

September 30, 2016

Mr. Gerald S. Frey
Global Pipeline Manager & President
ExxonMobil Pipeline Company
22777 Springwoods Village Pkwy
E3.5A.521
Spring, TX 77389-1425

Re: CPF No. 1-2013-5008

Dear Mr. Frey:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$37,500. It further finds that ExxonMobil Pipeline Co. has completed the actions specified in the Notice to comply with the pipeline safety regulations. When the civil penalty has been paid, this enforcement action will be closed. Service of the Final Order is made pursuant to 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Byron Coy, Director, Eastern 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**

In the Matter of)	
)	
ExxonMobil Pipeline Co.,)	CPF No. 1-2013-5008
)	
Respondent.)	
)	

FINAL ORDER

On November 14, 2011, pursuant to 49 U.S.C. § 60117, a representative 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 ExxonMobil Pipeline Company (EMPCo or Respondent) in Springfield, Massachusetts.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated June 20, 2013, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice alleged that EMPCo had violated 49 C.F.R. § 195.583, proposed a civil penalty of \$37,500 for the alleged violation, and proposed certain corrective action. The Notice also included one additional warning item in accordance with 49 C.F.R. § 190.205.

Respondent responded to the Notice by letter dated July 22, 2013 (Response) and February 10, 2014 (Pre-hearing Submission). EMPCo contested the allegations and requested a hearing. A hearing was subsequently held on July 9, 2014 in Trenton, New Jersey, before a Presiding Official from the Office of Chief Counsel, PHMSA. After the hearing, Respondent provided a post-hearing statement for the record, by letter dated August 22, 2014 (Closing). Pursuant to § 190.209(b)(7), the Director submitted a written evaluation of Respondent's response material on September 8, 2015.

¹ EMPCo operates approximately 4,000 miles of pipeline transporting crude oil, refined petroleum products, and highly volatile liquids in Texas, Louisiana, and other states as reported by EMPCo for calendar year 2015 pursuant to 49 C.F.R. § 195.49.

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.583(a), which states in relevant part:

§ 195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months.

The Notice alleged that Respondent violated 49 C.F.R. § 195.583(a) by failing to inspect an onshore pipeline that was exposed to the atmosphere for evidence of atmospheric corrosion. Specifically, the Notice alleged that in 2010, EMPCo failed to inspect the underside of an aboveground pipeline segment that was shielded from view by rocks. The evidence produced by OPS included Respondent’s 2010 inspection report that indicated the pipeline was “sitting on [an] abrasive rock shield.” OPS also produced photos from 2011 showing the proximity of rocks to the pipeline and documented conversations with Respondent’s employee who stated that he did not remove the rocks to inspect the pipeline.

Respondent contested the allegation and contended that on April 14, 2010, its Corrosion Technician inspected all aboveground piping for atmospheric corrosion, including the “manifold piping that transports product over an area of crushed gravel.”² Respondent contended that several pipe supports, including rock shield material, lay beneath the pipe to reduce contact with the rocks. Respondent stated that the Technician was able to “visually inspect all sides of the Segment piping, including the underside of the pipe, because the Segment was sitting above (and not on) the crushed gravel” and that he documented the results of the inspection in his report by noting there were “Pipes sitting on abrasive rock shield.”³ Respondent contended that no gravel had to be moved to conduct this inspection.

According to EMPCo, when the OPS inspector observed that the pipe was in contact with crushed gravel, thereby making the underside of the pipe inaccessible for inspection, the OPS inspector asked the Technician whether the rocks had been present during Respondent’s 2010 inspection of the pipe. Contrary to OPS’s report that the Technician stated the rocks were not removed and the underside was not inspected, Respondent contended that “at no time during the PHMSA inspection did [the Corrosion Technician] indicate that the portion of the Segment had

² Pre-hearing Submission at 2.

³ Pre-hearing Submission at 2-3; Response, Att. 1.

not been inspected for atmospheric corrosion.”⁴ Respondent argued the crushed gravel that was observed during the OPS inspection had collected around the pipe sometime between the Company’s 2010 atmospheric corrosion inspection and the 2011 OPS compliance inspection, likely due to “routine operational activities at the Terminal, as well as topographical changes caused by prior storms, tree loss, and the development of channels from water runoff.”⁵

Analysis

Section 195.583(a) requires a pipeline operator to inspect each pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion. The inspection must take place at least once every three calendar years, with intervals between inspections not exceeding 39 months. If atmospheric corrosion is discovered, the pipeline must be cleaned and coated with a material suitable for preventing atmospheric corrosion.⁶ If necessary, the pipeline must be repaired or replaced.⁷ During an inspection for atmospheric corrosion, an operator must inspect the entire circumference of the pipe, including beneath any thermal insulation or disbanded coating.⁸

The evidence in the record demonstrates that in 2011, an OPS inspector observed an exposed pipeline segment at Respondent’s Springfield Terminal. The pipeline was above and touching crushed gravel rocks. Pictures from 2011 show the presence of rocks would have prevented visual inspection of the underside of the pipeline. During the 2011 inspection, the OPS inspector asked Respondent’s Corrosion Technician if he had removed the rocks to inspect the pipeline during the most recent atmospheric inspection in 2010. The Technician indicated he did not remove the rocks.

There is disagreement about whether the Technician meant that he did not *have to* remove the rocks because the rocks were not present in 2010. For several reasons I find the evidence proves the rocks were present in 2010 and Respondent failed to remove them to inspect the pipe. Respondent’s 2010 Inspection Report noted that the pipe was “sitting on [an] abrasive rock shield.” A photograph of the pipeline segment from 2010 shows the pipe, the rock shield, and the gravel. The photograph indicates that the rocks were very close to and possibly even touching the bottom of the pipe at the time of the 2010 atmospheric corrosion inspection. The proximity of the rocks would have impeded visual examination of the underside of the pipe.

Although Respondent has submitted an affidavit by its Corrosion Technician stating that it was not necessary to remove the rocks to visually inspect the underside of the pipe, the affidavit was prepared over two years after the 2010 atmospheric corrosion inspection. Respondent’s 2010

⁴ Pre-hearing Submission at 3; Closing at 1.

⁵ Closing at 2.

⁶ §§ 195.581; 195.583(c).

⁷ § 195.585.

⁸ § 195.583(b).

Inspection Report and photograph from the time of the inspection, however, provide stronger evidence that rocks were present and obstructed the bottom of the pipe from view.

Accordingly, after considering all of the evidence, I find Respondent violated 49 C.F.R. § 195.583(a) by failing to inspect the underside of the exposed pipeline for evidence of atmospheric corrosion.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122 (2010), Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for a related series of violations.⁹ The Notice proposed a civil penalty of \$37,500 for the violation cited above.

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.

Item 1: The Notice proposed a civil penalty of \$37,500 for Respondent's violation of 49 C.F.R. § 195.583(a), for failing to inspect an exposed pipeline for evidence of atmospheric corrosion.

The proposed penalty was based on assertions in the Notice and Violation Report relevant to the penalty assessment criteria in § 190.225. With regard to the nature of the violation, the Violation Report noted this violation concerned Respondent's failure to perform an inspection. With regard to circumstances, it noted the violation was discovered by OPS. With regard to gravity, the Violation Report suggested pipeline integrity or safe operation was potentially compromised at a station or similar area. With regard to the degree of Respondent's culpability and good faith, the Violation Report suggested no credit under these factors.

⁹ The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904 (Jan. 3, 2012), increased the maximum administrative civil penalty amounts to \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for a related series of violations. The maximum penalties were also increased to account for inflation. Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 81 Fed. Reg. 42564 (Jun. 30, 2016).

Respondent argued the civil penalty should be reduced based on its good faith “performance of the April 2010 inspection and actions taken since.”¹⁰ Respondent stated that “Within a week following the OPS 2011 inspection, the Company removed the crushed gravel so that the Segment was no longer in contact with the gravel and verified that no external corrosion was evident.”¹¹ When considering the good faith of Respondent in attempting to comply, PHMSA looks at “the attempt by the operator to comply with the cited regulation prior to the occurrence of the violation.”¹² Respondent’s actions taken after the OPS inspection, though prudent to come into compliance, does not warrant reducing the civil penalty. Respondent’s attempt to comply by performing the 2010 inspection is noted, but due to its failure to inspect the entire pipe no credit to the penalty is warranted.

At the time of the Notice, Respondent had a history of three prior offenses within the last eight years. Respondent argued these offenses were not similar violations of § 195.583(a). I consider Respondent’s entire history of prior violations, not just repeat offenses.

Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty of **\$37,500** for the violation of § 195.583(a).

Payment of the civil penalty must be made within 20 days of service. 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, 6500 S MacArthur Blvd., Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$37,500 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 Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 195.583(a). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquid or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director

¹⁰ Closing at 4.

¹¹ Pre-hearing Submission at 3.

¹² White Cliffs Pipeline, LLC, CPF No. 3-2011-5012, at 6, 2013 WL 1247518, at *5 (Feb. 5, 2013).

indicated that Respondent has taken the following actions specified in the proposed compliance order:

With respect to the violation of § 195.583(a) (**Item 1**), Respondent has removed the gravel in question, inspected the underside of the pipeline segment, and remediated any deficiencies.

Accordingly, I find that compliance has been achieved with respect to this violation. It is not necessary to include the proposed compliance terms in this Order.

WARNING ITEM

With respect to Item 2, the Notice alleged a probable violation of § 195.49 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning is for:

49 C.F.R. § 195.49 (**Item 2**) – Respondent’s alleged failure to accurately complete annual reporting DOT Form PHMSA F-7000-1.1 for its hazardous liquid pipeline facility. For reporting year 2010, Respondent allegedly included a 22-mile pipeline that has been abandoned since 1983.

EMPCo provided information showing it has taken action to address the cited item by removing the abandoned pipeline from its 2011 annual report. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a petition for reconsideration of this Final Order to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, D.C. 20590, no later than 20 days after receipt of the Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

Alan K. Mayberry
Issued
Acting Associate Administrator
for Pipeline Safety

Date