

**Before the  
U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
Office of Pipeline Safety**

\_\_\_\_\_  
In the Matter of )  
)

ExxonMobil Pipeline Company, )  
)

Respondent. )  
\_\_\_\_\_ )

CPF No. 5-2013-5007  
Notice of Probable Violation

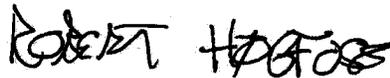
**REQUEST FOR HEARING**

ExxonMobil Pipeline Company (EMPCo or the Company) respectfully requests a hearing on the above-referenced Notice of Probable Violation (NOPV), which includes a Proposed Civil Penalty and Proposed Compliance Order, pursuant to 49 C.F.R. Parts 190.209 and 190.211. This NOPV was issued to EMPCo by the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency), Office of Pipeline Safety (OPS) on March 25, 2013, in electronic format. Pursuant to 49 C.F.R. Part 190.209, this request is timely.

As required by 49 C.F.R. Part 211(a), this Request for Hearing includes a Statement of Issues (attached), which incorporates by reference a Written Response to the NOPV (attached). As required by 49 C.F.R. Part 190.211(a), please be advised that the Hunton & Williams law firm, along with EMPCo General Counsel Jim Stevens, will represent the Company at any hearing that is scheduled for this matter.

Pursuant to 49 C.F.R. Part 190.211(e), EMPCo also hereby requests a copy of all material in the PHMSA case files that may be relevant to the issues raised in the NOPV and the issues raised by this Request for Hearing (including case files or materials relied upon during preparation of this action, CPF No. 5-2013-5007, and all other matters referenced in the NOPV or this Request for Hearing).

Respectfully submitted,



**HUNTON & WILLIAMS**

Robert E. Hogfoss, Esq.  
Bank of America Plaza, Suite 4100  
600 Peachtree Street, N.E.  
Atlanta, GA 30308  
(404) 888-4042

Catherine D. Little, Esq.  
Bank of America Plaza, Suite 4100  
600 Peachtree Street, N.E.  
Atlanta, GA 30308  
(404) 888-4047

**EXXONMOBIL PIPELINE COMPANY**

  
\_\_\_\_\_  
James R. Stevens, Esq.  
General Counsel  
800 Bell Street  
Houston, TX 77002  
(713) 656-3783

Date: April 24, 2013

**Before the  
U.S. Department of Transportation  
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**STATEMENT OF ISSUES**

In connection with its Request for a Hearing and in accordance with the requirements of 49 C.F.R. Part 190.211(a), ExxonMobil Pipeline Company (EMPCo or the Company), hereby provides the Statement of Issues that it intends to raise at a Hearing. The Statement of Issues incorporates by reference the Response to the Notice of Probable Violation (Response).

EMPCo shares the Pipeline and Hazardous Materials Administration's (PHMSA's or the Agency's) desire to ensure public safety and enhance pipeline system integrity. Without admitting the facts and conclusions set forth in the Notice of Probable Violation (NOPV), EMPCo intends to raise the following issues at a Hearing:

1. The Proposed Civil Penalty exceeds the statutory maximum allowed by the Pipeline Safety Act for violations occurring in 2011 (before the statutory maximums were increased, effective January 3, 2012). The civil penalty for this "related series of violations" as alleged may not exceed \$1 million pursuant to 49 C.F.R. Part 190.223(a); 49 U.S.C. § 60122(a)(1) (prior to the 2012 amendments).
2. Contrary to the direction of Congress in Section 2 of the Pipeline Safety Act, 49 U.S.C. § 60122(b), and PHMSA's own regulations at 49 C.F.R. Part 190.225, the Proposed Civil Penalty does not take into account all factors associated with the incident, including the fact that EMPCo fully cooperated with all federal, State and local officials in good faith while responding to and investigating the causes of the incident, and that the Company spent \$135 million in response and coordination efforts (which included three (3) Horizontal Directional Drills of existing Silvertip Pipeline river crossings).
3. Item 1 of the NOPV alleges that EMPCo's Integrity Management Program (IMP) plan was inadequate because it failed to anticipate 100 year flood events

on the river, and yet the IMP plan did address flooding, and the river flow on the day of the incident exceeded 500 year flood thresholds.

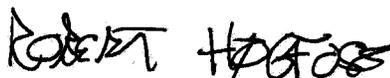
4. Item 2 of the NOPV incorrectly alleges that the Company failed to take preventive and mitigative (P&M) measures as part of its IMP plan, but the Company did address P&M measures and adopted specific P&M measures at the Yellowstone River crossing.

5. Item 4 of the NOPV incorrectly alleges that the Company had "no written emergency procedures" to respond to seasonal flooding; the Company did have procedures consistent with regulatory requirements.

6. Item 5 of the NOPV incorrectly alleges that the Company had "no written procedures" to minimize the amount of a release; the Company did have procedures consistent with regulatory requirements.

For all of these reasons and other matters as justice may require, the Company respectfully requests that PHMSA withdraw Items 1, 2, 4 and 5 of the NOPV, or significantly reduce the proposed penalty associated with those Items, and that the final penalty be adjusted below the statutory maximum of \$1 million for 'any related series of violations.' The Company does not contest the issuance of the Proposed Compliance Order in response to Item 3 of the NOPV, although it does not agree with the Agency's allegations in item 3.

Respectfully submitted,



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**HUNTON & WILLIAMS**

Robert E. Hogfoss, Esq.

Bank of America Plaza, Suite 4100

600 Peachtree Street, N.E.

Atlanta, GA 30308

(404) 888-4042

Catherine D. Little, Esq.

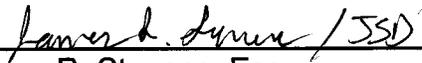
Bank of America Plaza, Suite 4100

600 Peachtree Street, N.E.

Atlanta, GA 30308

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In the Matter of	)	
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ExxonMobil Pipeline Company,	)	CPF No. 5-2013-5007
	)	Notice of Probable Violation
	)	
Respondent.	)	<b>RESPONSE TO NOTICE OF PROBABLE VIOLATION</b>

On March 25, 2013, the Associate Administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS or the Agency), issued a Notice of Probable Violation (NOPV) which included a Proposed Civil Penalty and Proposed Compliance Order, to the ExxonMobil Pipeline Company (EMPCo or the Company). The NOPV contained five (5) alleged violations of the federal pipeline safety regulations, proposed a civil penalty of one million seven hundred thousand dollars (\$1.7 million), and proposed a compliance order requiring retraining of Company pipeline controllers.

The NOPV was issued to address a release of liquid petroleum products from the Company's Silvertip Pipeline in Montana on July 1, 2011. Without admitting the allegations, facts and conclusions set forth in the NOPV, EMPCo seeks a Hearing on several of the alleged violations and regarding the amount of civil penalty proposed. The Company's response to the elements of the NOPV, the Proposed Civil Penalty and the Proposed Compliance Order is set forth below.

**I. Background Allegations**

In the introductory portion of the NOPV, the Agency provides background facts surrounding the Silvertip incident. There are several factual statements that should be clarified, as follows:

1. Silvertip Yellowstone River Crossing: The NOPV is solely focused on the Silvertip Pipeline where it crosses the Yellowstone River, but the NOPV does not provide necessary background information about the crossing. The Silvertip Pipeline was re-routed to go under the Yellowstone River in 1991. Prior to that date, the pipeline crossed the River at a bridge span. At the time of re-routing, the pipeline was placed in a rock cobble trench at least 6 feet below the river bed, constructed of 12-inch diameter, 0.500" wall thickness pipe (as opposed to 0.375" pipe used on the rest of

the line) and covered with 1-inch of concrete coating. A post-construction hydrotest was conducted in 1991, prior to putting the pipeline in service.

2. The NOPV alleges that the incident “was presaged by numerous indications over the past 20 years that the Yellowstone River was prone to seasonal flooding, including that the river had experienced increased erosion and scouring from recent floods...” *NOPV*, pp. 2-3. Although the Yellowstone, like most rivers, is indeed prone to seasonal flooding, the NOPV overstates the facts. Federal databases, including the U.S. Geologic Survey (USGS) and Soil Conservation Service (SCS), show that high water events on the Yellowstone since the Silvertip Pipeline was placed under the river were less extreme than historical levels. A report issued in 2008 for the Yellowstone River Conservation Council, entitled “Yellowstone River Historic Events Timeline,” shows that, other than 1997-1998, the time period from 1979 to 2007 “was characterized by minimal floods on tributaries and no floods on the Yellowstone River.” *Report at p. 5.*

Of the prior floods over the past 20 years, three were at levels higher than the levels recorded on July 1, 2011, as measured at river flood gauges at Billings. One occurred prior to the pipe being installed in the Yellowstone River (1974), one in 1997 (which was the highest crest ever recorded for the river) and one on May 26, 2011. In the latter two instances, the line survived the high water events, and the Company increased monitoring of the river crossing.

3. The NOPV also alleges that “another pipeline in the vicinity had failed in 2009 due to flooding.” *NOPV*, p. 3. The pipeline referred to is the Williston Basin Pipeline. Just one month after the Williston Basin Pipeline release in 2009, EMPCo conducted another inline inspection (ILI) of the Silvertip pipeline at the Yellowstone crossing (an ILI was also conducted in 2004), and found no anomalies requiring action. The following year, in 2010, the Company also conducted another depth of cover survey on the river crossing (a prior survey was conducted in 2001) and reconfirmed that the pipe was buried in rock and cobble at least five to eight feet below the riverbed. The 2010 depth of cover survey was provided to PHMSA prior to the 2011 flooding events.

4. The NOPV alleges that city officials from Laurel, Montana and officials from PHMSA expressed “their continuing concerns” about flooding and erosion on several occasions between late 2010 and July of 2011. *NOPV*, p. 3. The Company was aware and participated in all of these contacts. Notably, the Company fully cooperated with both the City and PHMSA at every point of contact. The Company reviewed depth of cover survey results with City and PHMSA officials (and ILI data with PHMSA), and increased monitoring of the river crossing. The NOPV notes that on

both May 26 and June 24, 2011, "EMPCo shut down the line for several hours to assess the situation but decided each time to resume operations."

We respectfully suggest that all of these allegations, including precautionary shutdowns of the line on two occasions, reflect the appropriate response of EMPCo, rather than suggest that the Company was not aware or involved with local conditions and concerns.

## II. Alleged Probable Violations

### ITEM 1: Alleged Failure to Consider All Risk Factors Under IMP

Item 1 of the NOPV alleges, pursuant to 49 C.F.R. Part 195.452(i)(2), that the Company's Integrity Management Program (IMP) plan failed to consider all relevant risk factors or preventive and mitigative measures for the Yellowstone River crossing. To the contrary, EMPCo's IMP plan (2010 version) clearly included consideration of time dependent threats such as heavy rains and floods. *EMPCo IMP Plan, Section 6 ('Preventive & Mitigative Measures'), App. J, 2010.* In addition, the Company conducted and documented a risk assessment of the Silvertip Crossing in 2010.

Consistent with PHMSA regulation and guidance, the Company's IMP Plan as of 2010 stated that where flooding could be anticipated the Company should consider such measures as thicker wall pipe, depth of cover surveys, use of block valves, ILI and increased monitoring. Significantly, EMPCo employed all of these measures at the Yellowstone River crossing prior to the incident.

For all of these reasons, EMPCo respectfully requests that Item 1 of the NOPV be withdrawn, or that the proposed penalty be withdrawn or significantly reduced.

### ITEM 2: Alleged Failure to Take P&M Measures Under IMP

Item 2 alleges that EMPCO failed to take preventive and mitigative (P&M) measures required by 49 C.F.R. Part 195.452(i)(1), that could have mitigated the consequences of a pipeline failure due to flooding. The allegations and legal and factual basis for Item 2 of the NOPV are largely duplicative of Item 1; both invoke PHMSA's IMP regulations at Part 195.452(i) and both allege a failure of the Company to be aware of flood history on this waterway. As pointed out in response to Item 1, the Company's IMP manual did address P&M measures and, in fact, had adopted specific P&M measures at the Yellowstone River crossing. To the

extent this Item addresses actions of the controllers, those issues are already addressed under Item 3, which we do not contest.

For all of these reasons, EMPCo respectfully requests that Item 2 of the NOPV be withdrawn, or that the proposed penalty be withdrawn or significantly reduced.

**ITEM 3: Alleged Failure to Maintain Continuing Training for Emergencies**

Item 3 of the NOPV alleges, pursuant to 49 C.F.R. Part 195.403(a)(3), that EMPCo “failed to establish and conduct a continuing training program to instruct emergency response personnel to recognize conditions like to cause emergencies...” Although the Company did have a training program for controllers on how to respond to emergency conditions, and the controllers did respond in accordance with their training and EMPCo’s procedures, EMPCo has indeed used the Silvertip incident to further improve its training procedures for controllers on how to respond to emergencies. For this reason, and without agreeing that PHMSA’s factual allegations in support of this alleged violation are correct or that EMPCo’s training was inadequate or not in compliance with the regulations, the Company does not contest the issuance of the Compliance Order that PHMSA has proposed in response to this Item.

**ITEM 4: Alleged Failure of O&M Manual Written Procedures for Flooding**

Item 4 of the NOPV alleges that EMPCo violated 49 C.F.R. Part 195.402(e)(2) by “failing to have written procedures [in its Operation and Maintenance (O&M) Manual] for taking prompt and effective action...to respond to seasonal flooding of the Yellowstone River.” Ironically, this Item criticizes the Company for proactively meeting with City of Laurel and PHMSA officials on several occasions prior to the incident to discuss high water issues and preparedness. The Item also notes that “[t]here is no indication that EMPCo initiated or implemented any new procedures to respond to the 2011 flooding of the Yellowstone River.” PHMSA regulations for O&M Manuals require preparation of written procedures to address normal operations, abnormal conditions and emergencies. See *Part 195.402(c), (d) and (e)*. The provision cited in the NOPV requires procedures for effecting “prompt and effective response” to emergencies “when an emergency condition occurs.” *Part 195.402(e)*.

The record shows that EMPCo did in fact have written procedures in place for responding to emergencies, including flooding, and that the Company’s

response efforts were prompt and effective. See *EMPCo O&M Manual, Local Operating Instructions, Silvertip to Laurel*, pp. 12, 26 (re flooding and emergency conditions). Indeed, the pipeline had survived higher flood levels in 1997 and on May 26, 2011. The Company confirmed depth of cover and ILI data in December 2010, immediately prior to the 2011 events. The allegations of fact are incorrect and the regulatory citations set forth in Item 4 are misplaced; there is no legal requirement to create “new procedures” in response to site specific conditions already addressed on a larger level.

We respectfully request that Item 4 of the NOPV be withdrawn, or that the proposed penalty be withdrawn or significantly reduced.

**ITEM 5: Alleged Failure of O&M Manual Written Procedures for Response**

Item 5 of the NOPV alleges that EMPCo violated 49 C.F.R. Part 195.402(e)(4) “by failing to have written procedures for taking necessary action to minimize the volume of oil potentially released...in the event of a failure.” Similar to Item 4 of the NOPV, the allegations of fact are incorrect and the regulatory citation in Item 5 is misplaced; PHMSA’s rule for emergencies at Part 195.402(e)(4) requires operators to have written procedures in their O&M Manual for “[t]aking necessary action, such as emergency shutdown or pressure reduction, to minimize the volume of hazardous liquid...released.” The Company *did* in fact have written procedures in place for emergencies, and those procedures were relied on during the Silvertip incident precisely to make emergency shutdowns of pumps and block valves. See *O&M Manual, Local Operating Instructions for Silvertip Pipeline*.

The question of whether the actions of the controllers responding to the Silvertip incident should have been accomplished more efficiently is a separate issue, addressed in Item 3 of the NOPV, which EMPCo does not contest.

We respectfully request that Item 5 of the NOPV be withdrawn, or that the proposed penalty be withdrawn or significantly reduced.

**III. Proposed Civil Penalty**

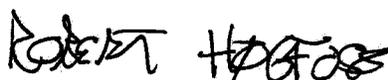
The NOPV proposes a civil penalty in the amount of \$1.7 million. The Pipeline Safety Act and PHMSA's regulations to implement that statute limit the amount of civil penalties as follows: "...the maximum civil penalty may not exceed \$1,000,000 for any related series of violations." 49 C.F.R. Part 190.223(a); 49 U.S.C. § 60122(a)(1) (prior to the 2012 amendments). There is no question that the allegations set forth in the NOPV arise from a 'related series of violations,' thus the maximum penalty available should be limited to \$1 million. Moreover, for the reasons noted in this Response and related documents, including the fact that EMPCo has fully cooperated in good faith with all federal, State and local agencies in responding to the Silvertip incident – and has already spent \$135 million in those response efforts – we respectfully request that the amount of civil penalty should be further reduced below \$1 million.

**IV. Proposed Compliance Order**

For the reasons noted in response to Item 3 of the NOPV, EMPCo does not contest the Proposed Compliance Order, and is already in the process of implementing those actions.

For all of the reasons identified above in this Response, including the fact that EMPCo has cooperated with PHMSA from the outset of this matter, and other matters as justice may require, the Company respectfully requests that PHMSA reduce the amount of the civil penalty as proposed.

Respectfully submitted,



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**HUNTON & WILLIAMS**

Robert E. Hogfoss, Esq.  
Bank of America Plaza, Suite 4100  
600 Peachtree Street, N.E.  
Atlanta, GA 30308  
(404) 888-4042

Catherine D. Little, Esq.  
Bank of America Plaza, Suite 4100  
600 Peachtree Street, N.E.  
Atlanta, GA 30308  
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James R. Stevens, Esq.  
General Counsel  
800 Bell Street  
Houston, TX 77002  
(713) 656-3783

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