

December 21, 2021

VIA ELECTRONIC MAIL TO: liam.m.mallon@exxonmobil.com

Mr. Liam Mallon
President
ExxonMobil Upstream Oil & Gas Company, US Conventional
22777 Springwoods Village Parkway
Spring, Texas 77389

Re: CPF No. 4-2021-013-NOPV

Dear Mr. Mallon:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws two of the allegations of violation, makes other findings of violation, assesses a reduced civil penalty of \$19,600, and specifies actions that need to be taken by ExxonMobil Upstream Oil & Gas Company, US Conventional, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by e-mail is effective upon the date of transmission 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. Otis Dickinson, Santa Ynez Unit Safety, Security, Health, and Environment
Supervisor, ExxonMobil Upstream Oil & Gas, US Conventional,
otis.dickinson@exxonmobil.com

Mr. Adolfo Calero, Regulatory Specialist, ExxonMobil Upstream Oil & Gas, US
Conventional, adolfo.a.calero@exxonmobil.com

CONFIRMATION OF RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

_____)	
In the Matter of)	
)	
ExxonMobil Upstream Oil & Gas Co.,)	CPF No. 4-2021-013-NOPV
US Conventional,)	
)	
Respondent.)	
_____)	

FINAL ORDER

From July 7, 2020 through September 25, 2020, pursuant to 49 U.S.C. § 60117, a representative 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 the Santa Ynez Unit, owned and operated by ExxonMobil Upstream Oil & Gas Company, US Conventional (ExxonMobil or Respondent) off the coast of California. The Santa Ynez Unit consists of three offshore production platforms (Heritage, Harmony, and Hondo) and an onshore oil and natural gas processing facility (the Las Flores Processing Plant). PHMSA inspected the 11.2-mile transportation pipeline originating offshore on Platform Harmony and traveling onshore to the Las Flores Processing Plant.

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated March 4, 2021, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that ExxonMobil had committed four violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$39,200 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional warning item pursuant to 49 C.F.R. § 190.205, which required no further action, but warned the operator to correct the probable violation or face possible future enforcement action.

ExxonMobil responded to the Notice by letter dated April 2, 2021 (Response). ExxonMobil contested several of the allegations and offered additional information in response to the Notice. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.49, which states, in relevant part:

§ 195.49 Annual report.

Each operator must annually complete and submit DOT Form PHMSA F 7000-1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year. An operator must submit the annual report by June 15 each year, except that for the 2010 reporting year the report must be submitted by August 15, 2011....

The Notice alleged that Respondent violated 49 C.F.R. § 195.49 by failing to annually complete and submit DOT Form PHMSA F 7000-1.1 (Annual Report) for each type of hazardous liquid pipeline facility operated at the end of the previous year by June 15. Specifically, the Notice alleged that ExxonMobil failed to complete and submit its 2019 Annual Report by June 15, 2020. Instead, the company submitted its 2019 Annual Report on July 8, 2020. After submittal, PHMSA discovered mileage discrepancies by system type between the 2018 and 2019 Annual Reports.

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. § 195.49 failing to timely submit its 2019 Annual Report.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c), which states:

§ 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. § 195.440(c) by failing to follow the general program recommendations, including baseline and supplemental requirements of American Petroleum Institute (API) Recommended Practice (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. Specifically, the Notice alleged that although ExxonMobil incorporated API RP 1162 into its Public Awareness Program, it failed to implement certain requirements. During the inspection, ExxonMobil could not provide documentation or other evidence to demonstrate that it had performed an annual review of its program pursuant to API RP 1162 Section 8.3, or that it had assessed its program effectiveness every 4 years as required by API RP 1162 Section 8.4.

In its Response, ExxonMobil provided additional information about its Public Awareness Program, including details regarding how the company performs annual reviews to measure program effectiveness. On April 13, 2021, ExxonMobil submitted documents to PHMSA demonstrating that the company performed annual program effectiveness reviews for 2016-2019. Although it is unclear why these documents were not timely provided to PHMSA upon request during the onsite inspection, these records demonstrate that ExxonMobil complied with the cited requirements.

Accordingly, after considering all of the evidence, I find ExxonMobil did not violate 49 C.F.R. § 195.440(c). Based upon the foregoing, I hereby order that Item 2 be withdrawn.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(i), which states, in relevant part:

§ 195.505 Qualification program.

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

(a) . . .

(i) After December 16, 2004, notify the Administrator or a state agency participating under 49 U.S.C. Chapter 601 if the operator significantly modifies the program after the administrator or state agency has verified that it complies with this section....

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(i) by failing to notify PHMSA that it significantly modified its Operator Qualification (OQ) program after PHMSA had verified it complied with 49 C.F.R. § 195.505. Specifically, the Notice alleged that ExxonMobil failed to notify PHMSA after it made significant modifications to its OQ program, including the removal of covered assets, approval of OQ modules for various covered tasks, changes in course materials, and changes to its evaluation process, by replacing its computer-based training with a third-party service provider.

In its Response, ExxonMobil contested this allegation of violation. Specifically, the company explained that it did not consider these changes to significantly modify its OQ program and therefore, it did not need to report the changes to PHMSA. ExxonMobil considered these changes to be insignificant for several reasons: (1) the removal of its covered asset—the Mobile Bay pipeline system, located in Alabama—did not affect the OQ Program implemented at the Santa Ynez Unit facility in California; (2) the course materials (computer-based training and OQ modules) were replaced with updated content from the same third-party service provider; and (3) the method of evaluation for its OQ Program was not changed, and still consists of a knowledge-based component and a hands-on observation.

49 C.F.R. § 195.505(i) requires an operator to notify PHMSA if it “significantly modifies” its OQ program. Therefore, in order to determine if ExxonMobil should have notified PHMSA of these changes to its OQ program, I must determine if they are “significant changes.” In 2009, PHMSA published an Advisory Bulletin that defined “significant changes” to an operator’s OQ program that would warrant notification to PHMSA.¹ The Advisory Bulletin explained that “[a]s applicable to OQ program modifications, significant includes but is not limited to: increasing evaluation intervals, increasing span of control ratios, eliminating covered tasks, mergers and/or acquisition changes, evaluation method changes such as written vs. observation, and wholesale changes made to OQ plan.”²

¹ Pipeline Safety: Operator Qualification (OQ) Program Modifications, 74 FR 64123-01, Dec. 7, 2009.

² I also note that ExxonMobil’s Management of Change (MOC) procedures require that “high impact changes” be reported to PHMSA, including the “addition/deletion of a covered task, change in acceptable method of evaluations, or an increase in the span-of-control or the frequency of evaluation.” See PHMSA Pipeline Safety Violation Report at Exhibit E-3 (Mar. 4, 2021) (on file with PHMSA).

After reviewing the changes ExxonMobil made to its OQ program, I do not find they were significant changes that required notification. First, the removal of the Mobile Bay pipeline system in Alabama did not impact the OQ Program administered at the Santa Ynez Unit in California. Second, in its Response, ExxonMobil explained that the course materials referenced in its MOC procedures were updates to existing course materials from the same third-party service provider. There is nothing in the record to demonstrate that these module updates served to change evaluation methods (e.g., written vs. observation) or otherwise constituted wholesale changes to the OQ program.

In sum, none of the changes referenced in the Notice that ExxonMobil made to its OQ program significantly modified or made wholesale changes to its OQ program. The company did not make changes to covered tasks, modify acceptable evaluation methods, or increase span-of-control or frequency of evaluations. Further, although some “merger and/or acquisition changes” may constitute significant modifications to an OQ program, there is nothing in the record to suggest that the sale of its assets in Alabama changed the implementation of its OQ program in California.³ PHMSA has previously found that a change in assets without corresponding changes to the OQ plan is not a significant modification required to be reported.⁴ Accordingly, since ExxonMobil did not significantly modify its OQ program, it did not need to submit notification to PHMSA of these changes.

Accordingly, after considering all of the evidence, I find ExxonMobil did not violate 49 C.F.R. § 195.505(i) as alleged in the Notice. Based upon the foregoing, I hereby order that Item 4 be withdrawn.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.555, which states:

§ 195.555 What are the qualifications for supervisors?

You must require and verify that supervisors maintain a thorough knowledge of that portion of the corrosion control procedures established under § 195.402(c)(3) for which they are responsible for insuring compliance.

The Notice alleged that Respondent violated 49 C.F.R. § 195.555 by failing to require and verify that supervisors maintain a thorough knowledge of that portion of the corrosion control procedures established under § 195.402(c)(3) for which they are responsible for ensuring compliance. According to ExxonMobil’s written procedures, “[a]nnually, supervisors will indicate, by signing DOT Form TR, that they understand the corrosion control procedures employed for the DOT pipelines they steward...” During the inspection, however, PHMSA discovered that these forms were completed by ExxonMobil’s Safety and Risk Advisor, and not the requisite supervisors, as required by § 195.555 and ExxonMobil’s procedures. The Notice

³ For example, in a prior enforcement case, PHMSA found an operator violated § 195.505(i) when it failed to notify PHMSA following an acquisition that involved merging multiple OQ programs and removing certain covered tasks. *In the Matter of Targa NGL Pipeline Co.*, Final Order, CPF No. 4-2020-5017, 2021 WL 663175 (Feb. 12, 2021).

⁴ See *In the Matter of Tristate NLA, LLC*, Final Order, CPF No. 4-2020-006-NOPV, 2021 WL 4055261 (Aug. 9, 2021) (finding an operator did not commit a violation of § 192.805(i) when the operator acquired additional pipeline facilities but the acquisition did not result in any changes to its OQ program).

further alleged that several of the company's supervisors had let their corrosion control training lapse.

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. § 195.555 failing to require and verify that supervisors maintain a thorough knowledge of that portion of the corrosion control procedures established under § 195.402(c)(3) for which they are responsible for ensuring compliance.

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

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.⁵

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; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 \$39,200 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$19,600 for Respondent's alleged violation of 49 C.F.R. § 195.440(c). Since this alleged violation has been withdrawn, the proposed penalty is not assessed.

Item 5: The Notice proposed a civil penalty of \$19,600 for Respondent's violation of 49 C.F.R. § 195.555, for failing to require and verify that supervisors maintain a thorough knowledge of that portion of the corrosion control procedures established under § 195.402(c)(3) for which they are responsible for ensuring compliance. Although pipeline safety was minimally affected, ExxonMobil failed to comply with a requirement that was clearly applicable and did not provide a justification for its noncompliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$19,600 for violation of 49 C.F.R. § 195.555.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$19,600**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49

⁵ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$19,600 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, 4, and 5 in the Notice for violations of 49 C.F.R. §§ 195.49, 195.440(c), 195.505(i) and 195.555, respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Since Items 2 and 4 have been withdrawn, the associated compliance terms for each item are also withdrawn.

In response to Item 1, the Director has indicated that Respondent submitted a corrected 2019 Supplemental Annual Report to PHMSA. Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice for Item 1 are not included in this Order.

As for the remaining compliance terms, pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.555 (**Item 5**), Respondent must ensure that its supervisors annually sign a DOT Form TR to indicate that they understand the procedures employed for the pipelines that they are responsible within 30 days of receipt of the Final Order. ExxonMobil must also ensure all supervisors have the required training that is up-to-date and submit updated training records to PHMSA for review within 30 days of receipt of the Final Order.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with

replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEM

With respect to Item 3, the Notice alleged a probable violation of Part 195, but identified it as a warning item pursuant to § 190.205. The warning was for:

49 C.F.R. § 195.442(a) (**Item 3**) — Respondent's alleged failure to carry out its written program to prevent damage to that pipeline from excavation activities

If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

December 21, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued