



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

JAN - 9 2007

Mr. Richard A. Rabinow
President
ExxonMobil Pipeline Company
800 Bell St.
Houston, TX 77002

Re: CPF No. 5-2005-5008

Dear Mr. Rabinow:

Enclosed is the Final Order issued by the Acting Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws two of the Notice Items, makes findings of violation, and assesses a civil penalty of \$5,000. The Final Order also specifies actions to be taken to comply with the pipeline safety regulations and revision of certain procedures/plans. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the Compliance Order and Amendment of Procedures are completed, as determined by the Director, Western Region, PHMSA, this enforcement action will be closed. Your receipt of the Final Order constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
PHMSA-Office of Pipeline Safety

Enclosure

cc: Ms. Candice Frembling Dykhuizen, Esq.
ExxonMobil Pipeline Company
Law Department
800 Bell Street
Houston, Texas 77702

Mr. Jimmy James, Operations Manager—Northern Region
ExxonMobil Pipeline Company
3225 Gallows Road
Fairfax, Virginia 22037

Mr. Chris Hoidal, P E., Director Western Region, PHMSA
Mr. Jerry Davis, P.E., Western Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

In the Matter of

ExxonMobil Pipeline Company,

Respondent

CPF No. 5-2005-5008

FINAL ORDER

On or about June 28, 2004 to July 1, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration's (PHMSA's)¹ Office of Pipeline Safety conducted an on-site pipeline safety inspection of Respondent's facilities, manuals, and records at the Silvertip Station, Bridger Booster Station, Cenex Refinery delivery point in Laurel, Montana and the ConocoPhillips Refinery and ExxonMobil Refinery delivery points in Billings, Montana. As a result of the inspection, the Director, Western Region, PHMSA, issued to Respondent, by letter dated February 18, 2005, a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$5,000 for the alleged violation, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its procedures/plans. The Notice also warned Respondent to take appropriate corrective action

Respondent responded to the Notice in a letter dated March 24, 2005 (Response). Respondent did not dispute some of the Notice Items but did contest many of them, requested withdrawal of certain Notice Items, offered information in explanation of the allegations, requested elimination of the proposed penalty, and requested a hearing.

The hearing was held on December 13, 2005, in Denver, Colorado. After this hearing, Respondent was granted permission and provided a post-hearing submission, dated February 7, 2006.

¹ Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) succeeded Research and Special Programs Administration as the agency responsible for regulating safety in pipeline transportation and hazardous materials transportation. See section 108 of the Norman Y Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). See also, 70 Fed. Reg. 8299 (February 18, 2005) re-delegating the pipeline safety authorities and functions to the PHMSA Administrator

FINDINGS OF VIOLATION

(Contested)

Item 5a of the Notice alleged Respondent violated 49 C.F.R. § 195.402(a) in that Respondent failed to review several of the procedure manuals referenced in Respondent's DOT Liquids Manual once each calendar year not to exceed 15 months.

In its first Response, Respondent contested this Notice Item by stating that its DOT Liquids Manual is utilized as the primary manual for documenting DOT required written procedures. It stated that this manual is reviewed at least once each calendar year not to exceed 15 months. Respondent further stated that these manuals are also reviewed formally on a periodic basis. Respondent contends that the dates of the latest reviews for these manuals were not properly updated on its Reference Library but that these manuals had been updated on an annual basis for content. Respondent provided no documentation to support this claim.

At the hearing, Respondent provided affidavits attesting that both the Pipeline Welding Manual and Pipeline Repair and Modifications Manual were reviewed in 2004 and the Hydrostatic Test Manual was reviewed in June of 2004. It provided no documentation showing any of the previous year's reviews.

During the PHMSA inspection, on or about June 28, 2004 to July 1, 2004, PHMSA inspectors noted that the Hydrostatic Test Manual had not been reviewed since 1993. 49 CFR Part 195 Subpart E Pressure Testing has had substantive changes made since 1993. Additionally, PHMSA inspectors noted that the phone numbers in the "working" Facility Response Manual had not been updated since May 18, 2000. This was evidenced by a "sticky note" attached to the manual that said, "Need to Check numbers." When asked what the note meant, Respondent's personnel replied that it had not confirmed the telephone numbers since May 18, 2000.

Because Respondent's DOT Liquids Manual refers to other manuals for procedures required under Part 195, those referenced procedures are considered to be a part of the manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Therefore, as part of its manual review, all referenced procedures required under Part 195 must also be reviewed to ensure effectiveness, once each calendar year not to exceed 15 months.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.402(a) in the Notice.

Item 12a of the Notice alleged that Respondent violated 49 C.F.R. § 195.573(e). Respondent's cathodic protection (CP) monitoring procedures call for trending of current pipe to soil (P/S) readings with the last three years readings to determine if CP is adequate. Corrosion control records lack documentation of actions taken to correct deficiencies found when trending current monitoring levels.

Respondent contested this Proposed Compliance Order item on the grounds that all

measurements were above -850 mV during the 2001, 2002, and 2003 pipe to soil monitoring.

During this inspection of CP monitoring records, only two years of data were available to compare to the October 13, 2003 data. This does not follow Respondent's procedures,² which requires the current CP data to be compared to the previous three years of data. If the report had included the CP monitoring data for 2000, it is possible that the areas of low reading could have been reconciled. As the report now shows, there are still some areas of low readings for 2003 Stationing of those apparent low readings in 2003 are MP 0 to MP 0.3, MP 1.05 to MP 1.4, MP 5.05 to MP 7.0, MP 9.2 to MP 10.05, MP 44.75 to MP 49.9, MP 60.8 to MP 62.4. Without the 2000 year CP monitoring data, it is not possible to determine if these "low" areas meet the criteria shown in Respondent's procedures.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.573(e) in the Notice.

Item 12b in the Notice alleged Respondent violated 49 C.F.R. § 195.573(e) Respondent performed a close interval survey in 1999 That survey had several areas that did not meet a -850 mV with impressed current interrupted criteria. Though Respondent resolved several of these low areas during a resurvey in 2000, its records did not have corrective actions taken to mitigate those low areas that continued to have low CP monitoring levels during the 2000 resurvey. In particular were the locations referred to as CIS Stations 564+00 to 565+89 and 2509+73 to 2518+90.

Respondent provided information to PHMSA showing that measures have been taken to remediate the low levels of CP found during a 2000 close interval survey between stations 564+00 and 565+89.

Respondent also made a statement that a close interval survey completed on May 19, 2005 shows that the area between stations 2509+73 to 2523+79 have adequate levels of CP.

Records provided for stations 564+00 to 565+89 show that adequate measures have been taken. No records or data were provided showing that mitigative measures have been taken between stations 2509+73 to 2523+79. Respondent only offered a statement that a close interval survey between these stations shows that adequate levels of CP have been provided. Though this may be true, it cannot be verified by PHMSA until Respondent submits the data from the 2005 close interval survey.

Accordingly, I find that Respondent violated 49 C.F.R. § 195.573(e) in the Notice.

² CPF No. 5-2003-5006 Notice Item 2 required that Respondent amend its procedures to clarify how voltage drops are taken into account when performing "on" CP monitoring surveys. Respondent amended its procedures to more accurately describe what it did to take the voltage drops into account during annual CP monitoring surveys. Its amended procedure, on page 3 of 12 of Respondent's Facilities Inspection and Maintenance Management system Cathodic Protection Program, dated October 5, 2003, stated: "The annual pipe-to-soils shall be plotted and compared to the last three years. When a significant drop in potential is noted, further investigation should be scheduled to identify the cause."

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

WITHDRAWAL OF NOTICE ITEMS

Item 2 in the Notice alleged that Respondent had violated 49 C.F.R. § 195.214(a) in that Respondent's girth weld records of the 2000 line lowering project did not indicate which welder performed each weld. Respondent contested this Warning Letter Item and provided documentation, including an affidavit from a welding inspector, which indicates who the welders were for the 2000 line-lowering project and that they were qualified. The affidavit provided by Respondent states that Kenneth M. Thompson was partly responsible for welding inspection during this project. As such, he named Mr. Mark Thiel and Mr. Todd Dehner as the welders. Qualifications provided for these two welders show that they both have multiple qualifications under API 1104, which qualifies these welders to do all welding provided the process and filler material is the same as their qualification. Assuming that the welding done during this project was "production" welding and not "in-service" welding, it is reasonable that the welding procedure used incorporated a Type 1 or 2 filler material using a shielded metal arc welding process. Both welders were qualified using these variables. Documentation provided by Respondent adequately addresses this Notice Item. Based on this information demonstrating compliance with the regulation, I am withdrawing this Warning Letter Item.

Item 7 in the Notice alleged that Respondent had violated 49 C.F.R. §§ 195.402(c)(3) and 195.420(b) by failing to include in the DOT valve inspection procedures inspection of the components of the valve or procedures requiring any documentation of such inspections. Respondent contested this Notice of Amendment Item. It provided its procedure for valve maintenance. In that procedure, there is a description for the inspection of components that should be checked: "During the operation of each valve, its operating condition shall be checked and corrections made where necessary. Such items as condition of gears, ease of operation, condition and position of indicator, etc., should be checked." This procedure appears to be adequate. Based on this information demonstrating compliance with the regulation, I am withdrawing this Notice of Amendment Item.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require. The Notice proposed a total civil penalty of \$5,000 for violation of 49 C.F.R. § 195.402(a).

