

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

May 16, 2017

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

CPF 4-2017-9002

Dear Mr. Acker:

On multiple occasions between February 23 and 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 Pipeline, LLC (EXXI) crude oil and natural gas pipeline operations 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.

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 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'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. §192.605 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

(b) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

(8) Periodically reviewing the work done by operator personnel to determine the effectiveness, and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found.

EXXI 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's procedure P-192.605(a) Operations and Maintenance Manual Annual Review 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.

3. §195.413 Underwater inspection and reburial of pipelines in the Gulf of Mexico and its inlets.

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

(1) Promptly, but not later than 24 hours after discovery, notify the National Response Center, telephone: 1-800-424-8802, of the location and, if available, the geographic coordinates of that pipeline.

(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 after 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.

(i) An operator may employ engineered alternatives to burial that meet or exceed the level of protection provided by burial.

(ii) If an operator cannot obtain required state or Federal permits in time to comply with this section, it must notify OPS; specify whether the required permit is State or Federal; and, justify the delay.

EXXI did not promptly, but not later than 7 days after discovery mark the location of ST21H-E Timbalier Island Facility 10-inch pipeline in accordance with 33 CFR Part 64. Also EXXI did not bury the pipeline so that the top of the pipe is 36 inches below the underwater natural bottom within 6 months after discovery.

During the records inspection, PHMSA inspectors reviewed EXXI's 2015 Underwater Inspection Procedure (UIP). EXXI performed the survey and found that ST21H-E Timbalier Island Facility 10-inch pipeline was exposed/hazard to navigation on March 19, 2013. The location marking for the exposure/hazard to navigation of this pipeline was not performed until May 15, 2013 according to the UIP. Also, the UIP showed that ST21H Oil-E Timbalier Island Facility 10-inch pipeline was not reburied until September 2014 which is 18 months past the date of discovery.

4. §195.440 and §192.616 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"> • Outreach • Level of Knowledge • Changes in behavior • Bottom-line results 	<ol style="list-style-type: none"> 1. Survey: Can assess outreach efforts, audience knowledge and changes in behavior <ul style="list-style-type: none"> • Operator-designed and conducted survey, or • Use of pre-designed survey by third-party or industry association, or • Trade association conducted survey segmented by operator, state, or other relevant separation to allow application of results to each operator 2. Assess notifications and incidents to determine anecdotal changes in behavior. 3. Documented records and industry comparisons of incidents to evaluate bottom-line results. 	<p>No more than four years apart.</p> <p>Operator should consider more frequent as a supplement or upon major redesign of program.</p>
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 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 records and procedures review, PHMSA inspectors inspected EXXI's Public Awareness Plan (Plan). EXXI'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 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 did complete their Plan's Effectiveness Evaluation on March 3, 2016 and it was reviewed by PHMSA inspectors.

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 \$30,200 as follows:

<u>Item number</u>	<u>PENALTY</u>
3	\$19,000
4	\$11,200

Warning Items

With respect to items 1 and 2, 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 these items. 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 4-2017-9002** 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*