

**NOTICE OF PROBABLE VIOLATION  
and  
PROPOSED CIVIL PENALTY**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

May 16, 2017

Mr. Keith Acker, Sr. Vice President  
Energy XXI USA, Inc.  
1021 Main Street, Suite 2626  
Houston, TX 77002

**CPF 4-2017-7001**

Dear Mr. Acker:

From February 23 through April 14, 2016, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code inspected Energy XXI USA, Inc. (EXXI USA) crude oil pipeline operations in 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.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. **§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.

**(c) *Maintenance and normal operations.*** The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

**(13) Periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.**

EXXI USA did not follow their procedures with regards to periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures. During the inspection, EXXI did not provide documentation that work performed by operator personnel had been subjected to periodic review to determine the effectiveness of the procedures used in normal operation and maintenance and taking any corrective action where deficiencies are found.

EXXI USA's procedure P-195.402(a) Operations and Maintenance Procedure Update states that annually or more frequently, as appropriate, a review of personnel performing pipeline tasks shall be performed to ensure that the procedures in use are adequate. EXXI states that the reviews are to be documented in CMS.

2. **§195.440 Public Awareness.**

**(c) The operator must 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.**

**API RP 1162**

**8.4 MEASURING PROGRAM EFFECTIVENESS**

Operators should assess progress on the following measures to assess whether the actions undertaken in implementation of this RP are achieving the intended goals and objectives:

- Whether the information is reaching the intended stakeholder audiences
- If the recipient audiences are understanding the messages delivered
- Whether the recipients are motivated to respond appropriately in alignment with the information provided
- If the implementation of the Public Awareness Program is impacting bottom-line results (such as reduction in the number of incidents caused by third-party damage).

## 8.5 SUMMARY OF BASELINE EVALUATION PROGRAM

**Table 8-1-Summary of Baseline Evaluation Program**

The results of the evaluation need to be considered and revisions/updates made in the public awareness program plan, implementation, materials, frequency and/or messages accordingly

Evaluation Approaches	Evaluation Techniques	Recommended Frequency
Self-Assessment of Implementation	Internal review, <i>or</i> third-party assessment <i>or</i> regulatory	Annually
Pre-Test Effectiveness of Materials	Focus groups (in-house or external participants)	Upon design or major redesign of public awareness materials or messages
Evaluation of effectiveness of program implementation: <ul style="list-style-type: none"> <li>• Outreach</li> <li>• Level of Knowledge</li> <li>• Changes in behavior</li> <li>• Bottom-line results</li> </ul>	1. Survey: Can assess outreach efforts, audience knowledge and changes in behavior <ul style="list-style-type: none"> <li>• Operator-designed and conducted survey, or</li> <li>• Use of pre-designed survey by third-party or industry association, or</li> <li>• Trade association conducted survey segmented by operator, state, or other relevant separation to allow application of results to each operator</li> </ul> 2. Assess notifications and incidents to determine anecdotal changes in behavior. 3. Documented records and industry comparisons of incidents to evaluate bottom-line results.	No more than four years apart. Operator should consider more frequent as a supplement or upon major redesign of program.
Implement changes to the Public Awareness Program as assessment methods above suggest.	Responsible person as designated in written Public Awareness Program	As required by findings of evaluations.

EXXI USA did not perform a review of their Public Awareness Plan to measure effectiveness of the program every 4 years as required by API RP 1162 Sections 8.4, 8.5 and their written Public Awareness Plan.

During the inspection, PHMSA inspected EXXI USA's Public Awareness Plan (Plan). EXXI USA's Plan Section 13 – Perform Program Evaluation states that the effectiveness review must be completed every four years. While inspecting the Plan, the Review and Revision Log noted that Version 1 of the Plan was revised and updated on November 24, 2011. Also, the Plan's Review and Revision Log Version 3 stated in August 2014 that the due date for the Effectiveness Evaluation required in Section 13.3 was changed from April 1, 2015 to November 1, 2017. EXXI USA could not provide an explanation or justification to the PHMSA inspectors as to why the Plan's Effectiveness Evaluation date was changed to well past 4 years to complete the review.

EXXI USA did complete their Plan's Effectiveness Evaluation on March 3, 2016 and it was reviewed by PHMSA inspectors.

**3. §195.505 Qualification program.**

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

**(b) Ensure through evaluation that individuals performing covered tasks are qualified;**

EXXI USA did not demonstrate compliance with Subpart G-Qualification of Pipeline Personnel ensuring through evaluation that individuals performing covered tasks are qualified.

During the inspection, PHMSA noted on EXXI USA's API 653 inspection records that Tank 2052 had an internal inspection on February 17, 2012 performed by non-qualified personnel. EXXI USA only provided a sign in/out log for the project. EXXI USA could not provide documentation to demonstrate that contractors performing maintenance or inspection activities were qualified individuals, the dates of current qualifications, identification of the covered tasks or the qualification methods.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$205,638 per violation per day the violation persists up to a maximum of \$2,056,380 for a related series of violations. For violations occurring between January 4, 2012 to August 1, 2016, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed \$100,000 per violation per day, with maximum penalty not to exceed \$1,000,000 for related series of violations. The Compliance Officer has reviewed the

circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$37,100 as follows:

<u>Item number</u>	<u>PENALTY</u>
2	\$11,200
3	\$25,900

Warning Items

With respect to item 1 we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct this item. Failure to do so may result in additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. All material submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 4-2017-7001** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Terri J. Binns  
Acting Director, Southwest Region  
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Compliance Proceedings*