Item 5a of the Notice proposed a civil penalty of \$5,000 for violation of 49 C.F.R. § 195.402(a), as more fully described in the Notice. As discussed above in this Final Order, Respondent failed to review several of the procedure manuals referenced in Respondent's DOT Liquids Manual once each calendar year not to exceed 15 months. Respondent contends that the \$5000 penalty is excessive given the minor technical nature of the alleged violation. This is the second violation of this nature that PHMSA has issued to Respondent, the first was a Warning in CPF 5-2003-5006. The intent of the rule is to prevent procedures, required by Part 195 for normal, abnormal, emergency and maintenance operations, from becoming ineffective and possibly leading to an incident. This violation is not considered to be trivial.

Here, of the 69 miles of pipeline, there is over twenty miles that could affect Drinking Water USAs ("Unusually Sensitive Areas") for Billings, Montana and outlying areas. There are two crossings of the Yellowstone River and two crossings of tributaries to the Yellowstone River. The pipeline goes through the south side of Billings, which is a High Population Area. Additionally, there are at least two Other Population Areas, Bridger and Fromber, that could be affected by a crude oil release. There are also some environmentally sensitive USAs along this pipeline's route that could be affected by a release.

Given the public and environmental concerns and that this is the second violation of this type in a two year period, this penalty is not considered to be excessive.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for the violation. Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-300), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this 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 (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$5,000 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 United States District Court.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to Items 12a and 12b in the Notice. 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. 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 Respondent must-

1. With respect to Item 12a of the Notice, provide documentation for the Silvertip pipeline of actions taken to correct deficiencies found during the 2002 and 2003 monitoring surveys;
2. With respect to Item 12b of the Notice, provide documentation of those corrective actions taken for CIS 2509+73 to 2518+90, which did not meet the -850 mV criteria in 1999 or 2000;
3. **Maintain** documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Director, Western Region, PHMSA Costs shall 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; and
4. Within 60 days of receipt of the Final Order, submit documentation of procedures, costs and evidence of actions taken to the Director, Western Region, Pipeline and Hazardous Materials Safety Administration, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228. Please refer to CPF No 5-2005-5008 on any correspondence or communication in these matters.

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

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 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.

AMENDMENT OF PROCEDURES

Items 6, 7, 8, and 11 of the Notice alleged inadequacies in Respondent's procedures/plans and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. § § 195.402 (e)(7) (Notice Item 6), 195.402(c)(3) and 195.420(b) (Notice Item 7), 195.403(c) (Notice Item 8), and 195.555 (Notice Item 11). Respondent did not contest Notice Item 6 but did contest Notice of Amendment Items 7, 8, and 11. As discussed above, Notice Item 7 was withdrawn.

Item 8 in the Notice alleged inadequacies in complying with 49 C.F.R. §195.403(c) in that Respondent's process for verifying a supervisor's knowledge of emergency procedures currently requires self-validation, i.e., the supervisor must sign that s/he is familiar with procedures without any check or review process to validate his/her knowledge. Respondent contested this Notice of Amendment Item by stating that supervisors affirm their knowledge of emergency response procedures and managers review this statement. A supervisor's affirmation of knowledge and subsequent review of this affirmation by the manager is not considered to be verification. Verification should entail some method that ensures that the supervisor knows and understands the emergency response procedures. This may include testing or a review of procedures or critiques of a supervisor's actions during emergency response activities, both for tabletop exercises and actual events.

Item 11 in the Notice alleged inadequacies in complying with 49 C.F.R. 195.555 in that Respondent's process for verifying a supervisor's knowledge of corrosion control procedures currently requires self-validation, i.e., the supervisor must sign that s/he is familiar with procedures without any check or review process to validate his/her knowledge. Respondent contested this Notice of Amendment Item by stating that supervisors affirm their knowledge of corrosion control procedures and managers review this statement. Additionally, Respondent contends that this is the same allegation as Notice Item 8. A supervisor's affirmation of knowledge and subsequent review of this affirmation by the manager is not considered to be verification. Verification should entail some method that ensures that the supervisor knows and understands the CP procedures. This may include testing or a review of procedures or critiques of a supervisor's actions during corrosion control activities. Because the procedures for corrosion do not reside under emergency response procedures, PHMSA considers these two Notice of Amendment Items to be separate.

As discussed above, Respondent did not contest Notice Item 6, indicating that it is updating its emergency response plan. With respect to Notice Items 7, 8, and 11, Respondent submitted information, which Western Region, PHMSA, reviewed. Accordingly, based on the results of this review and the information at hand, I find that Respondent's procedures as described in the Notice for Items 6, 8, and 11 were inadequate to ensure safe operation of its pipeline system; Notice Item 7 was withdrawn. Pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. §190.237, Respondent is ordered to make the following revisions to its procedures. Respondent must—

1. Amend its procedures/plans with updated emergency response plan contact information. The procedures, including contact information, for emergencies should be updated at least once per year at intervals not exceeding 15 months (Notice Item 6),
2. Amend its process for verifying a supervisor's knowledge of emergency response procedures to ensure there are adequate checks and balances (Notice Item 8); and
3. Amend its process for verifying a supervisor's knowledge of corrosion control procedures to ensure there are adequate checks and balances (Notice Item 11).

- 4 Within 30 days following receipt of this Order, submit the amended procedures to the Director, Western Region, PHMSA.

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

Failure to comply with this Order Directing Amendment may result in the assessment of civil penalties of up to \$100,000 for each violation for each day the violation continues or in the referral to the Attorney General for appropriate relief in a district court of the United States

WARNING ITEMS

As noted above, Warning Item 2 in the Notice is dropped. The Notice did not propose a civil penalty or corrective action for Notice Item 1 (49 C.F.R. § 195.112(c)), Notice Item 3 (49 C.F.R. § 195.214(b)), Notice Item 4 (49 C.F.R. § 195.266(b)), Notice Item 5b (49 C.F.R. § 195.402(a)), Notice Item 5c (49 C.F.R. § 195.402(a)), Notice Item 9 (49 C.F.R. § 195.410(a)(2)(i-ii)), Notice Item 10 (49 C.F.R. § 195.428(a)), and Notice Item 13 (49 C.F.R. § 195.579(c)) but warned Respondent that it should take appropriate corrective action to correct the items as more fully described in the Notice. Respondent presented information regarding Warning Items 2, 3, 9, and 10 in its Response and/or at the hearing and acknowledged the other Warning Items in the Notice. With respect to Notice Items 3, 9, and 10—

Item 3 in the Notice warned that Respondent's welding procedures were missing in the project documentation for Sugar Plant reroute and the 2000 line lowering project. 49 C.F.R. § 195.214(b) requires that each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used. Respondent disagreed with this Warning Letter Item and provided documentation of welding specifications and of one welding procedure. Documents presented by Respondent did not provide any evidence indicating that the provided welding procedure was used during the 2000 line-lowering project. After review of the available information, this is considered a Warning Item and neither a civil penalty nor Compliance Order is attached to this Notice Item.

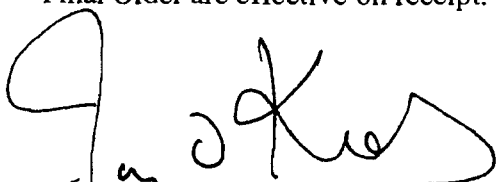
Item 9 in the Notice warned that Respondent's ROW markers at several locations had phone number lettering that was severely faded making reading of the phone number difficult. Additionally, several markers had the company name of Exxon and not ExxonMobil. Respondent disputed this Warning Letter Item, stating that although phone numbers were faded they could still be read. PHMSA photos taken during this inspection indicated that the phone numbers on some ROW markers were not legible. Respondent did not provide any other evidence for compliance with 49 C.F.R. § 195.410(a)(2)(i-ii). After review of the available information, this is considered a Warning Item and neither a civil penalty nor Compliance Order is attached to this Notice Item.

Item 10 in the Notice warned that Respondent only documents the data obtained during testing and calibration of the pressure transmitters on its pipeline that assist in metering. It did not document data obtained during the testing and calibration of other pressure transmitters on its

pipeline system. If a pressure transmitter is sending signals to another device or a SCADA system that controls pressure, then that transmitter is considered to be a pressure control device and as such must be tested and inspected and the data be recorded once each calendar year not to exceed 15 months in accordance with 49 C.F.R. § 195.428(a). Respondent disagreed with this Warning Letter Item, stating that pressure transmitters that send pressure and flow rate signals to control logic devices or a remote operating control center are not pressure control equipment. Since these devices are integral in the control of pressures for the Silvertip pipeline, PHMSA does not agree with Respondent's interpretation. After review of the available information, this is considered a Warning Item and neither a civil penalty nor Compliance Order is attached to this Notice Item.

With respect to all the Warning Items in the Notice, except for Notice Item 2, Respondent is again warned that if PHMSA finds a violation for any of these items in a subsequent inspection, enforcement action will be taken

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. All other terms of the Order, including any required corrective action and amendment of procedures, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective on receipt.



Theodore L. Willke
Acting Associate Administrator
for Pipeline Safety

JAN - 9 2007

Date Issued