

**JAN 11 2012**

Mr. Geoffrey Craft  
Vice President, Operations  
ExxonMobil Pipeline Company  
12851 166<sup>th</sup> Street  
Cerritos, CA 90703-2103

**Re: CPF No. 5-2009-5004**

Dear Mr. Craft:

Enclosed please find the Decision on the Petition for Reconsideration filed by ExxonMobil Pipeline Company in the above-referenced case. For the reasons set forth in the Decision, your petition is denied. When the civil penalty has been paid, this enforcement action will be closed. Service of the Decision by certified mail is complete upon mailing as 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: Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety  
Mr. Chris Hoidal, Director, Western Region, OPS

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164203063561]**

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

In the Matter of	)	
	)	
ExxonMobil Pipeline Company,	)	CPF No. 5-2009-5004
	)	
Petitioner.	)	
	)	

**DECISION ON PETITION FOR RECONSIDERATION**

On July 11, 2011, pursuant to 49 U.S.C. §§ 60118 and 60112 and 49 C.F.R. § 190.213, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Final Order in this proceeding finding that ExxonMobil Pipeline Company (EMPCO or Petitioner) committed a violation of the hazardous liquid pipeline safety regulations in 49 C.F.R. Part 195. The Final Order assessed a civil penalty of \$100,000 for the violation. EMPCO operates a pipeline terminal in Spokane, Washington that consists of six breakout tanks and associated piping. The facility is located adjacent to an aquifer supplying drinking water to the City of Spokane, Washington.

EMPCO submitted a Petition for Reconsideration dated August 2, 2011 (Petition). In its Petition, EMPCO requested that PHMSA mitigate the \$100,000 civil penalty associated with that finding of violation.

Pursuant to 49 C.F.R. § 190.215, a respondent may petition PHMSA for reconsideration of a final order issued pursuant to § 190.213. PHMSA does not consider repetitious information or arguments, but may consider additional facts or arguments, provided the respondent submits a valid reason 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, data, and comment as deemed appropriate.

EMPCO did not provide a reason why its Petition contains facts and arguments not presented prior to issuance of the Final Order. Despite this failure, it presented some novel arguments in response to the Final Order. For this reason, I will consider the arguments, as outlined in EMPCO's Petition.

**Item 1:** The Final Order determined that EMPCO violated 49 C.F.R. § 195.402(a), 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 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.

The Final Order found that EMPCO failed to prepare and follow a written procedure for the safe removal of a temperature probe. As a result, during removal of a temperature probe, an EMPCO contractor inadvertently detached a Thermowell unit from breakout tank #505, resulting in the release of 80 barrels of gasoline.

In its Petition, EMPCO states that it “acted in accordance with reasonable industry practices in its development of written procedures required under 49 C.F.R. § 195.402(a).”<sup>1</sup> Therefore, Petitioner suggests that the issue in this case is not the lack of a particular written procedure for the safe removal of a temperature probe. Rather, the dispositive issue is whether EMPCO’s overall practices, as manifested in its complete manual, demonstrate compliance with § 195.402(a).

EMPCO also argues that the assessed penalty is unsupported by several facts and circumstances. In accordance with its argument that PHMSA utilize a *totality of the circumstances* approach in its evaluation of EMPCO’s compliance with § 195.402(a), the Respondent also argues that the assessed penalty should reflect its overall good faith in the development of its manual. EMPCO asserts that its manual is in full compliance with § 195.402(a) and reflects a careful balance between comprehensiveness and excessive detail.

Lastly, Petitioner ascribes the incident to human error or “an unforeseeable event which was outside of its control”<sup>2</sup> and accordingly, unrelated to the lack of having a procedure for removal of the temperature probe. EMPCO also notes that the company derived no cost savings or other financial benefit from the noncompliance in this case and that the assessed penalty is excessive, as compared to the penalty assessed in another case.

***Analysis***

I will address each of the Petitioner’s arguments, in turn. First, EMPCO argues that § 195.402(a) “sets forth minimum standards for the contents of a DOT Liquids Manual . . . [and] afford[s] the regulated pipeline community some latitude and discretion.”<sup>3</sup> I agree that § 195.402(a) provides

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<sup>1</sup> Petition at 2.

<sup>2</sup> Id. at 3.

<sup>3</sup> Id. at 2.

operators with the minimum standard for manuals of written procedures. However, the facts of this case support the Final Order's finding that Petitioner's manual did not meet this standard.

The Petitioner has admitted throughout the record in this case that the removal of a temperature probe is routinely practiced at its facility. As such, this procedure certainly qualifies as a "normal operation[s] and maintenance activity" and therefore should have been included in EMPCO's manual of written procedures. Simply because a task is routinely performed does not render it superfluous. EMPCO argues that inclusion of this procedure would "detract from the utility of the Manual and cause it to be 'ineffective.'"<sup>4</sup> The Petitioner has already amended its written procedures and no such consequences have resulted.

EMPCO advances other factors in support of mitigation of the assessed penalty. As stated above, EMPCO asserts that its comprehensive efforts in development of its written manual were such that it has been faithful to the "overall requirements of § 195.402(a)." As stated above, the threshold for compliance with § 195.402(a) is the inclusion of all "normal operations[s] and maintenance activit[ies]." Removal of a temperature probe is a normal maintenance activity and all such activities must be included to achieve compliance with 195.402(a). Simply because EMPCO had other written procedures in place does not warrant mitigation.

According to the Petitioner, the presence of this procedure would not have prevented this accident. The presence of written procedures serves as a reminder for all employees, irrespective of their tenure, to follow specific steps when conducting routine activities. The fact that Petitioner's longstanding contractor could have ignored the written procedure does not excuse or lessen the noncompliance of not having *any* procedure whatsoever.

EMPCO also argues that it derived no financial benefit from the noncompliance in this case. This appears to be true, but must be weighed against other factors that support the assessed penalty.

Lastly, Petitioner argues that its penalty is excessive in relation to other penalties that it considers more serious. Generally, PHMSA declines to compare penalties. The circumstances of each individual matter can sometimes be opaque and a number of different considerations are weighed in arriving at an individualized penalty for each case. However, as stated in the Final Order, this case presented several factors that support assessment of a \$100,000 penalty. Most importantly, this facility is located directly adjacent to a sole source aquifer that supplies drinking water to the greater Spokane metropolitan area. At the time of this incident, there was no membrane below the affected tank. Serious consequences could have resulted to the environment and the public. Furthermore, it appears that the Petitioner's failure to have and follow procedures directly contributed to this incident.

Accordingly, for the above reasons, EMPCO's petition to mitigate the civil penalty for the finding of violation in the Final Order is *denied*.

Payment of the \$100,000 civil penalty assessed in the Final Order is now due and must be made within 20 days of receipt of this Decision. Federal Regulations (49 C.F.R. § 89.21(b)(3)) require

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<sup>4</sup> Id. at 2.

this payment 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, OK 73125; 405-954-8893.

Failure to pay the \$100,000 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 United States District Court.

The Decision on Reconsideration is the final administrative action in this proceeding.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued