

JUL 11 2011

Mr. Geoffrey Craft
Vice President, Operations
ExxonMobil Pipeline Company
12851 166th Street
Cerritos, CA 90703-2103

Re: CPF No. 5-2009-5004

Dear Mr. Craft:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$100,000. It further finds that ExxonMobil Pipeline Company has completed the actions specified in the Notice to comply with the pipeline safety regulations. When the civil penalty has been paid, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety
Mr. Chris Hoidal, Director, Western Region, PHMSA

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 1160 0001 0075 9497]

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

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In the Matter of)	
)	
ExxonMobil Pipeline Company,)	CPF No. 5-2009-5004
)	
Respondent.)	
)	

FINAL ORDER

Pursuant to 49 U.S.C. § 60117, a representative of the Washington Utilities and Transportation Commission (WUTC), as agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an investigation of an accident involving the pipeline terminal operated by ExxonMobil Pipeline Company (EMPCO or Respondent) in Spokane, Washington. The Spokane Terminal consists of six breakout tanks and associated piping.

The investigation arose out of a release of approximately 80 barrels of gasoline from Tank #505 during maintenance involving the removal of a temperature probe from the tank. The facility is located adjacent to an aquifer supplying drinking water to the City of Spokane, Washington.

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated February 3, 2009, a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that EMPCO had violated 49 C.F.R. § 195.402(a) and proposed assessing a civil penalty of \$100,000 for the alleged violation. The Notice also proposed that Respondent be required to take certain measures to correct the alleged violation.

Respondent responded to the Notice by letter dated March 9, 2009, as supplemented by letter dated August 3, 2009 (Response). EMPCO contested the allegation and requested a hearing. An informal hearing was subsequently held on August 18, 2009 in Lakewood, Colorado, with an Attorney from PHMSA's Office of Chief Counsel presiding. At the hearing, Respondent was represented by counsel. After the hearing, Respondent provided additional written material for the record, by letter dated September 17, 2009.

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195 as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

§ 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.

Specifically, the Notice alleged that EMPCO did not establish and follow a written procedure for the safe removal of the temperature probe from Tank #505. The probe was attached to a Thermowell unit and the individual removing the probe inadvertently detached the Thermowell unit from the tank causing gasoline to begin escaping from the tank.

In its Response and at the hearing, Respondent acknowledged that at the time of the accident it did not have a written procedure in place for removal of temperature probes that would prevent the Thermowell from rotating, such as a procedure for using a second wrench to hold the Thermowell unit in place while the probe was turned. EMPCO contended, however, that § 195.402(a) did not specifically require a procedure for removal of temperature probes because removing and calibrating the probes was such a routine task the presence of a written procedure in the manual would not have prevented the accident. Respondent, however, was not persuasive. The regulation requires written procedures for conducting “normal operations and maintenance activities...” Removal and calibration of temperature probes is clearly a normal operations and maintenance activity. The fact that an operations or maintenance task is considered to be routine does not negate the requirement to have and follow procedures for conducting it. Many operations and maintenance tasks can be considered to be routine. Any avoidance of the requirement to have procedures for the operations and maintenance tasks performed most frequently by an operator would be inconsistent with the purpose of the regulation and could have adverse safety consequences.

Respondent went on to argue that the individual who was removing the probe had over 30 years of experience in pipeline maintenance and would not have even read the written procedure if it existed. Respondent stated its view that this individual could not have been trained any more than he was and that the accident was the result of “human error.” The level of experience of any particular employee on a given operations or maintenance task, however, does not negate an operator’s obligation to have written procedures for the task. The next time, it could be a newer employee performing it but even experienced personnel need procedures. Written procedures are effective because they enable operations and maintenance tasks to be performed safely and consistently by all personnel.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to establish and follow a procedure for the safe removal of the temperature probe.

This finding of violation will be considered a prior offense 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 \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. 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; the Respondent's ability to pay the penalty 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.

Item 1: The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to establish and follow a written procedure for the safe removal of the temperature probe. In its Response and at the hearing, Respondent stated that it viewed every job from a loss prevention perspective before beginning and that it never foresaw a scenario where a Thermowell unit came out of a tank. Respondent argued that the penalty amount proposed in the Notice was excessive, particularly in light of its earlier argument that the existence of a procedure would not have prevented the accident.

To the contrary, however, the nature and circumstances of this accident actually highlight the value of having and following procedures. If Respondent had established and followed a procedure for removing temperature probes that included the use of a second wrench to ensure the Thermowell unit did not loosen, the spill may never have happened. With regard to the gravity and seriousness of the violation, the facility is located adjacent to a sole source aquifer supplying drinking water to the greater Spokane area. The task of removing a through-wall device had the potential for serious consequences in the event of an accident and at the time of the incident there was no membrane below the tank. I acknowledge that EMPCO took prompt action to contain the spill once the accident occurred and perform clean-up and removal of the contaminated soil. With respect to the good faith penalty assessment factor, however, Respondent made no good faith effort prior to the accident to develop a procedure for removal of the temperature probes.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.402(a).

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$100,000 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 district court of the United States.

The Notice proposed a Compliance Order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 195.402(a). 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. The Director indicates that Respondent submitted documentation demonstrating that on February 11, 2009 it established and implemented a procedure for safely removing devices that protrude through break out tank walls, including temperature probes. Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice are not included in this Order.

Under 49 C.F.R. § 190.215, Respondent has the right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, the petition must be sent to: 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. PHMSA will accept petitions received no later than 20 days after receipt of service of the Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued