

June 15, 2018

Mr. Douglas E. Brooks
President and CEO
Energy XXI Gulf Coast, Inc.
1021 Main Street, Suite 2626
Houston, TX 77002

Re: CPF No. 4-2017-7001

Dear Mr. Brooks:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$37,100. This is to acknowledge receipt of payment of the full penalty amount, by wire transfer, dated June 13, 2017. This enforcement action is now closed. Service of the Final Order by certified mail is effective upon the date of mailing as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Keith Acker, Energy XXI USA, Inc., 1021 Main Street, Suite 2626,
Houston, TX 77002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)	
Energy XXI USA, Inc.,)	
Respondent.)	CPF No. 4-2017-7001

FINAL ORDER

From February 23 through April 14, 2016, 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 facilities and records of Energy XXI USA, Inc. (EXXI or Respondent), in the West Delta, Grand Isle, Grand Isle - South Addition, West Delta - South Addition, South Pass - South and East Addition, and Mississippi Canyon Areas in the Gulf of Mexico and Grand Isle, Louisiana. EXXI is a predecessor-in-interest of Energy XXI Gulf Coast, Inc. (EGC), a situation resulting from Chapter 11 bankruptcy petitions filed by EXXI and other predecessors-in-interest of EGC.¹ EGC is an oil and natural gas development and production company with assets located in the U.S. waters of the Gulf of Mexico and onshore in Louisiana and Texas.²

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated May 16, 2017, a Notice of Probable Violation and Proposed Civil Penalty (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that EXXI had committed three violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$37,100 for the alleged violations. The warning item required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

EXXI responded to the Notice by letter dated June 9, 2017 (Response). The company did not contest the allegations of violation and paid the proposed civil penalty of \$37,100. In accordance with 49 C.F.R. § 190.208(a)(1), such payment authorizes the Associate Administrator to make findings of violation and to issue this final order without further proceedings.

¹ Energy XXI Gulf Coast, Inc., Form 10-KT Transition Report filed February 22, 2017, available at <https://ir.energyxxi.com/annual-reports/content/0001144204-17-010398/0001144204-17-010398.pdf>.

² Energy XXI Gulf Coast, Inc.'s website, available at <https://www.energyxxi.com/about> (last accessed March 23, 2018).

FINDINGS OF VIOLATION

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

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c), which states:

§ 195.440 Public awareness.

(a)

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of [American Petroleum Institute Recommended Practice (API RP)] 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c) by failing to follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety. Specifically, the Notice alleged that EXXI failed to perform a review of its Public Awareness Plan (PAP) to measure effectiveness at the intervals required by API RP 1162 and the PAP. The Notice alleged that EXXI failed to conduct reviews of its PAP to measure effectiveness, no more than four years apart, as required by Sections 8.4 and 8.5 of API RP 1162 and by Section 13 of EXXI's PAP. EXXI's PAP was reviewed and updated on November 24, 2011. EXXI's Review and Revision Log (RRL), Version 1, noted that a subsequent review of the PAP was due by April 1, 2015. However, Version 3 of the RRL, dated August 2014, changed the due date of the subsequent PAP review to November 1, 2017, nearly six years after the initial review of the PAP. Respondent did not provide any explanation for the change in due date. EXXI did not complete a subsequent review of its PAP until March 3, 2016.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.440(c) by failing to follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program.
The program shall include provisions to:

(a)

(b) Ensure through evaluation that individuals performing covered tasks are qualified[.]

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure that individuals performing covered tasks were qualified. Specifically, the Notice alleged that EXXI conducted an internal inspection of Tank 2052 on February 17, 2012, pursuant to API Standard 653. EXXI only provided PHMSA with a copy of the sign-in/out log for the inspection. Respondent did not provide any documentation to demonstrate that contractors performing the inspection and maintenance of Tank 2052 were qualified individuals, the dates of current qualification, identification of the covered tasks performed, or qualification methods used.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure that individuals performing covered tasks were qualified.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.³

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; 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 \$37,100 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$11,200 for Respondent's violation of 49 C.F.R. § 195.440(c), for failing to follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety. EXXI neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$11,200 for violation of 49 C.F.R. § 195.440(c).

Item 3: The Notice proposed a civil penalty of \$25,900 for Respondent's violation of 49 C.F.R. § 195.505(b), for failing to ensure that individuals performing covered tasks were qualified. EXXI neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the

³ These amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

assessment criteria, I assess Respondent a civil penalty of \$25,900 for violation of 49 C.F.R. § 195.505(b).

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 **\$37,100**. Respondent paid the total civil penalty amount of \$37,100 by wire transfer on June 13, 2017.

WARNING ITEM

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

49 C.F.R. § 195.402(a) (**Item 1**) — Respondent's alleged failure to follow procedures requiring EXXI to periodically review the work done by operator personnel to determine the effectiveness of the procedures.

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

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

June 15, 2018

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued