

Colin G. Harris
Partner
colin.harris@FaegreBD.com
Direct +1 303 447 7736

Faegre Baker Daniels LLP
1470 Walnut Street ▾ Suite 300
Boulder ▾ Colorado 80302-5335
Main +1 303 447 7700
Fax +1 303 447 7800

07-03-17P12:39 RCVD

June 30, 2017

VIA E-MAIL (CHRIS.HOIDEL@DOT.GOV)
VIA US MAIL

Mr. Chris Hoidel
Director, Western Region
US Department of Transportation
Pipeline and Hazardous Materials Safety
Administration
12300 W. Dakota Ave., Suite 110
Lakewood, CO 80228

Re: CPF No. 5-2017-6017

Dear Mr. Hoidel:

We are counsel for ExxonMobil Production Company (ExxonMobil) in the above referenced matter. Enclosed is ExxonMobil's REQUEST FOR HEARING AND STATEMENT OF ISSUES. Please contact me if you have any questions regarding these documents.

Very truly yours,



Colin G. Harris

HARRC01

cc: Alan K. Mayberry

Boulder, CO 80302

E2.3B.526
Spring, TX 77389

DATE: _____

6-30-2017

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

In the Matter of)	
)	CPF 5-2017-6017
ExxonMobil Production Company,)	Notice of Probable Violation
)	
Respondent)	STATEMENT OF ISSUES AND
)	RESPONSE TO NOPV

In connection with its Request for Hearing (Request) in the above-referenced Notice of Proposed Violation (NOPV), and in accordance with the requirements of 49 C.F.R. Part 211(b), ExxonMobil Production Company (ExxonMobil) hereby provides this Statement of Issues and Response to the NOPV (Statement) that it intends to raise at a hearing. This matter involves the CO2 sales pipelines associated with ExxonMobil's Shute Creek treating facility near LaBarge, Wyoming (the "Shute Creek CO2 pipelines").

ExxonMobil shares the desire of the Pipeline and Hazardous Materials Safety Administration (PHMSA) to ensure public safety and ensure pipeline system integrity. In its Request and in this Statement, ExxonMobil is raising issues of fact and law related to the alleged violations in the NOPV, as well as challenging the Proposed Civil Penalty and Proposed Compliance Order. ExxonMobil notes that it has corrected the alleged deficiencies in Item 1 of the NOPV via the 2010 and 2015 External Corrosion Direct Assessment (ECDA) programs, which included the required number of direct examinations according to the NACE SP0502 standard. Without admitting any facts or conclusions set forth in the NOPV, ExxonMobil intends to raise the following issues at a hearing:

Issue #1: Lack of PHMSA Jurisdiction

The Shute Creek CO2 pipelines are not subject to PHMSA jurisdiction because they are intrastate CO2 pipelines. The Pipeline Safety Act, at 49 U.S.C. § 60101 et seq., does not expressly confer jurisdiction to PHMSA over intrastate CO2 pipelines. The Shute Creek CO2 pipelines are located entirely in the State of Wyoming, and transport the CO2 to points of destination in Wyoming only. Therefore, the Shute Creek CO2 pipelines are intrastate CO2 pipelines, and not subject to PHMSA jurisdiction.

Issue #2: The Shute Creek CO2 Pipelines are not Subject to §195.446(a)

With respect to the allegations contained in Item #2 of the Notice (Control Room Management), ExxonMobil contests the allegation that it "failed to comply with § 195.446(a) by not having and following written control room management procedures

that implement the requirements of § 195.446” on the grounds that the CO2 pipelines in question are not subject to regulation under 49 C.F.R. § 194.446. This is based on the following:

- (1) 49 U.S.C. § 60137(a) gives PHMSA the authority to issue regulations pertaining to control room management (CRM) for operators of a “gas or hazardous liquid pipeline.” CO2 is not defined in the statute or Part 195 of the pipeline safety regulations as a “gas” or a “hazardous liquid” (see 49 U.S.C. § 60101(a)(2) and (4), 49 C.F.R. § 195.2) and the LaBarge CO2 pipelines are not part of a “hazardous liquid pipeline facility,” 49 U.S.C. § 60101(a)(5).
- (2) In its rulemaking for CO2 pipelines, PHMSA expressly declined to include CO2 in the definition of “hazardous liquid.” Specifically, stakeholders explained that CO2 is less hazardous than hazardous liquids typically regulated by the Pipeline Safety Act, and that Congress distinguished the terms when enacting the statutory provisions authorizing regulation of CO2. 54 Fed. Reg. 41912, 41914 (October 12, 1989). PHMSA agreed, stating that “part 195 would be applied to CO2 pipelines without calling CO2 a hazardous liquid.” *Id.*

Issue #3: Arbitrary and Capricious

The Issuance of the NOPV was arbitrary and capricious, an abuse of discretion, in excess of stator jurisdiction, or otherwise not in accordance with law. Specifically, but without exclusion, PHMSA’s claims are barred because the attempt to impose the CRM regulations on CO2 pipelines falls outside the delegation of authority by Congress to PHMSA and are therefore ultra vires and not in accordance with law.

Issue #4: Failure to State a Claim

The NOPV alleges that ExxonMobil “failed to comply with § 195.466(a) by not having and following written control room management procedures that implement the requirements of § 195.466.” This allegation fails to state a claim because the NOPV does not identify any “control room management procedure” that ExxonMobil allegedly does not follow. Further, the Shute Creek CO2 pipelines are continuously monitored from the Shute Creek plant control room.

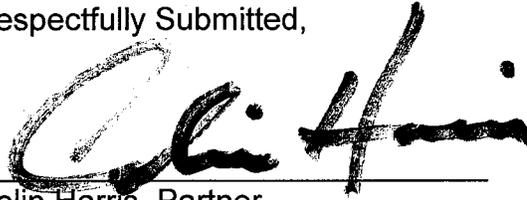
Issue #5: Laches, Estoppel and Waiver

PHMSA’s claims in the NOPV are barred by the doctrines of laches, estoppel and waiver.

For these reasons, and other matters as justice may require, ExxonMobil respectfully requests that PHMSA withdraw the NOPV, or Item # 2 of the NOPV, and withdraw the Proposed Civil Penalties, and the Proposed Compliance Order. To the extent that the penalty is upheld, NOPV challenges the amount of the penalty as arbitrary and

capricious and excessive. ExxonMobil reserves the right to supplement these positions and introduce additional information, if necessary, at the hearing.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Colin Harris". The signature is written in a cursive style with a horizontal line underneath it.

Colin Harris, Partner
Faegre Baker Daniels
1470 Walnut Street, Suite 300
Boulder, CO 80302

DATE: 6-30-2017