



Respondent denies that it failed to comply with 49 C.F.R. Part 195.302 or 49 C.F.R. Part 195.310, but instead believes there was a miscommunication during the inspection regarding the EMPCo pipeline segments that are authorized to operate without a record of a Subpart E pressure test.

The list of twenty-seven (27) segments cited in the NOPV was prepared by Exxon Pipeline Company as part of its efforts to comply with the pressure testing requirements of 49 C.F.R. Part 195.302 in advance of the relevant deadlines. Two (2) of those pipeline segments were subsequently sold, five (5) have been idled (purged of product), twelve (12) have been hydrotested, three (3) are exempt from 49 C.F.R. Part 195 and pressure testing (either as an offshore pipeline under 49 C.F.R. 195.1(b)(5) or a non-regulated gathering line), and five (5) have employed the risk based alternative to pressure testing.

EMPCo now operates eight (8) segments that are authorized to operate without a Subpart E pressure test. For five (5) of those segments, although Respondent has some evidence that they were historically pressure tested, Respondent nevertheless timely invoked the risk based alternative provided by PHMSA at 49 C.F.R. Part 195.302(b)(4) and Part 195.303.<sup>1</sup> For one (1) additional segment, Respondent relied on the exception from pressure testing pursuant to 49 C.F.R. Part 195.302(b)(1) for derating the pipeline's maximum operating pressure pursuant to 49 C.F.R. Part 195.406(a)(5). The remaining two (2) segments are exempt from 49 C.F.R. Part 195, one as an offshore pipeline under 49 C.F.R. Part 195.1(b)(5) and the other a non-regulated gathering line.

In support of the above, the Company will provide additional information to PHMSA in advance of the Hearing in this matter, and make the supporting documents available for review.

**NOPV Item 2: Failure to Demonstrate that the 180-day Period to Discover a Condition is Impracticable, pursuant to 49 C.F.R. Part 195.452(h)(2)**

*PHMSA alleges that Respondent extended the discovery date for a condition beyond the 180-day period without establishing that discovery was impracticable within that time frame on two occasions: (1) the pipeline segment from Melville to Boyce and (2) the pipeline segment from West Delta 73 to Grand Isle Station. As alleged, and as addressed in the Agency's Proposed Compliance Order for this violation, PHMSA has questioned the sufficiency of Respondent's Integrity Management Program (IMP) Manual.*

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<sup>1</sup> Two (2) of the five (5) segments for which Respondent previously invoked the risk-based alternative were recently successfully hydrotested.

In both instances noted in the NOPV, Respondent complied with 49 C.F.R. Part 195.452(h) and its own internal procedures requiring adequate data in order to discover a condition. Pursuant to 49 C.F.R. Part 195.452(h)(2), discovery of a condition occurs when an operator has “adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline.” Respondent’s IMP Manual (as audited by PHMSA in 2003 and 2007) requires that comprehensive data integration and analysis be completed prior to making final discovery within 180 days of the final ILI tool run. *EMPCo IMP Manual, Section 3, Data Integration for High Consequence Areas & Section 4, Repair Criteria.* Respondent understands that extensions to the 180 day period are difficult to obtain, and may only be granted by Respondent’s management in rare circumstances, as reflected in the Company’s procedures. *EMPCo IMP Manual, Section 0, Exception Process.*

In the first instance cited by PHMSA, Respondent complied with the meaning of “discovery of condition” under 49 C.F.R. Part 195.452(h)(2). When Respondent received preliminary ILI data from the vendor less than 22 days before the 180 day deadline, adequate information about the condition and discovery was not yet available. It was ‘impracticable’ for Respondent to perform the comprehensive data integration and analysis required under 49 C.F.R. Part 195.452(g) and Respondent’s own procedures within the 180-day period. Specifically, because the preliminary ILI data was received so late in the process, Respondent had the following data integration and analysis remaining to conduct: analysis of results and data integration including overlay of ILI data with additional information, including but not limited to, cathodic protection, hydrotesting, previous ILIs, depth of cover, waterway crossings, aerial patrols, encroachments, leak history, alignment sheets, and previous repairs. As a result, in order to ensure that Respondent received the final ILI report and the data was properly integrated and considered as required by PHMSA and pursuant to Respondent’s internal procedure, Respondent documented the reasons that discovery of a condition was impracticable to meet the deadline and the need for an extension of the 180 period in order to perform the required comprehensive analysis.

In the second instance cited by PHMSA, the 180 day deadline was not extended but, rather, Respondent experienced failed ILI tool runs. The quality of the data was suspect in that the ILI tool did not provide adequate information under 49 C.F.R. Part 195.452(h)(2) or precise enough information to determine whether a specific repair condition existed, and the entire ILI was rerun two additional times. As delineated in API Standard 1160 and consistent with PHMSA Integrity Management FAQ 7.19, Respondent considered tool accuracy tolerances in evaluating the quality of the ILI data. After two failed attempts to validate the tool run pursuant to its IMP Manual, Respondent made the determination that the previous ILI

run failed to accurately assess the defects at issue and scheduled two additional ILI runs with a higher accuracy tool. *EMPCo IMP Manual, Appendix K, Validation and Repair Process Analysis Tools*. Consistent with PHMSA Integrity Management FAQ 4.13, discovery was complete within 180 days of the only successful tool run.

In support of the above, Respondent will provide relevant documentation to PHMSA in advance of the Hearing in this matter. To address PHMSA's concern regarding Respondent's IMP Manual, Respondent is in the process of making revisions to clarify the definition of discovery of condition and what may qualify as impracticable.

**NOPV Item 3: Failure to Evaluate and Repair Immediate Repair Conditions in an Acceptable Amount of Time, pursuant to 49 C.F.R. Part 195.452(h)(4)(i)**

*PHMSA alleges that Respondent failed to evaluate and repair at least 3 immediate repair conditions, or reduce pressure, within an acceptable amount of time. These include instances on the West Delta 73 pipeline and the South Marsh Island 69B to South Bend pipeline. As alleged, and as addressed in the Agency's Proposed Compliance Order for this violation, PHMSA has questioned the sufficiency of Respondent's IMP Manual.*

The three instances at issue involve offshore transmission lines operated at low stress levels, including one line for which the repair condition was located such that it could not affect a high consequence area (HCA) pursuant to 49 C.F.R. Part 195.452(a).

Repairs for offshore pipelines require considerably more time to permit, plan, stage and execute. As noted in the NOPV, PHMSA IM FAQ 7.4 requires that immediate repairs be made "as soon as practicable." With regard to the instances on the West Delta 73 pipeline, because the pipelines were offshore lines, it was not practicable for Respondent to make the required repairs within the relevant timeframes set forth in its IMP Manual. *EMPCo IMP Manual, Section 4, Repair Criteria*. Accordingly, pursuant to internal IMP procedures, Respondent timely filed a Safety Related Condition Report with PHMSA. *EMPCo IMP Manual, Section 2, Baseline Assessment Plan; Section 4, Repair Criteria*. In the report, Respondent notified PHMSA that repairs were being evaluated and scheduled and that additional pressure restrictions would not be necessary because the lines were already operated at low pressures and further pressure reductions would not serve to increase the level of safety, consistent with ASME B31.4-2006, Section 451.6.1. Further, the corrosion defect anomalies detected on that line were rated as not needing a pressure reduction, using ASME B31.G-1991, incorporated at 49 C.F.R. Part 195.452(h)(4)(i)(B).

Finally, pursuant to 49 C.F.R. 195.452(a) and PHMSA IM FAQ 2.4, IMP requirements are not applicable to the dent anomaly on the South Marsh Island 69B line because that particular segment could not affect an HCA. *EMPCo IMP Manual, Section 1, HCA Segment Identification Process, Figure 1.5*. Even though it was not required, EMPCo filed a Safety Related Condition Report, as precautionary measure and to keep PHMSA informed.

In support of the above, Respondent will provide relevant documentation in its possession in advance of the Hearing in this matter. To address PHMSA's concern regarding Respondent's IMP manual, however, Respondent is in the process of making revisions to provide additional guidance regarding immediate repairs and pressure reductions.

### **Response to Proposed Civil Penalty**

For the reasons noted above, Respondent believes that the penalties for Items 1 through 3 should be withdrawn or, in the alternative, reduced.

### **Response to Proposed Compliance Order**

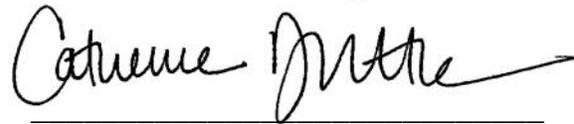
Respondent is already in the process of completing the actions requested by Item 2 of the Proposed Compliance Order that accompanied the NOPV. Respondent respectfully requests that Item 1, and the relevant portion of Item 5 regarding hydrostatic testing, be withdrawn from the Proposed Compliance Order in light of the information provided. In addition, with regard to Items 3 and 4 of the Proposed Compliance Order, Respondent respectfully requests additional discussion with PHMSA regarding the relevant revisions to its IMP manual to address the regulatory requirements for immediate repairs and pressure reductions. Information documenting corrective actions will be provided to PHMSA, along with the cost documentation requested by the Proposed Compliance Order.

### **Summary**

For the reasons set forth in the above Response to the NOPV, and in light of Respondent's cooperative and proactive response to this action, the Company respectfully requests that PHMSA withdraw or convert Item 1 to a Warning Item because the Company had completed all required actions and records existed at the time of the inspection. In addition, Respondent maintains that the allegations set forth in Items 2 and 3, and their associated penalties, should be withdrawn or in the alternative converted to Warning Items because Respondent had completed all actions required at the time of the inspection. If the penalties are not withdrawn, Respondent also respectfully requests that PHMSA reduce the proposed penalties in light of the information provided and because of Respondent's prompt and cooperative response to the enforcement action.

In support of these requests, Respondent will submit further documentation as noted above prior to the Hearing scheduled in this matter, or as PHMSA may otherwise request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Catherine D. Little", with a long horizontal flourish extending to the right.

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**HUNTON & WILLIAMS**

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