

**NOTICE OF PROBABLE VIOLATION,
PROPOSED CIVIL PENALTY,
and
PROPOSED COMPLIANCE ORDER**

ELECTRONIC MAIL - RETURN RECEIPT REQUESTED

March 4, 2021

Liam Mallon
President, ExxonMobil Upstream Oil & Gas Company
ExxonMobil Production Company, A Division of Exxon Mobil Corporation
22777 Springwoods Village Parkway
Spring, Texas 77389

CPF 4-2021-013-NOPV

Dear Mr. Mallon:

From July 7, 2020 through September 25, 2020, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected ExxonMobil Production Company's (ExxonMobil) operations, maintenance, and integrity management plans and procedures for its Santa Ynez Unit off the coast of Santa Barbara, California.

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

1. **§ 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. A separate report is required for crude oil, HVL (including anhydrous ammonia), petroleum products, carbon dioxide pipelines, and fuel grade ethanol pipelines. For each state a pipeline traverses, an operator must separately complete those sections on the form requiring information to be reported for each state.

ExxonMobil failed to complete and timely submit DOT Form PHMSA F 7000-1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year for

calendar year 2019. ExxonMobil filed its 2019 Annual Report on July 8, 2020, which was 23 days late.

In addition, PHMSA inspectors compared ExxonMobil's 2018 Annual Report and the 2019 Annual Report, which uncovered discrepancies in the mileages by system type. For 2018, ExxonMobil reported 1.15 onshore interstate pipeline miles, 5.05 offshore interstate pipeline miles, and 4.63 OCS-Pacific pipeline miles. This is inconsistent with the mileage reported in 2019, where ExxonMobil reported 4.63 offshore interstate pipeline miles, 1.15 onshore intrastate pipeline miles, and 5.05 offshore intrastate pipeline miles, which does not match the actual mileage for each of the categories.

2. **§ 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.

ExxonMobil failed to follow the general program recommendations of API RP 1162, "Public Awareness Programs for Pipeline Operators" for conducting effectiveness reviews of its *Public Awareness Program* as required by § 195.440(c). Specifically, ExxonMobil had not performed a review of its *Public Awareness Program* annually as required by API RP 1162, Section 8.3 Measuring Program Implementation, nor measured its program effectiveness every 4 years as required by API RP 1162, Section 8.4 Measuring Program Effectiveness. Additionally, ExxonMobil incorporates Section 8 of API RP 1162 into its *Public Awareness Program*.

During the inspection, ExxonMobil was unable to provide documentation that it performed an effectiveness review nor provided a justification as to why compliance with these provisions of API RP 1162 were not practicable and not necessary for safety. Instead, ExxonMobil stated that the reason the effectiveness reviews were not performed for this pipeline was that RP stands for Recommended Practice and, therefore, ExxonMobil did not have to comply with a Recommended Practice. However, § 195.440(c) plainly states that an operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162.

3. **§ 195.442 - Damage prevention program.**

(a) Except as provided in paragraph (d) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term "excavation activities" includes excavation, tunneling, backfilling, the removal

of aboveground structures by either explosive or mechanical means, and other earthmoving operations.

ExxonMobil failed to carry out its written damage prevention program to prevent damage to its pipeline from excavation activities. ExxonMobil's written *Operations, Maintenance, & Emergency Manual* (OM&E Manual) dated December 20, 2019, "Section: 2.3.5 Damage Prevention Program", requires that a "list of local excavators who have significant activities in the work area or who have caused problems" in connection with ExxonMobil pipelines, should be reviewed annually and documented on DOT Form EL. Following the annual review of the excavator list, ExxonMobil's DOT Subject Matter Expert is to complete a mail out pursuant to the *Public Awareness Program*, which includes excavators identified on DOT Form EL.

PHMSA inspectors reviewed ExxonMobil's completed DOT Form EL dated October 25, 2015, September 20, 2016, December 11, 2017, November 28, 2018, and December 12, 2019, and found three excavators listed. However, when the 2019 mailing list of excavators was reviewed, PHMSA inspectors found that the mailing list was not updated as required to include the three excavators identified on the DOT Form EL. Therefore, ExxonMobil did not comply with its own written damage prevention program to prevent damage to its pipeline from excavation activities in accordance with § 195.442.

4. **§ 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. Notifications to PHMSA may be submitted by electronic mail to InformationResourcesManager@dot.gov, or by mail to ATTN: Information Resources Manager DOT/PHMSA/OPS, East Building, 2nd Floor, E22-321, New Jersey Avenue SE., Washington, DC 20590.

ExxonMobil failed to notify the Administrator of significant modifications made to the *Operator Qualification Program* (OQ Program) in the year 2019. ExxonMobil's written OQ Program, "Section 1.6.3 Notification of Significant Changes to PHMSA and State Agencies" contains a requirement that once the OQ Program "has been inspected by the Pipeline and Hazardous Materials Safety Administration (PHMSA) and/or State Regulatory Agencies, high impact changes will be submitted to these agencies."

ExxonMobil completed a wide range of changes in its 2019 OQ Program to include the removal of assets covered by the OQ Program, which included approving OQ modules for

various covered tasks, changes in course materials, and replacing computer-based training with a third-party service provider, therefore changing the acceptable method of evaluations. PHMSA inspectors reviewed Pipeline Data Mart OQ Notifications for OPID 4908 and found no previous OQ Notification submissions. During the inspection, PHMSA inspectors requested documentation of the most recent OQ Notification, but ExxonMobil was not able to provide any records of any submissions to PHMSA.

5. **§ 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.

ExxonMobil failed 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 insuring compliance.

ExxonMobil's OM&E Manual, "Section 5 Personnel Training and Review" states, "Supervisors must maintain a thorough knowledge of that portion of the corrosion control procedures for which they are responsible for insuring compliance. Annually, supervisors will indicate, by signing DOT Form TR, that they understand the corrosion control procedures employed for the DOT pipelines they steward..."

PHMSA inspectors reviewed ExxonMobil's completed DOT Form TR records dated January 10, 2018, January 9, 2019, and January 7, 2020, and found that the forms were not signed by the supervisors but instead were signed by the ExxonMobil Safety and Risk Advisor. Pursuant to § 195.555, as well as ExxonMobil's procedures, ExxonMobil must require and verify that supervisors maintain a thorough knowledge of the corrosion control procedures and that said supervisors sign DOT Form TR to acknowledge such an understanding.

Additionally, ExxonMobil requires that four supervisors for the Santa Ynez pipeline system complete DOT Pipeline Safety Phase 1 training, the required corrosion control training for the company's supervisors. A review of records showed that each supervisor was found to either have a lapse in qualification or a lapse in qualification from when they assumed the role of supervisor to when they completed the required training, and in some cases both lapses.

- Supervisor #1: Records show the following: a 45-day lapse in qualification from July 3, 2018 to August 17, 2018 and a 402-day lapse in qualification from August 17, 2019, until the date the records were reviewed on September 22, 2020.
- Supervisor #2: Records show a 359-day lapse in qualification from when he assumed the supervisor role on April 20, 2019 to April 13, 2020, when he took the required training.

- Supervisor #3: Records show that there is a 439-day lapse in training from when he assumed the supervisor role on July 12, 2018, to when he completed the required training on September 24, 2019.
- Supervisor #4: Records show that there was a 45-day lapse in training from June 7, 2019 to July 22, 2019 and another 25-day gap in his training from July 21, 2020 to August 15, 2020.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documentation involved for the above probable violation(s) and recommend that you be preliminarily assessed a civil penalty of **\$39,200** as follows:

<u>Item</u>	<u>Penalty</u>
2	\$19,600
5	\$19,600

Warning Items

With respect to Item 3, 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.

Proposed Compliance Order

With respect to Items 1, 2, 4, and 5 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to ExxonMobil Production Company. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

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 you 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).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. 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. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 4-2021-013-NOPV**, and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Mary L. McDaniel, P.E.
Director, Southwest Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

cc: Adolfo Calero, DOT SME, ExxonMobil, adolfo.acalero@exxonmobil.com

PROPOSED COMPLIANCE ORDER

Pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to ExxonMobil Production Company (ExxonMobil) a Compliance Order incorporating the following remedial requirements to ensure the compliance of ExxonMobil with the pipeline safety regulations:

- A. Regarding Item Number 1 of the Notice pertaining to ExxonMobil's failure to submit its 2019 Annual Report by the June 15, 2020 deadline and the conflicting information between the 2018 and 2019 Annual Reports, ExxonMobil must verify mileage and whether the mileage is interstate, intrastate, or OCS Pacific, and submit a corrected supplemental 2019 Annual Report to PHMSA within 30 days of receipt of the Final Order.
- B. Regarding Item Number 2 of the Notice pertaining to ExxonMobil's failure to conduct public awareness program effectiveness reviews in accordance with API RP 1162, ExxonMobil must conduct an effective review of its *Public Awareness Program* as required by § 195.440(c) and provide the results of the effectiveness review to PHMSA for review within 30 days of receipt of the Final Order.
- C. Regarding Item Number 4 of the Notice pertaining to ExxonMobil's failure to notify the Administrator of significant modifications to the *Operator Qualification Program*, ExxonMobil must submit its *Operator Qualification Program* to the Administrator for PHMSA's review within 30 days of receipt of the Final Order.
- D. Regarding Item Number 5 of the Notice pertaining to ExxonMobil's failure to require and verify that supervisors maintain a thorough knowledge of that portion of the corrosion control procedures established under § 195.402(c)(3), Exxon 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.

It is requested (not mandated) that ExxonMobil maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Mary L. McDaniel, Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration. 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.