

May 14, 2018

Mr. Douglas E. Brooks  
President and CEO  
Energy XXI Pipeline, LLC  
1021 Main Street, Suite 2626  
Houston, TX 77002

**Re: CPF No. 4-2017-9002**

Dear Mr. Brooks:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$30,200. This is to acknowledge receipt of payment of the full penalty amount, by wire transfer, dated June 13, 2017. This enforcement action is now closed. Service of the Final 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. Wesley Stout, Vice President Production, Energy XXI Pipeline, LLC, 1021 Main  
Street, Suite 2626, Houston, TX 77002

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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<b>In the Matter of</b>	)	
	)	
<b>Energy XXI Pipeline, LLC,</b>	)	<b>CPF No. 4-2017-9002</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

From February 23 through April 14, 2016, pursuant to 49 U.S.C. § 60117, representatives 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 Energy XXI Pipeline, LLC (EXXI or Respondent) in the South Timbalier, Grand Isle, West Delta, West Delta-South Addition, and South Pass areas in the Gulf of Mexico and Grand Isle, Louisiana. EXXI is an oil and natural gas development and production company with assets located in the U.S. Gulf of Mexico waters and the Gulf Coast onshore.<sup>1</sup>

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated May 16, 2017, a Notice of Probable Violation and Proposed Civil Penalty (Notice), which also included warnings pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that EXXI had committed four violations of 49 C.F.R. Parts 192 and 195 and proposed assessing a civil penalty of \$30,200 for the alleged violations. The warning items required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

EXXI responded to the Notice by letter dated June 9, 2017 (Response). The company did not contest the allegations of violation and paid the proposed civil penalty of \$30,200. In accordance with 49 C.F.R. § 190.208(a)(1), such payment authorizes the Associate Administrator to make findings of violation and to issue this final order without further proceedings.

**FINDINGS OF VIOLATION**

In its Response, EXXI did not contest the allegations in the Notice that it violated 49 C.F.R. Parts 192 and 195, as follows:

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<sup>1</sup> Energy XXI Pipeline, LLC's website, available at <http://www.energyxxi.com/> (last accessed February 26, 2018).

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 195.413(c)(2) and (3), which state:

**§ 195.413. Underwater inspection and reburial of pipelines in the Gulf of Mexico and its inlets.**

(a) . . . .

(c) If an operator discovers that its pipeline is an exposed underwater pipeline or poses a hazard to navigation, the operator shall –

(1) . . . .

(2) Promptly, but not later than 7 days after discovery, mark the location of the pipeline in accordance with 33 CFR Part 64 at the ends of the pipeline segment and at intervals of not over 500 yards (457 meters) long, except that a pipeline segment less than 200 yards (183 meters) long need only be marked at the center; and

(3) Within 6 months of discovery, or not later than November 1 of the following year if the 6 month period is later than November 1 of the year of discovery, bury the pipeline so that the top of the pipe is 36 inches (914 millimeters) below the underwater natural bottom (as determined by recognized and generally accepted practices) for normal excavation or 18 inches (457 millimeters) for rock excavation.

The Notice alleged that Respondent violated 49 C.F.R. § 195.413(c)(2) and (3) by failing to promptly, but not later than seven days after discovery, that its pipeline was exposed underwater or posed a hazard to navigation, mark the location of its pipeline in accordance with 33 C.F.R. Part 64 and to bury its pipeline so that the top of the pipe was 36 inches below the underwater natural bottom, within six months of discovery. Specifically, the Notice alleged that EXXI did not mark the location of its ST21H-E Timbalier Island Facility 10-inch diameter pipeline in accordance with 33 C.F.R. Part 64, and failed to bury it so that the top of the pipe was 36 inches below the underwater natural bottom, within the regulatory timeframes.<sup>2</sup>

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.413(c)(2) and (3) by failing to promptly, but not later than seven days after discovery, that its pipeline was exposed underwater or posed a hazard to navigation, mark the location of its pipeline in accordance with 33 C.F.R. Part 64 and to bury it so that the top of the pipe was 36 inches below the underwater natural bottom, within six months of discovery.

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 192.616(c) and 49 C.F.R. § 195.440(c), which state:

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<sup>2</sup> PHMSA's review of EXXI's records revealed that EXXI discovered on March 19, 2013, that its ST21H-E Timbalier Island Facility 10-inch diameter pipeline was exposed underwater or posed a hazard to navigation. The location was not marked pursuant to 33 C.F.R. Part 64 until May 15, 2013 (past the seven-day requirement), and the pipe was not reburied until September 2014 (past the six-month requirement). Pipeline Safety Violation Report (May 15, 2017) (on file with PHMSA) at 18-19.

**§ 192.616 Public awareness.**

(a) . . . .

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of [American Petroleum Institute (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.

and

**§ 195.440 Public awareness.**

(a) . . . .

(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.

The Notice alleged that Respondent violated 49 C.F.R. § 192.616(c) and § 195.440(c) by failing to follow the general program recommendations, including baseline and supplemental requirements, of API RP 1162, or providing justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice was not practicable and not necessary for safety.<sup>3</sup> Specifically, the Notice alleged that EXXI failed to review its Public Awareness Plan to measure program effectiveness, in accordance with API RP 1162 Sections 8.4 and 8.5, and failed to complete this review within four years, as required by Section 13 of EXXI's own written plan.<sup>4</sup>

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.616(c) and § 195.440(c) by failing to follow the general program recommendations, including baseline and supplemental requirements, of API RP 1162.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

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<sup>3</sup> API RP 1162 Section 8.4 states that operators should measure program effectiveness to assess whether the actions undertaken in implementation of the RP are achieving the intended goals and objectives. Further, Section 8.5 provides guidance on how results of this evaluation need to be considered and revisions/updates made accordingly in the operator's public awareness program plan, implementation, materials, frequency and/or messages.

<sup>4</sup> During the PHMSA inspection, EXXI could not provide an explanation or justification as to why the Effectiveness Evaluation date was changed to November 1, 2017, well past the four-year frequency listed in the Plan. Notice at 5-6.

### **ASSESSMENT OF PENALTY**

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.<sup>5</sup> 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. The Notice proposed a total civil penalty of \$30,200 for the violations cited above.

Having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$30,200**. Respondent paid the total civil penalty amount of \$30,200 by wire transfer on June 13, 2017.

### **WARNING ITEMS**

With respect to Items 1 and 2, the Notice alleged probable violations of Parts 192 and 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.402(c) (**Item 1**) — Respondent's alleged failure to follow its own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies for hazardous liquid pipelines. Specifically, it alleged that EXXI failed to periodically review the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance, and to take corrective action where deficiencies were found; and

49 C.F.R. § 192.605(b)(8) (**Item 2**) — Respondent's alleged failure to follow its own manual of written procedures for conducting operations and maintenance activities and for emergency response for gas pipelines. Specifically, it alleged that EXXI failed to periodically review the work done by operator personnel to determine the effectiveness and adequacy of the procedures used in normal operation and maintenance and to modify the procedures when deficiencies were found.

If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

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<sup>5</sup> These amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

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

May 14, 2018

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued