

November 15, 2016

Mr. Richard C. Anderson  
President and Chief Executive Officer  
Freeport-McMoRan, Inc.  
333 North Central Avenue  
Phoenix, Arizona 85004

**Re: CPF No. 5-2015-7001**

Dear Mr. Anderson:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Freeport-McMoRan Oil & Gas, LLC. It makes one finding of violation and assesses a civil penalty of \$4,500. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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,

Alan K. Mayberry  
Acting Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, Director, Western Region, OPS  
Mr. Steve Rusch, Vice President of EH&S and Government Affairs, Freeport-McMoRan  
Oil and Gas, LLC, 5640 South Fairfax Avenue, Los Angeles, CA 92256

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

<b>In the Matter of</b>	)	
	)	
<b>Freeport-McMoRan Oil and Gas, LLC,</b>	)	<b>CPF No. 5-2015-7001</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

Between March 9 and March 12, 2015, 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 Freeport-McMoRan Oil & Gas, LLC<sup>1</sup> (FMOG or Respondent), in California. Respondent operates the Point Pedernales Pipeline, a 20-inch, onshore and offshore pipeline that transports crude oil from the company’s Platform Irene to the Lompoc Oil and Gas Plant in Santa Barbara, California.<sup>2</sup> The onshore portion of the pipeline is approximately 12 miles long.

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated August 21, 2015, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 195.452(h)(2) and proposed assessing a civil penalty of \$4,500 for the alleged violation.

FMOG responded to the Notice by letter dated September 22, 2015 (Response). The company contested the allegation of violation and presented information seeking elimination of the proposed penalty. Respondent did not request a hearing and therefore has waived its right to one.

**FINDING OF VIOLATION**

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

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<sup>1</sup> Freeport McMoRan Oil and Gas, LLC, is an operating company of Freeport-McMoRan, Inc.

<sup>2</sup> Freeport-McMoRan Inc., Annual Report (Form 10-K), at 43 (2015), available at [http://s2.q4cdn.com/089924811/files/doc\\_financials/annual/2015/10\\_k2015.pdf](http://s2.q4cdn.com/089924811/files/doc_financials/annual/2015/10_k2015.pdf).

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h)(2) which states:

**§ 195.452 Pipeline integrity management in high consequence areas.**

(a) . . .

(h) *What actions must an operator take to address integrity issues? . . .*

(2) *Discovery of condition.* Discovery of a condition occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator can demonstrate that the 180-day period is impracticable.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h)(2) by failing to promptly discover a condition on the Point Pedernales Pipeline within 180 days of an integrity assessment. Specifically, the Notice alleged that Respondent failed to obtain sufficient information about the Point Pedernales Pipeline within 180 days of two separate integrity assessments to determine whether the condition presented a potential threat to the integrity of the pipeline. The Notice alleged that FMOG conducted integrity assessments of the Point Pedernales Pipeline on July 16, 2013, and August 21, 2014. However FMOG did not receive the final report for the July 2013 assessment until February 19, 2014, and did not receive the final report for the August 2014 assessment until March 16, 2015. Both final reports noted an anomalous condition that required evaluation and remediation, but neither was obtained by FMOG within 180 days of the respective assessments.

In its Response, FMOG did not contest the allegation that discovery was made beyond 180 days after the assessments, but argued that it was impracticable to obtain sufficient information within 180 days. FMOG explained that, in 2011, the company learned the magnetic flux leakage (MFL) technology it was employing indicated an unexplained increase in wall loss in the Point Pedernales Pipeline. In response, FMOG changed the pigging and corrosion-inhibitor programs to address the anomaly, but without success. FMOG stated that it subsequently determined the MFL technology was not differentiating between internal and external corrosion in situations where both occurred. FMOG further explained that it coordinated with smart-pig vendors to investigate potential solutions to the issue.

According to FMOG, the company ultimately decided to run multiple tools, including MFL, ultrasound, and shallow internal-corrosion technologies, to address the different types of corrosion on the line. FMOG contended that additional time was needed to process the data from these three separate technologies into one report because the data had to be manually combined. FMOG therefore argued that the 180-day timeline was “impracticable” for both the July 2013 and August 2014 assessments.

I disagree. On the one hand, PHMSA has recognized in prior enforcement actions that “in some situations a delay in receiving ILI results from a tool vendor may render the 180-day discovery

period impracticable.”<sup>3</sup> On the other hand, PHMSA has also found that while it is sometimes possible for such situations to arise occasionally, “generally it is not an impracticability where the vendor delay could have been anticipated ahead of time, or where there was some action by the operator that contributed to the delay.”<sup>4</sup>

In this case, the Respondent planned to run three separate tools on the Point Pedernales Pipeline and chose to combine the data from the three tool runs into one report, thereby increasing the amount of information collected and the time needed for the information to be processed and reported. It is commendable that FMOG sought to undertake a series of in-line inspection (ILI) runs in an effort to learn more about the nature of the condition and to take a more comprehensive approach to understanding and addressing anomalous conditions. However, such an approach must still recognize that the 180-day period specified in § 195.452(h)(2) is based upon the premise that when an operator learns of an anomalous condition on its pipeline, it needs to obtain sufficient information about the nature of that condition within a reasonable period of time to effectively remediate a condition that may pose a real safety risk. This time period has a specific outer limit of 180 days.

As the operator of a hazardous liquid pipeline, Respondent bears the risk that an increased number of tests may result in longer processing times that would impact compliance with the 180-day discovery period. In this case, I find that the actions of the Respondent contributed to the delay in receiving ILI information and that therefore “impracticability” does not apply here. Further, I find that FMOG could have reasonably foreseen that it would not be able to obtain sufficient information from both reports within 180 days to make the proper determination and would therefore need to take alternative measures.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(h)(2) by failing to obtain sufficient information about a condition on its pipeline to determine that the condition presented a potential threat to the integrity of the pipeline within 180 days following an integrity assessment.

### **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. 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; and any effect that the penalty may have on its ability to continue doing business; and the good faith of the

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<sup>3</sup> *E.g.*, In the Matter of ExxonMobil Pipeline Co., C.P.F. 4-2011-5016, Item 2, 2013 WL 4478404 at \*14 (June 27, 2013).

<sup>4</sup> In the Matter of ExxonMobil Pipeline Co., C.P.F. 4-2013-5027, Item 6, 2015 WL 7175715 at \*20 (October 1, 2015).

company 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. The Notice proposed a total civil penalty of \$4,500 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$4,500 for Respondent's violation of 49 C.F.R. § 195.452(h)(2), for failing to promptly discover a condition on the Point Pedernales Pipeline within 180 days after an integrity assessment. Specifically, the Notice alleged the Respondent failed to obtain sufficient information about the Point Pedernales Pipeline within 180 days of two separate integrity assessments to determine whether the condition presented a potential threat to the integrity of the pipeline. As explained above, I find that impracticability is not a defense for missing the 180-day deadline in this instance, and the Respondent is therefore in violation of § 195.452(h)(2).

With regard to the nature, circumstances and gravity of the violation, the Violation Report indicated that the violation resulted in a minimal impact on pipeline safety due to the more-frequent assessment interval employed by FMOG than is required by § 195.452. The penalty amount, therefore, already takes into account FMOG's argument that the penalty should be reduced due to the company's efforts in running additional integrity assessments on the Point Pedernales Pipeline. Accordingly, PHMSA finds that the \$4,500 civil penalty has already been properly reduced to account for the severity of the violation.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$4,500 for violation of 49 C.F.R. § 195.452(h)(2).

In summary, having reviewed the record and considered the assessment criteria for the Item cited above, I assess Respondent a total civil penalty of **\$4,500**.

Payment of the civil penalty must be made within 20 days of service of this Final Order. Payment may be made by sending a certified check or money order (containing the CPF Number for this case), made payable to "U.S. Department of Transportation," to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMK-325), P.O. Box 269039, Oklahoma City, Oklahoma 73125. Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit 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, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$4,500 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.

Under 49 C.F.R. § 190.243, Respondent has the right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> 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. § 190.243. 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.

November 15, 2016

Alan K. Mayberry  
Acting Associate Administrator  
for Pipeline Safety

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Date Issued