

JULY 9, 2014

Mr. Gerald S. Frey
Global Pipeline Manager & President
ExxonMobil Pipeline Company
800 Bell St., Room 741-D
Houston, TX 77002

Re: CPF No. 4-2011-5016

Dear Mr. Frey:

Enclosed is the decision on the petition for reconsideration filed by ExxonMobil Pipeline Company in the above-referenced case. For the reasons explained therein, the decision affirms certain violations in the Final Order, withdraws other violations, and modifies the civil penalty and compliance terms. The penalty payment terms are set forth in the decision. 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. This decision constitutes the final administrative action in this proceeding. Service of the decision is made pursuant to 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
Ms. Catherine Little, Hunton & Williams LLP, Bank of America Plaza, Suite 4100
600 Peachtree Street, N.E., Atlanta, GA 30308

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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In the Matter of)	
)	
ExxonMobil Pipeline Company,)	CPF No. 4-2011-5016
)	
Petitioner.)	
)	

DECISION ON PETITION FOR RECONSIDERATION

On March 31-April 1, 2011, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the records and procedures of ExxonMobil Pipeline Company (EMPCo or Petitioner) in Houston, Texas.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) on November 7, 2011, which alleged certain violations of the pipeline safety regulations and proposed a civil penalty of \$151,100. The Notice also proposed corrective action to be completed. EMPCo requested a hearing on the Notice, which was held on April 25, 2012, in Houston, Texas.

On June 27, 2013, pursuant to 49 C.F.R. § 190.213, PHMSA issued a Final Order in this proceeding. PHMSA determined that EMPCo had committed violations of § 195.302 (Item 1) and § 195.452(h)(2) (Item 2) as alleged in the Notice, and withdrew certain other allegations. The Final Order assessed a civil penalty of \$112,300 and ordered corrective action set forth in a Compliance Order.

In accordance with § 190.243, EMPCo filed a Petition for Reconsideration of the Final Order on July 22, 2013, seeking reconsideration of the violation, civil penalty, and Compliance Order for Item 1. EMPCo did not seek reconsideration of Item 2. On August 2, 2013, PHMSA stayed Item 1 of the Compliance Order pending issuance of this decision.

Pursuant to 49 C.F.R. § 190.243, an operator may petition for reconsideration of a final order issued under § 190.213. Section 190.243 provides that PHMSA may consider additional facts or

¹ EMPCo, a subsidiary of Exxon Mobil Corporation, operates approximately 3,800 miles of pipeline transporting crude oil, refined petroleum products, and natural gas liquids in Texas, Louisiana, and Montana as reported by EMPCo for calendar year 2012 pursuant to 49 C.F.R. § 195.49.

arguments if the petitioner submits a valid reason explaining why such information was not presented prior to issuance of the final order. PHMSA may grant or deny, in whole or in part, a petition for reconsideration without further proceedings, but may request additional information or comment if deemed appropriate.

Item 1 in the Final Order found EMPCo had violated 49 C.F.R. § 195.302, which states, in relevant part:

§ 195.302 General requirements.

(a) [N]o operator may operate a pipeline unless it has been pressure tested under this subpart without leakage

(c) Except for pipelines . . . covered under § 195.303, the following compliance deadlines apply to pipelines . . . that have not been pressure tested under this subpart . . .

(2) For pipelines scheduled for testing, each operator shall—

(i) Before December 7, 2000, pressure test—

(A) Each pipeline identified by name, symbol, or otherwise that existing records show contains more than 50 percent by mileage (length) of electric resistance welded pipe manufactured before 1970; and

(B) At least 50 percent of the mileage (length) of all other pipelines; and

(ii) Before December 7, 2003, pressure test the remainder of the pipeline mileage (length).

The Final Order determined EMPCo had violated § 195.302 by operating 19 pipeline segments without documentation demonstrating the segments had been pressure tested. The 19 pipeline segments were identified by number, corresponding to a spreadsheet prepared by EMPCo in 1998.² For most of the 19 segments, PHMSA found either that EMPCo did not have complete pressure test records or that EMPCo's records did not show the entire length of the segment had been tested. For a few segments, where EMPCo had asserted the company was not required to conduct pressure tests under § 195.303, PHMSA found the company did not have sufficient documentation to exempt those segments from testing. PHMSA also withdrew allegations that 8 additional segments were in violation.³

In its Petition, EMPCo requested that PHMSA withdraw 16 of the 19 segments from the violation.⁴ The grounds provided by EMPCo for withdrawing the violations included: (1) submission of additional pressure test documentation; (2) arguments concerning the adequacy

² See OPS Pipeline Safety Violation Report, Exhibit 1-2 (Nov. 7, 2011). The Final Order found violations with regard to Segment Numbers 2-5, 7-12, 14-16, 20-22, 24, 25 and 27.

³ The Final Order withdrew the alleged violations regarding Segment Numbers 1, 6, 13, 17-19, 23 and 26, finding either that adequate pressure test documentation was provided, the type of pipeline was exempt from pressure testing, or the segment had been sold prior to the time period in question.

⁴ EMPCo did not contest the violations for Segment Numbers 7-9, but did assert the pipelines were subsequently tested and "idled" and therefore do not need to be retested. In this case, "idled" means deactivated and purged.

of alternative programs established under § 195.303; and (3) the status of several segments as intrastate pipelines.⁵ EMPCo also requested that the Compliance Order be modified and the civil penalty be further reduced. PHMSA considers these arguments below.

1. Submission of Additional Pressure Test Documentation

In its Petition, EMPCo requested that PHMSA withdraw the violation for certain segments based on the submission of additional pressure test documentation.⁶ Petitioner contended that some of the additional information was not previously provided to OPS “in order to minimize the volume of the submission and in anticipation of further dialog with the Agency.”⁷ EMPCo explained that after the hearing it expected to confer with OPS about the documentation it had submitted, but OPS “did not avail itself of any opportunity to engage with the Company after the Hearing” and did not request any additional information.⁸ EMPCo contended that as a result, there was “unnecessary confusion with respect to pipeline nomenclature, testing mileage, and the pressure testing documentation” leading to findings of violation in the Final Order.⁹

EMPCo also explained that it recovered some additional pressure recording charts that were not previously available, and requested that PHMSA consider this new information. In summary EMPCo argued that 13 segments should be withdrawn because each segment had a valid pressure test performed in accordance with § 195.302.

After reviewing the record, PHMSA confirms that at the hearing the Presiding Official granted EMPCo’s request for two post-hearing submission deadlines separated by 60 days. The briefing schedule was to allow EMPCo an opportunity to submit its records, confer with OPS about the submission, and then file any further information necessary. According to EMPCo, OPS did not raise any issues regarding its first submission and therefore EMPCo did not know until receipt of the Final Order that additional records would have been helpful. PHMSA will consider the additional information submitted by Petitioner.

A. Segments found to be in compliance based on additional test documentation

Upon reconsideration in light of the additional documentation, PHMSA finds EMPCo has demonstrated compliance with § 195.302 for the following segments:

PCU to Mt. Belvieu Poly Propylene (Segment 2) – In response to the Notice, EMPCo initially stated this segment was pressure tested in 1981, 2004, and 2009. Prior to issuance of the Final Order, EMPCo submitted records from a pressure test that took place in 1980 on a portion of the system. The Final Order determined the records were not sufficient to demonstrate the entire 0.27-mile segment had been pressure tested.

⁵ See Petition, Exhibit 1 “Overview of Nineteen Segments.”

⁶ See Petition, Exhibit 2, identifying Segment Numbers 2, 4, 10-12, 14-16, 21, 22, 24, 25 and 27.

⁷ Petition at 4.

⁸ Petition at 3.

⁹ Petition at 4.

In its Petition, EMPCo produced additional pressure test records from 2005. PHMSA finds the information demonstrates this segment was brought into compliance with § 195.302 in 2005, which is more than five years prior to commencement of this proceeding. Accordingly, PHMSA is withdrawing this violation.

Weeks Island to Olivier (Segment 10) – In response to the Notice, EMPCo submitted test records for this segment dated 2000 and 2005. The Final Order determined the records were not sufficient to demonstrate compliance because no pressure recording charts were included.¹⁰ In its Petition, EMPCo provided additional information from pressure tests performed in 2000 and 2003, including pressure recording charts. PHMSA finds the additional information demonstrates compliance.

Webster to Baytown #3 and #6-8 inch (Segment 11) – EMPCo initially submitted test records for this segment from 2000. The Final Order determined the records were not sufficient because they lacked pressure recording charts and did not otherwise demonstrate the entire 1.08-mile segment had been tested. In its Petition, EMPCo provided additional records from the pressure test, including pressure recording charts. PHMSA finds the additional information demonstrates compliance with regard to the 1.08-mile segment at issue.¹¹

BOP to ITC Butadiene (Segment 12) – EMPCo initially submitted pressure test records for this segment dated 1979 and 1980. The Final Order determined the records were not sufficient to demonstrate compliance because no pressure recording charts were included. In its Petition, EMPCo provided the pressure recording charts, which PHMSA finds demonstrate compliance.

Boyce to Bunkie (Segment 14) – EMPCo initially submitted certain test records for this segment dated 2001. The Final Order determined the records were not sufficient because they lacked pressure recording charts and did not cover all 46.3 miles of the segment. In its Petition, EMPCo provided additional records from the pressure test, including pressure recording charts for the 46.3 miles of the segment. PHMSA finds the additional information demonstrates compliance for the segment.

Bunkie to Anchorage (Segment 15) – EMPCo initially submitted records for this segment from a pressure test conducted in 2001. The Final Order determined the records were not sufficient because they lacked pressure recording charts and did not cover all 51.41 miles of the segment. In its Petition, EMPCo provided additional pressure test information including pressure recording charts for the 51.41 miles of the segment. PHMSA finds the additional information demonstrates compliance for the segment.

Finney to Boyce (Segment 16) – EMPCo initially submitted test records for this segment from a pressure test conducted in 2001. The Final Order determined the records were not sufficient because no pressure recording charts were included. In its Petition, EMPCo provided the pressure test charts. PHMSA finds the new information demonstrates compliance.

¹⁰ Section 195.310 requires certain pressure test records to be kept, including pressure recording charts.

¹¹ The diagram for this pipeline segment referenced other segments totaling almost 19 miles of pipeline, but only the 1.08-mile #3 and #6 8-inch lines were at issue in this case, as listed in the 1998 spreadsheet.

Borregas to Viola (Segment 20)¹² – EMPCo initially submitted pressure test records for this segment from 2005, but the test records were missing necessary data, including test pressure, duration, and temperature. In its Petition, EMPCo provided additional documentation from the pressure test. PHMSA finds the information demonstrates the segment was brought into compliance with § 195.302 in 2005, which is more than five years prior to commencement of this proceeding. Accordingly, PHMSA is withdrawing this violation.

Strang Road to Texas City (Segment 21) – EMPCo initially submitted records from a 1997 pressure test that took place on this segment. The Final Order determined the records were not sufficient because they lacked pressure recording charts and did not demonstrate the entire 2.86-mile segment was tested. In its Petition, EMPCo provided additional records including pressure test charts. PHMSA finds the additional information demonstrates compliance for the entire 2.86-mile segment.

Texas Olefins Multi-Products Crossover (Segment 22) – EMPCo initially submitted records from a 1982 pressure test on this segment. The Final Order determined the records were not sufficient to demonstrate the entire segment had been pressure tested. In addition, no pressure recording charts were included. In its Petition, EMPCo provided additional records including pressure recording charts. PHMSA finds the additional information demonstrates compliance.

Chocolate Bayou BOP Crude Butadiene (Segment 24) – EMPCo initially submitted test records from 1981 for this segment, but the Final Order determined the records were not sufficient because no pressure recording charts were included. In its Petition, EMPCo provided additional pressure test records including pressure recording charts. PHMSA finds the additional information demonstrates compliance.

Viola to Hess Refinery #2 - 6 inch Line (Segment 27) – EMPCo initially contended this segment was pressure tested in 1999 and 2011, but only submitted pressure test records from 1999. The Final Order determined the records were not sufficient because they did not include any pressure recording charts. In its Petition, EMPCo provided additional pressure test records from 1999, including pressure recording charts. Having reviewed the documentation, PHMSA finds the additional information demonstrates compliance with respect to the 1999 pressure test.

In summary, PHMSA withdraws the violation for the following 12 segments based on the submission of additional pressure test documentation: Segment Numbers 2, 10-12, 14-16, 20-22, 24, and 27. The civil penalties and compliance terms associated with these segments are also withdrawn.

B. Segments not found in compliance based on additional test documentation

Upon reconsideration of the violations in light of the additional documentation submitted, PHMSA continues to find violations with regard to the following segments:

¹² In its Petition, EMPCo argued Segment 20 should be withdrawn for other reasons, but PHMSA finds it is appropriate to address the segment here for the reasons stated.

St. James to Junction (Segment 4) – In response to the Notice, EMPCo submitted a single page Pipeline Qualification Record for this segment from 1968. The Final Order determined the record was not sufficient because it lacked necessary pressure test information, such as pressure recording charts. In its Petition, EMPCo provided one additional page that consisted of a pressure recording chart.

Section § 195.310 lists the records that must be kept of each pressure test for as long as the facility is in use. The records include, among other things: the pressure recording charts; test instrument calibration data; minimum test pressure; test medium; description of the facility tested and the test apparatus; explanation of any pressure discontinuities, including test failures, that appear on the pressure recording charts; and temperature of the test medium or pipe during the test period.

The two pages produced by EMPCo from 1968 lack required information, including the temperature of the test medium or pipe during the test period. There is also a question about calibration of the test data. A note in the new record indicated that test pressure was calibrated, but there is no documentation or certification of the calibration. Also there is a note indicating the pressure recorder was not calibrated. Accordingly, PHMSA continues to find insufficient documentation to demonstrate a pressure test was performed on this segment in accordance with 49 C.F.R. Subpart E.

Clovelly to Raceland 16-inch Import (Segment 25) – EMPCo initially contended this segment was pressure tested in 1966 and submitted records from that year that were attached to a report prepared in 1996. The Final Order determined the records were not sufficient because they did not demonstrate the entire 16.79-mile segment was pressure tested. Specifically, the 1996 report stated the pressure test covered 6.21 miles of the #2 16-inch pipeline.

In its Petition, EMPCo provided an additional page of records that documented a leak during the pressure test. The additional record does not demonstrate a pressure test was performed in accordance with 49 C.F.R. Subpart E on the entire 16.69-mile 16-inch import pipeline segment. Accordingly, PHMSA continues to find insufficient documentation to demonstrate compliance.

In summary, PHMSA confirms the violations for Segment Numbers 4 and 25. The civil penalty and compliance terms associated with the segments are discussed below.

2. Adequacy of Alternative Programs Established under § 195.303

In its Petition, EMPCo requested that PHMSA withdraw the finding of violation for two segments because the engineering judgments used by EMPCo in making conclusions to exempt the segments from testing were sound and reasonable.¹³

As explained in the Final Order, § 195.303 permitted operators to elect a risk-based program for older pipelines as an alternative to the pressure test deadlines set forth in § 195.302(c)(2). An operator electing this approach in 1998 was required to evaluate each pipeline segment according

¹³ See Petition at 5, identifying Segment Numbers 3 and 5.

to a list of risk factors and to assign each pipeline segment a corresponding risk classification.¹⁴ Pressure tests were still required for any pipelines constructed of electric resistance-welded (ERW) pipe manufactured prior to 1970 if the pipeline was “susceptible to longitudinal seam failures.”¹⁵ Other segments could be evaluated with inline inspection (ILI) depending on risk classification. Pipelines in the lowest risk category were not subject to additional measures. Deadlines for testing and inspections under the alternative program were specified in § 195.303(f).

Section 195.303(d) established that all pre-1970 ERW pipe were to be deemed “susceptible to longitudinal seam failures,” and thus were required to be pressure tested, unless an engineering analysis showed otherwise. In conducting an engineering analysis, an operator was required to consider among other things: (1) seam-related leak history of the pipe and pipe manufacturing information as available, including the pipe steel’s mechanical properties and fracture toughness; (2) the manufacturing process and controls related to seam properties, including whether the ERW process was high-frequency or low-frequency, whether the weld seam was heat treated, whether the seam was inspected, the test pressure and duration during mill hydrotest; (3) the quality control of the steel-making process; and (4) other factors pertinent to seam properties and quality.

Pierce Junction to Luling (Segment 3) and SMI 6A to South Bend (Segment 5) – In response to the Notice, EMPCo argued that it had conducted engineering analyses under § 195.303 for both of these pre-1970 ERW pipeline segments. The Final Order determined the documented analyses did not justify EMPCo’s conclusion that the segments were not susceptible to longitudinal seam failure.

In particular, Segment 3 had experienced documented failures during pressure tests, one of which had grown along the weld seam. The longitudinal seam of the pipe was referred to in a company record as the “weak path.”¹⁶ The Final Order determined the engineering analysis did not properly analyze the weakness of the longitudinal seam evidenced by the failure. In addition, there was no information regarding the manufacturing process and controls of the pipe.

With respect to Segment 5, the Final Order found the engineering analysis did not address noted issues with the pipe’s manufacturing. The metallurgical analysis stated there had been no normalization by post-weld heat treatment, which caused “higher-than-normal microhardness tests.”¹⁷ The company’s analysis also found inadequate toughness tests and inadequate shear requirements. These issues were not addressed in the engineering analysis to determine the extent to which they could impact the susceptibility of the seam to failure.

¹⁴ An operator electing to follow an alternative program was required to develop the plans and schedule for testing by December 7, 1998.

¹⁵ § 195.303(c).

¹⁶ Final Order at 11.

¹⁷ Final Order at 12.

Under the regulatory presumption that all pre-1970 ERW pipelines are susceptible to seam failure unless otherwise shown, the Final Order concluded pressure tests were required for Segment Numbers 3 and 5 in the absence of justified conclusions to the contrary.

In its Petition, EMPCo requested that PHMSA withdraw this finding because the engineering judgments were sound and reasonable. Petitioner argued the regulation only required operators to consider pipe information that is “available.”¹⁸ EMPCo contended that it had considered all available information, including manufacturing records, process, and controls as required by the rule.

Petitioner also argued that PHMSA’s weighting of certain factors favored a more conservative conclusion regarding susceptibility, which was “beyond the requirements of the plain language of the regulation, and is not established in any guidance or other interpretive document available.”¹⁹ Petitioner noted that PHMSA has never communicated to operators what constitutes a sufficient engineering assessment under § 195.303.

PHMSA disagrees with the contention that § 195.303 does not prescribe the manner in which operators must conduct an engineering analysis. The regulation lists the information that must be considered. In addition, a reasonable reading of the regulation supports a conservative conclusion regarding seam susceptibility. The regulation establishes a presumption that all pre-1970 ERW pipelines must be pressure tested unless an operator can demonstrate they are not susceptible to seam failure.

PHMSA has reevaluated the engineering analyses that were the basis for EMPCo’s conclusion that the segments were not susceptible to seam failure. PHMSA continues to find information in the records that either suggested a susceptibility to seam failure (e.g., a leak that propagated along the seam of Segment 3) or that called seam integrity into question (e.g., inadequate toughness and shear of Segment 5). With regard to the leak that propagated along the seam of Segment 3 during a pressure test, there was no discussion in the engineering analysis of any reasons to discount this apparent weakness along the seam. Likewise for Segment 5, there was no discussion as to whether or not the manufacturing issues listed in the company’s record could affect seam integrity. There was an absence of sufficient discussion or analysis in the records to support a conclusion that the segments were not susceptible to seam failure given the issues noted. PHMSA finds no basis to modify its decision.

Accordingly, PHMSA confirms the violations in Item 1 of the Final Order for Segment Numbers 3 and 5. The civil penalty and compliance terms associated with the segments are discussed below.

¹⁸ See § 195.303(d). EMPCo also cited “Low Frequency ERW and Lap Welded Longitudinal Seam Evaluation” at 63, Michael Baker Jr., Inc. (Oct. 30, 2003) *available at* <http://primis.phmsa.dot.gov/iim/techreports.htm>.

¹⁹ Petition at 6.

3. Intrastate Pipelines

In its Petition, EMPCo requested that PHMSA withdraw the finding of violation with regard to several segments because they are intrastate pipelines not subject to the regulatory authority of PHMSA.²⁰ Petitioner noted that under the Pipeline Safety Act, 49 U.S.C. § 60105(a), PHMSA “may not prescribe or enforce safety standards and practices for an intrastate pipeline facility or intrastate pipeline transportation to the extent that the safety standards and practices are regulated by a State authority [with a current certification].”

Petitioner argued several segments identified in the Final Order are intrastate and regulated by the Texas Railroad Commission (TRRC), a State authority with a current certification for regulating intrastate hazardous liquid pipelines. Petitioner argued that because the pipeline segments fall under the TRRC, PHMSA may not impose a civil penalty or compliance order on the pipelines. EMPCo explained that it initially provided documentation to PHMSA regarding these pipelines solely in the spirit of cooperation.

PHMSA has withdrawn most of these segments based on the submission of additional test documentation.²¹ Accordingly, PHMSA considers EMPCo’s argument only with regard to Segment Number 3.

The question of whether this pipeline is interstate or intrastate was raised for the first time by EMPCo in its Petition. This issue was not briefed by the parties prior to issuance of the Final Order, nor was it discussed at the hearing. At this late stage of the proceeding, there is not sufficient evidence in the record to withdraw the violation on the sole basis that EMPCo now claims the segment is intrastate. Accordingly, PHMSA confirms the violation for Segment Number 3. The civil penalty and compliance terms associated with the segment are discussed below.

4. Compliance Order: Pipelines Subsequently Idled or Pressure Tested

In its Petition, EMPCo requested several pipeline segments be withdrawn from the Compliance Order because they have either been idled or subsequently pressure tested.²² EMPCo contended these segments do not need to be tested under the terms of the Compliance Order.

PHMSA has already withdrawn the violations for many of these segments.²³ Accordingly, PHMSA considers EMPCo’s argument only with regard to Segment Numbers 7, 8, and 9.

New Iberia to Sunset (Segment 7), South Bend to New Iberia (Segment 8), and Sunset to Anchorage (Segment 9) – With regard to pipeline segments that have been idled, meaning they do not currently contain hazardous liquids, PHMSA confirms its statement in the Final Order

²⁰ See Petition, Exhibit 3, identifying Segment Numbers 2, 3, 12, 20-22, 24 and 27.

²¹ Segment Numbers 2, 12, 20-22, 24 and 27 are withdrawn on the basis of additional documentation provided.

²² See Petition, Exhibit 4, identifying Segment numbers 2, 7-9, 12, 14-16, 20, 21 and 27 with subsequent pressure tests; and Exhibit 5, identifying Segment numbers 7-11 and 21 that have been idled.

²³ Segment Numbers 2, 10-12, 14-16, 20, 21 and 27 were withdrawn on the basis of additional documentation.

that EMPCo may pressure test such segments when Respondent plans to reintroduce hazardous liquids. In the event hazardous liquid operations will be resumed on an idled segment, that segment must be pressure tested prior to resuming operations, unless EMPCo demonstrates the segment has already been tested in accordance with Subpart E. Accordingly, these pipelines remain subject to the Compliance Order as modified below.

5. Additional Penalty Considerations

In its Petition, EMPCo requested reconsideration of the civil penalty assessed in the Final Order. EMPCo offered several reasons to reduce the penalty.

First, EMPCo argued the penalty should be reduced because EMPCo provided additional pressure test documentation for many of the pipeline segments. PHMSA agrees that pressure test records were provided to warrant withdrawing 12 pipeline segments. Therefore the civil penalty is reduced to reflect the withdrawal of these segments from the violation.

Second, EMPCo argued the penalty should be reduced because the engineering assessments conducted for two segments met applicable legal requirements under § 195.303. PHMSA disagrees as set forth above, and does not reduce the civil penalty for this reason.

Third, EMPCo argued the penalty should be reduced because some segments are intrastate pipelines regulated by the TRRC. For the reasons discussed above, PHMSA is not withdrawing the violation or civil penalty for the one segment that implicates this issue.

Fourth, EMPCo argued the penalty should be reduced because several additional segments were subsequently pressure tested. PHMSA does not find cause to reduce the penalty for corrective action taken after OPS identified the violations.²⁴

Fifth, EMPCo argued the penalty should be reduced because several segments are presently idled. PHMSA does not find cause to reduce the penalty for idling pipelines after the violations already occurred.

Sixth, EMPCo argued the penalty should be reduced because none of the segments pose a risk to safety or the environment. PHMSA already addressed the risks posed by the violations in the Final Order when it found the nature, circumstances, and gravity of the violations warranted the penalty. PHMSA finds no cause to reduce the penalty under these assessment considerations.

Finally, EMPCo argued the penalty should be reduced because the company exhibited good faith in attempting to comply with the regulations. PHMSA confirms that EMPCo demonstrated it did not commit violations with respect to 12 of the 19 pipeline segments, and therefore those segment and associated civil penalties are withdrawn. PHMSA does not find sufficient justification to reduce the penalty further under the good faith consideration for the remaining violations.

²⁴ See City of Richmond, Virginia, CPF No. 1-2011-0001, at 5, 2012 WL 4846325 (Aug. 1, 2012) (stating PHMSA does not generally find cause to reduce a civil penalty for corrective action taken after the operator has been notified of the deficiency through a compliance inspection).

In summary, PHMSA is reducing the civil penalty as set forth below to reflect the withdrawal of 12 of the 19 segments from the violation.

ASSESSMENT OF PENALTY

The Final Order assessed a total civil penalty of \$112,300, which included \$102,300 for the violation of § 195.302 (Item 1) and \$10,000 for the violation of § 195.452(h)(2) (Item 2). EMPCo did not request reconsideration of the civil penalty for Item 2.

The \$102,300 civil penalty for Item 1 in the Final Order was based on 19 segments that were found in violation. In this Decision on Petition for Reconsideration, PHMSA is withdrawing 12 of the 19 segments from the violation. Accordingly, PHMSA is reducing the civil penalty for Item 1 from \$102,300 to \$91,500. The reduced penalty is for 7 segments that were in violation

As explained in the Final Order, when a civil penalty is assessed for more than one instance of a violation, such as 7 segments without pressure tests, the majority of the penalty is for having one segment in violation with each additional segment increasing the penalty by a smaller amount.

Accordingly, the total civil penalties due in this case for the violations of § 195.302 (Item 1) and § 195.452(h)(2) (Item 2) are **\$101,500**.

Payment of the civil penalty must be made within 20 days of service of this Decision. 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, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$101,500 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.

COMPLIANCE ORDER

The Final Order included a Compliance Order requiring EMPCo to take certain corrective action to comply with the pipeline safety regulations. Based on the foregoing considerations, Item 1 of the Compliance Order is revised to read as follows:

1. With respect to the violation of § 195.302 (**Item 1**), Respondent must prepare a plan to perform pressure testing of the 7 pipeline segments identified in the Final Order as

Segment Numbers 3-5, 7-9, and 25, which are also listed on the 1998 Spreadsheet (Exhibit 1-2 of the Violation Report, incorporated by reference). Respondent must submit the plan to the Director for review and approval within 30 days of receipt of the Decision on Petition for Reconsideration. The plan must meet applicable pipeline safety requirements in 49 C.F.R. Part 195, including those in Subpart E, and must include a schedule for pressure testing each segment within 1 year from receipt of the Decision. A pipeline segment must be pressure tested under this Compliance Order unless the Director determines in writing to Respondent that one of the following conditions applies:

- a. Respondent demonstrates the segment has already been tested in accordance with Subpart E.
- b. Respondent demonstrates the segment contains no hazardous liquids, and Respondent has adopted written procedures to pressure test the pipeline prior to the reintroduction of hazardous liquids on the segment.
- c. Respondent demonstrates the segment is an intrastate pipeline subject to the regulatory responsibility of a State authority under 49 U.S.C. § 60105, and Respondent confirms the segment has been tested in accordance with the authority's Subpart E equivalent.

All other terms of the Final Order, including terms of the Compliance Order not otherwise modified in this Decision, remain in effect. The stay issued by PHMSA on August 2, 2013, is hereby terminated.

This Decision constitutes final agency action taken by PHMSA in the enforcement proceeding. The terms and conditions of this Decision are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued