

**MARCH 25, 2014**

Mr. Michael A. Creel  
President & CEO  
Enterprise Products Operating, LLC  
1100 Louisiana Street  
Houston, TX 77002-5227

**Re: CPF No. 3-2012-5023**

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 \$437,500. 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: Ms. Linda Daugherty, Director, Central Region, OPS

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

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<b>In the Matter of</b>	)	
	)	
<b>Enterprise Products Operating, LLC</b>	)	<b>CPF No. 3-2012-5023</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

On April 14, 2010, 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 investigation of an accident that occurred at a pump station operated by Enterprise Products Operating, LLC (Enterprise or Respondent) in Seymour, Indiana. While conducting maintenance of the sump system associated with the P35 pipeline sump system, product from a leaking valve ultimately ignited, resulting in a flash fire. Two employees were burned, one of whom required extended hospitalization<sup>1</sup> and two contractors were also exposed to the flames.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated October 18, 2012, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Enterprise committed various violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$437,500 for the alleged violations.

Enterprise requested and received an extension, then responded to the Notice by letter dated January 17, 2013 (Response). Respondent contested one allegation of violation and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

**FINDINGS OF VIOLATION**

The Notice alleged that Respondent violated 49 C.F.R. Part 195.402, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402, which states in relevant part:

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<sup>1</sup> Pipeline Safety Violation Report A & B (Violation Report A) (Violation Report B), (October 18, 2012) (on file with PHMSA), at 4. Please note that there is one Violation Report, but it has been divided into two subparts, the latter composed of appendices to the actual report.

**§ 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:

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402 by failing to follow its manual of written procedures for operating, maintaining, and repairing its pipeline system. Specifically, the Notice alleged that Enterprise did not perform lockout and tagout isolation during the maintenance project at the Seymour pump station, in accordance with its procedures.

***Background<sup>2</sup>***

Respondent undertook the maintenance project of the sump system in order to address a chronic Highly Volatile Liquids (HVL) contamination issue at its pump station in Seymour, Indiana. At some point, the Seymour facility handled crude oil. Since that time, the facility has ceased transport of crude oil, but traces remain in the piping that contaminate the current products transported by this facility. To address the product quality issue caused by the contamination, Enterprise undertook a number of projects, including a manifold rebuild program, abandonment of crude oil piping and valve replacements. During removal of the old piping and valve replacement, some modifications to the original layout were also planned to remove outdated or unnecessary structures. The employees involved in this accident were in the process of consolidating and abandoning certain piping and replacing valves when the flash fire occurred.

On April 13, 2010, the day before the accident, Enterprise employees closed the mainline valves and shut down the main line pipe to the sump in preparation for the work described above. On the day of the accident, April 14, 2010, an Enterprise employee completed draining the piping, pumping the sump “dry” and closing the sump system valves. Two teams, one comprised of two Enterprise employees and the other of two contract employees were to remove 2” drain valves. While attempting to remove a valve on the south side of the bell hole, the Enterprise team

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<sup>2</sup> This description of events was composed from the evidence section of the Violation Report. The Violation Report’s evidence was based on the site visit and interviews conducted with Enterprise personnel, including Ryan Autry, Roby Abernathy, and Luke Abernathy. Pipeline Safety Violation Report (Violation Report), (May 17, 2007) (on file with PHMSA), 4-13.

struggled to remove some valve flange bolts that were corroded and difficult to access. To speed this work, the Enterprise employees bypassed the available manual tools and began predominantly using an electric impact wrench supplied by the contract employees. The Enterprise employees then removed the sump side of their valve and unbolted the downstream flange. Sometime after this point, both teams took a lunch break, leaving the bell hole. The piping was not monitored for the presence of vapors during this time.

After lunch, both teams returned to the bell hole. When the Enterprise team resumed removing bolts on the upstream side of the valve, product began escaping from a flange. At the same time, the contractors cracked a flange while unbolting their valve, allowing diesel to escape. A station operator making rounds at the bell hole noticed vapors coming from the contract employees' cracked flange. In an attempt to contain the product leaking from their flange, the Enterprise employees began tightening a bolt with the electric impact wrench, precipitating the flash fire. These employees sustained burns to their hands and face, while the contract employees were singed. In order to extinguish the fire, the contract employees left the bell hole to retrieve a fire extinguisher from their truck.

### ***Analysis - Item 1***

EPCO's Section 3.3.5 *General Procedures and Requirements*<sup>3</sup> states that, prior to beginning maintenance work, the Operations Supervisor or designee must identify "all mechanical isolating device(s) that must be closed, blinded, or disconnected" on an Isolation/Blind List.<sup>4</sup> Then, pursuant to Section 3.3.1.3, *Acceptable Energy Isolation Devices*, the devices identified on the Isolation/Blind List are locked out and tagged "prior to any work being performed on the upstream/downstream deenergized side of these devices."<sup>5</sup> During PHMSA's investigation of the accident, the investigator collected evidence demonstrating that Enterprise failed to identify all of the devices on the Isolation/Blind List prior to beginning this work project. Furthermore, the valves<sup>6</sup> from the HVL skid to the sump system were not tagged out.

Respondent did not contest this allegation of violation, but argued that the civil penalty should be reduced based on its good faith attempts to comply with this regulatory requirement. I will address this argument in the penalty section of this order.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402 by failing to follow its manual of written procedures for operating, maintaining, and repairing its pipeline system when it did not perform lockout and tagout isolation during the April 2010 maintenance project at the Seymour pump station.

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<sup>3</sup> Respondent's procedures are entitled "EH&S Management System Safety Policies & Procedures Manual (Effective Date 05/31/2006)."

<sup>4</sup> Violation Report B, at 29.

<sup>5</sup> *Id.* at 26.

<sup>6</sup> Violation Report A, at 6.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402, which states in relevant part:

**§ 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:

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402 by failing to follow its manual of written procedures for operating, maintaining, and repairing its pipeline system. Specifically, the Notice alleged that Enterprise failed to comply with its procedure requiring continuous Lower Explosive Limit (LEL) monitoring in the presence of certain electrical equipment. During maintenance of the sump pump system, Enterprise personnel used an electric impact wrench without actively monitoring for the presence of flammable vapors. While an LEL monitor was present at the work site, it was not connected and therefore did not extend to the bottom of the trench, where the work was actually being performed. Enterprise acknowledges as much in its Accident Investigation Report, which cited the LEL monitor as a causal factor.<sup>7</sup> Respondent did not contest this allegation of violation but again asserted in its Response that it acted with good faith and therefore the penalty assessment should be reconsidered. I will address this argument in the penalty section of this order.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402 by failing to follow its procedure requiring the use of LEL monitoring when certain electrical equipment is used in classified areas.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402, which states in relevant part:

**§ 195.402 Procedural manual for operations, maintenance, and emergencies.**

(a) *General.* Each operator shall prepare and follow for each pipeline

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<sup>7</sup> Enterprise Accident Investigation Report (Investigation Report), (May 21, 2010) (on file with PHMSA). Page 1. “Causal Factors: 2. Non-Intrinsically Safe tool (Electric Impact Wrench) introduced into the job area without an additional hazard evaluation being conducted.” Violation Report B, at 3.

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:

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402 by failing to follow its manual of written procedures for operating, maintaining, and repairing its pipeline system. Specifically, the Notice alleged that Enterprise failed to abide by Section 3.11.3.2<sup>8</sup>, which requires the reissuance of any permit upon “any changes in the operating area that may affect the validity of the permit *as originally issued (emphasis added).*” Enterprise’s original hot work permit only referred to the use of gasoline and diesel powered equipment. Upon introducing the electric impact wrench, Enterprise was required to reissue the permit and inform all relevant parties of the change.

In its Response, Enterprise admits that, “there was a lack of follow up by operating personnel,” but contends that it demonstrated good faith in complying with this regulatory requirement.<sup>9</sup> Consequently, Enterprise requests mitigation of the proposed civil penalty. The penalty section will address this issue.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402 by failing to follow its manual of written procedures, which required reissuance of a permit following a change in the operating area that affected the validity of the original hot work permit.

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402, 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

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<sup>8</sup> Violation Report B, at 17.

<sup>9</sup> Respondent’s Response to the Notice (Response), at 2.

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:

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402 by failing to follow its manual of written procedures for operating, maintaining, and repairing its pipeline system. Specifically, the Notice alleged that, contrary to its procedures, Enterprise failed to post a fire watch during maintenance of the sump pump system. Enterprise's procedure, *3.11.8 Hot Work Permit Requirements*, requires that a "stand by" or fire watch to be present and monitor any potential ignition sources.

In its Response, Enterprise acknowledges that it should have posted a fire watch during the sump pump maintenance.<sup>10</sup> However, it contests the Violation Report, which states that its failure to post a fire watch was a contributing factor in this accident or increased the severity of the consequences of this accident. It is Enterprise's position that its personnel's failure to follow procedures was the causal factor in this accident. Accordingly, Enterprise requests that PHMSA amend the gravity and culpability designations in recognition of its attempts to comply with the regulatory requirements. I will address these arguments in the penalty section of this order, as they relate to the circumstances of the violation and not whether or not Enterprise is in violation of this regulatory requirement.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402 by failing to follow its manual of written procedures, which required posting a "stand-by" or fire watch during maintenance of the sump system.

**Item 5:** 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 Respondent violated 49 C.F.R. § 195.422(a) by failing to insure that repairs are made in a safe manner so as to prevent damage to persons or property. Specifically, the Notice alleged that Enterprise's collective actions and inactions on the day of the sump maintenance collectively were made in an unsafe manner, causing damage to persons and

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<sup>10</sup> Note that Enterprise's Products Operating LP Incident Investigation Report: "Causal Factors: 4. No fire watch on station." Violation Report B, at 6.

property.

In its Response, Enterprise argues that this allegation of violation is duplicative of Items 1-4 and should therefore be dismissed. Admittedly, Enterprise's failure to lockout and tagout, monitor for flammable vapors, seek reissuance of a permit after a material change, or post a fire watch contributed to the unsafe manner in which this project was conducted. However, the question of whether an operator acted in such a way as to avoid damage and act safely requires an evaluation of the totality of the circumstances. Respondent's personnel repeatedly ignored Enterprise's own procedures, to the detriment of their own safety. Furthermore, Enterprise's own Investigation Report<sup>11</sup> cites several other factors, including: "1. Operator 1 trying to coordinate too many events the morning of the incident....5. Contractor heard indications of pressure in the system (burps) but failed to pass the information onto the three other workers...8. The inability of all our workers to hear the warning above the work site noise level." The persistency and degree of both the regulatory noncompliance, combined with the other causal factors cited in the Investigation Report, lead to the conclusion that the Respondent failed to "insure" that its personnel was safely repairing its system, with an eye towards safeguarding life and property. There is no evidence that Enterprise took any steps to monitor for the compliance of its employees or to conduct these repairs so as to "prevent damage to persons or property."

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.422(a) by failing to insure that repairs are made in a safe manner and are made so as to prevent damage to persons or property.

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 \$437,500 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$37,500 for Respondent's violation of 49 C.F.R. § 195.402, for failing to follow its manual of written procedures for operating, maintaining, and repairing its pipeline system. Enterprise concedes that its employees failed to properly implement its policies and procedures, which state that lockout and tagout must be performed

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<sup>11</sup> Violation Report, Appendix 1.



prior to initiating any work. Nevertheless, Respondent argues that it demonstrated good faith by properly implementing policies and procedures. Notwithstanding the fact that Respondent evinced intent through its policies and procedures, its own employees failed to act in accordance with the procedures. The Violation Report articulates that good faith “does not exist if ... the operator did not *act* in accordance with its duty to meet the regulatory obligation (*emphasis added*).”<sup>12</sup> Therefore, I cannot impute good faith to the Respondent. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$37,500 for violation of 49 C.F.R. § 195.402.

**Item 2:** The Notice proposed a civil penalty of \$100,000 for Respondent’s violation of 49 C.F.R. § 195.402, for failing to comply with its procedure requiring continuous LEL monitoring in the presence of certain electrical equipment. Enterprise argues that it should be accorded good faith for having the appropriate policies and procedures in place, irrespective of its employees’ noncompliance. Once again, I find that good faith requires that the Respondent take some affirmative action towards compliance. If Respondent’s personnel had installed the LEL monitor properly in accordance with the procedures, this accident could have been averted. 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. § 195.402.

**Item 3:** The Notice proposed a civil penalty of \$100,000 for Respondent’s violation of 49 C.F.R. § 195.402, for failing to follow its manual of written procedures requiring the reissuance of any permit when changed circumstances call the validity of the original permit into question. Enterprise states that PHMSA’s evaluation of its culpability and good faith in the Violation Report should be reconsidered. First, the Respondent argues that it made an attempt to comply with the regulatory requirement by establishing procedures and training, though its personnel failed to comply. As stated before, the culpability determination is primarily concerned with action or inaction, not intention. The record shows that the Respondent took no affirmative steps to comply with its own procedure, which required that a permit be reissued in certain circumstances. Second, as to good faith, Respondent repeats the argument that it implemented policies and procedures and therefore acted with good faith despite its employees’ noncompliance. Once again, the operator’s failure to act is dispositive here. I therefore find that both the culpability and good faith determinations are appropriate. 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. § 195.402.

**Item 4:** The Notice proposed a civil penalty of \$100,000 for Respondent’s violation of 49 C.F.R. § 195.402, for failure to post a fire watch during maintenance of the sump pump system. Enterprise does not dispute that it violated the regulatory requirement by failing to follow its own procedures, but states that the penalty should be mitigated on account of three separate factors. First, Enterprise disputes the “gravity” designation in the Violation Report. Enterprise states that the lack of a fire watch was not causal to the accident<sup>13</sup> and that its “employee’s failure to follow multiple other established policies and procedures . . . are the

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<sup>12</sup> Violation Report A, at 17.

<sup>13</sup> See, Incident Investigation Report. “Causal Factors. 4. No fire watch on station.”

contributing and causal factors of the flash fire that occurred.” Posting a fire watch is required by Section 3.11.8.6 of Enterprise’s procedures and its failure to do so undoubtedly contributed to both the actual severity of the accident and the attendant consequences. The contractor employees, who did not sustain actual burns in the accident, were required to leave the bell hole in order to extinguish “several burning areas.”<sup>14</sup> The Violation Report states that “The non-compliance contributed to the cause of an accident/incident *or increas[ed] the severity of the consequences of an accident/incident (emphasis added).*” If a fire watch had been properly posted, the fire would have been extinguished sooner and the severity of the consequences potentially abated. The gravity designation is therefore appropriate. Second, Enterprise asserts that its “Culpability” designation should be changed from “failed to take any action or made minimal attempt” to “took some steps to address the issue” in light of the fact that it trained its employees on the proper procedures. I disagree. Whatever training was implemented by the Respondent, its personnel did not comply with the requirement that a fire watch be posted. Lastly, I disagree with Enterprise’s contention that it demonstrated good faith with respect to this item. While it argues that its training, policies, and procedures were established in good faith and its employees simply failed in implementing them, Respondent cannot disavow its own employees. 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. § 195.402.

**Item 5:** 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 to its pipeline system are made in a safe manner and to prevent damage to persons or property. As I stated above, Enterprise failed in several respects to insure the safe repair of its system. Evaluating the totality of circumstances, I find that the penalty assessment is appropriate. 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).

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 **\$437,500**.

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 \$437,500 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.

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<sup>14</sup> Violation Report A, at 36.

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, 2<sup>nd</sup> 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 [CPF No. 3-2012-5023] 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

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Date Issued