

August 7, 2018

Mr. Richard E. Byrne
General Counsel
ExxonMobil Pipeline Company
22777 Springwoods Village Parkway
Energy 3, 5A.491
Spring, Texas 77389

Re: In the Matter of ExxonMobil Pipeline Company, CPF No. 4-2013-5027

Dear Mr. Byrne:

Enclosed please find the Order on Remand issued in the above-referenced case. It assesses a reduced civil penalty of \$61,900 for the violation in Item 8 of the Final Order that was originally issued by PHMSA on October 1, 2015, and remanded by the U.S. Court of Appeals for the Fifth Circuit on August 14, 2017. Pursuant to the terms of this order, and because the penalties for Items 1–4 and 7 of the Final Order were vacated by the court, PHMSA is refunding Exxon civil penalties of \$2,355,500 that were already paid. When the remaining terms of the compliance order are completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of this 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. Johnnie R. Randolph, Jr., Counsel, Exxon Mobil Corporation
Mr. Reagan Simpson, YetterColeman, LLP
Mr. Robert Hogfoss, Ms. Catherine Little, Ms. Annie Cook, Troutman Sanders, LLP

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)	
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ExxonMobil Pipeline Company,)	CPF No. 4-2013-5027
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Respondent.)	
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ORDER ON REMAND

On October 1, 2015, pursuant to 49 C.F.R. § 190.213, PHMSA issued a Final Order to ExxonMobil Pipeline Company (Exxon) as a result of an investigation into the Pegasus Pipeline failure that occurred near the town of Mayflower, Arkansas in March 2013 (Failure).¹ The Final Order found that Exxon had committed nine violations of the pipeline safety regulations in connection with the Failure (Items 1–9), assessed a civil penalty of \$2,630,400 for the violations, and ordered Exxon to complete certain corrective actions. In accordance with 49 C.F.R. § 190.243, PHMSA affirmed the Final Order in a Decision on Petition for Reconsideration issued April 1, 2016.²

Thereafter, Exxon filed a Petition for Review with the U.S. Court of Appeals for the Fifth Circuit, challenging the agency’s Final Order and Decision. On August 14, 2017, the court issued a decision vacating Items 1–4 and 7, affirming the violation in Item 8, and remanding that item to PHMSA with instructions to reevaluate the basis for the penalty associated with Item 8. The court left undisturbed Items 5, 6, and 9.

On remand, PHMSA has reevaluated the civil penalty for Item 8 consistent with the court’s conclusion that the violation did not cause or contribute to the Failure. For the reasons set forth below, PHMSA is assessing a reduced civil penalty of \$61,900 for Item 8.

¹ The pipeline failure occurred on March 29, 2013, in a residential area and resulted in the release of approximately 5,000 barrels of crude oil, the evacuation of 22 households, and estimated property damage over \$57 million. *ExxonMobil Pipeline Co.*, CPF No. 4-2013-5027, 2015 WL 7175715 (Oct. 1, 2015).

² *ExxonMobil Pipeline Co.*, CPF No. 4-2013-5027, 2016 WL 2753318 (April 1, 2016). Enforcement decisions can also be viewed on PHMSA’s website at <http://www.phmsa.dot.gov/pipeline/enforcement> (follow links for Enforcement Information for Specific Operators).

ASSESSMENT OF REDUCED PENALTY

In determining the amount of a civil penalty, pursuant to 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, PHMSA 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; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and the effect on Respondent's ability to continue in business.

Item 8 of the Final Order found that Exxon violated 49 C.F.R. § 195.452(b)(5) by failing to follow its written procedures for implementing its integrity management program. The Final Order assessed a civil penalty of \$783,300 for the violation.

With regard to the nature, circumstances and gravity of the violation, the Final Order concluded the highest level of gravity was implicated because the violation was a causal factor in the Failure. Specifically, Exxon's procedures required the operator to follow certain procedures in implementing its integrity management program that involved assessing risk by answering questions about the condition of the Pegasus Pipeline. One of the questions asked whether or not an integrity assessment had been performed on the pipeline to evaluate seam integrity and to identify conditions requiring repair. While using the program, Exxon answered "yes" to this question, even though the company had not performed an integrity assessment. Exxon had planned to perform an integrity assessment in the near future and therefore answered this question incorrectly to reflect the future tool run. However, the tool run was not actually performed when planned and eventually was postponed another several years.

The Failure that occurred in March 2013 resulted from a failure of the pipeline's longitudinal seam—the very threat that the operator's risk assessment was supposed to address. In the Final Order, PHMSA found that the failure to follow the risk assessment program procedures had the highest level of gravity because the violation was a causal factor in the Failure. The Fifth Circuit concluded, however, that PHMSA erred in finding Item 8 had the highest level of gravity—finding the violation was not a causal factor in the accident. The court reasoned that even though Exxon answered "yes" and failed to run an inline inspection tool for several years, once the company ran the tool, it did not detect the anomaly that eventually failed. The court reasoned that even if the tool had been timely run, the accident would not have been prevented. The court remanded to PHMSA to reevaluate what would be an appropriate penalty for Item 8 in light of this determination.

On remand, PHMSA finds the highest levels of gravity are not appropriate for this violation in light of the court's determination. Having reviewed the record, PHMSA finds that the appropriate gravity level is that pipeline safety or integrity had been compromised in a high consequence area (HCA). Exxon's failure to follow procedures for assessing the integrity of its pipeline created unnecessary risk to safety, even if an accident did not directly result from the error. Misapplying the risk assessment program produced an inaccurate evaluation of the pipeline's safety condition and avoided documenting the need to perform additional integrity assessments. It also allowed unknown conditions on the pipeline to go unidentified or evaluated for several years until an inline inspection was finally performed. Further, the violation occurred

in a residential area that meets the definition of an HCA. Because the violation compromised safety in an HCA, but did not cause or contribute to the Failure, the civil penalty must be reduced.

PHMSA also reviewed the record with regard to the other assessment factors and found no reason to depart from the findings in the Final Order. Accordingly, having reviewed the record and considered the assessment criteria, PHMSA assesses a reduced penalty of \$61,900 for the violation of § 195.452(b)(5) in Item 8.

Disposition of penalties already paid. On April 21, 2016, twenty days following PHMSA's Decision on Petition for Reconsideration, Exxon paid the total assessed civil penalty of \$2,630,400 by wire transfer. Because the penalties for Items 1–4 and 7, totaling \$1,634,100, were vacated and the penalty for Item 8 is now reduced by \$721,400, Exxon must be refunded \$2,355,500. The penalties paid for Items 5, 6, and 9, totaling \$213,000, are not affected. PHMSA will therefore initiate a refund of **\$2,355,500** upon issuance of this Order.

Disposition of compliance order. The Final Order contained a Compliance Order that required Exxon to complete certain corrective actions to address the violations in Items 1, 2, 5, 6, and 8. Items 1 and 2 have been vacated and therefore the terms of the compliance order associated with those items are vacated. The remaining terms of the compliance order, including those associated with Items 5, 6, and 8, are not otherwise affected by this Order and must be completed by Respondent.

This Order is issued pursuant to 49 C.F.R. § 190.213. Under § 190.243, Respondent may submit a petition for reconsideration of this 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. A petition must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243.

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

August 7, 2018

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued