

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ENTERPRISE PRODUCTS
OPERATING, LLC,

Petitioner,

v.

IOWA UTILITIES BOARD,

Respondent.

CASE NO. CVCV065780

**IOWA UTILITIES BOARD'S
ANSWER
TO PETITION FOR
JUDICIAL REVIEW**

COMES NOW Respondent Iowa Utilities Board (Board), by and through its undersigned counsel, and for its Answer to the Petition for Judicial Review states:

INTRODUCTION

1. It admits the allegations of paragraph 1 contained in the petition.
2. It admits the allegation in paragraph 2 of the petition that the Board issued an April 21, 2023 order assessing civil penalties against Enterprise Products Operating LLC (Enterprise) for operating hazardous liquid pipelines and hazardous liquid underground storage facilities in Iowa without permits, as required by Iowa Code chapter 479B, and denied Enterprise's request for confidentiality. It admits that Enterprise was capped at \$200,000 for each of the nine separate violations (seven pipelines and two underground storage facilities) based on a total of \$9.8 million for each operating without a permit for 7,535 days, but denies the remaining allegations contained in paragraph 2 of the petition.
3. It denies the allegations contained in paragraph 3 of the petition.
4. It admits the allegations contained in paragraph 4 of the petition.

5. It admits the allegation contained in paragraph 5 of the petition that the Office of Consumer Advocate, a Division of the Iowa Department of Justice (OCA) supported rehearing, but denies remaining allegations.

6. It admits the allegations contained in paragraph 6 of the petition.

7. It admits the allegations contained in paragraph 7 of the petition.

8. It denies the allegations contained in paragraph 8 of the petition.

9. It admits that paragraph 9 of the petition sets forth Enterprise's request for relief, but denies the allegation that the civil penalties imposed exceeded the limits set forth in Iowa Code section 479B.21(1) and affirmatively states that the Board completed a second calculation of the total civil penalties after subjecting each of the nine missing permit violations to the maximum penalty.

10. It denies the allegations contained in paragraph 10 of the petition.

JURISDICTION AND VENUE

11. It admits that paragraph 11 of the petition sets forth Petitioner Enterprise's request for relief, but denies that the relief requested is warranted and that the Board's orders suffer from any defects alleged by Enterprise.

12. It admits the allegations contained in paragraph 12 of the petition.

13. It denies the allegations contained in paragraph 13 of the petition for lack of information.

14. It admits the allegations contained in paragraph 14 of the petition.

PARTIES

15. It admits the allegations contained in paragraph 15 of the petition.

16. It admits the allegations contained in paragraph 16 of the petition.

FACTUAL BACKGROUND & GENERAL ALLEGATIONS

17. It denies the allegations contained in paragraph 17 of the petition and affirmatively states that by on February 6, 2023, the Board notified Enterprise that its investigation revealed approximately 750 miles of hazardous liquid pipeline in Iowa owned and operated by Enterprise without a permit for 7,535 days (acquisition on July 31, 2002, to the filing for permits on March 17, 2023); ordered Enterprise to file a response; and set a show cause hearing for Enterprise to appear on March 17, 2023. Further, the Board granted Enterprise additional time to respond before the hearing and did in fact conduct the show cause hearing on March 17 consistent with such administrative proceedings.

18. It admits the allegations contained in paragraph 18 of the petition.

19. It denies the allegations contained in paragraph 19 of the petition for lack of information.

20. It denies the allegations contained in paragraph 19 of the petition for lack of information and affirmatively states that vitality of public service rendered by the hazardous liquid pipeline or hazardous liquid underground storage facility is not a factor considered in the assessment of civil penalties for failure to have a permit under Iowa Code section 479B.21.

21. It admits the allegations contained in paragraph 21 of the petition and affirmatively states that the Board set out the history of permits issued to Mid-America Pipeline Company (MAPCO) in the nine dockets at issue and summarized here as follow:

A. P-0453—On 3/1/1961, the Board issued a permit for 230.33 miles of 8-inch diameter pipeline, and, on 12/19/1986, the permit was renewed until 3/1/2011 for 240.21 miles due to previous amendment adding 9.88 miles.

B. P-0454—On 3/1/1961, the Board issued a permit for 73 miles of 6-inch diameter pipeline and 81 miles of 8-inch diameter pipeline. On 5/3/1972, the permit was amended to add 24 miles of 10-inch diameter pipeline and, on 6/28/1973, amended to add 58 miles of 10-inch diameter pipeline. On 12/19/1986, the permit was renewed until 3/1/2011.

C. P-0477—On 3/16/1961, the Board issued a permit for 107 miles of 6-inch diameter pipeline, and, on 12/19/1986, the permit was renewed until 3/16/2011.

D. P-0502—On 6/12/1962, the Board issued a permit for 38 miles of 8-inch diameter pipeline, and, on 10/14/1987, the permit was renewed until 6/22/2012.

E. P-0527—On 6/24/1963, the Board issued a permit for 3.4 miles of 8-inch diameter pipeline, and, on 10/4/1989, the permit was renewed until 6/24/2013.

F. P-0531—On 6/28/1963, the Board issued a permit for an underground storage facility for propane located in Johnson County, Iowa and, on 10/4/1989, the permit was renewed until 6/28/2013.

G. P-0572—On 7/12/1965, the Board issued a permit for 60 miles of 8-inch diameter pipeline. The permit was amended on 6/28/1973 to add 63 miles of 10-inch diameter pipeline; on 10/21/1983 to add .4 miles of 6-inch diameter pipeline; and on 9/29/1987 to add .4 miles of 8-inch diameter pipeline. On 1/4/1991, the permit was renewed until 7/12/2015.

H. P-0610—On 7/11/1966, the Board issued a permit for an underground storage facility for propane located in Johnson County, Iowa and, on 11/25/1991, the permit was renewed until 7/1/2016.

I. P-0735—There is a Board-identified pipeline permit (one not identified by Enterprise) for 3 miles of 10-inch diameter pipeline with the permit effective until 6/28/1998.

22. It admits the allegation contained in paragraph 22 of the petition that the State of Iowa regulated the construction, maintenance, and operation of natural gas and hazardous liquid pipelines pursuant to Iowa Code chapter 479. The Board states that the permitting history of permits issued to MAPCO, as set out in the Board's April 21, 2023 order speaks for itself as does the Eighth Circuit Court of

Appeal's opinion in *Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354 (8th Cir. 1993). The Board denies all remaining allegations set out in paragraph 22 of the petition.

23. It admits that the Iowa Legislature enacted the current version of Iowa Code chapter 479B in 1995 and granted the Board authority of interstate hazardous liquid pipelines and storage facilities, but denies the characterizations of the legislation and the Board's authority and all other allegations contained in paragraph 23 of the petition.

24. It admits the allegation contained in paragraph 24 that pipeline companies were required to petition for the Board's approval of hazardous liquid pipeline and underground storage permits and denies the remaining allegations of paragraph 24 of the petition.

25. It admits the allegation contained in paragraph 25 of the petition that Williams acquired MAPCO in November 1997 and denies all remaining allegations for lack of information.

26. It admits the allegation in paragraph 26 that Enterprise acquired the Iowa hazardous liquid pipelines and underground storage facilities from Williams on July 31, 2002, but denies the characterization of Enterprise's ownership and denies all remaining allegations contained in paragraph 26 of the petition for lack of information.

27. It denies the allegations contained in paragraph 27 of the petition for lack of information.

28. It denies the allegations contained in paragraph 28 of the petition.

29. It denies the allegations contained in paragraph 29 of the petition and affirmatively states that Enterprise was aware of permitting requirements after its acquisition and filed a petition to renew a permit in a docket separate from the nine dockets at issue.

30. It denies the allegations contained in paragraph 30 of the petition.

31. It denies the allegations contained in paragraph 31 of the petition for lack of information.

32. It states that underlying Board case, Docket No. SPU-2023-0002, *In re: Enterprise Products Operating, LLC*, speaks for itself on the Board's investigation, proceeding, and notice to Enterprise, but denies all remaining allegations contained in paragraph 32 of the petition, including any allegation that Enterprise lacks accountability based on Board notice.

33. It admits the allegation contained in paragraph 33 that, on February 6, 2023, the Board issued an Order Requiring Response and Setting Show Cause Hearing and denies all other allegations contained in paragraph 33 of the petition.

34. It denies the allegations contained in paragraph 34 of the petition.

35. It admits the allegations contained in paragraph 35 that the Board conducted an investigation that revealed that Enterprise owned and operated approximately 750 miles of hazardous liquid pipeline in Iowa without permits approved by the Board; and affirmatively states that Enterprise identified 18 separate hazardous liquid pipelines and two hazardous liquid underground storage facilities the company was operating in Iowa without permits that correlated with

nine pipeline permits that were previously granted by the Board. It denies the remaining allegations contained in paragraph 35 of the petition.

36. It admits the allegation contained in paragraph 36 that upon the enactment of Iowa Code chapter 479B in 1995, new permits were required for those seven hazardous liquid pipelines and two hazardous liquid underground storage facilities, but denies the remaining allegations contained in paragraph 36 of the petition.

37. It admits the allegations contained in paragraph 37 of the petition.

38. It denies the allegations contained in paragraph 38 of the petition.

39. It denies the allegations contained in paragraph 39 of the petition.

40. It denies the allegations contained in paragraph 40 of the petition and affirmatively states that Enterprise filed a petition for permits in Docket No. HLP-2023-0002, *In re: Enterprise Products Operating, LLC*, when this arose in March 2023 and, Enterprise remains in violation of law as its petition is still awaiting Enterprise's further filing of exhibits and required documentation nine months later.

41. It denies the allegations contained in paragraph 41 of the petition.

42. It denies the allegations contained in paragraph 42 of the petition.

See above paragraph 21 for the nine separate dockets.

43. It denies the allegations contained in paragraph 43 of the petition.

44. It admits the allegation contained in paragraph 44 that Enterprise submits its petition for judicial review, but denies that the Board's orders suffer from any of the defects alleged or enumerated grounds and denies all other allegations contained in paragraph 44 of the petition.

COUNT I
TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

45. It re-alleges and incorporates by reference all prior paragraphs of this Answer and the paragraphs below as if fully set forth therein.

46. It admits the allegation contained in paragraph 46 of the petition that by order dated April 21, 2023, the Board assessed civil penalties and affirmatively states that the Board examined the size of the business, and the gravity of the violation, and the good faith effort to achieve compliance, *i.e.*, multimillion-dollar company with market cap of \$55.9 billion that had operated the hazardous liquid pipelines and underground storage facilities for nearly 21 years without a permit and its expeditious filing for a permit upon notice did not overshadow the 21 years of noncompliance, before levying a civil penalty of \$200,000 for each of the seven pipelines and two underground storage facilities: P-0453, P-0454, P-0477, P-0502, P-0527, P-0531, P-0572, P-0610, and P-0735. It denies the remaining allegations of paragraph 46 of the petition. *See In re: Enterprise Products Operating, LLC*, 2023 WL 3093945, at *6, Dkt. SPU-2023-0002 (Iowa Utils. Bd. 4/21/2023).

47. It admits the allegation contained in paragraph 47 that the Board ordered Enterprise to remit the civil penalties within 30 days of its June 9, 2023 order on reconsideration and denies all other allegations contained in paragraph 47 of the petition. *See In re: Enterprise Products Operating, LLC*, 2023 WL 3949601, at *8, Dkt. SPU-2023-0002 (Iowa Utils. Bd. 6/9/2023).

48. It denies the allegations contained in paragraph 48 of the petition and affirmatively states that the Board determined that Enterprise's "motion for stay [was] moot." *See id.*

49. It denies the allegations contained in paragraph 49 of the petition.

50. It admits the allegations contained in paragraph 50 of the petition.

51. It denies the allegations contained in paragraph 51 of the petition.

52. It denies the allegations contained in paragraph 52 of the petition.

53. It denies the allegations contained in paragraph 53 of the petition.

54. It denies the allegations contained in paragraph 54 of the petition.

55. It admits that paragraph 55 sets forth the relief requested by Enterprise, but denies that relief is warranted and denies all remaining allegations contained in paragraph 55 of the petition.

COUNT II
(IOWA CODE SECTION 17A.19(10)(b))

56. It re-alleges and incorporates by reference all prior paragraphs of this answer and the paragraphs below as if fully set forth therein.

57. It admits that paragraph 57 of the petition sets forth in part Iowa Code section 17A.19(10), but denies that substantial rights of Enterprise have been prejudiced and that the Board's April 21 and June 9 orders suffer from any alleged defect or section 17A.19(10) grounds.

58. It admits that paragraph 58 of the petition sets forth in part Iowa Code section 17A.19(10)(b), but denies that the Board orders suffer from any alleged defect or section 17A.19(10)(b) ground.

59. It denies the allegations contained in paragraph 59 of the petition.

60. It denies the allegations contained in paragraph 60 of the petition and affirmatively states that Iowa Code section 479B.21 must be read in its entirety and speaks for itself.

61. It states that that the cases speak for themselves and denies the allegations contained in paragraph 61 of the petition.

62. It denies the allegations contained in paragraph 62 of the petition.

63. It denies the allegations contained in paragraph 63 of the petition.

64. It admits that paragraph 64 of the petition states in part Iowa Code section 17A.19(10)(b), but denies the Board orders suffer from any defects or grounds alleged.

65. It admits that paragraph 65 of the petition purports to state a ground, section 17A.19(10)(b), upon which relief is sought, but denies that substantial rights of Enterprise have been prejudiced and that the Board orders suffer from any of the enumerated defects or grounds asserted.

66. It admits that paragraph 66 of the petition contains a statement of relief sought by Enterprise, but denies that the Court's grant of that or any other relief is appropriate.

COUNT III
(IOWA CODE SECTION 17A.19(10)(c))

67. It re-alleges and incorporates by reference all prior paragraphs of this answer and the paragraphs below as if fully set forth therein.

68. It denies the allegations contained in paragraph 68 of the petition and affirmatively states that Iowa Code section 479B.21(1) speaks for itself.

69. It denies the allegations contained in paragraph 69 of the petition.

70. It denies the allegations contained in paragraph 70 of the petition.

71. It denies the allegations contained in paragraph 71 of the petition.

72. It denies the allegations contained in paragraph 72 of the petition and affirmatively states that the April 21 Board order sets out detailed explanations and calculations for each missing pipeline permit in Docket Nos. P-0453, P-0454, P-0477, P-0502, P-0527, P-0531, P-0572, P-0610, and P-0735. See *In re: Enterprise Products Operating, LLC*, 2023 WL 3093945, at *5-7, Dkt. SPU-2023-0002 (Iowa Utils. Bd. 4/21/2023). See also above paragraph 21 outlining the nine permits and related dockets.

73. It denies the allegations contained in paragraph 73 of the petition and affirmatively states that the seven pipelines and two underground storage facilities' history of distinct treatment, with separate permitting at different dates with various amendments in the nine dockets, is reflected in the Board's April 21 order.

74. It denies the allegations contained in paragraph 74 of the petition.

75. It admits that paragraph 75 of the petition states in part Iowa Code section 17A.19(10)(c), but denies the Board orders suffer from any defects or grounds alleged.

76. It denies the allegations contained in paragraph 76 of the petition.

77. It denies the Board's orders suffer from any defects or grounds alleged and that any grant of relief is appropriate.

78. It admits that paragraph 78 of the petition states in part Iowa Code section 17A.19(10)(n), but denies the Board's orders suffer from any defects or grounds alleged.

79. It admits that paragraph 79 of the petition purports to state a ground, section 17A.19(10)(c), upon which relief is sought, but denies that substantial

rights of Enterprise have been prejudiced and that the Board orders suffer from any of the enumerated defects or grounds asserted.

80. It admits that paragraph 80 of the petition contains a statement of relief sought by Enterprise, but denies that the Court's grant of that or any other relief is appropriate.

COUNT IV
(IOWA CODE SECTION 17A.19(10)(n))

81. It re-alleges and incorporates by reference all prior paragraphs of this answer and the paragraphs below as if fully set forth therein.

82. It admits that paragraph 82 of the petition states in part Iowa Code section 17A.19(10)(n), but denies that the Board orders suffer from any defects or grounds alleged.

83. It denies the allegations contained in paragraph 83 of the petition.

84. It denies the allegations contained in paragraph 84 of the petition.

85. It denies the allegations contained in paragraph 85 of the petition and affirmatively states that the civil penalty at issue is \$200,000 for each of the pipelines or underground storage facilities as outlined in above paragraph 21, "A" through "I."

86. It denies the allegations contained in paragraph 86 of the petition.

87. It admits that the Board assessed a civil penalty capped at \$200,000 in *In re: Sinclair Transp. Co.*, Dkt. No. SPU-2023-0003, 2023 WL 3093966 (Iowa Utils. Bd. 4/21/2023), but affirmatively denies the allegations contained in paragraph 87 of the petition and affirmatively states Sinclair is distinguishable and the capped \$200,000 civil penalty was based on a civil penalty of \$355,00 for 355

days without one permit for 11.8 miles of pipeline while Enterprise was capped at \$200,000 for each of the nine separate violations (seven pipelines and two underground storage facilities) based on a total of \$9.8 million for each operating without a permit for 7,535 days.

88. It admits that paragraph 88 of the petition purports to state grounds upon which relief is sought, but denies that substantial rights of Enterprise have been prejudiced and that the Board orders suffer from any enumerated defects or grounds.

89. It denies the allegations contained in paragraph 89 of the petition.

90. It admits that paragraph 90 of the petition contains a statement of relief sought by Enterprise, but denies that the Court's grant of that or any other relief is appropriate.

COUNT V
(IOWA CONST. ART I, § 9 (DUE PROCESS))

91. It re-alleges and incorporates by reference all prior paragraphs of this answer and the paragraphs below as if fully set forth therein.

92. It denies the allegations contained in paragraph 92 of the petition.

93. It denies the allegations contained in paragraph 93 of the petition.

94. It denies the allegations contained in paragraph 94 of the petition.

95. It denies the allegations contained in paragraph 95 of the petition.

96. It denies the allegations contained in paragraph 96 of the petition.

97. It admits that paragraph 97 of the petition contains a statement of relief sought by Enterprise, but denies that the Court's grant of that or any other relief is appropriate.

COUNT VI
(IOWA CONST. ART I, § 6 (EQUAL PROTECTION))

98. It re-alleges and incorporates by reference all prior paragraphs of this answer and the paragraphs below as if fully set forth therein.

99. It states that the cases cited speak for themselves and denies all allegations contained in paragraph 99 of the petition.

100. It denies the allegations contained in paragraph 100 of the petition.
See above paragraph 87.

101. It denies the allegations contained in paragraph 101 of the petition.
See above paragraph 87.

102. It denies the allegations contained in paragraph 102 of the petition.

103. It admits that paragraph 103 of the petition contains a statement of relief sought by Enterprise, but denies that the Court's grant of that or any other relief is appropriate.

PRAYER FOR RELIEF

It admits that the "Prayer for Relief" in the petition contains statements of relief sought by Enterprise, but denies that the Court's grant of that or any other relief is appropriate.

WHEREFORE, the Iowa Utilities Board respectfully requests the Court affirm the agency order under review and tax the costs of the proceeding to the Petitioner Enterprise Products Operating, LLC.

Respectfully submitted,

/s/ Jon Tack

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