

**ExxonMobil Pipeline Company**

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Manager  
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March 9, 2009

Mr. Chris Hoidal, P.E.  
Director, Western Region  
Pipeline and Hazardous Material Safety Administration  
12300 W. Dakota Avenue, Suite 110  
Lakewood, CO 80228

Re: ExxonMobil Pipeline Company, CPF No. 5-2009-5004

Dear Mr. Hoidal:

This letter serves as ExxonMobil Pipeline Company's (EMPCo's) response to the Notice of Probable Violation with Proposed Civil Penalty and Proposed Compliance Order (NOPV), CPF No. 5-2009-5004, received February 9, 2009, regarding a release from Tank #505 at EMPCo's Spokane terminal.

On November 3, 2008, a contract terminal operator, working on behalf of EMPCo, was unscrewing a thermometer probe from the thermowell in Tank #505 when the thermowell was inadvertently loosened resulting in the release of 85 barrels of gasoline into the soil of the tank's containment system. EMPCo immediately responded to the situation, notifying local emergency response teams, as well as various state agencies, including the Washington Utilities and Transportation Commission (WUTC). The timeliness and commitment of the response teams significantly limited the consequence of this unfortunate event. The NOPV advises that the Pipeline and Hazardous Material Safety Administration (PHMSA) considers EMPCo to have committed a probable violation of 49 CFR §195.402 and has proposed a civil penalty of \$100,000.00 pursuant to 49 USC §60122.

EMPCo regrets the incident, acknowledges that it should not have occurred and takes responsibility for its consequences; however, for the reasons set out below, we do not believe that EMPCo violated 49 CFR §195.402 or that the proposed civil penalty is appropriate.

While 49 CFR §195.402(a) requires a pipeline operator to have a manual of written procedures for conducting normal operations and maintenance activities, 49 CFR §195.402(c) sets forth the procedures that must be included in such a manual. None of the fifteen (15) specifications of required procedures that must be addressed in a §194.402 manual deal with the removal of thermometer probes from thermowell units. To the extent 49 CFR §195.402(c)(3)<sup>1</sup> references

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<sup>1</sup> 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:

additional incorporated procedures that must be included in a manual, none of those incorporated procedures deal specifically with the removal of thermometer probes from thermowell units.

49 USC §60108 is the statutory authority for §195.402's requirement of a manual of procedures. That statute makes it clear that the manual is to be designed to meet the need for pipeline safety. As is apparent from the circumstances giving rise to the Tank #505 incident, prior to the incident there was nothing about this temperature probe removal procedure that suggested that it might present a safety risk that should be addressed in a PHMSA required operating manual. As the NOPV states, the "Removal of the temperature probe is a normal, periodically conducted maintenance activity." It is a simple procedure -- simply unscrew the probe from the thermowell -- that has been performed countless times over decades without incident. Indeed, while this incident involved a contract terminal operator, that person was a former EMPCo employee who had over 38 years experience working at the Spokane Terminal and who had successfully removed and replaced temperature probes from tanks many times in the past. In this particular case, the operator did fail to notice that he was loosening the thermowell while unscrewing the probe, but that was a result of a failure to pay attention to the execution of the task being performed. The release was not the result of a failure to have a written procedure for the task.

49 USC §60108 requires that the §195.402 manual be "practicable." EMPCo believes that this requirement that the manual be "practicable" means Congress did not intend that operators have a written procedure for every routine task that is performed during pipeline maintenance. There is very good reason for this requirement of practicability. If a manual is larded with descriptions of how to perform simple routine tasks, this could well obscure, and potentially diminish, the importance of correctly performing safety sensitive procedures for which written procedures are important. In this instance, given the lack of an indication that the procedure presented a safety issue, EMPCo did not believe that a written procedure was warranted or required. Given the strong behavior-based procedure utilized (ExxonMobil's Safe Performance Self Assessment process), EMPCo was confident that there was sufficient structure provided for the operator's successful execution of such a simple task. Accordingly, EMPCo's manual met the requirements of 49 CFR §195.402 and 49 USC §60108.

In determining the amount of the civil penalty to be imposed, 49 USC §60122 and 49 CFR 190.225 require that PHMSA consider, among other factors, the nature, circumstances and gravity of the violation; adverse impacts on the environment; and EMPCo's good faith in attempting to comply. If, despite EMPCo's contention that it did not violate 49 CFR §195.402, PHMSA concludes a violation did occur then EMPCo requests that PHMSA consider the following facts as mitigating circumstances for imposition of penalty substantially less than \$100,000.00.

- EMPCo immediately responded to the release and, per its written procedures, notified local emergency response teams, as well as various state agencies, including the WUTC. The timeliness and commitment of the response teams significantly limited the consequence of this event.
- Remediation of the environment was undertaken immediately and soil that was excavated following the incident has been transported to local treatment and disposal facilities. Residual non-aqueous phase liquids (NAPL) are being addressed using a

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

mobile soil vapor extraction unit. Utilizing draft modeling results and assessment data collected following the release, it appears that impacts to the environment are primarily confined to the upper five to seven feet of soil in the area of the release (a majority of which was excavated during the response phase).

- EMPCo cooperated with, and provided timely information to the WUTC inspector, acknowledging the absence of a written procedure for the task of unscrewing a temperature probe from a thermowell unit.
- In the course of our post-incident investigation, we realized, given the details of this particular event, that the existence of a documented procedure could assist us with our endeavor toward flawless operations. EMPCo's Spokane personnel immediately developed a Thermowell Replacement Procedure, as well as a Job Safety Analysis, which included the removal and calibration of a temperature probe. Draft copies of both documents were sent to the WUTC inspector on December 1, 2008.
- As evidenced by the numerous written Department of Transportation related procedures that it does maintain, EMPCo remains committed to operating in complete regulatory compliance.

With the development and implementation of the above-referenced documents, EMPCo has satisfied Requirement #1 in the Proposed Compliance Order. In response to Requirement #2, there were no direct costs related to incorporating these practices into our manuals.

If, after considering the arguments set out above, PHMSA remains of the opinion that a probable violation has occurred and a penalty is warranted, then EMPCo requests a hearing be conducted on this matter. EMPCo's Statement of Issues for such a hearing is attached. EMPCo will be represented by counsel at the hearing.

Again, EMPCo regrets this incident. For the reasons stated above we are requesting that the NOPV be withdrawn or that the Proposed Civil Penalty be withdrawn or significantly mitigated.

Sincerely,



Kevan G. McCrae

Attachments

- c - J. E. James
- c - J. B. Rose
- c - J. R. Stevens
- c - R. L. Ortiz
- c - S. A. Holecek
- c - L. K. Sleevi

RE: NOTICE OF PROBABLE VIOLATION, PROPOSED CIVIL PENALTY  
AND PROPOSED COMPLIANCE ORDER  
ISSUED TO EXXONMOBIL PIPELINE COMPANY  
DATED FEBRUARY 3, 2009  
CPF No. 5-2009-5004

ExxonMobil Pipeline Company's Statement of Issues for Hearing

1. Whether 49 CFR 195.402 required ExxonMobil Pipeline Company (EMPCo) to have a written procedure to unscrew a thermometer probe from a thermowell.
2. If 49 CFR 195.402 required ExxonMobil Pipeline Company (EMPCo) to have a written procedure to unscrew a thermometer probe from a thermowell, what is the appropriate civil penalty, if any, for failure to have such a written procedure?
3. If 49 CFR 195.402 required ExxonMobil Pipeline Company (EMPCo) to have a written procedure to unscrew a thermometer probe from a thermowell, what terms, if any, would be appropriate in a Compliance Order?