the company's February 21, 2011 hazardous liquid accident. In its Response, Enterprise requested that the proposed penalty be reduced or eliminated based on its self-disclosure and remedial actions performed prior to the issuance of the Notice.³ The company did not dispute that the report should have been filed, but contended that it had prepared the accident report in a timely manner but that an employee had failed to transmit the report to PHMSA. The company also contended that it had taken remedial action to ensure better accountability of future workflow by revising training and procedures for its compliance specialists. Respondent requested that the proposed civil penalty be reduced or eliminated, arguing that the company's "explanation is consistent with our policy of transparency with our regulator and is also consistent with the spirit and intent of the regulations, and the assessment considerations contained within 49 C.F.R. § 190.225."⁴

As noted above, I found that the accident in Cushing, Oklahoma, occurred on February 21, 2011, but Respondent did not file an accident report until June 27, 2011. The accident report was filed with PHMSA four months after the accident, exceeding the maximum 30-day time limit. PHMSA has a defined process for collecting and analyzing such accident information. Pursuant to the instructions for DOT Form 7000-1, operators are required to submit accident reports to the Information Resources Manager at PHMSA's headquarters building in Washington, D.C.⁵

I find that although Enterprise may have prepared the report electronically, the report was still not submitted to PHMSA's Information Resources Manager in a timely manner after discovery of the accident. The circumstances and the gravity of the violation are heightened because the accident resulted in the spill of 600 barrels of hazardous liquid and was reportable under 49 C.F.R. §§ 195.54 and 195.50. Respondent's culpability is high, in light of the company's failure to file the accident report until four months after the accident. Respondent's compliance efforts after the discovery of the violation do not warrant a reduction in penalty. Based upon the foregoing, I assess Respondent a civil penalty of \$10,000 for violation of 49 C.F.R. § 195.54.

Payment of the civil penalty must be made within 20 days of service of this Final Order. Payment may be made by sending a certified check or money order (containing the CPF Number for this case), made payable to "U.S. Department of Transportation," to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-341), P.O. Box 269039, Oklahoma City, Oklahoma 73125. Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit 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 telephone number is (405) 954-8893.

³ Response, at 1.

⁴ *Id.*

⁵ The new instructions, applicable to all accidents occurring after January 1, 2010, permit operators to file accident reports online, by mail, or by facsimile.

Failure to pay the \$10,000 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.

WARNING ITEM

With respect to Item 1, the Notice alleged a probable violation of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning is for:

49 C.F.R. § 195.52(a) (**Item 1**) — Respondent's alleged failure to give telephonic notice, at the earliest practicable moment, following its discovery of the Texas City, Texas tank farm accident that resulted in the release of 600 barrels of hazardous liquid.

If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has the 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 the 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 but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued